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**Caring for the mentally disordered offender
in the Court environment from a Nurse's perspective**

by Paul Smith

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ABSTRACT

This paper examines the difficulties health professionals face daily when providing care for the mentally disordered offender in the court environment. The role of the court nurse is to provide care for people with mental health needs in the court and health professionals can find this a restrictive environment to work in. This is mainly due to the court's legal processes which are designed to punish rather than offer therapeutic alternatives. By advocating for the mentally disordered offender, the court nurse ensures the court is aware of an individual's mental health needs, thus reducing the prospect of inappropriate sentencing, and the associated stigmatisation that may occur as a result of a criminal conviction.

Key Words: *Legislation, care, nurse, ethics, advocacy, mental health, court environment.*

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INTRODUCTION

Nursing in the 21st century has evolved to such a degree that many nurses have now specialised in the type of care they deliver to people in our communities who suffer from medical and mental health issues. Forensic psychiatry is one such discipline where nurses provide specialised care for people who have committed a criminal offence and have mental health needs. Forensic mental health teams throughout New Zealand provide care for the mentally disordered offender in prisons, hospitals, courts and communities.

For the past eight years, I have been employed as a Forensic Court Liaison Nurse, to advocate for people with mental health needs who have committed a criminal offence. On many occasions over these years, I have been asked by the court to complete a mental health assessment on an individual, and to give guidance on whether the person is bad, mad or sad.

This paper will examine the complex issues nurses face in working in the court environment that can be both legalistic and non-therapeutic for a person with mental health needs.

SECTION 1

FORENSIC MENTAL HEALTH SERVICE DELIVERY IN THE COURT ENVIRONMENT

The Formation of Forensic Mental Health Services in New Zealand

As European settlers migrated to New Zealand in the 1850's, we as a country appeared to follow the British model of caring for the mentally ill by building asylums in the Wellington, Canterbury, Dunedin, Nelson and Auckland regions. These asylums functioned independently of prisons and hospitals, being deliberately built on the rural outskirts of towns for tranquillity, and were small enough to be family like. As the general population in New Zealand increased, asylums lost these qualities and became places of containment, as large institutions were built to provide care for people with mental health needs.

Records kept between 1873 and 1910 show that 93% of New Zealand asylum patients were deemed incurable. By 1945 when medication was being introduced as a therapeutic intervention, more mentally ill patients had died in asylums than had been discharged (Brunton, 1996).

From the 1950's through to the early 1980's there appeared to be no defining line between the criminal justice and mental health systems. Hospital Boards now had the responsibility for caring for the mentally ill, and large mental health institutions such as Oakley, Lake Alice, Sunnyside and Carrington were established. It was anticipated that with the introduction of the Mental Health Act (1969) that there would be clearer guidelines about who had the responsibility of care for people with mental health needs in the criminal justice system. Sadly this new legislation appeared to further confuse the issue of responsibility of care, resulting in the reluctance to accept the mentally ill offenders by psychiatric

hospitals. As a result of this confusion people with mental health needs languished in non therapeutic environments such as prisons (Bell & Brookbanks,1998).

By the early 1980's mental health services in New Zealand were at a crisis point. In 1987 a serious incident occurred in Auckland, when a man took a carving knife from the kitchen at a boarding house where he was staying, went outside and stabbed another man who was waiting at a bus stop. He then returned to the boarding house. Early the next morning he fatally stabbed another boarder and wounded two others. This incident and several suicides in prisons around the country at this time, prompted the New Zealand Government to establish a Committee of Enquiry, resulting in the Mason Report (1988).

Judge Mason and his fellow committee members visited other countries and travelled around New Zealand looking at the structure of mental health systems. The result of this research was the introduction of a foundation document model around which specialist forensic mental health services has been structured in New Zealand today (Mason Report, 1988).

Another influencing factor that assisted in establishing structure to forensic mental health service delivery in New Zealand was the introduction of the Mental Health (compulsory, assessment and treatment) Act (1992). With the closing down of all large psychiatric institutions in New Zealand in the early 1990's, de-institutionalisation was in full swing as a community based philosophy for caring for people with mental health needs was being trialled. The introduction of the amended Mental Health Act (1992) assisted in the meshing of the Criminal Justice Act (1985) and resulted in clearer guidelines for courts, corrections staff and mental health providers on responsibilities of care for the criminal offender with mental health needs.

By 1993, in response to the Mason Report's recommendation, regional forensic mental health services had been established in Auckland, Waikato, Wanganui, Wellington, Christchurch and Dunedin. The aim of each of these services was to

ensure that people who appeared in the criminal justice system with mental health needs, received the appropriate care, treatment and monitoring through specialised services. Forensic teams consisting of psychiatrists, psychologists, nurses, social workers and occupational therapists now had the responsibility of providing care for mentally disordered offenders in the prison, court, hospital, and community settings. A review of forensic mental health services by the Ministry of Health (1994) indicated that this aim had largely been achieved.

