

Homelessness and Mental Health

NOV 01, 2018

BY ROBERT ROSBOROUGH

Thirty years ago, a young, redheaded homeless guy wandered the streets of San Francisco, appearing downtown, in the Castro, occasionally in my neighborhood (Russian Hill). My best friend was also a redhead and he acknowledged a slight resemblance. He used to joke that it was his bad-karma doppelgänger, a joke I let slide since my friend had been homeless himself, having lived in a van when he arrived in San Francisco after leaving his homophobic family. We saw the homeless guy periodically, who seemed a little crazy and wasn't very communicative so we never learned his story. Earlier this year, I was walking down my lane to find him sitting on a planter box outside my window, using the water tap, still homeless, still uncommunicative. My friend died in 1992 and I think of him when I see the other redhead still on the streets decades later.

"Intractable" and "persistent" are two of the many adjectives tossed around when people discuss homelessness. While not the sole reason for homelessness, mental illness is a significant contributor to the intractable and persistent nature of it, as my redheaded guy seems to illustrate. This issue of the Marin Lawyer takes a few small steps into exploring homelessness in our community and in particular its relationship to mental health. I would like to thank Damon Connolly, our Guest Editor, for bringing together an issue on this topic and Mary Sackett for her invaluable help in making it happen. As a starting point, I highly recommend Andrew Hening's article exploring the relationship between mental health and homelessness, which sets out the recent history of mental health treatment and the law in our country, which in turn helps explain why we are faced with the situation we are.

A. J. Brady discusses a controversial recent Ninth Circuit ruling that prohibits the criminalization of sleeping on public property. How this will affect the lives of the homeless and how society addresses helping the homeless is yet to be seen. If all of this is sounding grim, be sure to read Judge Kelly Simmons' article on the promise of Marin County's new Pathways program in the courts. As

Presiding Judge Haakenson noted in his creative and entertaining report on the Marin bench at this month's MCBA member luncheon (if you missed it, you can read about it in Mary Sackett's report), Judge Simmons was instrumental in bringing together a wide array of constituencies and resources to create a way to help the mentally ill homeless who are swept into the criminal justice system for minor offenses. And in our non-profit profile, you can read about the innovative Downtown Streets Team, which is making a real difference in the lives of many homeless by engaging them with a comprehensive and sustained program that uses community work to rebuild lives, leading to employment and housing.

With our stratified economy and sky-high housing prices, more and more Marin residents are in danger of becoming homeless. You can help keep them in their homes through the many pro bono opportunities here in Marin. As I mentioned last month, whether it is MCBA's partnership with the Law Library—Lawyers in the Library—or volunteering for Legal Aid or the Canal Alliance or another non-profit organization, you can find a way to put your skills to good use. One place to start is through the Marin Pro Bono Network, which you can explore at (<https://www.marinprobononetwork.org/>) www.marinprobononetwork.org.

Changing Judicial Assignments and a Changing Board

OCT 31, 2018

BY THOMAS S. BROWN

Every year the Judges' Luncheon is one of the most highly anticipated and well-attended events of the MCBA year. One would not think that the announcement of judicial assignments would be such an entertaining or informative event, but Presiding Judge Paul Haakenson managed to enliven the crowd this year as he revealed the new assignments of his colleagues with just the right amount of humor and fanfare in his clever digital presentation. Almost none of the bench was left unscathed in the announcements and the face of both the civil and criminal benches will be significantly changed in the coming year.

The Civil Division comprises Assistant Presiding Judge Andrew E. Sweet (Dept. E), Judge James Chou (Dept. B), and Supervising Judge Stephen Freccero (Dept. A). Judge Roy O. Chernus will tackle the Civil harassment hearings in Dept. C and Judge Kelly V. Simmons will continue to manage the Probate Calendar in Dept. G.

Family Law will expand to three vertical departments with Judge Verna Adams as Supervising Judge (Dept. H); Judge Mark Talamantes in Dept. L, and Judge Sheila Shah Lichtblau in Dept. K.

The Criminal Division will be presided over by Supervising Judge Kelly V. Simmons (Dept. J), who with Judge Haakenson (Dept. F) and Judge Geoffrey Howard (Dept. D) will each handle vertical criminal departments. Judge Beth Jordan will be running the misdemeanor calendar in Dept. M and Judge Beverly Wood will be assigned the Juvenile Division. We will continue to have Trial Departments that regularly take out misdemeanor cases and motions to suppress that will be presided over by Judge Chernus and Judge Beverly Wood (Dept. G).

Marin is home to several specialty courts which are designed to handle unique and often challenging cases. In addition to their regular assignments, the judges will handle these courts as well, which include the STAR Mental Health Court (Judge Lichtblau), the Adult Drug Court (Judge Haakenson), and the Family Violence Court (Judge Howard).

In addition to the judicial changes at 3501 Civic Center Drive, the MCBA is pleased to announce its new slate of Officers and Directors, which was approved at last month's membership meeting. Leading the MCBA next year will be President Charles Dresow, Ragghianti & Freitas; President-Elect Susan Feder, Mediation panelist with Judicate West; Treasurer J. Timothy Nardell, Nardell, Chitsaz & Associates; Secretary Robert Rosborough, Monty White; and Five-Year Past President David Feingold, Ragghianti & Freitas. Joining the Board as Directors are Habib Bentaleb, Ahtossa Fullerton, Kelley Reid, Michael Chaput, and Sarah Leger, who will each serve three-year terms.

A special thanks to the Board's departing Directors: Alan Brayton, Nicole Çabalette, Damon Connolly, and Christian Martinez. Also transitioning from the Board will be Caroline Joachim, who served as both Secretary and Treasurer over her six-year tenure, and Jessica Karner, our outgoing Five-Year Past President. Please join me in thanking all of the outgoing board members and officers and welcoming the new slate of officers and directors. We are looking forward to an exciting transition to next year.

