“What Can I Do to Keep You Free?”

Perspectives on Clinical Practice in the Criminal Legal System

by Julian Adler and Virginia Barber Rioja

Center
for
Justice
Innovation

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Overview

Despite the glaring need for mental health care, relatively few court-involved people ever receive traditional therapeutic or intensive interventions. Instead, most clinical engagements are limited to a course of brief mandated encounters. The challenge for practitioners is making those encounters meaningful.[1]

The emerging legal theory of Therapeutic Jurisprudence [TJ] recognizes the court process itself inevitably influences the emotional and psychological well-being of those involved (often in ways that are unintended by the system or its actors).[2] The aim of TJ is to avoid, or at least mitigate, the anti-therapeutic consequences while promoting healing and wellness.[3] However, the theory of TJ is in sharp tension with the counter-therapeutic context of the criminal legal system. Practitioners often meet clients for the first time shortly after an arrest. Their clients may still be behind bars or have only recently been released and practitioners may have precious few minutes to try to form a relationship and determine an appropriate plan. Particularly for people on pretrial supervision, neither clients nor practitioners will likely even know when a case is going to conclude—it could be days, weeks, or months. Throughout, practitioners and their clients are navigating systems that were not designed with treatment or support in mind.

Yet there is little research or expert guidance that speaks to this clinical reality. In such an

environment, how can practitioners make the most of brief processes such as intake screenings and monitoring appointments? To what extent can practitioners realize the goals of TJ, trauma-informed care, rehabilitation, harm reduction, and meaningful engagement? Can practitioners leverage these opportunities to increase the likelihood that their clients will make their court appearances, avoid rearrest, and participate in longer-term voluntary services? Can practitioners help to foster self-determination, listening to their clients and centering their life goals?

To explore these questions and more, the Center for Justice Innovation recently hosted a discussion of clinical experts, tasking them with applying their experiences to the range of processes that practitioners most frequently navigate in the criminal court system context. While there were no easy answers, the exchange yielded a wealth of insights and actionable ideas— some of which will detailed more fully elsewhere in collaboration with the New York City Mayor's Office of Criminal Justice.

What follows below are edited excerpts from the day's discussion organized around some of the most salient themes that emerged.

Roundtable Participants

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MICHELE GALIETTA

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JUDITH HERMAN

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JESSICA KLAVER

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STEVE MICCIO

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New York State Office of Mental Health/
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RUTH SHIM

University of California, Davis

SHANTRELL SUTTON

Heartland Alliance/READI Chicago

RAYMOND TAFRATE

Central Connecticut State University

Creativity in Engagement vs. Fidelity to Evidence-Based Practices

Fostering engagement with clients requires creativity and individualized, culturally-informed approaches. Comprehensive analyses of therapeutic interventions strongly suggest that outweighing the importance of any particular protocol or approach is the quality of the human interaction accompanying it. The effect sizes for factors such as goal consensus, empathy, alliance, and positive regard are significantly greater than for model fidelity or the saliency of a particular technique.[4] Yet this can be at odds with the pressure to maximize the reliability, consistency, and validity of EBPs. Administratively, fidelity is particularly important in larger institutional settings when controlling for the quality of services delivered. Roundtable participants explored various facets of this tension.

Nijah Afflic

I think the nonverbal ingredient here is just as important as the verbal. People can pick it up when they're not being respected, when they're being talked down to, when they're being basically bossed around. And further down the line, I think you can clarify with them that this isn't going to work if it's something I'm doing to you. It's only going to work if we work together. That's why so much work has to go into training the people who are doing the intervention. Because if they are feeling frightened of their clients and contemptuous of them, the clients are going to pick it up right away.

— HERMAN

I think a significant problem really has to do with racism, and what I think can be an automatic bias response that providers may have to the patients that they're trying to take care of. And I think that's undiscussed in a way that we should be more transparent about.

— FORD

Elizabeth Ford

There's a level of responsibility that I think we need to take as a clinician to be able to create safety without clients having to say anything to us because they're too scared to talk.

— AFFLIC

Can we get the person to talk? Can we get some change talk? Can we get them to come back [to our next appointment]? If we can do that, I think we've achieved a lot.

— TAFRATE

Warmth, authenticity, and the ability to create some hope at the end of the session. You want to grab them and make this moment different. But engagement is necessary but not sufficient. I think the sufficient part is marrying our purpose with their motivation, marrying risks and goals. I can't tell you the number of people who are like, "I'm building rapport." For six months they're building rapport. It is not effective.

— GALIETTA

No one evidence-based intervention is going to work for everyone. We have to think about the needs that are defining this population and look at what interventions can be aligned there. But what is never clear from the literature is how we deliver that in small doses. That's where we have to get creative. And then the art of effectively delivering the intervention is to show the client how it is aligned with their goals.