Research conducted on sentenced prisoners in New Zealand's corrections facilities in 1999, found that 80% of prisoners had alcohol/drug problems, 60% of the prison population had a diagnosis of personality disorder, and one in four in custody had mental health needs (Brinded, Malcolm, Fairly, Laidlaw, & Simpson, 1999). These research findings are somewhat disturbing, because to receive a criminal conviction you firstly have to proceed through the court process, and from a nurse's perspective I find the criminalisation of the mentally ill unacceptable. The question arises as to whether or not the court is receiving the appropriate information before the individual is sentenced. The consequences of the court not receiving relevant information in regards to a person's mental health needs, may result in that person being placed in an environment such as prison that contains rather than provides the appropriate care.

Current Trends in Providing Care for the Person with Mental Health Needs in the Court Environment

In the United States, a growing number of mentally disordered people are appearing in the criminal justice system as a result of de-institutionalisation some 20 years ago. This has resulted in special mental health courts being established. These mental health courts have judges, prosecutors, the client's counsel and other court staff, who are specifically trained in mental health issues. The goal of these courts is to prevent criminalisation and recidivism of the mentally disordered offender, by providing alternatives to imprisonment through rehabilitation (Watson, Luchins, Hanrahan, & Lurigio, 2001).

The American Government appears committed to this type of service delivery by the courts, having recently authorised another 100 mental health courts to be established throughout the country (Steadman, Davidson, & Brown, 2001). Mental health courts do have their critics, with concern being expressed with regard to people with mental health needs committing offences to get arrested, because this may be the easiest way to gain access to care. This could result in queue jumping as others wait for assistance for their mental health needs. The question being asked is, are mental health courts representing a real shift in doing justice for the offender with mental health needs, or is it a passing trend without addressing the needs of more resources being given to community care for people with mental health needs? (Petrila, 2003).

In Britain, both police and courts are well aware of the inappropriateness of the mentally disordered person being placed in custody. Efforts are now being made to divert these people as soon as possible from the court process by means of diversion schemes to hospital, to receive the appropriate treatment (Robertson, Pearson, & Gibb, 1996).

The aim of the British model for court diversion is to have mental health professionals present at court to complete an assessment of a person's mental health needs. The team's recommendations are essential in diverting the mentally ill offender out of the court system and into the appropriate treatment and hospital care (James, Cripps, Gilluly, & Harlow, 1997).

The Court and Current Legislation

Forensic mental health care in New Zealand courts differs from the models of care that are used in the USA and Britain. In New Zealand, we do not have a recognised diversion system as such. Instead, we rely on legislation to divert people with mental health needs from the criminal justice system into the appropriate care of hospitals.

Forensic psychiatry has been defined as a part of mental health care that deals with people at the interface of the legal system. Therefore any health professional who works in the court environment must have a sound knowledge of court procedures and criminal law (Gunn & Taylor, 1995).

Not only should the court nurse be equipped with a good legalistic knowledge but they should also have an understanding of the court process. This especially applies to the Youth and District Court as legislation is designed to rehabilitate using several pieces of law to reach its outcomes, and thus may be seen as complex to the uninitiated.

Youth Court

The Youth Court has been specifically set up to deal with young offenders between the ages of 14 to 17 years. Although this court is not a diversion system as such, the court's philosophy is not to punish but to rehabilitate, by offering alternatives to the court in dealing with a criminal offence. No criminal offence proceeds in Youth Court until a Family Group Conference (FGC) has been completed. The people who attend the FGC to formulate a plan on what rehabilitation may assist the offender, are a Child Youth and Families representative, the offender and their family, the victim, a youth advocate (lawyer), and a police youth aid officer (McElrea, 1993).

As a result of the FGC, a written report is submitted to the court to identify what assistance the offender requires in their rehabilitation. These reports can often identify psychological or psychiatric factors that may be driving the young person's behaviour. The court may then request that forensic mental health services provide a report by completing a mental health assessment on the youth involved. These reports are not optional for the young person, but ordered, and often made as part of the young person's bail conditions to assist in compliance in attending the assessment (Department of Social Welfare, 1989).

These reports provide feedback to the court on the individual's mental state and any psychological factors that may be influencing their behaviours. A vital part of any mental health assessment is the risk assessment to see if the young person is a risk to themselves or others. This is important, as the risk of suicide amongst young people is a major concern around the world. In the mid 1990's New Zealand had one of the highest suicide rates amongst 15 - 24 years olds in the western world. Factors contributing to these deaths were mental illness, drug and alcohol abuse and psychological stressors, such as dysfunctional family environments (Bell & Brookbanks, 1998).

Once a mental health issue has been identified by a psychologist or psychiatrist, the court will usually follow through with the report's recommendations. If a young person is identified as having a severe mental illness, the local Child and Adolescent Mental Health Service become involved, and the person's offences are often withdrawn by the Police to allow the health providers the opportunity to provide the appropriate care. The withdrawal of charges also alleviates the stress that can be involved in appearing in the court environment, and reduces the double stigma of having a criminal and mental health record. The court nurse plays an integral part in ensuring all information that relates to the individual's mental health needs is obtained and passed on to the court.

Efforts need to be made to remove people with mental health needs from the criminal justice system as quickly as possible to enable them to receive the appropriate care and treatment, thus reducing the trauma and stigma that may be associated with a criminal conviction. As a general rule it has been accepted that people with mental disorders should receive treatment rather than punishment (Home Office, 1990).

