

The Role of the Psychiatrist in Evaluating a Prison Mental Health System in Litigation

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Federal courts during the past 14 years have recognized that many prisons in the United States have provided constitutionally inadequate medical and psychiatric services. Our recent national survey indicates that at least 20 states have had at least one part of their correctional system included in a certified class action suit that alleged insufficient mental health services for inmates. This article reviews the role of the expert psychiatric witness during the phases of litigation that involve proposed remedial plans and compliance in implementing remedial plans. Available epidemiologic data about psychiatric disorders among prison inmates, standards for correctional mental health care, and various mental health system models are briefly reviewed. A comprehensive approach to evaluating proposed remedial plans and assessing issues of compliance with accepted plans is described. Special attention is directed toward psychiatric issues unique to a correctional system.

Federal courts during the past 14 years have recognized that many prisons in the United States have provided constitutionally inadequate medical and psychiatric services.^{1,2} Litigation concerning psychiatric services in prisons generally consists of three different stages. The first stage involves proving the alleged constitutional inadequacies of the current mental health system in the prison. During the second or remedial stage, the state is ordered to develop a constitutionally adequate mental health program for the inmates. The final stage is an evaluation of the state's compliance in implementing the remedial plan. Expert testimony assumes a significant role

during all three stages. This report will focus on the role of the psychiatric expert witness during the latter two stages of litigation.

Prevalence of the Problem

Although there is sparse epidemiologic data in the literature about psychiatric disorders among prison inmates, several studies have found an overrepresentation within the prison population of people suffering from alcoholism, drug abuse, schizophrenia, and personality disorders.³⁻⁵ These studies estimate that between 12 and 24% of prison inmates require psychiatric treatment. The required number of inpatient psychiatric beds has been thought to range from 12 to 22 beds per 1,000 inmates.^{6,7}

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To augment the available data, a survey was conducted with the help of Dr. L. Dennis Kleinsasser (Colorado Department of Corrections). This questionnaire, sent to all 50 state correctional departments in April 1984, asked about the existence of standards for health services in each system, compliance with the correctional system's existing standards, and the prevalence of class action suits which involved the issue of providing adequate mental health services for inmates. Standards were defined as (1) written policy and procedures which define minimum services and staffing patterns required in order to provide adequate mental health services to the target population; (2) standards or guidelines developed and/or ordered as a result of a consent decree; or (3) any other written requirements which were consistent with standards for mental health services in the prison. A follow-up letter was sent to nonresponders during July 1984 urging completion of the questionnaire.

Thirty-seven states (74%) completed the questionnaire. Twenty of these states had at least one part of their correctional system included in a certified class action suit which involved the issue of providing adequate mental health services for inmates. Consent decrees had been issued in nine states, five states were under court order to provide certain mental health services, and the other six states were still awaiting the court's decision.

Twenty-eight states indicated they currently have standards for health services, seven states did not have any standards, and two states were in the process

of developing standards. Most of the state standards were described in their policy and procedure manual, but in only six states did this manual conform with any of the nationally developed standards. Among the states that currently had standards for mental health services in prisons, 17 states reported that they were in compliance with their standards, 6 states were not following their own standards, and 5 states did not respond to this question. The predominant reason for not following their own standards was lack of sufficient financial resources. Litigation will probably continue until standards are universally developed to which authorities can and will adhere.

Basic Preparation

In all phases of litigation, the psychiatrist will find it helpful to be familiar with the various published standards and manuals regarding mental health care for a correctional institution.⁸⁻¹¹ These manuals provide a useful outline for the structure of the mental health system. Reference to these standards will also increase the credibility of the psychiatrist's testimony. However, most published standards are distressingly silent about the role of the psychiatrist in the mental health system, especially regarding clinical and administrative responsibilities. This is a particular concern when psychotic and/or delirious inmates require treatment.

There are a variety of different models that can be used to provide constitutionally adequate psychiatric treatment for

Evaluating a Prison Mental Health System

inmates. These models include the following:

1. Psychiatric and other mental health services provided as part of the general medical care delivery system.

2. Mental health services provided by a psychology department which is administratively independent of the medical department.

3. Mental health services provided through both a psychology department and via the psychiatric division of the general medical services. Policies and procedures differentiate mental health services through the medical department from correctional and/or rehabilitative services through the psychology department.

4. Mental health services provided through a separate mental health department but closely coordinated with the medical department, both of which are under the same health care authority.