— CRUISE

Steve Miccio , Hale Martin, and Ruth Shim

I'm also thinking about the participant's level of motivation and how discouraging it is to not meet goals. That just creates this process of not taking steps, burnout, frustration, and the breakdown of the relationship.

— GALIETTA

There is a therapeutic modality called Narrative Therapy. It isn't one that people use very often but I think it gets to all of these approaches. Providers are trained to have people focus on their strengths and to ask what is a story that you have told about yourself and how can we point out the strengths in your story and what makes your story more powerful. I think this would be a really important place to focus.

— SHIM

We don't do evidence-based practice, we do practice-based evidence. But we use a rapid adaptive approach to the people we serve. One of the things I do is hire people with histories in the criminal justice system, which helps in our engagement.

— MICCIO

From my perspective, risk reduction is just the mirror of strengths enhancement. I don't think that we utilize that frame enough in supporting clients—particularly those with very complex needs. I think another challenge with engagement is how the system gets overwhelmed and how we, as individual providers, can be overwhelmed with what I would just call cumulative responsibility. It's not just the mental health needs. It's the mental health needs that are layered upon the familial and social/contextual responsivity factors that, in my opinion, can have just as strong an impact on future legal involvement.

— CRUISE

In that initial meeting we can ask how they were able to show up. What were all the things they were able to do to make that happen today? And how do we help support that moving forward?

— DESMARAIS

Screening and Assessment

Court-involved individuals are subjected to many forms of clinical screenings and assessments that have different purposes (e.g., determining eligibility, assessing criminogenic needs or risk of violence, developing treatment or monitoring/supervision plans). Often, the questions asked are related more to the needs of the funding agencies than those of the clients. Many of these assessments are repetitive and intrusive, and they run the risk of asking for information that can be distressful or traumatizing. Roundtable participants proposed ways to make screening and assessment processes more efficient while fostering engagement and positive therapeutic effects.

Therapeutic assessment involves using the process of psychological assessment to help people learn important and potentially life-changing things about themselves. It starts with the client's questions about their struggles in life. The goal is to work collaboratively and therapeutically to get to the root of the person's problems and then to use that understanding to answer the questions and help the client experience the answers. If people understand themselves better and get answers to their burning questions about themselves, how could that not be therapeutic? It is an evidence-based, short-term intervention that facilitates growth and promises enduring change, and it is effective with people with significant problems and those whom have heretofore been unreachable.

— MARTIN

Starting with their questions turns the table. It changes the atmosphere of the work. We can respond to their questions and collaborate to try and get good answers for them. This is a totally different approach than thinking that we know what we need to find out and what to do to help this person.

— CRUISE

Keith Cruise and Sarah Desmarais

Being honest about the process, saying things like, "I know I'm about to ask you 100 questions that 100 people have asked you before." Inoculating them by acknowledging that the process itself is traumatic because it represents all the times they've been through all the systems.

— KLAVER

Do we need screeners? What is the rush? There is always this sense of urgency. The urgency should be to get all the information needed in a way that makes that person feel human and seen.

— AFFLIC

I don't have any problem with self-reports—I think they afford people privacy. But they need to be concise, not redundant. Clients can do the self-reports ahead of time and the clinician can read it before the session so that you don't ask the same questions again but only ask clarifying questions. That's respectful.

— GALIETTA

You tend to get better trauma reporting by not asking vague, open-ended questions like "have you experienced abuse?" If it is done via structured, behaviorally-anchored questions through either interview or self-report, clients are often willing to report on their experiences. To look someone in the eye and ask questions about past traumas can be triggering and can feel embarrassing. This work has to be done with transparency and sensitivity, clearly communicating to clients how and why the information will help

Jessica Klaver

inform their service planning. I also don't know why we think that we have to do all of this assessment upfront. We should separate out the task of engagement from assessment. Make engagement the first priority—with the exception of acute risks that you need to get on the table or some contact information. Assessment is really an ongoing endeavor. There are pressures to gather information as quickly as possible from the client, which might run counter to a softer opportunity for engagement.

— CRUISE

These are false dichotomies, the idea that we have to engage first. There is absolutely legitimacy to that, that we get better information with better engagement. But there is also a very real issue of risk in some of the places we are talking about. Part of the assessment is the decision about whether somebody needs a secure setting or not, either to keep them alive in the case of a hospital, an emergency room, or to keep them from killing someone else imminently.

— GALIETTA

There needs to be real clarity of purpose and context. Before we see them the next time, it's all about safety: our safety, their safety, the community's safety. So not trying to find their entire medical history, which probably already exists in records, not trying to get deep into the reasons why they are here. But really just being specific and triaging.

