

MENTAL ILLNESS & CRIMINAL PROCEDURE

Problems, Progress and Room for Reform

Emily S. Martin
University of Denver
Sturm College of Law

Directed Research Supervised by
Professor Ian P. Farrell

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INTRODUCTION

With an increase in attention on mental health issues in the United States, the legal system is no stranger to the complexities that come with individuals suffering from mental illness. As media outlets enhance their focus on the challenges of mental illness, the interactions of the mentally ill with law enforcement, and the expanding need for services, the pressure to find remedies for these concerns continues to rise. The priorities of treatment providers and mental health organizations oftentimes do not align with the primary concerns of law enforcement and the courts. From initial contact with law enforcement all the way into corrections, the legal system is unskilled in handling the delicate balance between justice and humanity for the mentally ill. The intersection of law and psychology needs to be addressed at several intersections. Standards for issues like competency and insanity need to be calibrated to provide shared definitions between these intertwined fields. The methods employed in handling the mentally ill during interrogations and custodial procedures also require some level of customization to address their unique needs. Furthermore, the concept of “rehabilitation” that realistically has no part in our current justice system needs to be utilized; the realms of mental health and justice should be working together, not in opposition of one another. The unspoken partnership that exists between the fields of law and psychology can yield systemic success if taken advantage of, but the perspective of *both* fields must be assessed and reviewed to harness this feat. For our justice system to achieve its intended goals it needs to be far more interdisciplinary; the existing void between psychology and the law needs to be bridged from both sides and

both fields. From addressing the existing problems and their importance to the legal system, to recognizing the current efforts being made and the areas still with room for improvement, a broad review of this topic helps to reveal the keys of this interdisciplinary partnership.

PART I: WHY SHOULD WE CARE?

Prevalence of Mental Illness

Within the legal system there is often question about if and when mental illness should be considered to play a significant role. A study conducted in 2002 concluded that the probability of arrest was 67 times higher for individuals with outward symptoms of mental illness than it was for individuals who do not display such symptoms.^{1,2} The National Alliance on Mental Illness (NAMI) compiled statistics that revealed that twenty-one percent of individuals residing in local jails and twenty percent of state prison inmates have had what NAMI refers to as “a recent history” of a mental health condition.³ The existence of these disorders in one-fifth of inmates is enough on its own to raise a red flag of concern. This is why those in the legal profession should care. NAMI estimated that one out of every four adults in the United States experiences some level of mental illness each year - that is over sixty million Americans.⁴ Even more shocking is the reality that an estimated one out of every

¹ Allison D. Redlich, *Mental Illness, Police Interrogations, and the Potential for False Confession*, 55 *J. of L. & Psychiatry* 19, 19 (2004).

² Linda A. Teplin, *Keeping the peace: police discretion and mentally ill persons*, *Nat'l Inst. Of Just. J.* 8, 12 (2000).

³ National Alliance on Mental Illness, *Mental Illness Facts and Numbers* (2003).

⁴ *Id.*

seventeen people, approximately 13.6 million total, suffers from serious mental illness such as bipolar disorder, schizophrenia, or major depression.⁵

Just as important as the high prevalence of mental illness is the lack of services available to those most in need of aid. It is estimated that as many as sixty percent of adults in America received no mental health services in the year preceding NAMI's data collection; the only factor more concerning than the widespread nature of mental illness is the reality that many affected have not received treatment.⁶ Particularly in criminal law, mental illness has significant ramifications and with so many affected by such disorders those ramifications cannot be ignored. The heightened risk of negative complications is yet another factor to consider when assessing mental illness as related to the justice system.

Defining Mental Illness

One of the most challenging pieces of assessing the impact of mental illness on the justice system is defining "mental illness" or "mental disorders." The American Psychological Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) defines a mental disorder as:

...a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress in social, occupational, or other important activities. An expectable or culturally approved response to a common

⁵ National Alliance on Mental Illness, *Mental Illness Facts and Numbers* (2003).

⁶ *Id.*

stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.⁷

This definition is an adjustment from previous version of the DSM. The publication of the DSM-5 in 2013 provided a more comprehensive and complete explanation of psychology and psychiatry's current view of mental disorders. The DSM-IV-TR defined a mental disorder only as, "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom."⁸ The new, enhanced definition is one of many displays of how society's view of mental illness is constantly developing and adjusting based on developments in medical fields as well as in mental health. As the fields of psychology and neuroscience continue to progress in their understanding of mental illness, the legal system is faced with the challenge of keeping up to date with this progress and how it impacts the justice system.

Black's Law Dictionary provides only a few basic definitions related to mental illness. This publication, used frequently and regularly by many attorneys, defines "mental illness" as : "1. A disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, or the ability to cope with the ordinary

⁷ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 20 (2013).

⁸ Diagnostic and statistical manual of mental disorders Text Revision: DSM-IV-TR, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-IV xxx (2000).

demands of life 2. Mental disease that is severe enough to necessitate care and treatment for the afflicted person's own welfare or the welfare of others in the community.”⁹ While this definition does touch on the issues of impairment in daily life, behavior, and an individual's perceptions, it remains vague with little insight into what that means. One important gap that exists in this legal definition relates to the cognitive components that may be included in mental illness; while Black's does include a definition for developmental disability, it fails to mention that cognitive elements can accompany many other mental health diagnoses. Instead, Black's Law Dictionary defines such a disability only as, “an impairment of general intellectual functioning or adaptive behavior.”¹⁰ Once again, this widely used resource is unlikely to give a lawyer any true understanding of a cognitive disorder or the impact it may have on a client or defendant and their actions.

The of legal definitions explaining mental health concerns is an issue in and of itself, but the conflict between these definitions and those in the field of psychology raises additional concerns as well. In two fields that so frequently intertwine with one another and manage many of the same clients, consistency in approach and understanding is important to the success of the justice system. Limited understanding combined with contradictions in defining mental health factors hinders both the ability of the legal system to provide justice, and the provision of fairness to those who enter it.

⁹ Black's Law Dictionary 1075 (9th ed. 2009).

¹⁰ Id. at 523

PART II: WHERE ARE THE PROBLEMS?

Mental Illness and Interrogation in the Investigative Stages

Existing features of the justice system in the early stages and beyond exacerbate the challenges that surface when mentally ill individuals enter the system. With regard to interrogations, the core issue is that of confessions. To be valid and admissible, a confession must be voluntary, which is measured through a variety of somewhat subjective means.¹¹ In order to assess the issue of voluntariness, several factors must be considered through a totality of the circumstances analysis of the interrogation; this analysis must include consideration of “both the defendant’s ability to resist coercive pressures and the nature of the police conduct.”^{12,13} Included in the Colorado Supreme Court’s list of factors that play a role in voluntariness is “the defendant’s mental and physical condition just prior to the interrogation,” a clear indication that the courts are aware of the impact mental state has when subjected to police processes.¹⁴ The Colorado requirements surrounding voluntariness adhere to the standards established by the United States Supreme Court; *Schneekloth v. Bustamonte* established that when assessing whether a confession or statement made by a defendant was voluntary a totality of the circumstances assessment is appropriate, including a look at “both the characteristics of the accused and the details of the interrogation.”¹⁵ These circumstances include the psychological impact of those circumstances on the

¹¹ *People v. Liggett*, 334 P.3d 231, 237 (2014).

¹² *People v. Ramadon*, 314 P.3d 836, 842 (2013).

¹³ *Schneekloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

¹⁴ *Id.* at 226.

¹⁵ *Id.*

individual accused.¹⁶ Several of the factors considered under such an analysis may be far more influential on a person suffering from a mental disorder than an individual of healthy, functioning mental capacity.

Many of the symptoms that accompany severe mental disorders easily impact an individual's behavior and understanding, particularly in an interrogation setting. For example, for individuals suffering from Schizophrenia spectrum disorders and other psychotic disorders, a common characteristic is the "apparent normality of their behavior and appearance" when their delusional thinking is not being directly discussed.¹⁷ Delusional components are merely one of many symptoms that may not be readily apparent to law enforcement despite their interference with psychological functioning and rational thinking. Similarly, individuals living with Bipolar and related disorders experience symptomology that can directly detriment their ability to function at a normal level in an interrogation. Impulsivity, functional recovery following manic or depressive episodes, and at times a lower level of cognitive functioning related to the symptoms and diagnoses are all symptoms of this family of disorders; each of these factors can impact an individual's willingness to answer questions or provide information, as well as his or her ability to understand options being presented to them.¹⁸

¹⁶ *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

¹⁷ *Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5* 93 (2013).

¹⁸ *Id.* at 123-54

Interrogation Errors

Many aspects of police interrogations and investigations are inherently problematic; interaction with individuals suffering from mental health issues only increases the complexity of those stages. Three sequential errors raise concerns in the interrogation phase of a legal case: the misclassification error, the coercion error, and the contamination error.¹⁹ During the interactions between law enforcement and a suspect, the misclassification error occurs when officers “erroneously decide” that an individual is guilty of the crime in question.²⁰ Leo and Drizin point out that because misclassifying an individual is the first step toward false confessions, it is “both the first and the most consequential error” that law enforcement can make.²¹ This error can easily occur whether or not the individual in question has a mental disorder; the following sequential errors however, are more concerning when interacting with the mentally ill.

In discussing “the coercion error,” the Leo and Drizin are referring to either police use of inherently coercive techniques such as promises or threats to overcome a suspect’s will, or the use of techniques that cause a suspect to believe that complying with the demands is his or her only choice.²² Black’s Law Dictionary defines coercion as, “compulsion by physical force or threat of physical force.”²³ While in the past, and even some today, harsh physical approaches such as deprivation of sleep, food, water,

¹⁹ Richard A. Leo & Steven A. Drizin, *Police Interrogations and False Confessions* 12-13 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

²⁰ *Id.* at 13.