Based on the positive feedback from last year's event, we are once again presenting the annual MCLE Fair, scheduled for November 29, 2018 at the Embassy Suites. We are returning to a full-day event and will offer the presentations in a one-track format. The MCLE Fair is jointly sponsored by MCBA, Marin County Women Lawyers, and the Marin County Legal Professionals Association. The Attorney Track will provide seven CLEs addressing Ethics, Elimination of Bias, and Substance Abuse. Topics include the Updated Rules of Professional Conduct (which also pertains to compliance for paralegals), Regulations in Cannabis Law, Ethical Mediation, and Media & Pop Culture on Trial Outcomes. Our keynote speaker is Ann O'Leary, a respected leader in the non-profit, philanthropic and political space, and law partner at Boies Schiller Flexner. She will talk about how you can put your legal skills and bar license to work for social justice as part of the transformative movements of the day. Join us for this full educational day that includes breakfast and lunch. Get those CLE requirements done before February 1! For your staff, the Legal Professionals track offers six presentations and the keynote lunch. Programs include Expert

Discovery: Requesting Documents, Setting Depositions and Trial Appearance; and Motion for Summary Judgment/Adjudication: What Should Be On Your Checklist.

One of my regrets this year has been the decrease of Section events and programs during the calendar year. Although there are several sections that have continued to hold many informative and consistent programs, (ADR, Probate & Estate Planning, Family Law and Labor & Employment for example), many of the other Sections have not met regularly. In an effort to understand the reasons behind the decline in Section involvement by the membership we are hosting a Section Chair event on November 8 at State Room Brewery in San Rafael. We are hopeful that this brain-storming and networking event will result in improved involvement in our Sections. A list of our current Section Chairs can be found on the MCBA's (<https://marinbar.org/mcle/section-chairs/>) website, so if you are interested in getting more involved in a section that relates to your practice, please reach out to the appropriate Chairperson.

I close this month's message with a request that members carefully review the articles featured in this month's newsletter, which touch on two issues that are impacting our county and the nation as a whole: homelessness and mental illness. These two issues, often intertwined, frequently result in individuals becoming entrenched in the criminal justice and civil litigation systems. Please read the articles for some excellent insights into how our legal community is addressing these challenging issues.

See you around the Courts.

Best,

Tom

Mental Health and Homelessness

OCT 31, 2018

BY ANDREW HENING

One of the public's biggest frustrations related to homelessness is encountering clearly mentally ill individuals living on the street.

(<https://www.nami.org/nami/media/nami-media/infographics/generalmhfacts.pdf>) 44 million Americans – housed and unhoused – experience mental illness every year. Many are medicated or otherwise not outwardly symptomatic, but at times some can sadly display strange, unsettling, or disruptive behavior. This is particularly evident when people are homeless.

According to

(https://www.marinhhs.org/sites/default/files/files/servicepages/2017_07/pit-report-marincounty-final.pdf) Marin's 2017 Homeless Point-in-Time Count, a staggering 70% of people experiencing chronic homelessness in Marin report having some type of psychiatric or emotional challenge.

<center><a>) 16 million Americans experience major depression every year.

- Depression is present in at least (<https://www.suicidology.org/portals/14/docs/resources/factsheets/2011/depressionsuicide2014.pdf>) 50% of all suicides.
- In the US (<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6128a8.htm>) the suicide rate is almost 3x higher than the murder rate.
- Major Depression is thought to result from a decline in serotonin in the brain. Serotonin is a type of neurotransmitter. Neurotransmitters are molecules brain cells use to talk with each other. Other studies suggest depression also stems from social/environmental influences like childhood trauma, loneliness, and a loss of autonomy.

Bipolar Disorder

Formerly known as “manic depression,” Bipolar Disorder is characterized by extended periods of depression AND extended periods of “mania.” Mania is the opposite of depression. It is the belief that one can achieve super human feats, or that one has transformed into a famous or powerful person. Approximately (<https://www.nami.org/nami/media/nami-media/infographics/generalmhfacts.pdf>) 6 million Americans experience bipolar disorder every year.

- Distorted thinking can lead to outlandish, violent, or generally inappropriate behavior.
- People can completely destroy their lives while in a manic state (e.g. spending all of their savings on erratic purchases or abandoning one’s family.)
- According to Dr. Seager, the author of Street Crazy, the current thinking is that bipolar disorder may be a variety of epilepsy because mania is well controlled by anti-seizure medications.

Schizophrenia

Schizophrenia is a long-term breakdown in the relationship between thought, emotion, and behavior, which can lead to faulty perception, hallucinations, inappropriate actions and feelings, paranoia, delusions of grandeur, and withdrawal from reality and personal relationships into fantasy.

- Approximately (<https://www.nami.org/nami/media/nami-media/infographics/generalmhfacts.pdf>)

2.5 million Americans experience schizophrenia every year.

- In the US, if you are schizophrenic you have a

(<https://www.theatlantic.com/health/archive/2013/03/study-people-with-mental-illness-are-five-times-more-likely-to-be-murdered/273740/>) 5x higher chance of being murdered.

- (<https://www.amazon.com/Street-Crazy-Americas-Mental-Tragedy/dp/0966582772>) 10% of schizophrenics commit suicide, and 50% try.

In his book *Street Crazy*, Dr. Seager says schizophrenia is more than a disease – it is a form of torture. Instead of actually killing you, schizophrenia can cause financial death, employment death, social death, and perhaps most sadly, personality and intellectual death. After onset, a person's IQ can drop by as much as 45 points.

Research has shown there are really two types of schizophrenia. One type of schizophrenic hears voices, has paranoid disorganized thoughts, but they retain their basic – albeit odd and aloof – personality. Their brain structure isn't that different (suggesting a possible chemical imbalance), they do well on medications, and with adequate support, can lead a fairly normal life.

The second type of schizophrenic has hardcore, psychotic symptoms. These individuals might be found wearing four layers of ragged clothing on a hot day, they might be found staring blankly and babbling, or they might make outlandish claims of being Jesus or being stalked by the CIA. Brain scans reveal significant structural damage to the brain in these individuals, similar to what happens with dementia.