District Court

The District Court is for people over the age of 17 years, who have been charged with a criminal offence. If during the court process a mental health need is

assessed, the presiding Judge may ask for a psychiatric or psychological report to be completed on the individual. These reports will be completed by forensic health professionals, such as a psychologist or psychiatrist. After a initial mental health assessment is completed by the court nurse, either counsel, police or the court nurse indicates to the Judge that the person has mental health needs. Often as a result of the nurse's initial assessment a court report will be ordered by the Judge.

The purpose of these reports is to address the person's current mental state and will also endeavour to address the person's mental state at the time of the offence. The court specifically want to know if the person is capable of understanding that what they have done is morally wrong; if they understand the court process, and if there are significant mental health needs, how should the court proceed. These mental health assessments can be completed either in hospital, custody or the community, depending on the person's risk factors and the acuteness of the illness (Ministry of Justice, 2003).

As a result of the recommendations in these reports, people who are acutely mentally unwell can be sentenced to hospital care through court orders and become inpatients under the Mental Health Act (1992). Although a psychiatrist may recommend a person be sentenced to a period of hospitalisation, the presiding Judge makes the decision on the appropriateness of the sentence.

Court reports become the property of the court therefore the police prosecutor and the defendant's lawyer get immediate access to these reports. Naturally both parties will interpret the information for their own means, as issues such as bail and risk factors to the community are argued between the prosecutor and counsel.

The legal system can use psychiatric evidence inappropriately for their own means, as the line between prosecution and defence gets blurred in an effort to win a case (Shea, 1996). For any health professional that works in the court environment or provides written information to the court, the difficult task is to

remain neutral. The focus must always be on what the person's mental health needs are and not what the court wants.

Mental health professionals are trained to complete assessments on people with mental health needs and in courts, face questions of law that only allow one answer, as the question is formulated by law. The difficulty with this is that the health professional who allows criminal law to dictate the answer, may be in danger of compromising the person's liberty versus their need for treatment and care (Nedopil, 2002). How we as nurses provide that care to people we are entrusted to restore to good health, must remain the focus at all times. This will be discussed further in the next chapter.

SECTION 2

PROVIDING CARE IN THE COURT ENVIRONMENT

Nurses' Role

To provide effective nursing care in the community, the nurse must have confidence in their knowledge base and ability to apply that knowledge to their nursing practice. Forensic mental health nursing has been described as being able to integrate nursing philosophy and practice into the criminal justice system to ensure people with mental health needs receive the appropriate care (Peternelj-Taylor & Hufft, 1997).

The role of the court nurse is somewhat unusual, in that you are working in the criminal justice system that is governed by law, which often is unsympathetic towards people with mental health needs. From a personal perspective, it is my philosophy and theory that assists me to remain client focused in this legalistic environment.

To glean information from a person who has mental health needs in the court environment, and then advocate for that individual by forwarding the information to the court, requires the court nurse to have good communication skills. My knowledge base is grounded in Travelbee's (1971) theory that good communication, especially listening skills, is essential to psychiatric nursing practice. To complement that theory and remain focused on the people I am there to provide care for, I have adopted the following philosophy: from Jung (1975).

The patient is there to be treated and not to verify theory. For that matter, there is no single theory in the whole world of practical psychology that cannot, on occasion, be proved to be basically wrong. True art is creation, and creation is

beyond all theories, so put them aside when you touch the miracle of the living soul. Not theories but your own creative individuality alone must decide (p.84).

Recent research reinforces the importance of forming a therapeutic relationship between nurse and patient when providing care for people with mental health needs. A group of people with mental health needs were asked what they most valued in their nursing care. The results were conclusive, in that they mostly valued a strong interpersonal relationship with the nurse (Adam, Tilley & Pollock, 2003).

The difficulty for the court nurse is that the dynamics that occur in this environment may distract them. For a person with mental health needs to be in the court process, they must firstly be facing a criminal offence. This then brings in the politics of what the police may require as dictated by law, versus what counsel wants. The court nurse is often caught in the middle and thus a sound knowledge of criminal law, and the appropriate pieces of legislation, will assist the nurse in guiding the court on how to get people with mental health needs the appropriate help.

When referring to forensic nursing, it has been stressed that the health professional has to have a sound knowledge base of criminal law and how it interfaces with mental health legislation (Skelua, Holmes, Zoucha, Destantis, & Olshansky, 2001). Having a sound knowledge base of criminal law and the court process is essential for the court nurse if you want to advocate for people with mental health needs. Peters and Wade (1996) refer to the need for the court nurse to identify a person's mental health needs and then advise the court on how best to meet that individual's needs.

Interestingly enough, the Peters and Wade (1996) article was the only article I could find on the role of the court liaison nurse, and I agree with them that you need to identify a person's mental health needs and then advise the court on how best to proceed. The key to providing care for the mentally disordered offender in

court is to have a sound knowledge base of criminal legislation and to remain client focused, despite the distractions from this at times, non-therapeutic and legalistic environment.