In all of these models, the services may be provided through some combination of consultants, full-time staff employees, and/or independent private contractors. A significant difference among these models is the administrative organization of the mental health services. A system that is centralized (i.e., one health care authority working at the departmental level) is more administratively sound than having the director of mental health services directly responsible to the superintendent of the institution because it provides more power and independence to negotiate for an adequate budget at the departmental level. For example, one western penitentiary with a decentralized system had an an-

nual mental health departmental budget of several hundred dollars.

Evaluating the Proposed Remedial Plan

Before evaluating the proposed remedial plan, the psychiatric consultant needs to be familiar with the constitutional deficiencies in the prison's psychiatric services. Discussion with the attorney representing the side that has hired the consultant and review of pertinent legal documents, including the court's decision, will clarify the nature of these deficiencies.

It is essential to review all reports of previous evaluations of the medical and mental health systems. These reports will highlight the system's problems in providing evaluation and/or treatment to the severely mentally disturbed inmate. This review should focus on issues of housing, procedures for prescribing and administering psychotropic medications, administrative organization of the mental health system, and psychiatric liaison issues involving the medical department.

The proposed mental health plan, which should provide a remedy to the pertinent constitutional deficiencies, needs to be carefully reviewed. The reliability and validity of the methodology involved in identifying the particular mental health needs of the prison population should be assessed. An adequate study is required to ensure that projected staffing patterns for the mental health system are reasonably sound. It will frequently be necessary to refer to the men-

tal health system's policy and procedure manual in order to evaluate the nature of the plan thoroughly.

The plan should include reference to the following: (1) the goals of the mental health system; (2) reliable and valid plans for identifying the severely disturbed inmate and providing appropriate treatment; (3) extent of confidentiality of the information obtained during diagnosis and/or treatment with pertinent exceptions described; (4) involuntary treatment including the use of restraints and seclusions; (5) administrative organization of the mental health system; (6) job descriptions of the mental health staff; and (7) formal training of correctional staff regarding mental health issues.

Plans that do not address these areas in a reasonable fashion are inadequate. Adequate plans establish psychiatric treatment services that assess and provide a comprehensive treatment program for inmates identified as having psychiatric illness. These services include the entire spectrum of care from outpatient services, to chronic and transitional day care, to chronic and acute inpatient services. Adequate plans also provide for suitable transportation, including escort officers, to accommodate the needs of the mental health system. The medication distribution system should be in compliance with legal and professional practice standards, and provisions should be made for treatment plans to address appropriate housing and work assignment limitations. The method of communicating this infor-

mation to the correctional staff should be clearly defined in the plan.

The adequate plan should distinguish psychiatric services, which have a different philosophy and purpose, from correctional and/or rehabilitative services. These latter services often deal with classification, parole board, and correctional management issues. It is common practice to specifically exclude psychiatric staff from being involved in the correctional disciplinary decision-making process.

Once the plan itself has been reviewed, it is a good idea to talk directly to the people who have written it. Specific questions should be asked about the inherent problems involved in the plan and the prison in general. Key administrative state personnel may be cooperative with the expert witness due to the potential benefits of court orders. The information obtained from these interviews can be helpful in modifying the plan to decrease future compliance difficulties.

Evaluating Issues of Compliance

Once a remedial plan has been accepted by the court, problems with complying with the plan are invariably raised by the plaintiffs. The consultant, who is evaluating issues of compliance, will repeat many of the previously described steps prior to visiting the prison(s). The evaluator needs to be thoroughly familiar with the accepted mental health plan. Meeting with the hiring attorney will highlight specific compliance problems.

Evaluating compliance frequently re-

Evaluating a Prison Mental Health System

quires several different site visits in order to become familiar with the functioning of the prison and the mental health system. More areas of the prison can be visited and additional inmates interviewed during multiple-site visits. Many areas of the prison have limited access due to restricted time availability which is related to security issues (i.e., head counts, shortage of escort officers, etc.). A scheduled visit during the evening and/or on a weekend will assist in assessing the crisis services available to the inmates.

Barriers to the evaluation are frequently a sign that the system is not in compliance with the court-ordered mental health plan. Common barriers include having a planned site visit cancelled with very little notice due to "scheduling conflicts" to waiting 30 to 60 minutes for "official clearance" to enter the prison. These delays often reflect the prison superintendent's lack of support for mental health services.