²¹ *Id.* at 12-13

²² *Id.* at 17-18.

²³ Black’s Law Dictionary 294 (9th ed. 2009).

or other necessities are what many think of when they hear the word “coercion,” today’s techniques tend to be far more psychological.²⁴ Whether implicit or express, interrogators frequently use threats of harsher treatment contrasted with promise of leniency to build rapport with suspects and steer them toward a statement most favorable to the investigator’s needs.²⁵ Leo and Drizin point out that beyond these techniques, the setting of an interrogation further enhances a suspect’s feelings of having no other choice; they point out that, “custodial environment and physical confinement are intended to isolate and disempower suspects,” another factor with heightened impact on the mentally ill.²⁶ In defining confessions, one of the subcategories of these statements is the “Coerced-Compliant Confession.”²⁷ This form of confession is defined as one given, “by a suspect who knows that he or she is innocent but is overcome by fatigue, the questioner’s tactics, or a desire for some potential benefit,” and is exactly the concern raised by Leo and Drizin with regard to the coercion error during interrogations.²⁸ A confession given in such a situation brings into question the true voluntariness of that statement, and also the truthfulness. This coercion error is where mental illness becomes a serious concern; if high functioning, cognitively and psychiatrically sound individuals are swayed and manipulated by these tactics, how could an individual with mental illness be expected to withstand the same pressures? If an individual is living with a cognitive deficit such

²⁴ Black’s Law Dictionary 294 (9th ed. 2009).

²⁵ Richard A. Leo & Steven A. Drizin, *Police Interrogations and False Confessions* 18 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

²⁶ *Id.*

²⁷ Black’s Law Dictionary 294 (9th ed. 2009).

²⁸ Richard A. Leo & Steven A. Drizin, *Police Interrogations and False Confessions* 18 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

as an intellectual disability, what psychological safeguards do they really have to protect them from coercion or the strategic plays of law enforcement and other members of the justice system?

Following the coercion error comes a third, and equally troubling issue within interrogations referred to as the contamination error. A contamination occurs largely as law enforcement tries to obtain a detailed narrative surrounding the crime in question in an interrogation; the need for law enforcement is to have information and details within that narrative that could only be known by those who perpetrated the crime.²⁹ In order to achieve this result, interrogators will often feed a suspect, whether knowingly or accidentally, information surrounding the specifics of a crime unknown to the public or the media. This information then becomes incorporated into the individual's narrative as if he or she had known it all along.³⁰ As this error can lead to confusion in any individual, it becomes even more concerning for individuals with mental disorders that impact their thinking and reasoning. As everyday incorporation of information can be difficult, being fed information that expands on their own actual experiences can cause a person with mental illness to experience an even higher level of confusion as to what they truly know versus what they have merely been told. This interrogation error can lead to a persuaded confession, "a false confession by a suspect who has no knowledge of a crime but adopts a belief in his or her guilt."³¹ Once again,

²⁹ Richard A. Leo & Steven A. Drizin, *Police Interrogations and False Confessions* 20 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

³⁰ *Id.* at 13.

³¹ *Black's Law Dictionary* 294 (9th ed. 2009).

where there is risk to mentally healthy, stable individuals, there is a heightened risk to those suffering from a mental disorder that lack the same psychological protections.

Beyond the errors discussed by Leo and Drizin, the basic features of any interrogations hold unique stressors and concerns with regard to the mentally ill. The strain of being confined, even in a safe and sanitary interrogation room, can trigger stress for any person; this perceived confinement and restriction can cause a person with mental disorders of paranoid types or delusional types to experience an even higher stress reaction.³² Similarly, interactions with law enforcement carry an inherent feeling of facing authority. Higher levels of mistrust and an inability to distinguish between those working for them or against them are realities for individuals with various mental disorders and cognitive deficits. These challenges that are less pervasive for individuals of healthy mental functioning remain a significant challenge for individuals with mental illness. Although many of these challenges arise through no intentional act or effort by law enforcement, the realities and challenges that come with these strategies and approaches must be recognized and acknowledged; equal protection should be provided to those that live with mental illness as is provided to those who do not, and adjustments should be utilized to address the need for a specialized approach with mentally ill subjects.

³² Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 J. L. Hum. Behav. 3, 21-22 (2010).

Impact of Mental Disorders on an Interrogation Subject

The ultimate goal of a police interrogation is to reap a confession from the suspected party. Unfortunately, the tactics used to reach this goal are inherently coercive when used on the average person, and are even more so when questioning individuals with mental illness. Not only are individuals with mental illness overrepresented within our justice system, they are also overrepresented amidst cases of false confessions.³³ Of the 341 cases of individuals later exonerated listed on the Innocence Project's database, ninety-six of those wrongful convictions followed a false confession.³⁴ The National Registry of Exonerations, hosted by the University of Michigan Law School, has chronicled 1,778 exonerations; of those, 120 resulted due to a false confession.³⁵ Even more astounding is the estimate that as many as one in four people wrongfully convicted and later exonerated made either a false confession, or some form of an incriminating statement.³⁶ The Innocence Project notes that in regard to mental illness: "People with mental disabilities have often falsely confessed because they are tempted to accommodate and agree with authority figures. Further, many law enforcement interrogators are not given any special training on questioning suspects

³³ Allison D. Redlich et al., *Self-Reported False Confessions and False Guilty Pleas among Offenders with Mental Illness*, 34 J. L. Hum. Behav. 79, 81-82 (2009).

³⁴ Innocence Project, *Cases*, <http://www.innocenceproject.org/all-cases/> (last visited Apr. 23, 2016).

³⁵ Michigan Law, *The National Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx> (last visited Apr. 23, 2016).

³⁶ Innocence Project, *False Confessions or Admissions*, <http://www.innocenceproject.org/causes/false-confessions-admissions/> (last visited Apr. 23, 2016).

with mental disabilities.”³⁷ The implications of the statistics are clear, and much of the reasoning for such statements and confessions stems from the tactics used by police during interrogations.

The need for persuasive methods during an interrogation is undeniable; this key stage of an investigation can make or break the police’s ability to catch the party responsible for a crime. Interrogators frequently use tactics to present themselves as someone who is there to help the suspect and is sympathetic to his or her situation.³⁸ Other tactics include creating the illusion that the extent or nature of the evidence against the suspect is more dire than it really is. Emphasizing potential consequences and making promises to help the suspect in exchange for honesty are other tactics used to gain the information they need from the interrogation.³⁹ The ongoing importance placed on telling the truth while contrasting it against the serious consequences of dishonesty aim to push a suspect toward the truth; unfortunately this can lead individuals with limited self-preservation tools to give the information they think police want to hear instead of the truth.

This is a challenge for nearly any individual placed in an interrogation setting, however the stakes are even higher for those who lack self-preservation skills. William

³⁷ Innocence Project, *False Confessions or Admissions*, <http://www.innocenceproject.org/causes/false-confessions-admissions/> (last visited Apr. 23, 2016).

³⁸ William C. Follette et al., *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 J. Crim. Just. 42, 43 (2007).

³⁹ Chris Schaefer, Colo. Bureau of Investigation, *University of Denver Forensic Field Guide Workshop Series: Forensic Investigation Techniques* (Feb. 22, 2017).

C. Follette discusses the many challenges of withstanding the inherent coercion of an interrogation:

Generally, a person must be able to exert considerable self-control-or self-regulation-in order to resist the pressures of interrogation. This includes the control of attention and cognitive processes necessary to evaluate incoming information, and to think of relevant information available from one's own knowledge and experience. It also entails the ability to control behavior. One must be able to withstand the relentless pressures to confess posed by one or more interrogators, possibly over a period of many hours, or even days. Moreover, they must control the need to confess simply as a way to end the interrogation, or satisfy the need for sleep, or to get the interrogators "out of my face."⁴⁰

Follette breaks down an individual's ability resist interrogative influence in terms of three components: relevant knowledge, intact cognitive resources, and the person's capacity for self-regulation.⁴¹ Relevant knowledge is a challenge for anyone, whether they suffer from a mental illness or not; navigating the complexities of police investigations and the workings of our legal system is no simple task. The aspect of intact cognitive resources is of the most concern when handling individuals with barriers of mental illness, such as cognitive, mood, and psychotic disorders. Self-regulation is of similar concern with regard to mentally ill suspects.

While symptoms vary by individual, impulsivity is a problematic symptom that spans across a variety of mental disorders. Post Traumatic Stress Disorder (PTSD), Bipolar and related disorders, Schizophrenia spectrum disorders, disruptive, impulse-control and conduct disorders, and neurocognitive or neurodevelopmental disorders are some of the many families of mental disorders that include symptoms of impulsivity

⁴⁰ William C. Follette et al., *Mental Health Status and Vulnerability to Police Interrogation Tactics*, 22 J. Crim. Just. 42, 43 (2007).

⁴¹ Id.

and related behaviors.⁴² An individual with PTSD may exhibit symptoms of self-destructive behavior, problems with concentration, irritable behavior, or angry outbursts; it is easy to consider the many ways in which behaviors such as these could become problematic and even suspicious in an interrogation setting.⁴³ The containment aspect of an interrogation, or other seemingly neutral stimuli such as the officer conducting the questioning, loud noises in the jail or police station setting, or other unpredictable aspects could trigger an individual with PTSD. As these components could cause psychological distress for the individual, sometimes as intensely as to trigger dissociation, an individual's ability to recall and relay information is inhibited.⁴⁴ Additionally, if the fear and anxiety associated with an individual's PTSD triggers behavioral outbursts, they could be seen as uncooperative or unwilling to participate in the interrogation, even if that is not actually the case.