Anosognosia

Quite amazingly, 70% of schizophrenics respond positively to medication, yet many people, especially among the homeless community, go without. That is because one of the saddest symptoms common to all three diseases is that people cannot even recognize they are ill. The formal medical term for this condition is anosognosia, from the Greek meaning "to not know a disease."

SUPERNATURAL ORIGINS For thousands of years mental illness was profoundly misunderstood. Often thought to be witchcraft, demonic possession, or simply moral shortcoming, these (<https://www.cityofsanrafael.org/mental-health-homelessness-pt-1/>) misdiagnoses justified a variety of inhumane treatments.

- In 30 AD in Rome, the (https://en.wikipedia.org/wiki/History_of_mental_disorders#Greece_and_Rome) doctor Celsus argued that philosophy and personal strength were the key to recovery. To that end, he advocated treatments ranging from the wearing of amulets to physical torture.
- In 1483, the Pope sanctioned (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4652010/>) Malleus Maleficarum (or “Witches Hammer”), which blamed the mentally ill for the Bubonic Plague and justified burning them at the stake.
- According to Dr. Seager’s research, in the 1700s, doctors often thought physical and mental health were connected. As a result, mentally ill patients were submerged in ice water baths, placed in physical restraints, and locked away in isolation.

DOROTHEA DIX Even though torture, abuse, and ostracization became the standard treatment for centuries, there have been glimmers of hope for more compassionate care.

- The first mental health “asylums” were built in ancient Egypt and Greece. They included boat rides on the Nile and trips to concerts. Asylums were originally seen as havens, shelters, or retreats. They only took on the negative connotation they have today much later.
- For centuries residents of (<https://www.npr.org/sections/health-shots/2016/07/01/484083305/for-centuries-a-small-town-has-embraced-strangers-with-mental-illness>) Geel, Belgium, have hosted severely mentally ill people in their homes, simply accepting them as they are.

In the US, mental health reform is most often associated with (<https://www.esquire.com/lifestyle/a20717313/mental-illness-treatment-in-prison/>) Dorothea Dix. Dix shared the following insight with a group of Massachusetts legislators in 1843 after observing a significant number of people with mental illness in prisons:

“Prisons are not constructed in view of being converted into county hospitals, and almshouses are not founded as receptacles for the insane. And yet, in the face of justice and common sense, wardens are by law compelled to receive, and masters of almshouses not to refuse, insane and idiotic subjects in all stages of mental disease and privation.”

10 years before Dix’s remarks’ to the legislature, the US opened its first prison in Philadelphia. The

goal of these facilities was penitence, not care-taking. Dix's solution proposed a new system with a new goal—institutions dedicated to the treatment of mental disorders. By 1880, when the U. S. released its first demographic study of mental illness, forty thousand patients had been moved out of jails and prisons and into state hospitals. Amazingly, only
(<https://www.esquire.com/lifestyle/a20717313/mental-illness-treatment-in-prison/>) four hundred people with a disorder remained behind bars.

<h4>THE FORGOTTEN</h4>In a way, the state hospital system was too successful. People with brain disease had a new place for treatment, and over the next 100 years, successive generations eventually forgot that serious mental illness had ever been such a significant public problem. WWII reopened the issue for two reasons:

- According to (<https://www.amazon.com/Street-Crazy-Americas-Mental-Tragedy/dp/0966582772>) Dr. Seager's research, 40% of all military draft rejections in WWII were for psychiatric reasons. Mental illness did not discriminate against race, religion, or class – it was impacting Americans of all backgrounds.
- There was a huge influx of returning wounded warriors who needed help processing the traumas of war.

As increased scrutiny and accountability descended on the mental health system, a grim picture emerged. Books like *Shame of the States* (1949) began detailing the rundown and inhumane conditions in state hospitals. In 1955, with 580,000 Americans living in these facilities, Congress and President Eisenhower passed the Mental Health Study Act, creating a joint commission to investigate.

Greer Williams, a prominent psychiatrist and writer, was the editor of the (<https://www.nih.gov/about-nih/what-we-do/nih-almanac/national-institute-mental-health-nimh>) final report. In July of 1961, he told *The Atlantic*:

<blockquote>"Comparatively few of the 277 state hospitals – probably no more than 20% – have actively participated in the modern therapeutic trend toward humane, healing hospitals and clinics of easy access and easy exit, instead of locked, barred, prisonlike depositories of alienated and rejected human beings ... [the typical state hospital] does a good job of keeping patients physically alive and mentally sick."</blockquote>

As public support for state hospitals began to erode, exemplified by books like *One Flew Over the Cuckoo's Nest* (1962), with its graphic depictions of electroconvulsive therapy and portrayals of unsympathetic mental-health workers, this period also witnessed astounding progress with the emerging field of psychopharmacology and new drug treatments for mental illnesses. Chlorpromazine, best known in the U.S. under the brand name Thorazine, became the first widely adopted antipsychotic drug in 1955. Others soon followed, and they had an immediate impact on the therapeutic landscape. Although the effects varied from person to person, for the first time many patients with serious mental illnesses could now be reliably treated beyond the asylum and hospital walls.

As a result of all of these developments, when JFK entered the Presidency in 1961, a new vision for mental health treatment was emerging. "We must move from the outmoded use of distant custodial institutions to the concept of community-centered agencies," JFK told legislators. To replace asylums, the president envisioned a national network of community-based mental health centers, equipped to provide "a coordinated range of timely diagnostic, health, educational, training, rehabilitation, employment, welfare, and legal protection services." The "Community Mental Health Centers Act" (CMHCA) was the last piece of legislation JFK signed into law before he was assassinated in 1963.

The CMHCA – or "deinstitutionalization" as it is referred to now – was a bipartisan effort with the best of intentions, but the results were not what policymakers envisioned.

THE UNINTENDED CONSEQUENCES OF DEINSTITUTIONALIZATION If you were to evaluate the success of deinstitutionalization by measuring the clearing out of state hospitals, it was a resounding success.

(Between 1955 and 1998, the populations in state and county mental health hospitals dropped from approximately 558,000 to fewer than 60,000. If the number of beds available in 1955 had simply kept up with population growth, state hospitals would have had 950,000 patients in 2000. In other words, our country has lost 94% of its per capita mental health bed capacity. Three things happened to accelerate

this change.

