



**2014 Access to Justice Conference**  
**MEETING THE CHALLENGES TO EQUAL JUSTICE FOR ALL**  
William S. Richardson School of Law, University of Hawaii  
Friday, June 20, 2014

**Mental Health Issues Concerning Low-Income  
Individuals**

PROFESSIONAL RESPONSIBILITY IN THE  
**NEW WORLD** OF MENTAL HEALTH JUSTICE



## A LAWYER IS A PUBLIC CITIZEN HAVING SPECIAL RESPONSIBILITY FOR THE QUALITY OF JUSTICE

A LAWYER, AS A MEMBER OF THE LEGAL PROFESSION, IS A REPRESENTATIVE OF CLIENTS, AN OFFICER OF THE LEGAL SYSTEM, AND A PUBLIC CITIZEN HAVING SPECIAL RESPONSIBILITY FOR THE QUALITY OF JUSTICE.

**Hawaii Rules of Professional Conduct Preamble [1].**



## WHO ARE THE MENTALLY ILL

- 21% OF ADULTS BETWEEN 18 AND 54 HAVE MENTAL ILLNESS: INCLUDES SERIOUS ANXIETY AND MOOD DISORDERS
- Bipolar disorder 1.1%
- Schizophrenia 1.3%
- (Mental Illness in Hawaii: Prevalence Estimates Based on Year 2000 Census. Dpt of Health)

An estimated **44 million Americans** meet the diagnostic criteria for some form of mental disorder, according to the National Institute of Mental Health, and 5.6 million of those live with a serious mental illness, like schizophrenia or manic-depression (Denton County NAMI Newsletter, Oct./Nov. 1999; p.5).

- By comparison, approximately 25.8 million people, or **8.3 percent**, have diabetes in the United States

## One third of Homeless

- People with untreated psychiatric illnesses comprise one-third, or 250,000, of the estimated 744,000 homeless population.

## Eight million children

- Childhood psychiatric illness is an escalating problem. Twelve percent of the population under the age of 18, that's about 8 million children, teenagers, in the United States today have a diagnosable psychiatric illness (Denton County NAMI Newsletter, June/July 1999; p.5).

## Where are the mentally ill?

- Nationwide more than **three times** as many mentally ill people are ***housed in prisons and jails*** as in hospitals, according to a 2010 study by the National Sheriffs' Association. In 1955, there was one bed in a psychiatric ward for every 300 Americans; now there is one for every 3,000 Americans, the 2010 study said. (2/8/14 NY Times, Nicholas Kristof)

## MENTALLY ILL INCLUDED IN WAVE OF INCREASED INCARCERATION

### United States Now Has the Largest Prison Population in the World

- **Since the early 1970s, the nation's prison population has quadrupled to 2.2 million, making it the world's biggest.** For more than a decade, researchers across multiple disciplines have been issuing reports on the widespread societal and economic damage caused by America's now-40-year experiment in locking up vast numbers of its citizens... overwhelming evidence shows **a crisis that threatens society as a whole.** .. From 1980 to 2000, the number of **children** with fathers in prison rose from 350,000 to **2.1 million.** NY Times Editorial 5/24/14

## QUESTION

- HOW MANY ADULTS WERE INCARCERATED IN HAWAII IN 1970?

HAWAII INCARCERATION  
INCREASED FROM 300  
IN 1970 TO OVER 6000  
IN 2010

## Justice Kennedy: resources misspent, punishments too severe, sentences too long

- Our incarceration rate in the US, per capita, is about eight times as high as that of England, France or Germany. Their per capita incarceration rate is about 1 in 1,000. Ours is one in 143. .. **in my view our resources are being misspent, our punishments are too severe and our sentences are too long.** Justice Anthony M. Kennedy address to congress and the American Bar Association. August, 2003



## Largest Mental Health Facility in the United States is the Cook County Jail in Chicago (10,000 inmates, 2,000 mentally ill)

**“It’s criminalizing mental illness,”** the Cook County sheriff, [Thomas Dart](#), told journalist Nikolas Kristof on a day when 60 percent of the jail’s intake reported that they had been diagnosed with mental illness. Dart said the system is abhorrent and senseless, as well as an astronomically expensive way to treat mental illness — but that he has no choice but to accept schizophrenic, bipolar, depressive and psychotic prisoners delivered by local police forces. As Sheriff Dart put it: “We’ve systematically shut down all the mental health facilities, so the mentally ill have nowhere else to go. **We’ve become the de facto mental health hospital.**” Sunday Review, Nikolas Kristof, 2/18/14



## OLD WORLD OF MENTAL HEALTH JUSTICE

- *INCARCERATE FOR SUCCESS*



## NEW WORLD OF MENTAL HEALTH JUSTICE:





VERY BIG PICTURE – BLACK HOLE EATS  
STAR



PURPOSE OF PRISON ?