For individuals living with Bipolar and related disorders, manic and hypomanic episodes also present obvious challenges in regard to interactions with law enforcement. Racing thoughts, distractibility, pressure to keep talking, and flight of ideas are all symptoms that leave a person with these mental disorders as more susceptible to interrogation strategies and the interrogation errors.⁴⁵ An individual with Bipolar that is experiencing a manic or hypomanic episode may have difficulty staying on topic during an interrogation, and may also be unable to refrain from

⁴² Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 (2013).

⁴³ Id. at 272.

⁴⁴ Id. at 271.

⁴⁵ Id. at 124.

answering or giving information even if it is in their best interest to refrain.⁴⁶ On the other hand, an individual experiencing a major depressive episode due to Bipolar may be impacted by feelings of inappropriate guilt that may be delusional, and may exhibit psychomotor agitation or retardation; any of these symptoms can give inaccurate impressions of the individual in an interrogation setting.⁴⁷ This is no small concern - approximately six million people in the United States live with Bipolar.⁴⁸

Neurocognitive disorders host their own troubling challenges for individuals facing interrogation. This family of disorders refers to deficits in cognitive function that are acquired as opposed to developmental, and the symptomology is troubling on its face. Of the various neurocognitive domains considered with regard to these disorders, each hosts its own challenges in an interrogation setting.⁴⁹ One of the difficulties that accompanies interrogations is the lengthy time period over which questions must be asked, statements taken, and explanations given. For an individual who struggles with complex attention, this prolonged process raises concerns with sustained attention, or attention over time, as well as selective attention, or maintaining attentiveness in spite of distractions.⁵⁰ As can be imagined, these challenges make the ability to focus on questions asked, and do so while managing surrounding sounds or movement, far more difficult for someone with these symptoms than the situation would be for an individual without cognitive deficits. Even more

⁴⁶ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 AT 123-25 (2013).

⁴⁷ Id. at 125.

⁴⁸ National Alliance on Mental Illness, Mental Illness Facts and Numbers (2003).

⁴⁹ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 at 591 (2013).

⁵⁰ Id. at 593.

concerning is the area of executive functioning. This neurocognitive domain includes actions such as planning, decision-making, cognitive flexibility, and working memory; each of these abilities is unmistakably important during an interrogation.⁵¹ This domain may impact an individual's ability to take in and apply the information given to them during an interrogation, as well as assess options presented to them based on the information provided. The learning and memory domain presents similar challenges; if an individual cannot retain bits of information given to them, even several minutes prior, their ability to make proper decisions with a comprehensive memory of all information given to them becomes nearly impossible.⁵²

When answering questions, individuals with deficits in the remaining three domains begin to suffer in attempts to recall events and provide answers. The language domain includes the ability to use expressive language including identifying objects or pictures, while the perceptual-motor domain implicates visual perception, coordination elements, and gnosis, or awareness and recognition, such as the recognition of faces.⁵³ These neurocognitive domains hold influence on an individual's ability to describe scenarios and identify related stimuli; as a result, individuals with diminished functioning in these areas lack the ability of a mentally healthy person to relay information and descriptions, a skill vital in an interrogation.⁵⁴ Finally, the social cognition domain comes into play. As this domain relates to recognition of emotions and the ability to "consider another person's mental state or experience," this cognitive

⁵¹ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 at 593 (2013).

⁵² Id. at 594.

⁵³ Id. at 595-96.

⁵⁴ Id.

area relates largely to an individual's ability to read and understand his or her interrogator and the interrogator's role.⁵⁵ Difficulty in reading others eliminates an individual's ability to gain a sense of whether someone is working for or against them, as well as whether a person's underlying motivations or emotions may be positive or negative.⁵⁶ In this way, the interpersonal components of an interrogation are largely misconstrued or at times lost entirely; much of the influence had by law enforcement is based off these factors, so lacking abilities in this cognitive domain can be exceptionally detrimental. While an interrogation subject may not have difficulty in all of the various cognitive domains, each individual domain presents its own unique and disconcerting challenges.

Causing similar complications are the Neurodevelopmental disorders, most notably, intellectual disability. This disorder is characterized by deficits in general mental functions such as reasoning, problem solving, judgment, and adaptive functioning.⁵⁷ Including many of the same features as neurocognitive disorders, neurodevelopmental disorders are those with onset during the developmental period as opposed to being acquired later in life.⁵⁸ These disorders often lack the visible symptoms that are stereotypically thought to accompany mental illnesses and are therefore frequently overlooked despite the reality that they can prove just as troublesome for individuals involved in the justice system. Cognitive and intellectual disorders impact an individual's ability to process and relay information quickly,

⁵⁵ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 at 595 (2013).

⁵⁶ Id.

⁵⁷ Id. at 33.

⁵⁸ Id.

clearly, and in a coherent manner.⁵⁹ The capacity to comprehend information presented to them can be negatively impacted at varying levels for individuals with cognitive disorders; this comes into play particularly when assessing one's understanding of legal procedures. Black's Law Dictionary provides only the definition for "developmental disability" as the overarching means of referencing limitations in cognitive functioning; even then, the focus in the mental health-related definitions is on whether or not a person is able to function in everyday life.⁶⁰ While someone may be capable of functioning effectively in basic, everyday activities, concerns may still be raised with regard to an individual's ability to knowingly waive rights, privileges, and other procedural elements if they become involved in the justice system. That being said, many individuals with intellectual disability and related disorders have never known any different; their level of functioning has been limited for the entirety of their life. Like those facing the challenges of neurocognitive disorders, individuals with neurodevelopmental disorders will face many of the same difficulties in an interrogation setting, particularly if their disorder is categorized as being in the moderate, severe, or profound ranges.⁶¹ These symptoms and those of other mental disorders only increase the complex and troubling nature of interrogation processes of mentally ill individuals and the question of fairness and justice when handling such interactions.

⁵⁹ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 31-38 (2013).

⁶⁰ Black's Law Dictionary 523 (9th ed. 2009).

⁶¹ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 35-36 (2013).

An individual suffering from disorders that include delusions, or other disorders that include symptoms of impaired focus and distractibility also face heightened risk related to the aforementioned interrogation errors. The coercion error noted by Leo and Drizin is of particular concern, as inhibited rational thinking and processing difficulties act as detriments to a mentally ill individual's ability to take in and properly comprehend information.⁶² Similarly, said individuals also face a unique challenge when weighing options and assessing risks and rewards related to the situations they are in. The contamination error is of similar concern.⁶³ When lacking the ability to clearly take in and process information, an individual suffering from mental illness, particularly neurocognitive disorders, faces a heightened challenge when parsing out what information is relevant to a situation and what is not.⁶⁴ In this way, the ability to sort out what information is known to an individual by his or her own experiences versus what information has been provided to them or integrated from an outside source is a skill individuals with mental difficulties in these areas likely lack. By no means do these errors occur in every interrogation intentionally or even accidentally, however the increased impact they can have on individuals suffering from mental disorders is undeniable. This heightens the risk associated with such errors to a level beyond even that connected with a mentally stable and healthy individual. While

⁶² Richard A. Leo & Steven A. Drizin, *Police Interrogations and False Confessions* 17 (G. Daniel Lassiter & Christian A. Meissner eds., 2010).

⁶³ *Id.* at 19-20.

⁶⁴ *Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5* 591-95 (2013).

interrogation hosts the fewest safeguards to protect the rights of those with mental disorders, mental health becomes more of a focus in later stages of criminal procedure.

PART III: WHERE IS PROGRESS BEING MADE?

Competency: Waivers, Rights, and Ability to Stand Trial

Beyond the interrogation setting, which hosts a variety of stressors for those with mental illness, several aspects of criminal procedure do focus directly on the issue of mental health and capacity to participate in the various stages of the justice system. Competency is one of the earliest issues addressed in the system and it remains a focus throughout judicial proceedings. Incompetence is defined as the “state or fact of being unable or unqualified to do something.”⁶⁵ So, with regard to the justice system, incompetency is defined as the “[l]ack of legal ability in some respect, especially to stand trial or to testify.”⁶⁶ The issue of potential incompetence can be raised by an individual’s attorney or the presiding judge or judicial official at any stage of the proceedings, with the two primary area of concern being an individual’s ability to assist in their defense and whether or not they possess a factual and rational understanding of the proceedings, charges against them, and potential penalties.⁶⁷

Once competency is raised an individual must be evaluated by a state evaluator, after which the evaluator will opine the individual competent or not.⁶⁸ The evaluators are employed by the state for this purpose and related duties, and therefore have extensive training in identifying and determining the severity of mental impairments

⁶⁵ Black’s Law Dictionary 833 (9th ed. 2009).

⁶⁶ Id.

⁶⁷ C.R.S. 16-8.5-101

⁶⁸ C.R.S. 16-8.5-103.

of all types and when the impairments may detrimentally impact an individual's capacity to participate in their judicial proceedings. Following the evaluation however, the ultimate determination of competency is up to the judge; more often than not they will side with the evaluator, but should they feel some glaring issue exists that was overlooked or left unexamined during the evaluation, they may override the evaluator's opinion.⁶⁹ When raising and assessing the issue of competency the court will schedule a Pate hearing, or a hearing during which the court "seeks to determine whether a criminal defendant is competent to stand trial."^{70,71,72} If an individual is deemed to be competent, the proceedings move forward. If it is found that an individual is incompetent to proceed, they may be referred to either in-patient or out patient competency restoration in an effort to assist them in the direction of competency; in this case, the court essentially presses "pause" on the proceedings related to their case until the individual can attain competency.^{73, 74} If an individual is committed to in-patient restoration treatment due to incompetency, they may be held for no longer than the maximum time of imprisonment for the offenses with which the defendant is charged.⁷⁵ Should a defendant be deemed permanently incompetent, the justice system is faced with a series of options from terminating proceedings, release on conditional bond, or pursuit of civil

⁶⁹ C.R.S. 16-8.5-103.