Caring for the Mentally Disordered Offender

There are many definitions for the word “caring” and it has been long associated as the fundamental core to nursing practice. Caring has been referred to as both who we are as nurses and what we do when we have the responsibility of providing care for people with mental health needs in our community (Maeve & Vaughan, 2001).

The importance of forming therapeutic relationships is obviously the key to providing effective nursing care. Without that relationship in nursing, nursing care can suddenly become a negative experience for both nurse and patient. Forensic nurses caring for people with personality disorders in a hospital inpatient setting, described their experiences as traumatic, feeling uncertain on how to provide care and struggling to make sense of the patient’s experience (O’Brien & Flote, 1997).

These nurses’ experiences reinforce the importance of nurses ensuring they form a relationship with people they care for before they can provide effective care. At times the environment in which nurses work, contributes to it being difficult for nurses to provide effective care. An example of this is recent research that was conducted on forensic nurses’ experiences in the prison environment. Doyle (1998) described how these nurses struggled in the prison environment, as the prison officers lacked understanding of the nurse’s role and this contributed to the prison nurses feeling unsupported and isolated in their roles.

As an autonomous worker in the court environment, the court nurse should be aware that the criminal justice system is governed by law that is not only

unsympathetic to the mentally disordered offender, but may be harsh on the nurse endeavouring to provide effective care (Wade, 1992). The health professional's role in the court is different, as the nurse is working in a fast paced legal system to which they need to adapt and become familiar with quickly. The court nurse needs to be sensitive to the fact that the arrest process may have caused trauma for people with mental health needs in the court environment. People do not suddenly appear in court. They firstly have to be arrested by the police, interviewed and are often held in police custody before they appear in court. The police usually place people who have known mental health problems in a camera monitored cell to ensure the person's own safety and the safety of the police who have the responsibility of care.

Camera monitored cells are cold and sparse, with only a mattress on the floor, a plastic bucket for a toilet, and a canvas blanket to keep the individual warm. The rationale for providing such a sparse environment is to reduce the risk of the offender self-harming. Police policy also demands that all people who are monitored in the camera cell remove all of their own clothing and wear paper suits. This can be the final insult and indignity for people who are unfortunate enough to be placed in that environment.

From the time of arrest to the time the mentally disordered offender appears in court, they have suffered from inappropriate care, as the police concentrate on the alleged offence and ensuring public safety. The police do request mental health assessments from local community mental health services if a mental health need is observed. It is not uncommon that justice has to take its course due to the serious nature of the crime, or the uncertainty of whether a person is bad, mad or sad. Police custody is seen as having a number of factors working against the mentally disordered offender that increase the chance that they may be traumatised by the experience (Hylton, 1995).

Caring for the mentally disordered offender in the court environment requires an understanding of the person's stressors, such as their experience in police custody,

before appropriate care can be given. By understanding the associated stressors and explaining to the person that you are there to advocate for their mental health needs, a trusting relationship between nurse and patient can exist in the court environment. An example of advocacy in the court environment is utilising other skilled professionals to assist in providing a holistic approach to care, such as counsel to explain legal issues, Maori health workers to work with whanau (family) and social workers to look at the individuals social needs.

An ability to engage in a therapeutic relationship in the forensic setting with people who are doubly stigmatised as criminals, yet have a mental illness, is seen as the key to providing nursing care (Martin, 2000). The ability to form a relationship with a person in the court environment is the important part of forensic nursing, as it affects every aspect of the nursing process and ultimately the quality of care.

The Court Environment

The reality is that the court environment can be a harsh environment to work in for any health professional, due to its complex dynamics that are governed by legislation. Court work for health professionals has been described as mystifying, intimidating and frustrating (Gunn & Taylor, 1995). These words are words I can relate to from personal experience.

My initial introduction to the court environment was frustrating, in that I felt intimidated. As a new graduate nurse of only four months, I was given the responsibility of being court liaison nurse. This was a dream come true for me, as over the five years I had worked in forensic services, court nursing was the area that interested me most, as it appeared to be challenging yet rewarding.

My first day in court as the court nurse was very memorable for all the wrong reasons. I strode into court full of confidence, only to be greeted by the court registrar who was less than enthusiastic in welcoming me into the court

environment. The registrar told me to sit in a corner of the court, and only speak when spoken to. As a result of these instructions I sat frozen to my seat. These experiences went on for some months while I hoped against hope, that neither the police, counsel, nor the judge would ask me any questions, as I had no answers.

Due to my inconspicuous approach to my role, other court providers probably had no idea who I was, or who I represented, therefore no questions were asked of or directed at me. The lack of confidence on my part was due to having no formal training in criminal law and not knowing how the court system worked.

Over the months, I was able to gain confidence by learning legislation, observing how the court worked, and gleaning information from other services, such as police, lawyers and probations services. The importance of having the confidence to work in any forensic setting relies heavily on health professionals having a good understanding on the criminal justice system and how it integrates with the mental health setting. Recent research conducted by (Dhondea, 1995) found that nurses thirsted for specialised knowledge in legal issues, the legal process, and the law-affecting people in forensic psychiatric settings.