#1 Medicare and Medicaid

According to research from Dr. Seager's book

(https://www.amazon.com/Street-Crazy-Americas-Mental-Tragedy/dp/0966582772/ref=sr_1_1?ie=UTF8&qid=1536613708&sr=8-1&keywords=street+crazy) Street Crazy, before deinstitutionalization, state hospitals actually served a variety of people, and most people experiencing serious mental illness were being treated and returned home. By comparison, long-term neglect was much more common among senile elderly people and people with incurable, degenerative neurological conditions (epilepsy, ALS, multiple sclerosis, Parkinson's), who were also warehoused in these facilities.

- In 1965, President Johnson signed Medicare into law. With guaranteed medical insurance regardless of income, elderly patients could finally be moved out of state hospitals to nursing homes.
- In 1966, President Johnson signed Medicaid into law, which provided federal funding for vulnerable people regardless of age. This allowed people with neurological disorders to move to nursing facilities.
-

(https://www.amazon.com/Street-Crazy-Americas-Mental-Tragedy/dp/0966582772/ref=sr_1_1?ie=UTF8&qid=1534793420&sr=8-1&keywords=street+crazy) In just 3 years, state hospital populations dropped by 50%.

This all sounds like great news, right? It definitely was for a lot of people but not for folks with serious mental illness. As Dr. Seager describes, local community mental health centers didn't actually take over care for the seriously mentally ill. Instead:

- Newly funded centers provided easier access for people with anxiety disorders, mild depression, and substance use disorders – problems previously unaddressed by public funding and services.
- Moreover, centers couldn't handle the behavior of the seriously mentally ill – they didn't keep appointments and refused medications among other challenges. If there were "easier to serve" people, why attempt to treat those who actively refused treatment or denied they were even ill?

#2 Expanding Civil Liberties

When people are "institutionalized" or "committed," they are held involuntarily for treatment.

There are two legal ideas that support this practice:

- Parens patriae – A legal idea harkening back to medieval English kings whereby the monarch is empowered to be a “substitute parent” for those who can’t care for themselves.
- Police Powers – Grants the government the right to protect society from dangerous individuals. Unfortunately, the commitment process, like state hospitals, had witnessed abuse. Family members were colluding with doctors to lock away spouses and elderly relatives, and patients were often subjected to treatment against their will.

Building on the momentum of the Civil Rights Movement in protecting individuals’ civil liberties and right to due process, in 1969, California passed the “Lanterman-Petris-Short” Act. In a few short years, the “LPS Commitment Process” became the model law for almost every state.

The LPS Act created strict new standards for involuntary holds that were overseen by the court system. To this day, to be placed on an involuntary hold, someone has to be either:

- An imminent danger to themselves (suicidal);
- An imminent danger to others (homicidal); or
- Gravely disabled (unable to provide food, clothing, or shelter).

Over time the courts have interpreted these laws in an increasingly expansive way:

- In 1975, in (https://en.wikipedia.org/wiki/O%27Connor_v._Donaldson) Donaldson vs. O’Connor, the US Supreme Court not only upheld the LPS concept, it went a step further to say no one can be hospitalized involuntarily if that person can simply “survive” in the community.
- In 1979, in (<https://www.ncbi.nlm.nih.gov/pubmed/11648567>) Reise v. St. Mary’s in California, the court gave mentally ill people the right to refuse treatment.
- The California Supreme Court has also ruled that past behavior patterns may not be weighed as evidence; instead, involuntary holds must be based on an “imminent” danger.

In Street Crazy, Dr. Seager writes about his work in a psych emergency unit in Los Angeles in the 1990s. This is an extreme, graphic example of the dysfunction made possible by our current legal system:

<blockquote>Pamela grew up in Maryland. After a relatively uneventful childhood, as a young woman Pamela had a violent, psychotic break during which she stabbed her mother 47 times. At her trial Pamela indicated voices had compelled the attack, and she was sent to a state hospital. Amazingly, she was released after just one year. With her new freedom she got on a bus and headed to Los Angeles. After arriving in LA, Pamela’s schizophrenia began to encourage self-mutilation, and over the next couple

years Pamela cut off the tips of all of her fingers, toes, nose, and ears. This self-endangerment landed her in psych emergency 49 times. Every time Pamela started taking medication, her condition improved, and she was released. Once Pamela felt partially well again, she stopped taking her medication. On that 49th visit, Pamela had gouged out one of her eyes. </blockquote>

#3 Defunding Mental Health Services

Even though the 1960s witnessed massive investment in publicly-funded healthcare through Medicaid and Medicare, the Community Mental Health Act of 1963 was immediately gutted of its major funding provisions. The American Medical Association opposed including funds for personnel, and in the final bill nothing was set aside for staffing.

In the last year of his presidency, Jimmy Carter signed the Mental Health Systems Act (MHSA) of 1980, which provided more grant funding directly to community mental health centers. However, even after John Hinkley, Jr. – a man suffering from an untreated psychotic disorder – attempted to assassinate President Reagan in March of 1981, Reagan went on to repeal most of MHSA later that same year.

By the mid-1980s, it was apparent that something had gone wrong:

- “The policy that led to the release of most of the nation’s mentally ill patients from the hospital to the community is now widely regarded as a major failure,” (<https://www.nytimes.com/1984/10/30/science/how-release-of-mental-patients-began.html>) declared The New York Times in 1984.”
- “States proved more enthusiastic about emptying the old facilities than about providing new ones,” the Chicago Tribune (<https://chicagotribune.newspapers.com/>) noted in 1989. “Many patients went from straitjackets to steam grates.”

The Great Recession accelerated the nation’s downward trend in mental-health spending. Between 2009 and 2012, America’s 50 state legislatures (https://www.nasmhpd.org/archive_publications) cut a total of nearly \$4.5 billion in services for the mentally ill, even as patient intakes increased by nearly 10% during the height of the economic crisis.