⁷⁰ Black's Law Dictionary 1234 (9th ed. 2009).

⁷¹ Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966).

⁷² 18 USCA § 4241.

⁷³ C.R.S. 16-8.5-113.

⁷⁴ C.R.S. 16-8.5-114.

⁷⁵ C.R.S. 16-8.5-116(1).

remedies, none of which are as efficient or productive as the pursuit of the criminal charges.⁷⁶ This dilemma is one for which the justice system has yet to create a better remedy.

While it is admirable that our justice system has recognized the need to assess an individual's true ability to understand and participate in the proceedings against them, concerns regarding competency expand far beyond the trial phases. While the courtroom provides a stage on which signs of mental illness or cognitive difficulties can be more easily identified at times, questions arise about the earlier phases. If someone is deemed to be incompetent to stand trial, were they competent to waive their *Miranda* rights in the stages leading up to trial? Is someone with a severe mental disorder capable of thinking through the complex nature of searches, interrogations, or other pretrial components enough to competently waive their rights or consent to other steps by law enforcement? These issues bring about concerns surrounding competency that are not as closely examined or regularly reviewed by law enforcement or our legal system as often as they likely should be.

As one of the most important cases to install protective factors in the investigative process, *Miranda v. Arizona* requires that before police interrogate any suspect the suspect must first be "adequately advised and effectively apprised of [his or her] rights and the exercise of those rights must be fully honored."⁷⁷ To waive the rights provided in the *Miranda* warning, an individual must do so knowingly, intelligently, and voluntarily; all three prongs must be satisfied through a totality of the

⁷⁶ C.R.S. 16-8.5-116(1).

⁷⁷ *Miranda v. Arizona*, 384 U.S. 436 (1966).

circumstances assessment.⁷⁸ This requirement becomes largely controversial and difficult to judge when considering individuals with mental disorders and various forms of cognitive difficulties. Unfortunately, the only means of assessing an individual's competency to waive *Miranda* rights is retroactive. Psychologists and psychiatrists brought in to conduct these evaluations consider several areas, including what a reasonable person would do and whether the accused behaved in a significantly different way, as well as whether the police practices were reasonable or in any way coercive.⁷⁹ These factors are considered in addition to the three requirements of *Miranda*. It is important to remember however that such evaluations are conducted only to determine whether an individual that has waived his or her rights was competent to do so; such evaluations are not conducted to determine whether statements made following a waiver were false or not.⁸⁰

An evaluation of competency to waive *Miranda* rights comes following a referral from an attorney, almost always the accused's defense attorney.⁸¹ The initial step of the assessment typically includes review of collateral information such as contact with the defendant and witnesses where possible, as well as transcripts or recordings of the interrogations following the waiver in question. In addition, evaluators will often attempt to contact and interview police and detectives attached to the case. Although often adversarial to these investigations and evaluations, the police are still a valuable

⁷⁸ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁷⁹ W. Neil Gowensmith, Clinical Assistant Professor, University of Denver, *Criminal Evaluations Course Lecture: Competency to Waive Miranda Rights and Other Legal Capacities* (April 13, 2016).

⁸⁰ *Id.*

⁸¹ *Id.*

source of information surrounding the accused's behavior and statements.⁸² In addition to collateral data, evaluators will also conduct psychological and cognitive testing. The goal here is to determine any underlying conditions that may exist as well as information related to the individual's ability to understand the rights and waiver, such as reading level.⁸³

Validated and reliable testing provides a foundation to help evaluators and the court understand the accused's psychological and cognitive capacity, but testing specific to the *Miranda* waiver has also been developed to aid evaluators. The Structured Assessment of Miranda Abilities (SAMA), developed by Richard Rogers, employs several areas of measure to assess an individual's true competency surrounding *Miranda* rights and waiver.^{84,85} The first measure, the Miranda Quiz (MQ), is comprised of twenty-five true or false questions that aim to measure common misconceptions regarding both the rights protected by *Miranda* as well as the effects of said misconceptions on an individual's decision-making.⁸⁶ Second, the Miranda Vocabulary Scale (MVS), assesses whether the accused understands the thirty-six words that are key to the *Miranda* warning; the terms included are those with legal meaning or those that could be puzzling semantically. The Miranda Comprehension

⁸² W. Neil Gowensmith, Clinical Assistant Professor, University of Denver, *Criminal Evaluations Course Lecture: Competency to Waive Miranda Rights and Other Legal Capacities* (April 13, 2016).

⁸³ *Id.*

⁸⁴ Standardized Assessment of Miranda Abilities (SAMA), <http://www4.parinc.com/Products/Product.aspx?ProductID=SAMA> (last visited April 27, 2016).

⁸⁵ American Bar Association, *Mirandized Statements: Successfully Navigating the Legal and Psychological Issues*, American Bar Association Center for Professional Development (Feb. 9, 2015), <http://www4.parinc.com/Products/Product.aspx?ProductID=SAMA>.

⁸⁶ *Id.*

Template (MCT) gives the evaluator insight into the accused's ability paraphrase the *Miranda* warning given to him or her in an accurate form, highlighting the "highly prototypical content found in many *Miranda* warnings."⁸⁷ The fourth measure is the *Miranda Acquiescence Questionnaire (MAQ)*. This measure gauges the accused's "level of yea-saying versus nay-saying" - whether they are more likely to accept or deny proposals and options.⁸⁸ The fifth and final measure in the SAMA is the *Miranda Reasoning Measure (MRM)*; this component aims to understand the accused's reasoning and thought process at the time they were given their *Miranda* warning and elected to waive the included rights.⁸⁹ The goal of the SAMA is to give the evaluator a well-rounded understanding of the individual's competency to waive their rights at the time they did so. Through the five measures the evaluator is also given insight into the three prongs required for a waiver by law: knowingness, intelligence, and voluntariness. While it is a valuable tool, the SAMA alone cannot provide definitive proof as to whether the individual's waiver satisfied the three prongs. The evaluator will typically be called to testify as to their findings and the resulting report so that the court may use the testimony and the report in deciding whether a defendant was competent to waive his or her *Miranda* rights. In determining the validity of a

⁸⁷ American Bar Association, *Mirandized Statements: Successfully Navigating the Legal and Psychological Issues*, American Bar Association Center for Professional Development (Feb. 9, 2015), <http://www4.parinc.com/Products/Product.aspx?ProductID=SAMA>.

⁸⁸ *Id.*

⁸⁹ W. Neil Gowensmith, Clinical Assistant Professor, University of Denver, *Criminal Evaluations Course Lecture: Competency to Waive Miranda Rights and Other Legal Capacities* (April 13, 2016).

Miranda waiver, the state has the burden of proving by a preponderance of the evidence that a suspect's statements were voluntary.^{90,91}

When assessing the knowing prong of Miranda rights, evaluators work to assess whether an individual truly understands what rights are included and what the Miranda warning covers.⁹² First and foremost, they try to discern the accused's comprehension of the Miranda language or lack thereof; while seemingly simple language, the ability to comprehend the rights being referenced in the warning is vital to the knowingly component of a proper waiver. In addition to the comprehension component, assessment of the knowing prong also includes evaluation as to whether the accused is aware of what rights are being waived. They must be able to understand their right to have an attorney, their right to decline to speak with police and others in adversarial roles, as well as what it means to not incriminate themselves.⁹³

The second prong, the intelligent aspect of the waiver evaluates the understanding of waiving rights more thoroughly. This prong includes an appreciation for the implications of waiving the *Miranda* rights and the significant impact waiver can have on an individual's future statements and case.⁹⁴ An evaluator considering the intelligence prong assesses whether the accused is using rational reasoning processes, akin to the rational understanding component assessed during a competency to stand trial evaluation. In determining whether an individual comprehends the relevant rights

⁹⁰ *People v. Raffèalli*, 647 P.2d 230, 235 (Colo. 1982).

⁹¹ *Lego v. Twomey*, 404 U.S. 477, 489 (1972).

⁹² W. Neil Gowensmith, Clinical Assistant Professor, University of Denver, *Criminal Evaluations Course Lecture: Competency to Waive Miranda Rights and Other Legal Capacities* (April 13, 2016).

⁹³ *Id.*

⁹⁴ *Id.*

and can apply them to his or her situation, evaluators take on several steps of assessment. Components to consider include whether the accused understands what it means to invoke his right to silence, what an attorney can do for him, and what reasons one would want to have an attorney present.

The final prong required by *Miranda*, voluntariness, requires additional assessment by evaluators to complete a totality of the circumstances analysis.^{95,96} This aspect aims to ensure that waiver is given based on an individual's free will as opposed to coercion. When considering the possible presence of coercion, an evaluator must consider only police action or behavior, and not other factors that may be coercive.⁹⁷ This piece also includes an analysis of whether or not the individual is particularly susceptible to coercive methods; while this aspect seems to indirectly reference those with mental illness and related challenges, the law states that such susceptibility cannot be due exclusively to mental illness.^{98,99}

The requirement that coercion come directly from police conduct and not entirely as a result of mental illness is a complicated and concerning area of criminal procedure. This rule stems from *Colorado v. Connelly*, a case eventually taken on by the U.S. Supreme Court in which Francis Connelly confessed to police, entirely unprompted, to committing a murder.¹⁰⁰ Even after being informed of his *Miranda*

⁹⁵ *Dickerson v. U.S.*, 530 U.S. 428 (2000).