Key people who should be interviewed in order to assist in the compliance assessment include the director of mental health services, chief of psychiatry (if the position exists), superintendent of the prison, medical director, head nurse, selected inmates, and correctional officers. The director of mental health services should be asked in a very straightforward fashion whether the institution is in compliance with the mental health plan. Very useful information can be obtained from the director, especially if this person is relatively new to the system and does not have a vested

interest in maintaining the old system. The director of mental health services often perceives compliance hearings to be beneficial in helping to achieve needed staffing and financial resources. Therefore, they are often very candid in helping to pinpoint areas of noncompliance with the plan. During the interviews with the other health care professionals, questions will address a more narrowed focus based on the person's area of expertise.

The meeting with the superintendent will help clarify some of the administrative issues related to the effective operation of the mental health system. For example, the superintendent's familiarity, or lack thereof, with the mental health plan is often a reflection of his commitment to assist in the implementation of the plan. His attitude and knowledge of the plan can be revealing with regard to compliance issues.

Inmates should be interviewed on both a random and preselected basis. Interviews should include inmates who are significantly involved in the class action suit, those who have been selected by the director of mental health services, and those who have been identified by the plaintiffs. Even when the examiner is hired by the plaintiff's attorney, these interviews should include inmates selected by the director of mental health services because this approach helps to form a collegial relationship with the director. This process also reduces the possibility of a biased evaluation. Finally, the director of mental health services generally selects inmates who are

knowledgeable about the workings of the mental health services. Inmates identified by the plaintiffs for interviews frequently have significant mental illnesses which are not being adequately treated within the prison system. Questions asked during the interviews with inmates include the type of treatment they individually have received, their knowledge of inmates who appear to be mentally ill that are not receiving treatment, and their general impressions regarding the availability and quality of the mental health services in the prison. Additional interviews of other inmates described during these interviews should be made.

Walking the tiers of cell blocks in order to attempt to talk to every inmate on that tier is extremely useful. This is especially productive to do in cell blocks where movement is restricted such as in administrative segregation and protective custody. Of course, appropriate security precautions should always be followed and this will include the presence of an escort guard. Useful information can be obtained from the escort officer about problems in the mental health system and the prison in general. Inmates are usually willing to answer the evaluator's questions after the purpose of the discussion has been clearly explained. This evaluation provides direct exposure to environmental conditions that impact on the inmates' mental state. The inmates' knowledge about the mental health system can be useful in assessing the compliance issues, especially access and availability of the mental health staff. The verbal information obtained from inmates in administrative segrega-

tion is often quite biased against the prison system due to their anger and personality traits.

Informal discussions with the front line security staff and various shift captains are beneficial. These officers will frequently help pinpoint areas of non-compliance and describe their working relationship with the mental health staff. Specific questions concerning management problems associated with mentally ill inmates can facilitate these discussions. The prison infirmary and/or inpatient psychiatric units should also be site visited. Interviews should be held with inmates, key treatment staff, and the head of security. Interviews with physician's assistants and nurse practitioners will increase the consultant's knowledge of the medical and mental health systems.

Attending any scheduled staffings can be helpful in order to have contact with other mental health staff, which will assist in the total evaluation. Staffings often focus on the very difficult mentally ill inmate which will often expose system deficiencies and/or problems.

Reviewing the mental health records of the inmates interviewed and other inmate records selected on a random basis is important. This review will help determine the credibility of these inmates as well as assess the adequacy of the medical records. Particular attention should be given to documentation of treatment plans and the confidentiality of the reports. The inmate's institutional file should also be reviewed to ensure that adequate confidentiality of the medical records is being maintained. There

are potential problems with confidentiality if the institutional file contains copies of psychiatric evaluations and/or consultations from the prison's mental health system. The examiner's prior review of professional standards and knowledge of pertinent state law concerning confidentiality will help in assessing this issue. The professionalism of the staff can often be assessed by reviewing these records.

Comparison of the operating budget of the mental health system with the originally proposed budget is important. Any discrepancy will again help to pinpoint areas of noncompliance. The originally proposed budget is generally a reflection of what was felt to be minimally required to provide services outlined in the mental health plan.

Even at the end of a thorough evaluation, many questions will remain unanswered. The hiring attorney can attempt to obtain answers by the use of interrogatories and/or depositions. Political and financial factors are among many factors affecting compliance which will make this process a long and difficult one.

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