Even the experienced health professional can be placed under pressure in the legalistic court environment. You can be roasted by Judges, misquoted by the press, have your credentials challenged by lawyers and be frowned upon by the police for not agreeing with them that a person is dangerous and should be placed in custody. The art for nurses who work in the court environment is to focus on the people you are there to care for. You are there to represent the mentally disordered offender, and not there as political pawns for counsel or police. For health professionals to operate as handmaidens to the court increases the practitioner's vulnerability and minimises their credibility to advocate for the people they are there to care for (Mullen, 2000).

Nurses' Responsibilities

The court nurse is responsible for conducting accurate mental health assessments and providing feedback to the court on the person's mental health needs. This feedback to the court can be either verbal or in writing, and if mental health needs are identified the court nurse is expected to recommend how best the case should proceed.

If a person's mental health is of concern to the court nurse, and the criminal offence is minor, it is usual practice for the court nurse to arrange an assessment with the local mental health crisis team. This can often lead to the person being admitted to hospital on a voluntary basis or under the Mental Health Act (1992), to allow the person time to receive treatment and be removed to a less stressful environment. The court environment tends to exacerbate their mental health condition. A forensic review in 2001 identified the importance of mental health services, and forensic mental health services, forming a better relationship by working together on such issues as getting people with mental health needs the appropriate help and care (Ministry of Health, 2001).

For those people who are deemed mentally disordered to the degree that they need to be removed from the court and admitted to hospital, it is then the court nurse who is responsible for liaising between mental health services and the court on such issues as the person's progress whilst in hospital and their next court appearance date.

Often both the criminal offence and the person's mental health needs are such that the court nurse may suggest a psychiatrist's court report under the Ministry of Justice (2003). These reports address issues such as disability, insanity and can recommend a person should be convicted and placed in hospital rather than receive a custodial sentence.

A psychiatrist's report can be completed either in the community, whilst the individual is on bail, in prison if bail is opposed, or in a medium secure forensic hospital. The court nurse is expected to indicate to the court what setting would be appropriate for the person's mental health needs. Naturally, the court takes into account the person's risk to the community in regard to bail, with the Judge having the final say on where the person will have the report completed. In my experience, it is rare that a Judge will not follow the court nurse's recommendations.

The court nurse gathers all relevant information from the police in regard to the person's offence, liaises with counsel to address what issues they want addressed in the report, and ensures all legal documentation is available for the psychiatrist to complete the report. If the report is ordered whilst the individual is on bail, the time and place for that person to attend the appointment is made by the nurse before they leave court .

Once the court report has been completed, the court nurse coordinates with the court to ensure the reports are available for the court when the person next appears. Depending on the report's recommendations about how the case will proceed, the court nurse may be approached and asked to give advice on how best these recommendations can be achieved.

There are challenges for the court nurse that come with the responsibilities of the role. When advising the court, the court nurse must remember that mental health professionals are trained to complete assessments on people with mental health needs and in the court may face questions of law that only allow one answer, as the question is formulated by law. The difficulty with this is that the health professional who allows this to happen may be in danger of compromising the person's right to treatment and care (Nedopil, 2002).

One area that the court often asks the court nurse to comment on is the individual's risk factors to the community. The court nurse needs to be wary that

the information they provide on risk may be misinterpreted and indeed may affect a person's liberty. Fortunately, in New Zealand, we have clear guidelines for health professionals to assist them in assessing and managing people's risk management. The purpose of these guidelines is to provide the health professionals with a framework on how to assess and manage clinical risk (Ministry of Health, 1998).

The importance of risk assessment for people with mental health needs in the court environment cannot be over emphasised. Forensic nursing has been described as requiring good risk assessment skills, and a sound knowledge base to make sound decisions. Emphasis should be placed upon examining the patient's history and potential for offending before a risk assessment is completed (Friel, 1996). The art for the court nurse is not to over emphasise a person's risk factors when advising the court on that individual's mental state, but to instead steer the court to the appropriate intervention of care to reduce the associated risks with the illness. Failure to do so and over emphasis on a person's risk factor, may allow the court to contain and punish rather than divert the person into appropriate care.

Working as an Autonomous Practitioner

Most court nurses in New Zealand work independently from their teams in the court environment. There are risks associated when working in isolation, especially if you do not acknowledge your accountability to the profession you are there to work for. A confident nurse is seen as a person who moves fluently between roles of client care, whilst always being aware of their role regarding their accountability and professional conduct (Cutcliffe, 1996).

Due to the isolation of the court environment, maintaining a professional standard is essential for the nurse to provide effective care for people with mental health needs in the criminal justice system. To ensure professional standards are maintained and the nurse's practice of care is safe, consultation with fellow health professionals on decisions made is essential. Peer consultation is referred to as a process where a nurse confers with another nurse or nurses to resolve clinical or

administrative problems that are related to nursing practice. By encouraging fellow nurses to participate in the decision making process, the quality of care the court nurse provides will be enhanced (Hart, Bull, Mugomery, and Albercht, 1994). Peer consultation also ensures safe practice and acts as a safety valve for the court nurse who makes decisions in an environment that is often not considered user friendly to the health professional, due to the ethical dilemmas they face in the decision making process that is governed by law.