⁹⁶ *People v. Valdez*, 969 P.2d 2080 (Colo. 1998).

⁹⁷ W. Neil Gowensmith, Clinical Assistant Professor, University of Denver, *Criminal Evaluations Course Lecture: Competency to Waive Miranda Rights and Other Legal Capacities* (April 13, 2016).

⁹⁸ *Id.*

⁹⁹ *Colorado v. Connelly*, 474 U.S. 1050 (1986).

¹⁰⁰ *Id.*

rights, Connelly stated that he still wished to discuss the murder. Prior to confessing, Connelly disclosed to officers that he had been placed in mental hospitals in the past, but did not appear to be displaying any outward signs of mental illness at that time. He elaborated on the crime and continued with his confession. The next day, during Connelly's meeting with his public defender, Connelly exhibited symptoms of disorientation and auditory hallucinations. When the case proceeded to trial, Connelly's incriminating statements were introduced as evidence. Connelly and his attorneys moved to suppress all statements he made to police; a state doctor testified on the matter, stating the Connelly suffered from Schizophrenia and as a result was in a psychotic state the day he confessed to the murders. The doctor elaborated that Connelly reported he had been following the voice of God, and that the voice instructed him to travel from Boston to Colorado and to confess.¹⁰¹ The trial court suppressed the confession on the basis that it was not given freely and that Connelly only confessed because he felt forced to do so based on his auditory hallucinations.¹⁰² The Colorado Supreme Court ultimately affirmed this decision based on the rationale that Connelly's statements were not "the product of a rational intellect and a free will."¹⁰³ The United States Supreme Court however, disagreed. The justices decided in a 7-2 decision that the taking of Connelly's statements as evidence did not violate the Due Process Clause of the Fourteenth Amendment; the Court stated that Connelly's statements were not made due to any coercion by government actors, which is what the Fifth Amendment is meant to protect citizens from. While the voices he was

¹⁰¹ *Colorado v. Connelly*, 474 U.S. 1050 (1986).

¹⁰² *People v. Connelly*, 702 P.2d 722, 728 (Colo. 1985).

¹⁰³ *Id.*

experiencing may have been coercive in nature, because the coercion was not due to any police action the evidence was permissible.¹⁰⁴ This case is a perfect illustration of mental illness falling into a gray area; while the law is intended to protect citizens from improper government action in our system, there is no protection for the mentally ill from their illness and its implications in our justice system. While an individual's mental condition is a factor to be considered in the totality of the circumstances analysis, his condition alone does not make the statement involuntary; this piece is only of increased importance if a government actor intentionally exploited the mental condition in a coercive nature.¹⁰⁵

Insanity

In addition to competency, one of the other most complex issues in our legal system is that of insanity. What further complicates this factor is the reality that despite portrayals in the media and fiction, insanity is not synonymous with mental illness, nor is either one indicative of the other. The issue of insanity is one that reveals the outdated and ill-informed nature of much of the legal system with regard to mental health and related disorders. Despite being published most recently a mere eight years ago in 2009, Black's Law Dictionary includes in its definition of insane the description, "mentally deranged."¹⁰⁶ While the definition of insanity is elaborated upon to include, "[a]ny mental disorder severe enough that it prevents a person from having a legal capacity and excuses the person from criminal or civil responsibility," Black's still

¹⁰⁴ *Colorado v. Connelly*, 474 U.S. 1050 (1986).

¹⁰⁵ *Effland v. People*, 240 P.3d 868, 877 (Colo. 2010).

¹⁰⁶ Black's Law Dictionary 865 (9th ed. 2009).

clarifies that insanity is a legal standard as opposed to a medical one.¹⁰⁷ The ongoing discrepancies between the fields of medicine and psychology and law only add to the confusion of how we are to truly and accurately define the point at which a person's mental illness overcomes their culpability for a crime.

Under Colorado law, the concept of insanity takes steps to incorporate psychology, despite the disparate definitions between the two fields. Black's Law Dictionary defines an insanity defense as: "An affirmative defense alleging that a mental disorder caused the accused to commit the crime."¹⁰⁸ Under Colorado Revised Statutes § 16-8-105.5, following a plea of not guilty by reason of insanity (NGRI) the court will order the accused to undergo a sanity examination by "one or more doctors specializing in nervous and mental disorders."¹⁰⁹ Colorado's insanity laws follow the precedence set by the English common law M'Naghten rule. The standard imposed by M'Naghten states that a defendant is not criminally responsible for crime if at the time he committed the offense he did not know right from wrong.¹¹⁰ Colorado's statutes mirror this standard; under C.R.S. § 16-8-101.5, "A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable."¹¹¹ The statute elaborates to say that the requisite mental disease or defect to justify an NGRI finding "includes those severely abnormal mental conditions that grossly and

¹⁰⁷ Black's Law Dictionary 865 (9th ed. 2009).

¹⁰⁸ *Id.*

¹⁰⁹ C.R.S. 16-8-105.5

¹¹⁰ Daniel Ward, *The M'Naghten Rule: A Re-Evaluation*, 45 Marq. L. Rev. 506, 506 (1962).

¹¹¹ C.R.S. 16-8-101.5

demonstrably impair a person's perception or understanding of reality."¹¹² Colorado remains in the minority by maintaining that the burden is on the prosecution to disprove an insanity claim; the state must prove beyond a reasonable doubt that a defendant claiming insanity was actually sane at the time he or she committed the offense.¹¹³

The unfortunate reality, despite forward efforts in this area, is the vast amount of gray area created by Colorado's standard and similar standards across the country. An individual suffering from mental illness could very well meet the provided criteria yet still be seen by a jury as being responsible for the crime they have committed. The unclear and largely subjective nature of explaining and understanding mental illness under the umbrella of the legal system makes it next to impossible for a jury theoretically comprised of laymen to sift through the various rules and definitions in a way that is truly fair with regard to the role of mental illness. If attorneys, judges, and law enforcement lack the training and wherewithal to properly handle such suspects or defendants in the early stages of the justice system, what is to say that a jury will provide them with any higher air of fairness in the final legal stages? For the outcome to be one that exemplifies justice, early stages need to be addressed and adjusted appropriately so that mentally ill individuals are not left relying on the very last judicial protection. Despite the procedural safeguards that protect mentally stable or healthy individuals in the stages leading up to and through trial, these safeguards often lack the same protective value for individuals facing the same situations while

¹¹² C.R.S. 16-8-101.5

¹¹³ *Id.*

influenced by mental illness. In a system that is largely imperfect for your everyday person of average functioning, it is even farther from perfect for justice-involved individuals living with mental illness.

PART IV: REVEALING THE REALITY OF THE PROBLEMS

Case Study: Brendan Dassey

Made infamous by the Netflix documentary *Making a Murderer* covering the 2005 rape and murder of Theresa Halbach in Manitowoc County, Wisconsin, Brendan Dassey was implicated in aspects of the crime by his own confession to police.¹¹⁴ While it is impossible to give a definitive assessment on Brendan Dassey's guilt or innocence based solely on information provided by media outlets and the one-sided Netflix series, it is possible to simply consider and review the bits of information that have been consistently given throughout the investigation and trial process in order to look at how mental disorders may have made an impact. It is true that the primary focus of the coverage of this case continues to be Steven Avery, Dassey's uncle. However, several major concerns arise with regard to the interrogation and use of information provided by Dassey in this case, that appear to be largely overshadowed by the trepidations surrounding Avery's case.¹¹⁵

In the series, it was made clear that Dassey was in fact a minor at the time of the crime and his interrogations. At seventeen years of age, his minority status should have been considered not only with regard to his competency to participate in the

¹¹⁴ *Making a Murderer* (Netflix & Synthesis Films 2015).

¹¹⁵ *Making a Murderer: Indefensible* (Netflix & Synthesis Films 2015).

proceedings, but also the safeguards that should have been in place for him. At no point should Dassey have been interviewed by the police alone, yet again and again he was questioned without the presence of his parents or his attorney and without their permission.¹¹⁶ *In re Gault* determined that juveniles held the same rights as adults with regard to the privilege of no self-incrimination, as well as notification of their right to remain silent and right to counsel, which in Dassey's case appear to have been violated.¹¹⁷ Of more concern were the signs of cognitive deficits that Dassey appeared to possess. With a history of placement in special education classes as well as a below average IQ, Dassey presents many of the symptoms required for a diagnosis of an intellectual disability, including but not limited to: deficits in academic learning, judgment, abstract thinking, and failure to meet developmental standards.¹¹⁸ By no means was this a reality unknown to those around the case; in many phone conversations with his mother and with police, Dassey mentions that he is "stupid" or "not smart."¹¹⁹ Dassey's mother makes similar comments regarding his limited intelligence level as well, all information that was available to police had they been unsure about the issue.¹²⁰ As discussed previously, the various cognitive domains that can be impacted by the presence of an intellectual disability or other cognitive disorders have significant influence on an individual's ability to manage information processing, rationalization, and various other components implicated in a police

¹¹⁶ Making a Murderer: Indefensible (Netflix & Synthesis Films 2015).

¹¹⁷ *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428 (1967).

¹¹⁸ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 33 (2013).

¹¹⁹ *Id.*

¹²⁰ *Id.*

interrogation.¹²¹ The fact that no apparent steps were taken to address these factors in questioning Dassey and utilizing the information he provided is of serious concern.