— DESMARAIS

I think we have to push leaders in organizations to try to develop a full logic model around why we are even doing this. If leaders can't communicate how a screening is contributing to an immediate decision that helps the case move forward, the screening should not be done. It would be like taking a psychologist and saying, "we are going to train you on assessing depression, but you don't know anything about depression or its manifestations and how it affects people's lives. But let's train you on giving the tool and scoring."

— CRUISE

Voluntary vs. Mandated Treatment

For many individuals in the criminal legal system, their freedom from confinement is contingent on participating in treatment or supervision/monitoring (e.g., pretrial supervised release, problem-solving courts, probation). That makes these interventions inherently coercive. Roundtable participants considered the layered challenges of engagement and meaningful interventions in the context of court-mandated and involuntary treatment.

With respect to the services we provide, we ask, "What can I do to keep you free?" We are also fellow travelers. I think a lot of times we find ourselves performing instead of walking alongside that person.

— **SUTTON**

We put their agenda front and center. We are mostly training probation officers, but this approach could be adapted to other practitioners: "Part of my job is to uphold the conditions of the court. Another part of my job is to help you look at your life and try to figure out the things that are causing you problems and try to fix those. And we want you to lead a better life. We want you to be successful on probation."

— **TAFRATE**

It's what we train people to look for. If we train probation officers to catch people for what they're doing wrong, that's what gets spoken about. We also need to help people navigate the system the way it is. Everyone has limited choices to some extent, and marginalized populations have far fewer choices. And we acknowledge that. We have to acknowledge that.

— **GALIETTA**

It doesn't have to be all about a mandate and the negative consequences of non-compliance. We need to lean into the positive and the reasons why people will benefit from services. What is in it for them? What would

Raymond Tafrate

work for them? How do we support their self-actualization and freedom?

— **ROTTER**

Let's just be transparent. Let's show clients that we're advocating for them by engaging in those advocacy-level conversations about what we have to report versus not with judges and prosecutors. And then let clients know that we are engaging in that advocacy work. It's never going to eliminate the coercion. It's never going to eliminate the power differential. But I think that with the clients that we work with, they need to see that we are engaging with the system and advocating for them.

— **CRUISE**

You need to be clear in your initial engagement with someone about what exactly you need to report or what exactly adherence means. You may have one idea of what's going to get reported and they have a totally different idea, and maybe even the judge and the D.A. have different ideas. Also, if your whole experience with the program is a threat of punishment, why would you stay there?

— **KLAVER**

Contingency Management/ Positive Reinforcement

Following the Drug Treatment Court model, many court-related interventions use sanctions and rewards to address unwanted behaviors. The principles of behavioral modification tell us that positive reinforcement is more effective than punishment at securing change, but roundtable participants agreed that the court system tends to prioritize punishment. Recent research indicates that contingency management approaches foregrounding positive reinforcement are "virtually nonexistent" in criminal legal settings.[5] Participants underlined the importance of incorporating contingency management interventions with an emphasis on positive reinforcement.

Lisa Najavits

A method that I think has been very powerful and is evidence-based is contingency management. It may be especially helpful for people who are not as focused on interpersonal relationships, at least at this point, perhaps due to significant trauma. So contingency management creates a sort of game. If you show up at the next session (or other target, such as having a negative drug test), you get to draw from a lottery, and if you have the winning ticket, you get a prize. The prize could be anything—a free bus pass or a gift card. Many people really like this mechanistic, material method, and they can engage at that level even if they can't so well at an interpersonal level. Most counseling depends on interpersonal methods, but contingency management is worth looking into as a potential alternate model for engagement.

— NAJAVITS

I love the idea of positive reinforcement and all of the different ways we can do it—it can be very creative. At the same time, we need to distinguish who can be engaged effectively through conversation and who needs other kinds of strategies. That would change culture.

— GALIETTA

Our criminal justice system was set up on the basis of punishment as a behavioral change model. But we know it is the most ineffective model! If we think about positive reinforcement of behaviors and use that in our work, it will engender adherence because we know that's a more effective method of behavior change, which would also then mean getting rid of technical violations. We need to be asking how we get people to adhere to something they feel is working for them.

— DESMARAIS

What would work for them? This is an important question we're not asking enough. Identify what those positive reinforcements are. Learn more about how to frame that in a way that clients can operationalize.

— ROTTER

Critiquing the System While Supporting System-Involved People

Providing clinical services in criminal court settings requires an understanding of the forces and structural inequities that have shaped the American legal landscape and resulted in the overrepresentation of certain racial and ethnic groups in correctional systems. The failure to recognize this can perpetuate an overfocus on "fixing" the individual rather than acknowledging the structural problems that drive community harm. Roundtable participants addressed the dissonance of maintaining a critical analysis of structural racism and the legitimacy of the system while trying to help clients in the here and now.