### JUSTICE KENNEDY: THERE'S SOMETHING SERIOUSLY WRONG.

Professor James Whittman of Yale has written a book called "Harsh Punishment". Professor Whittman makes the charge, that **the purpose and the mission of our prisons is to degrade and to demean the prisoner and to deprive them of their dignity** and that is a serious charge. I think this association should look carefully at that charge. We have to find some way to bridge the gap between **skepticism about rehabilitation** and the fact that so many of your fellow citizens, and your fellow humans, are being maintained in prison. And we have to ask, 'Why are they there?' We have to ask if there are better ways to prevent the addiction to crime which causes the cycle of recidivism. **Out of sight out of mind is not acceptable for any part of our justice system. Please, don't tune out and say, 'Well I'll tune back in when he gets on some other subject', because you're not a lawyer at all. This is your justice system and they're your prisons and there's something seriously wrong with them.** Justice

Anthony Kennedy August 9, 2003



## Proven treatment methods

- Many of the solutions to this crisis are clear, even if the political path to them often is not: Reduce sentence lengths substantially. Provide more opportunities for rehabilitation inside prison. Remove the barriers that keep people from rejoining society after they are released from prison. **Use alternatives to imprisonment for nonviolent offenders, drug addicts and the mentally ill.** (May 24, 2014 NY TIMES EDITORIAL)

- IS PRISON FOR THE MENTALLY ILL

- **INTERVENTION** OR ENHANCING CYCLE OF CRIME?
- ENTERING NEW OR OLD CRIMINAL JUSTICE SYSTEM?



## MENTAL HEALTH Courts

## THE NEW WORLD OF CRIMINAL JUSTICE

## ENLIGHTENED INTERVENTION A GROWING TREND

- In 1997 only 4 Mental Health Courts existed in the United States. The number has grown to over 300 in 2014.

In 2005 HAWAII ENTERS THE **NEW WORLD** OF  
CRIMINAL JUSTICE: MENTAL HEALTH COURT



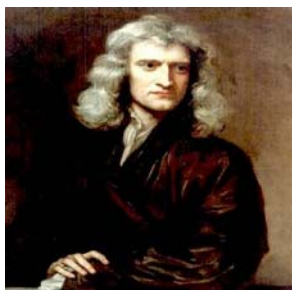
## WHO DO WE TREAT in MENTAL HEALTH COURT?

### Eligible Mental Health Court defendant



Ludwig Van Beethoven

Beethoven was a German composer, the predominant musical figure in the transitional period between the Classical and Romantic eras. He is widely regarded as one of the greatest of composers – and he is believed to have been **bipolar**.



Sir Isaac Newton

Sir Isaac Newton was an English physicist, mathematician, astronomer, natural philosopher, alchemist and theologian – and is believed to have been **bipolar** and suffered from **schizoid symptoms**.

Eligible Mental Health Court defendant

A probationable,

nonviolent

class B or C felon

with a serious persistent mental illness

and no history of sex or gun offenses.

Serious persistent mental illness:

- Bipolar
- Schizophrenia
- Major depression psychotic feature

## Typical Mental Health Court Candidate

- *Suffering*
- Doesn't understand mental illness
- Homeless
- Uneducated
- Unemployed
- Poor Family Support

## Services provided by Mental Health Court

- Regular review hearings
- Substance abuse and mental health counseling by treatment physicians (Sand Island Treatment Center, Hina Mauka, Po`ailani, Queen's Day Care)
- Education
- Housing
- Employment

TRACK 2 – **TRANSFORMATIVE  
SENTENCING**

- DEFENDANT SELF-AWAKENS (understand addiction and medication through treatment)
- ACCESS RESOURCES
- LEARNS LIFE SKILLS/NEW THINKING
- NO CONVICTION
- STEM THE TIDE OF PRISON POPULATION

**TRACK 2 SILVER BULLET**  
TARGETED TREATMENT = NO RECORD





## TRACK 2 – Pretrial Defendant: charges dismissed

- Eligible defendants are pretrial; arrested, charged, but have not gone to trial.
- Referrals are made by private attorneys and the Office of the Public Defender to the Office of the Prosecuting Attorney.
- Benefit of program completion is *dismissal of charges*

Chief Justice Recktenwald congratulates reunited father, full-time employee and former college basketball scholarship recipient



Graduate with mother who came from Wisconsin to celebrate with her son. He now volunteers every week to participate in support group



## First Drug Court Graduates



## Graduates with new life skills

**Miracle:** a surprising and welcome event that is not explicable by natural or scientific laws and is therefore considered to be the work of a divine agency.



All Graduates: Not  
Suffering. Proud

## New World of Relevant Sentencing

- Decrease in Prison Population
- Increase in opportunities for success of the children of incarcerated people



over 600 thousand new children  
of incarcerated parents

- From 1980 to 2000, the number of **children** with fathers in prison rose from 350,000 to **2.1 million**

## Mental Health Justice in Civil Court

- Targeted treatment for chronically mentally ill unlikely to live safely in the community

## ACT 221 ASSISTED COMMUNITY TREATMENT

- PURPOSE: TREAT AND STABILIZE MENTALLY ILL/SUBSTANCE ABUSER
- PROVIDES COURT-ORDERED SERVICES TO MENTALLY ILL UNLIKELY TO LIVE SAFELY IN THE COMMUNITY WITH HISTORY OF INPATIENT HOSPITALIZATION OR DANGEROUS TO SELF OR OTHERS. PATIENT HAS HISTORY OF LACK OF ADHERENCE TO TREATMENT
- PSYCHIATRIST LETTER ACCEPTED BY FAMILY COURT

Human progress is neither automatic nor inevitable... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals.

-----MARTIN LUTHER KING JR and SIMEON ACOBA JR