The factors of a potential mental disorder paired dangerously with several interrogation errors amidst Dassey's interviews with police. Several times, interrogating officers mention to Dassey that his cooperation will ultimately help him in the long run, and that they can only help him if he is "honest" and tells them the "truth."¹²² The coercive nature of these statements, particularly when interacting with an individual with cognitive deficits as stated previously, becomes more coercive in nature than they may be in an interaction with a person of average or high functioning. More concerning than the coercion errors that can be noted throughout Dassey's conversations with police however is the clear contamination that occurs. In the episode centered on Dassey's involvement, *Plight of the Accused*, Dassey's interactions with police are on film, and the videos revisited for the purpose of the documentary.¹²³ As police begin to question Dassey regarding the specifics of Theresa Halbach's murder and how it was carried out, they work to elicit details from Dassey that only a person involved would know. Unfortunately for police, Dassey answers many of their questions with "I don't know," and other statements suggesting he did not have any knowledge of the information they were seeking. Dassey appears in his answers to be guessing, stating "we stabbed her," among other statements that do not fit the

¹²¹ Making a Murderer: Indefensible (Netflix & Synthesis Films 2015).

¹²² Making a Murderer: Plight of the Accused (Netflix & Synthesis Films 2015).

¹²³ Id.

available physical evidence.¹²⁴ Eventually, the police begin to ask more and more pointed questions, and the conversation goes as follows:

Detective 1: Come on, something with the head. (pause) Brendan? What else did you guys do?

Detective 2 (off screen): What he made you do Brendan! We know he made you do somethin' else.

Detective 1: What was it? What was it?

Detective 2: We have the evidence Brendan, we just need you to be honest with us.

Dassey: They cut off her hair?

Detective 1: They cut off her hair? Okay, what else?

Detective 2: What else was done to her head?

Dassey: They punched her.

Detective 1: What else? (pause) It's okay, what else did he make you do?

Dassey: Cut her.

Detective 1: Cut her. Cut her where?

Dassey: On her...throat?

Detective 1: Cut her throat? (pause) What else happens to her and her head?

Detective 2: It's extremely, extremely important you tell us this for us to believe you.

Detective 1: Come on Brendan, what else?

Detective 2: We know. We just need you to tell us.

Dassey: That's all I can remember.

Detective 1: All right, I'm just gonna come right out and ask ya, who shot her in the head?

Dassey: He did.¹²⁵

As the questions are asked, Dassey's answers continue to be short, and not at all connected to the evidence possessed by police.¹²⁶ When the officers begin to tailor their questions more carefully, they specify that they need to know what happened to Halbach's head, a piece of information not yet mentioned by Dassey and not known to the press or the public as being of any significance. As Dassey remains quiet and provides more answers unrelated to the evidence, the detectives become even more

¹²⁴ Making a Murderer: Plight of the Accused (Netflix & Synthesis Films 2015).

¹²⁵ Id.

¹²⁶ Id.

specific, until Detective 1 finally provides Dassey with the information that they had been trying to get him to disclose: Theresa Halbach was shot in the head. The detective's decision to ask Dassey, "I'm just gonna come out and ask ya, who shot her in the head?" is the ultimate example of a contamination error.¹²⁷ The media and the public had not been provided with a cause of death for Halbach, and so the only people in possession of that knowledge were the police and the perpetrator; by giving that information to Dassey, it becomes impossible from that point forward to know whether he was aware of this information on his own and through experience, or whether that fact was incorporated into his later statements purely because the detectives *gave* him that information.¹²⁸ The inability to distinguish the source of the information hurts the credibility and related confessions.

While these interrogation errors are concerning on their own, the influence of a mental disorder with regard to playing into these errors raises the stakes for Dassey. As discussed previously, intellectual disabilities and related cognitive deficits impair an individual's ability to take in and process information, as well as make rational decisions and act accordingly based on those rationalizations.¹²⁹ Brendan Dassey's interactions with police and confession following his interrogations are perfect examples of a mental disorder that impairs a person's ability to take in all the factors of a situation, and process them effectively. In this case, procedural safeguards that work to protect individuals of average or above-average functioning fail to accommodate the varied

¹²⁷ *Making a Murderer: Plight of the Accused* (Netflix & Synthesis Films 2015).

¹²⁸ *Id.*

¹²⁹ Diagnostic and statistical manual of mental disorders: DSM-5, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM-5 31-38 (2013).

needs and deficits of individuals suffering from mental disorders. While this assessment still fails to be a foolproof means of determining Dassey's guilt or innocence, the concerns that arise out of his experience with law enforcement are far from an isolated incident. The concerns raised in this case carry over to many others, and deserve the attention and means of addressing the related concerns appropriately in the name of true justice.

NOTE: Since the original writing of this piece, the courts elected to address several of the aforementioned aspects of Dassey's conviction and the related evidence. In August of 2016, federal magistrate William Duffin issued a court order granting Dassey's petition for a writ of habeas corpus, stating that police made false promises during Dassey's interrogations which, "when considered in conjunction with all relevant factors, most especially Dassey's age, intellectual deficits, and the absence of a supportive adult, rendered Dassey's confession involuntary under the Fifth and Fourteenth Amendments."^{130,131} This ruling was appealed by the state along with a request for oral arguments, sending the case on to the 7th Circuit Federal Court of Appeals which sits in Chicago. Dassey's release was accordingly blocked in November of 2016, and arguments were heard by the justices on the appeals bench on February 14, 2017. During these proceedings the justices focused largely on the question of whether or not police promises to Dassey, such as "honesty will set you free," would have led him to believe he could go home if he answered their questions. Dassey's mental state was

¹³⁰ 2013 U.S. Dist. LEXIS 177420, 55 (E.D. Wis. Dec. 18, 2013).

¹³¹ Daniel Victor, *Conviction Against Brendan Dassey of 'Making a Murderer' Is Overturned*, The New York Times, Aug. 12, 2016 at A13.

clearly on their minds as Justice Ilana D. Rovner clarified among the questions, “I want you to imagine it is not an average person but a 16-year-old with a very, very low IQ, who is extremely suggestible,” raising all at once many of the aforementioned concerns surrounding Dassey’s confession.^{132,133} The focus of these ongoing appeals and hearings reveals that the justice system and some of its officers are learning from past mistakes; while they may not have been properly addressed in Dassey’s original trial, the appeals court has made it clear that Dassey’s mental deficiencies stemming from both his age and cognitive disorder are being taken into account now when assessing his responses in the interrogation setting.

PART V: HOW ARE WE WORKING TO MAKE IT BETTER?

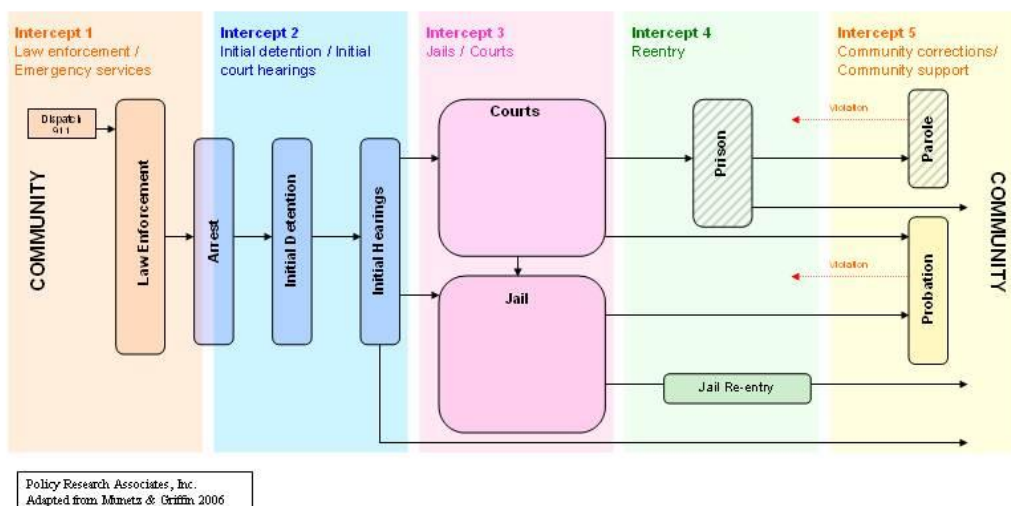
The Sequential Intercept Model

While it may not be possible to find an infallible cure for the existing issues in our justice system, the sequential intercept model is a step in the right direction. Many mental health professionals illustrate the importance of the overlap between mental health treatment and our justice system using this model. Sequential intercept allows for a visual explanation of the many steps through the justice system in which mental health interventions can assist individuals making their way through that system, or preventing them from entering later stages of the system at all.

¹³² Rhonda Roberts & Emily Matesic, *Federal Judges hear Brendan Dassey’s case for freedom*, ABC 2 WBAY.com (Feb. 14, 2017, 5:10 PM), <http://wbay.com/2017/02/14/major-players-in-brendan-dassey-case-arrive-for-hearing/>.

¹³³ Tom Kertscher, *Judges question investigators’ conduct in Brendan Dassey case*, USA Today Network (Feb. 14, 2017, 2:05PM), <http://www.usatoday.com/story/news/nation-now/2017/02/14/brendan-dassey-making-murderer-case/97900116/>.

Sequential Intercepts for Change: Criminal Justice - Mental Health Partnerships



The Substance Abuse and Mental Health Services Administration (SAMHSA) provides a succinct description of the purpose of this model: “This model identifies five key points for “intercepting” individuals with behavioral health issues, linking them to services and preventing further penetration into the criminal justice system.”¹³⁴ These interventions’ importance is emphasized not only with the hopes of providing appropriate treatment, but even more so to protect the rights of the mentally ill. For individuals living with a mental disorder, the criminal justice system often works as a sort of revolving door; they enter the system, are shuffled through the criminal procedure, are pushed forward and out without proper attention to the underlying issue. These individuals frequently commit additional crimes and come right back into the revolving door of the system, still very much ill.