<h4>TODAY</h4>

It is now believed that 1/3 to 1/2 of all inmates in the US have a mental illness. That's 400,000 people. The largest mental health facility in the country is now the (https://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/) Cook County Jail in Chicago. The National Alliance on Mental Illness estimates that between 25 and 40 percent of all mentally ill Americans will be jailed or incarcerated at some point in their lives.

(https://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/) Most mentally ill inmates end up behind bars because of "crimes of survival" such as retail theft (to find food or supplies) or breaking and entering (to find a place to sleep). For those with mental illness, drug possession charges can often indicate attempts at self-medication. The 1976 Supreme Court case *Estelle v. Gabriel* found that prisons are constitutionally required to provide adequate medical care to inmates in custody, thus creating a potentially perverse incentive to commit crimes to receive treatment.

Like it was in the 1800s, jail continues to be a terrible place for people with mental health issues. In (https://www.amazon.com/Insane-Americas-Criminal-Treatment-Illness-ebook/dp/B074M6FZXQ) *Insane*, Elissa Roth visited prisons across the country, observing mentally ill people without access to medication, constantly surrounded by loud noises and sounds, in tight confined spaces, sleep deprived, and often in isolation. Mentally ill inmates fail to understand the rules they're expected to follow or the punishment they receive, and their conditions result in the exact opposite behavior of what correction officers desire – paranoia and noncompliance.

This depressing state of affairs was not inevitable. It is the direct result of decades of policy decisions to stifle the community health mental vision. But that original vision is still sound. And there is reason to hope that one day we will fully implement it.

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This article was originally published by The City of San Rafael in a three part blog. Reprinted here with permission.

Martin v. Boise: Not a Case to Sleep Through

OCT 31, 2018

BY A.J. BRADY

The Ninth Circuit has again sent ripples across the legal landscape, this time through the crossroads of criminal justice and homelessness policy with its decision in *Martin v. City of Boise* (9th Cir. 2018) No. 15-35845. In *Martin v. Boise*, a group of homeless individuals filed a 42 U.S.C. section 1983 action against the city of Boise accusing the city of violating their civil rights. Plaintiffs alleged that the city of Boise violated their rights by criminalizing "camping" and "trespassing" on public property. According to the appellate record, Boise enforced these ordinances against homeless people essentially for sleeping on public property.

The Ninth Circuit held that, "[T]he Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to." While Boise has homeless shelters, the court indicated that there were numerous reasons why plaintiffs could be barred from entry aside from capacity, specifically if plaintiffs refused to engage in a faith-based curriculum, exceeded limits on the number of days allowed, or left a program prematurely. The court reasoned that punishing basic behavior associated with being human, such as "sleeping" done in public without alternatives, is not punishing conduct but rather punishing the status of being poor, which has previously been held to be unconstitutional.

The tentacles of *Martin v. Boise* are far reaching. In California, an analogous statute to those at issue in Boise is Penal Code section 647(e), which makes it a misdemeanor to "[lodge] in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it." Numerous local laws could also be affected, such as Novato Municipal Code section 14-20 and San Rafael Municipal Code section 8.10.090(d), which both bar 'camping' and attendant conduct in similar ways to Boise.

The Martin court took great pains to emphasize the limits of its ruling, even expressly stating, "Our holding is a narrow one." Yet legal observers may be left paraphrasing Queen Gertrude in Hamlet, "The Ninth Circuit doth protest too much." The potential fallout of its ruling was understood by the court, which in cautious language stated, "[W]e in no way dictate to the City that it must provide sufficient shelter for the homeless...." However, its ruling inevitably leads to the conclusion that sufficient shelter is a necessary precondition to a municipality using criminal sanctions against the homeless sleeping on public property.

It is also not hard to predict the expansion of Martin v. Boise. While the ruling applied specifically to "sleeping," the court's language encompasses all conduct which is a "universal and unavoidable consequences of being human." Other unavoidable consequences of being human are generally frowned upon or are illegal when done in public: relieving oneself; warming oneself, perhaps by fire; or accruing property and shelter in order to survive through a winter.

The court indicated that there could be reasonable restrictions on camping, and city attorneys would be well advised to review their municipal codes and advise their police departments on proper enforcement procedures or risk a section 1983 lawsuit, with attendant damages and attorney's fees. However, it would be a huge mistake to view Martin v. Boise as simply a mandate to narrow the scope of public camping laws. The clear import of the ruling is that traditional criminalization and law enforcement cannot be the primary method of 'dealing' with everyday conduct by a human being who is homeless.

Marin County's Community Resource Guide

OCT 30, 2018

BY MARIN COUNTY SUPERVISOR DAMON CONNOLLY, DISTRICT 1, SAN RAFAEL

As lawyers, our jobs can involve clients who need community services along with their legal services. When such issues come up, you will be happy to know there is a website that lists resources to connect someone to vital services in Marin County.

Are you representing:

- Someone in need of credentials to navigate to their next career? (<http://careerpointnorthbay.org/>)

Careerpointnorthbay.org

- A woman over 50 who is trying to enter the workforce? (<https://fiftyplus.ywcasf-marin.org/>) YWCA Fifty+ 415-479-9922

- An older adult who is looking for transportation? (<https://marintransit.org/marin-access>) Marin Access 415-454-0902

- A client who might be entitled to veteran's benefits? (<https://www.marinhhs.org/veterans-services>) Veterans Services 415-473-6193

- A caregiver in need of respite while caring for a loved one with memory loss? (<http://www.senioraccess.org/>) Senior Access 415-491-2503

- A person with a disability who wants to remain at home and actively engaged in the community? (<http://www.marincil.org/>) Marin Center for Independent Living 415-459-6245

These are just a few examples of the extensive resources Marin County has that might make an enormous difference in the lives of your clients. A comprehensive guide to the available resources in

Marin County can be found here: (<https://www.marinhhs.org/community-resource-guide>) Marin County Community Resource Guide. You are also welcome to call my office, as often I can help connect you to the right person to address your client's non-legal needs.