SECTION 3

ETHICAL CONSIDERATIONS WHEN CARING FOR THE MENTALLY DISORDERED OFFENDER

Ethics and Autonomy

In today's society, health professionals face daily ethical issues when providing care for people who suffer from mental health issues. It has been suggested that the range of ethical dilemmas in psychiatric nursing is wide, with very few clear-cut answers (Barker & Davidson, 1998). For the nurse working in the court environment, an awareness of ethical issues that could affect a person's liberty is essential in providing appropriate care in this legally bound arena.

The court nurse must remain client focused and the role requires good advocacy skills, as often the nurse is challenged by the court to complete a mental health assessment on an individual and then advise the court if the person is mad, bad or sad. Psychiatric nursing has been referred to as requiring the health professional to exercise their professional and ethical responsibilities by forming a nurse-patient relationship that intervenes between what is humane versus natural justice (Foster, 1998). So what are these ethical responsibilities which we as nurses have in caring for the mentally disordered offender?

The word ethics is derived from the Greek adjective "ethicos", meaning "nature" or "disposition". Ethics can be used either philosophically or practically (Block & Chodoff, 1991). In the criminal justice system, society demands the criminal offender be punished as governed by statutory and case law, so that society can run safely and smoothly. Ethical issues, such as the needs of a person who has mental health problems in the criminal justice area are often lost as the court weighs up the individual's needs for treatment versus containment and punishment.

For the health professional who works in the criminal justice system, caring for the mentally disordered offender is fraught with difficulties due to the ethical dilemmas they face in decision making in these environments. Decision-making can weigh heavily on the court nurse as they are expected to advise the court on how an individual case should proceed, and their actions could potentially have either a positive or negative impact on their client's progress through the court environment. Rogers and Niven (1996) argue that "issues of treatment, committal, consent, judgement, impairment and safety are common perhaps even daily concerns for nurses in psychiatric services" (p.48).

For me personally, the ethical focus in the court environment is the individual's right to autonomy. The term "autonomy" comes from the Greek word "autos" (meaning "self") and "nomos" (meaning "rule" or "governance"). (Johnstone, 1999). Autonomy therefore translates as self -rule. If we have autonomy we can make our decisions on the basis of deliberations (Gillon, 1994).

To help keep focused on respecting a person's right to autonomy, an ethical framework may assist in maintaining that focus. Austin (2001) suggests that "an ethics framework that requires the opening of dialogue, consideration of multiple perspectives, and attention to context can be a potential tool for nurses coping with the tension between custody and caring. It can guide nurses as they strive to engage and respect even their most estranged patients" (p.17).

An ethical framework that has assisted me in caring for mentally disordered offenders is the autonomy model. This model uses seven key points, effective communication, adequate information, comprehension, competence, absence of coercion, right to refuse proposed treatment and advocacy (Roger & Niven, 1996). I utilise these seven points in the following way to ensure a safe nursing practice for those I have the responsibilities of providing care for.

Effective Communication

The ability to communicate with people who have mental health needs has already been discussed as the key to establishing a therapeutic relationship in the court environment.

Once information has been gathered through an interview with a person who has mental health needs, the nurse may then have to communicate their findings in the court environment to the presiding Judge. The nurse needs to be aware that other court providers are not trained in the mental health field, nor in mental health terminology, therefore your information may be misinterpreted if it is not delivered in a professional manner.

If allowed the time, my preference is to communicate my findings in writing, which avoids the pressure of speaking in an open court and having to think on your feet. Written reports should be objective in nature and content, with the person's mental health issues and risk factors included. The court nurse must not divulge to the court their thoughts about whether the defendant is guilty or not guilty. Peters and Wade, (1996) argue "these reports should be impartial, not defence or prosecution orientated" (p.368).

It is a fine line that the court nurse sometimes treads as the information they present to the court is bound by law, and the wrong interpretation of that information may result in the person with mental health needs not getting the appropriate help. Where possible the court nurse should work with an individuals counsel to ensure the person receives professional legal representation. Bell and Brookbanks (1998) say how important it is that the court nurse concentrates on a person's clinical features and leaves the legal terminology to counsel who are trained in law and the legal process.

Communication between other health providers by sharing information is also a major part in ensuring a person's mental health needs are met. Often a person who is in the court process is under the care of local community mental health services. By establishing good networks with other community mental health providers, the court nurse ensures important information is obtained on the individual's current mental health status and what treatment they are receiving. The review of forensic mental health services in 2001 indicated the importance of information sharing between community and forensic mental health services to ensure the most positive outcome for mentally disordered offenders (Ministry of Health, 2001).

Adequate Information

The court nurse's first responsibility to the mentally disordered offender should be to ensure they receive legal representation. Legal representation is essential as the four principles of natural justice are that you have a right to know what is said about you, the right to explain your side of the case, the right to be treated in an unbiased way, and the right to have relevant things taken into account (Peter, 2003).

Once legal representation has been obtained, it is vital that the court nurse approaches counsel and alerts them to any mental health concerns that they have noted. This is important, as lawyers are not trained in the mental health field, and may overlook a person's mental health symptoms. Working together with counsel ensures that people with mental health needs are provided with the appropriate legal and mental health information gathered and presented to the court (Gunn & Taylor, 1995).