¹³⁴ Substance Abuse and Mental Health Serv. Admin., *SAMHSA’s Efforts on Criminal and Juvenile Justice Issues*, SAMHSA (Mar. 7, 2016), <http://www.samhsa.gov/criminal-juvenile-justice/samhsas-efforts>

The sequential intercept model provides various small means of addressing the most lacking areas of our justice system. SAMHSA notes that the first point of intercept lies with community and law enforcement.¹³⁵ This aspect aims to increase the number of early diversion programs that work to prevent individuals with mental illness from being immersed in the system to begin with; non-court community services are the ideal placement in those cases.¹³⁶ The second point of intercept is arrest and initial detention and court hearings.¹³⁷ This aspect also emphasizes police and legal professional training to aid in early identification and placement for those displaying heightened or unique needs. Training such as this can also aid in addressing concerns in the investigative stages, such as the risks of interrogating individuals with mental illness. This point, along with the third point of intercept, jails and specialty courts, both benefit from the growing realm of mental health courts and other problem-solving courts.^{138,139} The ability of specialty problem-solving courts to provide monitoring and structure while also connecting clients to resources is an unprecedented resource for our justice system; having existed for just around thirty years, this now quickly-expanding area provides a strong sense of hope for handling mental illness within the justice system.¹⁴⁰ While the ideal scenario is to aid individuals before they ever enter the system, the fifth intercept targets reentry back into the

¹³⁵ Substance Abuse and Mental Health Serv. Admin., *SAMHSA's Efforts on Criminal and Juvenile Justice Issues*, SAMHSA (Mar. 7, 2016), <http://www.samhsa.gov/criminal-juvenile-justice/samhsas-efforts>

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Problem-Solving Courts: Justice for the Twenty-First Century? 91-97 (Paul Higgins & Mitchell B. Mackinem eds., 2009).

¹⁴⁰ *Id.* at ix.

community from jails and prisons.¹⁴¹ The hope is to provide individuals being released from incarceration with the skills and tools to allow them to succeed in living a law-abiding lifestyle moving forward. SAMHSA notes that over forty percent of offenders find themselves back in a state prison within three years of release; by addressing the risks associated with recidivism that arise shortly after release, the system can hopefully reduce the number that return to corrections.¹⁴² Colorado communities address this goal through a variety of programs, most notably the Gateway Program at Red Rocks Community College.¹⁴³ This program provides offenders re-acclimating to the community the opportunity to take courses that build life skills while also working toward their GED and on to college coursework at Red Rocks. The program has found that participants report higher quality familial relationships, less frequent drug and alcohol use, as well as a significant decrease in legal troubles.¹⁴⁴ This fifth intercept is one of the most important, and one in which arguably the most significant impact can be made. The final intercept is that of community corrections.¹⁴⁵ If individuals are of the profile that their punishment can be handled safely and appropriately in the community as opposed to in a jail or prison, this option provides the opportunity to simultaneously address their more personal needs.

¹⁴¹ Substance Abuse and Mental Health Serv. Admin., *SAMHSA's Efforts on Criminal and Juvenile Justice Issues*, SAMHSA (Mar. 7, 2016), <http://www.samhsa.gov/criminal-juvenile-justice/samhsas-efforts>

¹⁴² *Id.*

¹⁴³ Red Rocks Community College, *The College Gateway Program: Results*, <http://www.rrcc.edu/gateway/program-information> (last visited Apr. 28, 2016).

¹⁴⁴ *Id.*

¹⁴⁵ Substance Abuse and Mental Health Serv. Admin., *SAMHSA's Efforts on Criminal and Juvenile Justice Issues*, SAMHSA (Mar. 7, 2016), <http://www.samhsa.gov/criminal-juvenile-justice/samhsas-efforts>

Whether a system takes action at one intercept, several, or all of them, progress can be made. The greatest impact comes when a system makes an effort at all stages of the system to identify and aid individuals with mental illness. The sequential intercept model provides a roadmap to communities, police, courts, legal professionals, and corrections as to each and every step at which they can provide aid. The more our system is able to help those who enter it, the more likely these individuals are to succeed in the community instead of returning to the system.

Crisis Intervention Training

One effort being made from the law enforcement perspective to improve the treatment of mentally ill individuals in the justice system is crisis intervention training. Contact with police tends to be one of the more dangerous steps of the system for those with mental illness; the chances of being killed by police are sixteen times higher for people with who have an untreated mental illness than those who do not.^{146,147} Equally troubling is the study conducted by the Treatment Advocacy Center that found that while only two percent of U.S. adults suffer from untreated severe mental illness, between twenty-five and fifty percent of fatal police shootings involve these untreated individuals.¹⁴⁸

¹⁴⁶ German Lopez, *How America's criminal justice system became the country's mental health system*, Vox (Mar. 1, 2016), <http://www.vox.com/2016/3/1/11134908/criminal-justice-mental-health>

¹⁴⁷ *People with Untreated Mental Illness 16 Times More Likely to be Killed by Police*, Treatment Advocacy Center (2015), <http://www.treatmentadvocacycenter.org/home-page/71-featured-articles/2976-people-with-untreated-mental-illness-16-times-more-likely-to-be-killed-by-law-enforcement->

¹⁴⁸ Id.

To address this problem, police forces have started undergoing crisis intervention training, or CIT. CIT-trained officers bear an additional pin to their uniform indicating that they have completed the program and possess the additional skills meant to improve police interactions with the mentally ill. According to the Crisis Intervention Teams Association of Colorado (CITAC), the goals of CIT trainings when they were first established was, “to train law enforcement officers in the recognition of mental illness, to enhance their verbal crisis de-escalation skills, and to provide more streamlined access to community-based mental health services.”¹⁴⁹ Colorado implemented their first CIT training processes in 2002; since the start of the training program, CITAC has partnered with Colorado Regional Community Policing Institute (CRCPI) to train over seven thousand Colorado peace officers.¹⁵⁰ The trainings include instruction from fellow officers, as well as experts in psychology and treatment providers in proper communication, de-escalation, and other skills relevant to any encounter, but especially those involving mentally ill individuals. With a curriculum that can be condensed to only forty hours over a single week, CIT training is a realistic, and easily implemented option to improve this crucial step of the justice system.^{151,152}

¹⁴⁹ *About CIT*, Crisis Intervention Teams Association of Colorado, http://www.citac.us/About_CIT.html (last visited Apr. 27, 2016).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Theresa Marchetta, *Denver Police Department Officers going through Crisis Intervention Training*, Denver Channel 7 News (Aug. 13, 2015), <http://www.thedenverchannel.com/news/investigations/denver-police-department-officers-going-through-crisis-intervention-training>.

PART VI: WHAT MORE CAN WE DO?

Law Schools and Interdisciplinary Education

The unfortunate reality of American Bar Association accredited law schools is that none place any strong emphasis on the role of mental health within their required curriculum. Particularly in the area of criminal law, students study to pursue careers in which they will undoubtedly encounter clients whose mental state is somehow related to their legal situation. Of graduating law students, a significant number will go on to pursue careers as public defenders, state prosecutors, and private criminal defense attorneys. All of these students will handle cases for clients accused of criminal offenses, yet few will have graduated with any mental health-related instruction or education. While criminal law, criminal procedure, evidence, and trial preparation courses may inform students of how to seek an NGRI plea, or how to raise the issue of competency, or how to object to the admission of a confession into evidence, how many will be able to recognize that competence or sanity should be a concern if it is not blatantly apparent? Will most graduates be prepared to acknowledge signs of an intellectual disability in their client? How many law school graduates are capable of knowing the signs and implications of psychotic disorders or mood disorders? What percentage of law school graduates are able to review a psychological evaluation of a client and understand what challenges may come with the given diagnoses or assessment?

While it is true that the increasing interdisciplinary nature of our justice system allows for more involvement of mental health professionals, the justice for mentally ill

clients still starts with their attorneys. Three years of law school as required by the ABA provides more than enough time to educate and prepare law students for the realities they will face in their careers, yet very rarely are they educated on the impact mental health will have. The University of Denver for example offers only three courses that host mental health as a central focus: Psychiatry and the Law, Problem Solving Courts, and Law and Neuroscience.¹⁵³ Psychiatry and the Law employs the impressive professional and academic background of Dr. Richard Martinez, one of Colorado's leading forensic psychiatrists, yet it hosts less than fifteen students each semester. Similarly, the newly implemented Problem Solving Courts taught by Denver drug court magistrate Albert Zweig and El Paso County Veterans Court judge David Shakes gives students a look inside the innovational world of problem solving courts and their goal of providing rehabilitative services to populations with unique needs; this class hosted less than ten students. Law and Neuroscience did not even host a single guest speaker with a background in psychology; the surface level look at aspects of neuroscience did little to emphasize its true importance for students' future clients. While this is an example of only one law school, it mirrors that of programs throughout the country; not one course related to mental health or psychology were listed on the University of Colorado's course catalog.¹⁵⁴ As law schools are the first step in remedying the lack of understanding the legal system has about mental health,

¹⁵³ University of Denver Sturm College of Law, *Course Descriptions*, <http://www.law.du.edu/forms/registrar/course-list.cfm> (last visited April 27, 2016).

¹⁵⁴ Colorado Law, *Course Descriptions*, <http://lawweb.colorado.edu/courses/courses.jsp?show&sortBy=TITLE> (last visited April 27, 2016).

there simply is not enough mental health and psychology-related material available to the future lawyers of this state.