Pathways Mental Health Court

OCT 30, 2018

BY JUDGE KELLY V. SIMMONS

For years, there has been an increasing need for criminal justice reform as it relates to the treatment of the mentally ill defendant. California jails are filling up with a higher and higher share of mentally ill people who have been accused of crimes. Many of these people have been deemed incompetent to stand trial. Ideally, these mentally ill defendants should be sent to state hospitals to receive proper care and treatment, but the state hospitals are full. With virtually every bed filled, and a waiting list sometimes six months long, a person charged with a lower level misdemeanor offense has no chance of making it to the state hospital for treatment. They are therefore often kept in the local jail where their mental condition is far less likely to improve and they are unlikely to be medicated.

The mentally ill bear a different level of responsibility for their actions than do the rest of us. Their inability to govern themselves, because of their illness, is no fault of their own, and yet because they cannot control their behaviors, they often find themselves in the county jail for long periods of time with no treatment options. We cannot deter mentally ill people from being mentally ill, but most of the time, jail is not where they belong—it's just where the beds are.

It is important, even encouraging, to note that many of the rehabilitative services that these unfortunate people need already exist in Marin County's system of care. In some cases, these services have been under-developed, but in other cases they are simply underutilized, or altogether unknown to participants in the criminal justice system. The Court has long needed assistance from service providers to help get these defendants out of jail, enrolled in appropriate services and placed in adequate housing, while at the same time providing incentive and guidance, and sometimes a firm hand, for the defendant to comply with court and medical directives.

I am most pleased that the Marin County Bench, the Board of Supervisors, the District Attorney's Office, the Public Defender's Office, Behavioral Health Services, Jail Mental Health, Marin General Hospital, local law enforcement, the Probation Department and the Public Guardians' offices have all come together to try to address this longstanding problem. After months of hard work, dedication and great collaboration, the Marin County Court opened its new mental health court known as "Pathways." Now, mentally ill defendants who face misdemeanor charges (and who do not qualify for other court approved programs) will be assigned to our new court. This court meets each week and is staffed by an exceptional group of professionals who are helping the court find the resources needed not only to help move these people through the system but also to provide them with needed mental health services, structure and case management. Once those services are in place, and a safety plan is implemented, these people can be released from custody with a future court date.

Since our start date of September 1, we have accepted 15 people into the court. Of those 15 people, one has been placed in a hospital setting, one was released and returned to custody for non-compliance and the rest have been released from custody with services, stable housing, medication and case management in place. Additionally, all defendants who have been released from incarceration have returned for their future court date as ordered. Although the program is still in its infancy, it appears to be working.

Acknowledgement and thanks must be given to some who have played a special role in all of this: Dori Ahana, Brian Morris, Tod Paler, Larry Jacobs, Shannon Kowalski, Connie Moreno-Peraza, Rebekah Reali, Carrie Coats, Juan Colonia, Darryl Roary, Michelle Funez Arteaga, Dr. Ryan Dunnigan, Dr. Jei Africa and Supervisor Connolly, for their continued support and leadership in this worthwhile endeavor.

Brian Washington

OCT 29, 2018

BY MARIN LAWYER

The Marin Lawyer sat down with Brian Washington, the Marin County Counsel, to learn more about him and the County Counsel's office. The Board of Supervisors appointed him to a four-year term in January 2017 to head the office of twenty-four full-time employees. Before coming to Marin, he was Alameda County's Chief Assistant County Counsel.

What is your practice area?

Public law. In the Office of the County Counsel, our primary role is to provide responsive and timely legal advice to the Board of Supervisors, County departments, assorted boards and commissions, special districts and other local government agencies. We file and litigate civil cases, prepare contracts and ordinances, render legal opinions for County departments, and prosecute civil child abuse and neglect cases. It is a great, varied practice area and makes work interesting every day.

Why did you decide to become a lawyer?

Growing up, I was always very interested in government. Like many, I suppose, I decided to go to law school when I realized that I needed an answer to the question, "What are you going to do when you graduate?" While I enjoyed some aspects of working as a lawyer in the private sector, I immediately knew that I had found the right career in 1994 when I became a Deputy County Counsel in the Alameda County Counsel's Office. I think it comes down to the feeling that I get working on behalf of the public for the public good. It makes me excited to come to work every day.

Why do you live in the Bay Area?

I grew up in the Central Valley, and my wife loves California but could not take the heat in Davis! The Bay Area was a natural fit. We lived by Lake Merritt in Oakland for about 20 years and now live in the Berkeley hills.

Is there something that Alameda County is doing well, that Marin could learn from?

I will flip that question around as I have spent the last two years learning all the things that Marin County does so well. On the innovation front, Marin County established MCE, Marin's community choice energy aggregator in 2007, while Alameda County is just getting its community choice aggregation program off the ground. I have also been impressed by Marin County's strategic planning work and its efforts to use that as a catalyst to drive change and improvement throughout the organization. Finally, I have also been impressed with Marin's knowledgeable, passionate and engaged citizenry.

What do you love to do when you're not busy practicing law?

I am at that point in life where I am realizing that after having spent the last eighteen years of my life raising kids, I need to develop some outside interests! In my spare time, I am a middling Master's swimmer, avid history reader, and I like to spend time in the Sierras (up the Highway 4 corridor) with my family.

If you could pursue any other career besides law, what would it be and why?

Starting center fielder for the Cincinnati Reds would have been my first choice. History professor would probably be my second, as being paid to do something I love (read history) sounds very appealing. If I were in academia though, I think I would really miss working on problems with immediate, real-world impacts.

Why did you join MCBA?

As a new member of the bar in Marin, it seemed like a great way to get to know the attorneys here, and I have been very impressed with the quality of MCBA's programs – another thing Alameda County can learn from Marin!

If you had to pick a single highlight of your career, what would it be?

I am proud of the County of Marin's leadership, along with San Mateo County, in filing suit against 37 oil, gas and coal companies regarding the impacts of sea level rise. The companies knowingly persisted with fossil fuel production, despite scientific research and recommendations from their own experts about its harmful effects and failed to warn the public or take steps to reduce their greenhouse gas pollution. It has been, and will continue to be, a very challenging case, but I appreciate MCBA members Damon Connolly and Kate Sears, along with the rest of the Board of Supervisors, taking a leadership role in seeking to hold these companies accountable for their conduct.

