

Collusion or Collision: Working at the Intersection of Mental Health and Legal Interpreting

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Disclaimer

- ▶ I am not an attorney.
- ▶ My opinions are not legal advice but are based on experience in a variety of situations
- ▶ Specific state statutes can (and do) vary widely, if you are unsure, consult with a legal professional



Where is this intersection?

- ▶ Mentally ill individuals in court
- ▶ Mental Health Court
- ▶ Competency to Stand Trial (CST) evaluation
- ▶ Mental Status Exams, in response to a Plea of Not Guilty by Reason of Insanity (NGRI)
- ▶ Sexually Violent Predator determinations
- ▶ Civil Commitment Procedures
- ▶ Child/Elder/Vulnerable Adult Abuse reporting and investigation
- ▶ Guardianship Proceedings



Specific Terms

- ▶ Competency to stand trial
- ▶ Not Guilty Reason of Insanity/NGRI
- ▶ M'Naghten Rule
- ▶ Durham Rule
- ▶ Model Penal Code
- ▶ Federal standard
- ▶ Diminished capacity
- ▶ Guilty But Mentally Ill (GBMI)/Guilty and Mentally Ill (GAMI)
- ▶ Commitment hearings



Mental Health Interpreting Norms

- ▶ The form is often more important than the content
- ▶ Interpreters are part of the behavioral healthcare team with a specific area of expertise
 - ▶ May chart and maintain record independent of other team members
- ▶ Providing commentary on language, culture and the interpreting process is appropriate.
- ▶ Issues that could lead to misunderstanding or misdiagnosis must be shared with the evaluators, this may include sharing information about Deaf culture and communication norms.



Mental Health Interpreting Expectations

- ▶ Interpreters should have a working knowledge of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR)
- ▶ Interpreters should have access to qualified ongoing supervision/mentoring
- ▶ Interpreters will be compliant with OSHA and HIPAA
- ▶ Interpreters should know the standard for insanity, competence and commitment in their jurisdiction
- ▶ Interpreters should know abuse reporting requirements



Competency to Stand Trial

- ▶ **Has a factual understanding of the proceedings**
 - ▶ Appreciate the charges against him/her
- ▶ **Ability to cooperate with counsel**
 - ▶ Talk about their case
 - ▶ Understand advocate role of defense attorney
 - ▶ Be able to state own opinions
- ▶ **Able to participate in their defense**
 - ▶ Share their memories of the case with their attorney
 - ▶ Able to make their own decisions
 - ▶ Able to understand testimony given by others



Competency Outcomes

- ▶ **Incompetent**

- ▶ Likely to regain competence
- ▶ Not likely to regain competence (Nolle Prosequi – Nol Pros)

- ▶ **Competent**

- ▶ Trial proceeds



Mental Health Court

- ▶ Vary from state to state
- ▶ Take cases upon referral from prosecutor
- ▶ Defendants must have severe mental illness
- ▶ Include staff from public mental health system
- ▶ Typically handle misdemeanors and “minor” felonies
- ▶ Have authority to require treatment, including medication, as condition of avoiding return to regular court
- ▶ Non-compliance results in a return to standard court system, with attendant greater penalties



Insanity

- ▶ A term with a specific legal meaning, not used in the mental health arena
- ▶ Severe mental illness
- ▶ Cannot accurately assess reality
- ▶ Cannot appropriately conduct affairs and make decisions about behavior
- ▶ Subject to uncontrollable impulsive behavior



M’Naghten Rule

- ▶ Presumption of sanity
- ▶ Defense burden
- ▶ Defect of reason from disease of the mind
- ▶ Requires that the individual:
 - ▶ Unaware of nature and quality of act, or
 - ▶ Did not know the act was wrong, or
- ▶ Often used with the “irresistible impulse” test
 - ▶ Is a person unable to comport behavior



M'Naghten Rule

- Alabama, Alaska, Arizona, California, Colorado, Florida, Georgia, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, Washington



No Insanity Defense

- ▶ Utah



Durham rule

- ▶ Not criminally responsible if unlawful act was product of mental disease or defect
- ▶ Rejected by federal courts
- ▶ Too broad (only used in New Hampshire today)



American Legal Institute

- ▶ A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of the law
- ▶ Arkansas, Connecticut, Delaware, District Of Columbia, Hawaii, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, North Dakota, Ohio, Oregon, Rhode Island, Tennessee, Vermont, West Virginia, Wisconsin, Wyoming



Model Penal Code (ALI)

- ▶ Not responsible for criminal conduct, if,
- ▶ Recognized mental disease or defect, and
- ▶ No substantial capacity (less strict than M’Naghten) to:
 - ▶ Appreciate the criminality of conduct, or
 - ▶ To conform conduct to requirements of the law



Federal standards

- ▶ Defense burden – clear and convincing
- ▶ At time of act
- ▶ Severe mental disease or defect
- ▶ Unable to appreciate nature and quality of wrongfulness of act
- ▶ Similar to M’Naghten but no “irresistible impulse” or “policeman at the elbow” test
- ▶ Trivia question, this was passed in 1984, what happened in 1982 that prompted this change?



GBMI/GAMI

- ▶ GBMI equivalent to a “guilty” verdict
- ▶ The defendant is sentenced the same as other people
- ▶ After sentencing, evaluated to see if they require psychiatric treatment and/or hospitalization, within the correctional system
- ▶ Alaska, Georgia, Illinois, Indiana, Kentucky, Michigan, Montana, New Mexico, Pennsylvania



Judicial Commitment/Emergency Commitment

- ▶ Laws vary from state to state but essentially require:
 - ▶ A severe mental illness
 - ▶ Clear and present danger to self or others
 - ▶ And/or
 - ▶ Lacking in insight and/or judgment to make reasonable decisions about treatment



Sexual Offenders / Civil Commitment

- ▶ A “sexually violent predator” is defined as “any person who: (a) Has been convicted of a sexually violent offense; and (b) Suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment



Sexually Violent Predator laws

- ▶ Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin, the Federal Government and the District of Columbia



Child/Elder/Vulnerable Adult Abuse

- ▶ Interpreters (except for some privileged communication) may be mandated reporters
- ▶ All states have mandatory reporting for child abuse
- ▶ Elder and vulnerable adult mandated in many states, optional in the rest
- ▶ Depending on specific state statute, licensing and funding source, the obligation to report may be upon the interpreter, even if other parties are not mandated or choose not to



Abuse Investigations

- ▶ Normally videotaped
- ▶ In most states the standard is preponderance of evidence
 - ▶ In a few it is “some credible evidence”
 - ▶ No significant difference in outcome
 - ▶ Founded or not-founded
- ▶ Notable concern about leading questions
 - ▶ A challenge for listing format in ASL questions
 - ▶ Requires thorough knowledge of interview protocol and consultation with interviewer
- ▶ May lead to criminal investigation and prosecution



Guardianship Proceedings

- ▶ Conservator – of the estate or property
- ▶ Guardian – of the person
- ▶ Either a minor or incapacitated adult
 - ▶ In AL, at 14 a minor can choose guardian
- ▶ An assessment by a physician
- ▶ Typically some other assessment also required
 - ▶ In SC, a visitor
 - ▶ In AL, a guardian ad litem
- ▶ A court determination, typically with a guardian ad litem





Thank you