Particularly on campuses with strong psychology graduate programs, such as DU, change in this area is very much possible. Courses that integrate the work of students from several disciplines benefit both groups of students through the sharing of ideas and professional knowledge. For example, collaboration between DU's Sturm College of Law and the Graduate School of Professional Psychology which hosts a forensic psychology master's program would allow for interdisciplinary work and education with two groups of students that will likely require one another's services when they reach the professional world. CU could employ a similar approach between their law school and neuroscience and psychology graduate programs. Just as options such as this allow for the sharing of students' ideas through discussions and learning, it also opens the door for the cooperation between faculties skilled in their areas of work as well. With the necessary resources already present to make a positive change, working on improving this challenge in the legal field could and should start in law schools.

Targeted Training: Public Defenders, District Attorneys, and Judges

While the most effective approach to changing how the mentally ill are treated moving forward may be to target law students' education, providing training to professionals already in the field can bolster this effort. As continuing legal education (CLE) credits remain a core part of attorney licensure and the requirements for other judicial officers, this opens the door for educating legal professionals. Because CLE

courses and credits are intended to keep active professionals up to date on developments in the field and ongoing learning opportunities, there could not be a more perfect platform to present mental health education.¹⁵⁵ By encouraging, or even requiring education in this area, the goal of entwining the fields of law and psychology can be pushed to reach those already practicing law. In addition, the judges and attorneys that are acting as supervisors, superiors, and advisors are one of the biggest influences on the profession's next generation; if tomorrow's legal professionals are expected to be more in tune with the implications of mentally ill individual's in our justice system, those guiding them should be held to a similar standard.

Further Police Training

Just as our system could be improved by increasing education on mental health within the legal professions, increased police training could provide vast benefits as well. CIT training has provided a good first step toward decreasing the damage our system can inflict upon individuals with mental illness, but that is not enough on its own. Steps should be taken to assist police in identifying and understanding the challenges associated with mental illness after initial contact with a suspect as well. While at this time CIT training is typically an optional course for police and other peace officers, it would be a logical and immensely helpful step to make such training mandatory. As mentioned previously, a CIT course can be completed in as little as a week; forfeiting forty hours for training is an easy concession when the training could

¹⁵⁵ ABA Model Rule for Continuing Legal Education with Comments (Am. Bar. Ass'n. 2004), http://www.americanbar.org/content/dam/aba/migrated/2011_build/cle/mcle/aba_model_rule_cle.authcheckdam.pdf.

ultimately end up saving the life of a mentally ill person officers may later encounter.¹⁵⁶ Not only would required CIT training help officers in on-duty encounters with at-risk individuals, it would also aid them in recognizing the signs and symptoms of mental illness during investigative stages. If officers are more equipped to identify such individuals, they can then work to ensure that questioning, waivers, and other steps can be carried out safely and appropriately to protect the individual's rights.

The United Kingdom provides a prime example of procedures that can be implemented to better protect the rights of the mentally ill. One of the changes made in the UK is the requirement that “psychologically vulnerable suspects” may only be interviewed by police if there is an “appropriate adult” present.¹⁵⁷ These psychologically vulnerable suspects include juveniles, handicapped persons, and individuals with mental illness. The logic behind these protocols is that individuals with the aforementioned traits or challenges “may without knowing or wishing to do so, be particularly prone in certain circumstances to provide information which is unreliable, misleading, or self-incriminating.”¹⁵⁸ These protective factors work to benefit not only the rights of the individuals being interrogated, but also the accuracy of related investigations for police.

¹⁵⁶ Theresa Marchetta, *Denver Police Department Officers going through Crisis Intervention Training*, Denver Channel 7 News (Aug. 13, 2015), <http://www.thedenverchannel.com/news/investigations/denver-police-department-officers-going-through-crisis-intervention-training>.

¹⁵⁷ Allison D. Redlich, *Mental Illness, Police Interrogations, and the Potential for False Confession*, 55 *J. of L. & Psychiatry* 20, 19 (2004).

¹⁵⁸ *Id.*

Corrections

Behind the idea of corrections stand four justifications: deterrence, incapacitation, retribution, and rehabilitation.¹⁵⁹ Incapacitation, the primary purpose in our justice system, detains individuals responsible for a crime in order to prevent them from committing additional crimes.¹⁶⁰ Depending on the severity of the offense committed and the assessed dangerousness of the individual, our system will incarcerate them accordingly. Our system also operates with the goal of deterrence; punishment is imposed with the goal of deterring the incarcerated individuals and others in the community from committing similar or future offenses.¹⁶¹ The idea is that having to spend time in prison or jail, or knowing that this punishment is probable following the commission of a crime with influence people to abide by the law instead. Retribution is a theory of punishment not as obviously fulfilled by incarceration. The word retribution stems from the Latin word *retribuo* meaning “I pay back.”¹⁶² This purpose serves to fulfill the idea that individuals who commit crimes deserve punishment as a result. The concept of retribution also aims to provide some reassurance to victims and their families that their experience did not go unnoticed or unaddressed.¹⁶³ The final purpose of punishment, and unfortunately the least emphasized, is rehabilitation. This theory suggests that people should be incarcerated so that they have “an opportunity to learn alternative behaviors to curb their deviant

¹⁵⁹ *Handbook of Correctional Mental Health* 9-10 (Charles L. Scott eds., 2010).

¹⁶⁰ *Id.*

¹⁶¹ *Handbook of Correctional Mental Health* 7-8 (Charles L. Scott eds., 2010).

¹⁶² *Id.* at 7.

¹⁶³ *Id.*

lifestyles.”¹⁶⁴ In the present U.S. justice system, rehabilitation is a miniscule component of corrections, if it even exists at all.

This area of corrections and incarceration is another aspect that would benefit from change. As discussed within the sequential intercept model, reentry into the community following incarceration is one of the most challenging steps. Many circumstances may contribute to an individual’s criminal behavior, and without addressing those circumstances they are almost guaranteed a trip back through the revolving door of the justice system. Particularly for those given lengthy prison sentences, the time in corrections is largely time wasted. Without helping this group to re-enter the community with practical skills and training, they are left without any tools to succeed in the outside world. Considering Colorado prisons treat over four times as many mentally ill individuals than the state psychiatric hospitals do, treatment should also be incorporated into incarceration for the sake of rehabilitation; Department of Corrections (DOC) is the largest mental health provider in the state, and yet most inmates are not being thoroughly treated.¹⁶⁵

While the state correction’s budget increased the amount allocated to mental health treatment forty-eight percent between 2007 and 2012, the resources remain limited. In 2011, DOC spent 1.9 million dollars on mental health prescriptions alone, nearly one tenth of the mental health budget.¹⁶⁶ While the money may be increasing, the ability to facilitate true treatment remains limited. Denver county jail employs only

¹⁶⁴ *Handbook of Correctional Mental Health* 8 (Charles L. Scott eds., 2010).

¹⁶⁵ Jennifer Brown, *Breakdown: Mental Health in Colorado*, Denver Post (2014), <http://extras.denverpost.com/mentalillness/>.

¹⁶⁶ *Id.*

three psychologists despite one fifth of the jail's inmates being mentally ill.¹⁶⁷ Even if inmates do have access to individual sessions or group therapy with the small number of mental health staff members, the psychological damage of incarceration for some mentally ill inmates outweighs the benefits reaped from mental health services.

Much like the United Kingdom provides a model for how the United States could adjust their interrogation procedures, Germany provides an incredible example of how rehabilitation can be utilized in corrections. Joerg Jesse is a psychologist and the director of prisons in Mecklenburg-Western Pomerania, Germany. As a leader in a prison system that sets rehabilitation as the highest priority theory of incarceration, Joerg stands by the idea that this component's importance far outweighs the need for deterrence, incapacitation, or retribution. "The real goal is re-integration into society, train them to find a different way to handle their situation outside, life without further crimes, life without creating new victims... We cannot see the sense in just locking people up for their whole life. Your prisons will fill up and you'll have to build new prisons and so on and I think that was the situation in the U.S." he told *60 Minutes*.¹⁶⁸ As a state of over one million people, the fact that Mecklenburg-Western Pomerania can employ such methods gives hope that Colorado could implement similar steps.¹⁶⁹ Countries that employ systems similar to Germany's have found that they can do so at lower cost while also decreasing the number of people incarcerated and recidivism

¹⁶⁷ Id.

¹⁶⁸ *60 Minutes: This is Prison? 60 Minutes Goes to Germany* (CBS television broadcast Apr. 3, 2016).

¹⁶⁹ *Mecklenburg-West Pomerania*, Encyclopedia Britannica, <http://www.britannica.com/place/Mecklenburg-West-Pomerania> (last visited May 1, 2016).

rates.¹⁷⁰ If Germany can use a rehabilitative approach, even with individuals convicted of violent crimes such as murder, there is nothing to say that this approach could not be used with mentally ill offenders who often commit less severe offenses.¹⁷¹ In this way, corrections would finally be taking steps beyond locking people up; instead, they could aid individuals with the challenges of mental illness and related struggles such as substance addiction.

CONCLUSION

In a correctional system that is rapidly becoming the primary provider of mental healthcare in this country, it is vital that the fields of law and psychology work together to make adjustments. Not only do the rights of the mentally ill need more protection in the early investigative stages, but also more safeguards must be put into place throughout our system to ensure true fairness. Improved education around these manners should be implemented not only in law schools but also for practicing professionals through continuing education. Increased training for law enforcement and correctional staff can help to not only improve the conditions for individuals with mental illness, but can even save lives. As the worlds of legal justice and mental health services serve many of the same clients, strides must be made to increase communication and cooperation so that these individuals receive proper care, and that the justice aspect of our system remains truly just.

¹⁷⁰ *60 Minutes: This is Prison? 60 Minutes Goes to Germany* (CBS television broadcast Apr. 3, 2016).

¹⁷¹ *Id.*