Downtown Streets Team

OCT 29, 2018

BY DAMON CONNOLLY

Founded in 2005 in Palo Alto, Downtown Streets Team (DST) has developed an innovative model for ending homelessness through the dignity of work. Now in twelve Bay Area communities, including San Rafael and Novato (and recently expanded beyond the Bay Area), DST's model is structured to be a one-year transitional program into permanent housing and employment. Premised on the idea that treating people with dignity and empowering them to be part of the solution to their own struggles is a major factor in their ultimate success, DST challenges homeless individuals to take an active role in their own recovery by working on beautification projects such as street cleaning and creek restoration.

Referred to as "team members," these individuals are either experiencing homelessness or are in extreme poverty. During their time with DST, team members are held accountable and trusted to complete tasks, show up on time and work well with others. In return, team members receive a non-cash stipend to help cover their basic needs and are able to take advantage of case management and employment services to find housing and a job. In the process, they find rejuvenation, restore their dignity, rediscover their self worth and rebuild their lives.

DST currently works with nearly one thousand individuals throughout the year. In Marin County alone, DST is encouraging and supporting anywhere between thirty and forty-five team members during any given month as they overcome barriers preventing them from securing employment and housing. One of those barriers is something most of us take for granted: staying clean. In March of this year, DST started Marin Mobile Care, a mobile shower program with host sites in Novato and San Rafael. Over 1,200 showers have been provided to over one hundred people experiencing homelessness. Marin Mobile Care has afforded DST the opportunity to hire some team members directly into employment. Former team members, now on staff, greet shower guests with smiles, warm towels, socks, and shampoo, conditioner, and body wash donated by Marin-based EO Products for the life of the program.

In addition to meeting with a case manager to work on obtaining housing and employment, if team members face legal barriers, they can connect with Marin County Bar Association member Elissa Lasserre of (<https://nblawcenter.org/>) New Beginnings Law Center, who volunteers her legal expertise and guidance to help with record expungements and resolving traffic violations. Elissa will often represent team members in court and/or connect them to (<https://www.vinnies.org/need-help/community-court/>) Community Court, where individuals can use their time with DST to clear those hours. Therapists from (<http://cipmarin.org/>) Community Institute for Psychotherapy also volunteer their time to meet with team members weekly, working on any trauma or mental health challenges.

The basic needs stipend takes the form of non-cash gift cards, which helps team members get out of survival mode and into goal-setting mode. This offers the opportunity to take a break from worrying about their immediate needs and regain an intrinsic motivation to seek employment with the support of DST's employment specialist, who helps build resumes, practice mock interviews, and secure employment.

Team members who have been resistant to connecting to services often reclaim determination to become self-sufficient through these available opportunities. For example, Mr. D became a team member intending only to serve community service hours required by the court to clear his legal record. He met that goal within the first week. Upon his check-in with his DST case manager, he decided to stay with DST. He wanted to see what else he could accomplish. He has since connected with a primary care physician, gotten his first pair of eyeglasses in 15 years, been instrumental in the success of several peers, been promoted to a "Team Lead" and is now preparing to find employment with his updated resume. It was the support he felt by his peers and case manager that encouraged him to stay and continue working on his goals.

To date, 1,619 team members have secured housing and employment throughout all of DST's Bay Area locations. In Marin, we have seen over 110 team members secure employment and 63 secure permanent housing. Every month, team members self-report in a survey, which recently showed that 96% have improved self-esteem, motivation and hope; 86% have fewer negative impacts from law enforcement; 73% were using fewer substances since joining the Team; 92% seek or maintain mental

health treatment; and 100% are interested in pursuing education or employment.

Mr. B is a shining example of what the shock of homelessness can do to someone and what being part of a Downtown Streets team can do to counter the experience. For him, the team offered support as he practiced resilience and perseverance in reaching his employment goals. When he joined, he hit the ground running in search of the perfect job. However, without instant success, his drinking increased, and he started to question his job search efforts. He then suffered a traumatic brain injury. His fellow DST peers were some of the only people in his world who made regular visits to the hospital during his recovery. After Mr. B was discharged, the first thing he did was rejoin the team with a renewed sense of self and determination to find employment so he could move past his experience of living and sleeping outside. He immediately met with the DST employment specialist and sent out dozens of job applications. He went to numerous interviews and landed an amazing full-time job. He checks in regularly to let staff know he is doing great and is maintaining his sobriety. Throughout his employment, Mr. B has been staying at the local emergency shelter working to secure permanent housing. His newest goal is saving his paychecks, so he can put down a security deposit on a place to call home.

For more information about Downtown Streets Team, visit: (<http://streetsteam.org/san-rafael>) Streetsteam.org/san-rafael or contact Karen Strolia, Director of Marin County for DST at (415) 583-2328 or (Karen@StreetsTeam.org) Karen@StreetsTeam.org.

The State of the Marin Courts: The 2018 Judges' Luncheon Report

OCT 29, 2018

BY MARY SACKETT

The October 24th MCBA sold-out Judges' Luncheon was a show not to be missed. Presiding Judge Haakenson reported on developments at the Marin County Courts, announced the judicial assignments for next year, shared entertaining highlights of each of his colleagues (eliciting a few groans along with the laughter at his puns), and displayed his considerable movie making skills.

Judge Haakenson started by kindly asking "Who should be honoring who?" Judge Haakenson shared appreciation from the bench for the work that the bar does for the community and the court. He explained that in traveling around the state as Presiding Judge, the Marin bar stands out as unique and creative. His colleagues in other counties are astonished by the strategies that the Marin bench and bar use, often as partners, to keep the courthouse doors and windows open and the courts running without delays.