When working in the Youth Court environment the court nurse needs to be aware of the importance of being available to talk to young offenders and their families, should psychological or psychiatric reports be requested by the court.

From my experience, the mention of these reports has produced fear for the young offender and their families that they will be labelled and stigmatised as mentally disordered. It is essential that the court nurse explains the purpose of these reports and educates the family on the reasons why the reports have been ordered, as the court sees these reports as useful in determining what may be driving the behaviours behind the offending. As a result of the recommendations in the report, the offender may receive appropriate counselling to prevent re-offending. After this has been explained to the family, their response and attitude to the process usually changes and they accept the process as a positive step forward in a young person's rehabilitation.

The Right to Refuse Treatment

In the court environment, the court nurse's role is not to enforce treatment as people have a right to refuse treatment. If a person is obviously mentally unstable and their charges are not deemed serious by the court, the court nurse may request the local community mental health team attend court, and the Mental Health Act (1992) be invoked to ensure the individual receives the appropriate treatment and care before criminal proceedings commence.

In cases where a person is acutely unwell and the court opposes bail due to the seriousness of the criminal offence, then a person may be remanded to a medium secure forensic hospital unit for a court report under the Mentally Impaired Person's Act (2003). It is common practice in New Zealand that the Mental Health Act (1992) is invoked as well, to allow for the treatment of the mentally disordered offender, and these two Acts run hand in hand to ensure treatment.

People with mental health needs who are remanded in custody, do not have to comply with any treatment and do so purely on a voluntary basis. For the court nurse this places extra pressure on their responsibility to ensure people are not inappropriately placed in custodial settings when they have obvious mental health needs. Allowing this to happen has been referred to as inappropriate, as these

people become mentally unstable due to the lack of appropriate treatment and follow-up care in the prison environment (Birmingham, Mason & Grubin, 1998).

The right to refuse treatment in the court environment remains with the criminal offender, and the right to remand a person in custody remains with the court. The health professional has to balance their own professional ethic with the harsh reality that the court environment is designed to contain people who are deemed a risk to society, and not to address an individual's needs for treatment.

Comprehension

Comprehension of the court process is considered difficult for the average person, due to its legalistic format and protocols. For the person who has mental health needs and has faced the stress of arrest, comprehension of legal issues becomes a complicating factor that can exacerbate their stress. This may lead to confusion and an inability to comprehend the seriousness of the offence or the reasons for their court appearance.

A person's ability to understand court proceedings must be assessed by the court nurse when they complete a mental health assessment on that person. It should never be taken for granted that a person who has mental health needs in the court environment has no comprehension of what is happening around them. Self-determination for each individual you assess should be valued. It has been suggested that most people want to make decisions for themselves, and this desire remains even if they are not in a position to make the best choice at the time (Buchan & Brock, 1989).

In cases where the court nurse completes a mental health assessment and has concerns about a person's ability to understand proceedings the ethic of paternalism replaces autonomy. Paternalism is when a health professional advocates for the person to avoid adverse consequences for the individual (Coverdale, 1996).

The appropriate way for the court nurse to ensure the court is given accurate information with regard to why the person has an inability to participate in the court process, is to order a court report so that a forensic consultant psychiatrist can comment on these issues. Once this report has been forwarded to the court, the person's counsel then advocates for them to ensure the appropriate conviction occurs. The court report will guide the court by recommending if the sentence should be served in hospital, prison or the community.

Absence of Coercion

The absence of coercion is referred to by Lakeman (1999) "as the controlling coercive practices whilst ethically justified at times, threaten the positive connection which is generally considered necessary for a truly helping relationship" (p 45).

Current criminal law is restrictive in its ability to meet the needs of people with mental health needs, as it has been designed to punish people in our community who break the law. The Judge's role in the court is to determine the guilt of people charged with a criminal offence (Peter, 2003). The difficulty for the Judge is that he or she often has to make decisions on an individual's mental health needs with limited options due to restrictive legislation, and the coercive practices of that environment.

Criminal law is controlling and it has been designed purposely by our government to ensure our society has protection against those who take the law into their own hands. For the mentally disordered offender, the court process is both confusing and controlling. It is therefore the court nurse's obligation to ensure people with mental health needs receive justice and compassion through advocacy (Bell & Brookbanks, 1998).

The dynamics of the court environment and its legislation can lead to coercive practices at times, as the system can be manipulated by counsel and prosecution to

win a case. The court nurse must be aware of such practices and ensure the person's needs are met through advocacy and care, thus avoiding being drawn into such issues as whether the individual is guilty or not guilty of the offence.

Through advocacy the court nurse can build a trusting relationship with the mentally disordered offender and buffer the coercive practices of the court process by representing them in this foreign environment in a caring manner.

Competence

The competence of a person with mental health needs to proceed through the court process relies heavily on the court nurse's initial assessment, and the feedback the nurse gives to the court. Expectations about nurses are becoming high in the court environment, with the health professional's role being referred to as assessing the mental state of criminal offenders to assist the judicial process (Scales, Mitchell, & Smith, 1993).

What the court nurse must not do is to make decisions on an individual's ability to participate in the court process due to disability and insanity issues. The Mentally Impaired Act (2003) is quite specific in that it clearly states issues of disability and insanity are to be addressed by forensic psychologists or psychiatrists.

