

Berkeley-Albany Municipal Judge Addresses Mental Illness and Criminal Justice

Summarized by Thomas T. Thomas

The Berkeley Court Project is a program that for many years has diverted mentally ill people who are charged with misdemeanors into treatment programs instead of jail. One of the architects of this effort was **Judge Carol Simon Brosnahan**, of the Berkeley-Albany Municipal Court. She is a graduate of Harvard Law School, has spent 20 years in the local court system, and was three times elected presiding judge of this court. She spoke to our membership on May 26 about the Berkeley Court Project and also about how the proposed changes to the current Lanterman-Petris-Short (LPS) Act, a 1967 statute that limited the justice system's ability to administer involuntary commitments and medications, will affect the project and her constituents.

"The original intent of Lanterman-Petris-Short," Judge Brosnahan said, "was to end the inappropriate, indefinite, and involuntary commitment of mentally ill persons, which had created the infamous 'snake pits,' where patients were handled with little attention to individual needs. Large state hospitals were supposed to be replaced with community-based treatment facilities, but those never opened.

"We implemented the Berkeley Court Project because the criminal justice system was not intended to treat mentally ill people."

Judge Brosnahan presides over the Misdemeanor Department, which she says sees far more mentally ill defendants than the Felony Department. "Felonies are usually economic crimes, such as drug dealing," she said. "Misdemeanors more often involve behavioral problems, usually associated with some form of substance abuse. It's not always clear to me in these cases which came first: the mental illness, or the substance abuse that may have triggered it."

She said the commonest offenses she sees are unprovoked assaults and vandalism—"and nuisance offenses, like disturbing the peace and scaring people." Her defendants with a mental illness most commonly exhibit undifferentiated schizophrenia and bipolar syndrome.

When there is a complaint, the court system must file a charge, regardless of the circumstances. "If a person's face has been pushed into a car and his teeth are broken, the district attorney has to file," she said. "However, in Berkeley, the DA will take into consideration the condition of the person charged and perhaps change a potential felony to a misdemeanor." That way, the defendant can get the treatment he or she needs, instead of jail time which may be dangerous and unproductive.

The police are also aware of a person's illness. They will work with the Berkeley Mental Health (BMH) Mobile Crisis Unit and often try to get the defendant reviewed by BMH before a case goes to trial. If the defendant is

treatment resistant, they will help get him or her to a treatment appointment under California Penal Code (CPC) Section 4011.6, which refers a person for review where a mental illness is indicated. The police will also try to “single-cell,” or put in a segregated facility, a suspected mental patient, so that he or she is not subjected to the dangers of the general prison population. (When asked if a mentally ill young man was safe in jail, Judge Brosnahan replied, “No young man is safe in jail.”)

If a person is unable to understand the nature of the charges against him or her, then CPC Section 1368 suspends the court proceedings and refers the person for psychiatric analysis. BMH and the Court Project prefer monitoring and treatment, she said, to jail time. Some of the alternatives they offer include:

Options Program, begun by Dr. Devita Cody at the Veterans Center, which refers substance abusers and offers a shelter with 12 beds.

East Bay Community Recovery Project, which has a day program with testing for dual-diagnosis patients.

“Unfortunately,” Judge Brosnahan said, “the county’s economics don’t allow a formal probation program, with a probation officer, in the case of misdemeanors. As it is, there’s not enough of that kind of support for our felony cases.”

She indicated a need for modifying the Lanterman-Petris-Short Act, which allows holding a person only for 72 hours and then for 14 days with a psychiatric evaluation. “To hold them longer, up to 180 days,” she said, “a psychiatrist must describe the person as presenting a terrible danger to others. And psychiatrists are loathe to do this.

“And if a person does not want to take his or her medications, they generally cannot be forced to without a hearing.” Judge Brosnahan said she understood the drawbacks and side effects of many anti-psychotic medications, but she hoped for some legal way to ease up on the restrictions on ordering medication. “Treatment is now a revolving door,” she said. “Some protections are not protections at all.”

In conclusion, Judge Brosnahan said that society had conflicting goals. “Right now, we have a law-and-order society dedicated to protecting victims’ rights. So a young man with a mental illness will show up regularly in my court screaming, cursing, spitting, perhaps with dual diagnosis. He’s supposed to be sent to Santa Rita jail, where he gets beaten up and worse—all because he’s ‘a danger to people.’

“The problem is, there is no real voice for this mentally ill person, who is himself a victim.”