James Humes, Presiding Justice, First District Court of Appeal, visited Marin Superior Court and was delighted and inspired by his visit. He testified before the Judicial Council about his observations in Marin, "We can all learn by some of the collaborative and creative ways Marin has provided services on a shrinking budget." Judge Haakenson, on behalf of his colleagues on the Bench, offered his profound thanks for all that the Marin County Bar does.

Some examples of the myriad collaborations in which Marin lawyers contribute their time and energy to make the resources of the Marin courts go further and help serve the community at large are:

- Family Law Bench Bar Settlement Conference.
- Family Law Interdisciplinary Settlement Conferences.
- Civil and probate Mandatory Settlement Conferences (161 attorneys this year).
- Lawyers in the Library. Lawyers in the Library needs volunteers, especially attorneys with knowledge of family law and landlord tenant matters. 700 people have been served through this program since its inception in 2016.
- Unlawful Detainer Settlement Conferences. 10 to 15 cases are set for trial each week, often with the parties being pro per. The conferences settle more than 90% of the cases and achieve good results for the clients. Settling these cases frees courtrooms for civil trials to proceed as scheduled.
- Civil Harassment Restraining Orders.
- Community Court in the St. Vincent de Paul dining room, and now also in the courtroom through Pathways.
- Youth Court.
- Legal Self-Help Center. Judge Haakenson announced that the Court recently received a grant to convert Courtroom P into a Legal Self-Help Center. A lawyer will be hired to work in the center, and there will be space for attorneys to both sit in the Self-Help Center and also be on call. Watch for details on this new program.
- Civil Bench Bar Committee. Members of the bench and bar are together reviewing local rules and looking at streamlining policies and procedures.
- Discovery Facilitator Program. This program has been invaluable, taking numerous motions off the calendar each week. More volunteers are needed! The service of those who do volunteer is greatly appreciated and invaluable to the bench.

More information on each of these volunteer opportunities can be found

(https://na01.safelinks.protection.outlook.com/?url=www.marincounty.org%2Fvolunteer_opportunities.htm&data=02%7C01%7Cmsackett%40marincounty.org%7C22a54fb06b9a4af5b3f108d63db6e6f8%7Cd272712e54ee458485b3934c194eeb6d%7C0%7C0%7C636764253104496422&sdata=16OsaVJ9G%2FY3cxGUU6fv%2BdELU7MHTL0dvHv5JeEr0EY%3D&reserved=0) here.

<h4>The Court's Budget</h4>

To everyone's great relief and in something of a surprise, there were no major cuts this year, though the Court is still absorbing \$2M worth of budget cuts from the last four years. Court filings are down, which might mean a budget cut next year. The doors are still open, the hours have not been cut, but Judge Haakenson stated that it feels like the Courts are at the tipping point every single day and week to ensure all functions are staffed.

<h4>Case Management System</h4>

It is estimated that a new filing system will cost \$6M, and the Court's annual budget is \$11M. The State does not allow the court to save more than 1% of its budget each year and so there is no way to save up for a new system. The Judicial Council would like to see Marin have a new system, and Marin filed a proposal for money outside of the ordinary judicial branch budget. The request was denied but Court Chief Executive Officer James Kim is creative and resourceful and is constantly working on a plan to pay for a case management system. There is cautious optimism that a contract will be signed by the end of the fiscal year. A survey will be going out about attorney preferences between Tyler Technologies or Journal Technologies.

<h4>Judicial Assignments</h4>

Judge Haakenson announced the following assignments for 2019:

Criminal:

Simmons (Supervising) (J)

Haakenson (F)

Howard (D)

Criminal Misdemeanor Calendar:

Jordan (M)

Criminal Motions:

Chernus, with Wood as backup (G)

Juvenile:

Wood

Adult Drug Court:

Haakenson

Family Violence Court:

Howard

STAR:

Lichtblau

Civil:

Chou (B)

Freccero (Supervising) (A)

Sweet (E)

Probate:

Simmons (G)

Civil Harassment Restraining Order:

Chernus (C)

Family:

Adams (Supervising) (H)

Talamantes (L)

Lichtblau (K)

Wood may keep some current family law cases.

DCSS Commissioner:

Judge Haakenson then showed Hollywood footage of each of the members on the bench. What stood out is that the Marin Bench is collegial and hard working. Each judge is willing to tackle a new subject area and even ask for the stretch. A few highlights from the reel:

- A year in, Judge Beth Jordan is described as “awesome” and willing to take on any type of case. She will be taking over from Judge Sweet in courtroom M, which is fast-paced and relentless. It sees 50-100 cases per day. She is up for the challenge. On top of the heavy case load, the criminal court sees changing case law on sentencing guidelines and bail reform. Last year the criminal division saw 3,100 new misdemeanor cases and 637 new felonies. As of October 2018, there are 5,086 active misdemeanor cases.
- Judge Sweet always ensures a pristine (i.e., clear, comprehensible and complete) record.
- Judge Freccero is described as “a rock” and has the last car in the parking lot many nights.
- Judge Chernus will be raring to go in the trial department. He is always positive and willing to help, day in and day out. The civil division saw 2,600 cases filed this year, which is down slightly from the prior fiscal year.
- The Family Law Division saw 1,166 cases last year. 194 involved some kind of domestic violence. 1,115 family law cases are currently in the system.
- Judge Lichtblau has been going to weekend family law boot camps, learning all there is to know about family law.
- Judge Talamantes personally bakes a cake every time he presides over an adoption!
- The San Francisco Bar Association recognized Judge Adams for helping to provide supervised visitation for low income families.
- The Marin Trial Lawyers Association recognized Judge Wood as Judge of the Year.
- Judge Simmons creatively finds solutions to our most difficult community issues that she sees from the bench. She recently established a new court called “Pathways,” connecting Marin County Health and Human Services to the courtroom at a moment’s notice. Read more about it in Judge’s Simmons’ column in this newsletter.

If you missed the luncheon, words cannot adequately convey Judge Haakenson’s six-minute closing cinematic masterpiece, showing him behind bars, breaking into the clerk’s office, turning into a caped

superhero, and being placed in the shredder by his clerk. Isn't that enough incentive to make sure you attend next year's luncheon?