The court nurse's initial mental health assessment thus becomes one of alerting the court to a person's inability to participate in the court process. It is vital that once a concern is noted by the court nurse, that they then approach counsel and the police prosecutor with their concerns. Although counsel is there to represent the mentally disordered offender, a relationship must also be formed with the police prosecutor. Not to keep the police informed may be seen as arrogance, and could even jeopardise the help the court nurse is endeavouring to get for the person with mental health needs in the court. Information shared may prevent the police opposing such issues as bail, or the placement of people with mental health

needs in hospital.

The importance of not working as an individual in the court environment cannot be stressed enough. The safety of those you provide care for and your nursing practice are at risk if you do not consult with other professionals such as police, counsel, and your work colleagues. Open communication between health professionals has been described as healthy as, unlike law, ethics cannot be forced upon us. A sense of ethical behaviour can only emerge with the ordinary cooperation of professionals, thus paving the way for the highest standards of care (Totsuka, 1989).

Advocacy

The importance of advocacy has already been mentioned several times as an important tool in ensuring the court receives the appropriate information with regard to individuals mental health needs.

Those who proceed through the court environment with a mental illness, face the double stigma of having a conviction and a mental illness recorded by their name. This not only alienates them from society, but other health professions may show a reluctance to provide care for them due to perceived risk factors associated with a criminal conviction. It has been suggested that the ethical consideration for recognising good in the mentally disordered is seldom considered and this may be reflected in the way some health professionals care for them (Barker & Davidson, 1998).

The stigma of a psychiatric illness has been referred to as a “negative factor” that affects the quality of life of those who have experiences of mental illness (Thompson & Thompson, 1997). The added burden of criminal procedures only exacerbates their mental health condition through stress and a lack of understanding. A criminal offence is seen in society’s eyes as a consequence of a person’s actions. People with mental health needs in the legal process have

suggested that the experience is embarrassing and have expressed a genuine dislike for the system (Hoffman, 1990).

For the court nurse, advocacy is about supporting people with mental health needs through the court process and educating other court providers or individuals about mental health needs. To advocate for people with mental health needs in the criminal justice system should be seen as a privilege and not as a chore. The court nurse attends court as a guest and not as a right. It has been suggested that one of the main principles for health professionals in forensic psychiatry is to remain client focused and to preserve the person's dignity (Ministry Health, 2001). This principle is worth adopting by any nurse providing care for people with mental health needs in the court environment. If we as nurses fail to remain client focused whilst working with the mentally disordered offender, and do not advocate for them, the decision of whether the person is mad, bad or sad will remain with the court. Not only could these people lose their dignity but they may also lose their liberty and right to appropriate care. Caring for the mentally disordered offender in the court environment therefore must remain the priority for the court nurse to prevent the criminalisation and stigmatisation of these people in our society.

CONCLUSION

This literature review has focused on the role of the court liaison nurse in caring for the mentally disordered offender in the court environment. What has become clear is that the court nurse is responsible for completing a comprehensive mental health assessment on the mentally disordered offender and then relaying any mental health concerns to the court.

To complete any mental health assessment it is essential that the court nurse establishes a trusting therapeutic relationship with those they are asked to provide care for. Once a mental health need has been identified then the court nurse should notify the court of their concerns, either through counsel or personally. As a result of the court nurse's assessment, recommendations on how best to proceed with the case are not only expected, but valued by the court.

The role of the court nurse, in a nutshell, is an advocacy role. You must be aware at all times that you are working in an environment that is governed by law that is designed to punish. Current legislation has limited powers to assist people with mental health needs. The court nurse has an ethical obligation to ensure that the mentally disordered offender is supported through this, at times, stressful environment. For the person who is acutely unwell and stressed when in the court environment, it is often difficult to establish a therapeutic relationship, therefore the role of advocacy becomes essential in ensuring the person's needs are represented in court.

There is an art in court nursing in that you often have to make decisions between a person's autonomy versus advocacy for their needs to be met. This will depend on the nurse's initial mental health assessment and to what degree they feel the person's mental illness affects their ability to participate in the court process.

What the court nurse must not do is make decisions without consultation with either counsel or fellow team members. The court nurse's aim must be at all times

to ensure that the mentally disordered offender receives the appropriate care. Without the appropriate information, a person with mental health needs may be doubly stigmatised with a conviction and a mental illness. If unsure of a person's mental health needs or how that person should proceed through the court process, the court nurse should seek advice from peers and consult with the person's counsel.

As I have mentioned in this paper, most of the comments I have made on the role of court liaison nurse have come from personal experiences in caring for the mentally disordered offender. As a result of this literature review, it would now be interesting to complete research on other court nurses' experiences in caring for the mentally disordered offender. This type of research through its findings, would only enhance the high standard of service delivery to courts in New Zealand and most importantly, may offer solutions on how best to care for people with mental health needs in this challenging environment. The ultimate goal of such research would be to prevent the criminalisation of the mentally ill and the stigma associated with a conviction. This desired outcome can only be achieved through nurses advocating for their patients in the court environment.

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