Structural racism impacts mental health outcomes. I think there is a dehumanizing effect that happens when people engage or interact with any aspect of the criminal legal system. That dehumanization is probably the thing that is most challenging for people. The entire system has to be fully reformed.

— SHIM

For my individual client that I'm seeing in the room, I need to help him or her or them build resilience in the moment so they can get through the court mandate. I am working within a traumatizing system to mitigate trauma for the individual. We need to focus on both changing the system and supporting the individual.

— ROTTER

But we don't talk about the system at large because we are worried about the crisis in the moment. If we want to transform the system and create some hope even in the first session, I think that stuff matters, right?

— GALIETTA

Shantrell Sutton

In that first session, I'm not waiting to hear your story. I'm not waiting for you to randomly trust me because I'm cool. I'm naming how I am not safe for you even though I look like you; how the system that I work for represents something; and how you came in here scared shitless.

— AFFLIC

I think that most Americans are unfamiliar with the systematic genocide of a culture that happens to Black and brown people in this country. If they're coming into spaces without that knowledge, then their stories, their narratives about how this person got to this place and why they're here will be very different from the narrative of somebody who understands how systematically this person has been harmed over and over again and understands how that person is presenting because of the harm that has been visited on them throughout their lifetime.

— SHIM

We have to check our privilege and check our predisposition. Privilege is a spectrum. Everybody at this table has some level of privilege, right? When we go into these situations with clients, we have to be aware that we represent the system that they are trying to get out of. We can't personalize their reactions to us.

— SUTTON

Recommendations

We conclude with six recommendations drawn from the ideas surfaced over the course of the roundtable. With sustained effort, we believe these recommendations stand to improve clinical practice in the criminal legal context.

Invest in Staffing

Prioritize hiring more practitioners with direct experience of the criminal legal system and improve conditions, resources, and training for all practitioners—human services are only as good as the humans charged with delivering them. Training must include opportunities for rigorous self-reflection and the identification of biases. Supervisors should regularly solicit—and act on—feedback from clients about the quality and effectiveness of individual practitioners.

Focus on Strengths and Opportunities

Shift your orientation from risk reduction to strengths enhancement. Pay more attention to protective factors that can be used to support clients in the community, centering their goals and values rather than the legal mandate. Shift the focus from the negative consequences of non-compliance to the reasons people might benefit from services and how there might be opportunity for self-actualization and freedom, even within the constraints of the mandate. Contingency management is an evidence-based intervention that rewards individuals for making positive change. Establish tangible, motivational rewards for specific benchmarks.

Trauma First

Adopt a universal precautions approach and assume that everyone has experienced some form of trauma. At the same time, be clear and specific about what trauma-informed care means in practice (e.g., communicate with warmth and authenticity). Agencies need to be wary of confusing trauma-informed care with having to uncover trauma. Recent research suggests that it might not even be classic symptoms of post-traumatic stress disorder that most closely correlate with system involvement, but rather the resulting stress, emotional dysregulation, hopelessness, and related challenges.

Assessment as a Collaborative Process

Make assessment an ongoing process that begins by identifying and answering the client's questions to improve self-understanding (excepting cases of imminent risk—such as, harm to self or others—and other time-sensitive screening considerations). Such a collaborative approach also involves providing

clients with clear explanations of the purpose and results of the assessment, which makes it critical to have a clear purpose for every question being asked.

Be Transparent and Provide Choices

Name and acknowledge the coercive nature of the criminal legal system, including the constraints it places on clients and practitioners alike. Explain how you understand and/or struggle with the challenges of system-based practice and yet manage to stay engaged. Be clear from the outset about the conditions of the mandate and your role in reporting non-compliance. At the same time, give people choices wherever possible (e.g., of providers, of types of treatments), and be creative in finding opportunities for clients to exercise their agency and remain focused on their priorities.

Mitigate Harm while Working to Change the System

Be aware of how structural racism has impacted your clients—including their ability to trust you—and its role in shaping your own perceptions. Address social determinants of health and system-involvement, acknowledging that you represent a system that has harmed and dehumanized your clients. While doing work at the interpersonal level, practitioners and their agencies should also work at the system level to advocate for broader reforms.

Endnotes

[1] We use the term "practitioner" to refer to the wide array of professionals who provide supportive services to court-mandated individuals in the context of diversion or community corrections (e.g., case managers, care workers, court liaisons, probation/parole officers).

[2] Wexler, D. B. (1992). Putting mental health into mental health law: Therapeutic jurisprudence. *Law and Human Behavior*, 16(1), 27-38.

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[5] Rudes, D. S., Taxman, F. S., Portillo, S., Murphy, A., Rhodes, A., Stitzer, M., Luongo, P. F., & Friedmann, P. D. (2012). Adding positive reinforcement in justice settings: acceptability and feasibility. Journal of substance abuse treatment, 42(3), 260–270.

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