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### **POLICY FORUM: PEER-REVIEWED ARTICLE**

## **Why Care-Based, Not Carceral, Approaches to Suspects With Mental Illness Is Key to Whether We Trust Professional or State Authority Ever Again**

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### **Abstract**

Many police officers, prosecutors, defense attorneys, judges, and parole boards have reformed how their court- or carceral-based work with patients who have mental illness proceeds. This article discusses how policies and protocols have evolved to help court and carceral workers meet mental health needs of people in their custody and considers which virtues and values should guide clinically, ethically, and legally relevant deliberations and conduct.

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### **Sean Moore**

On January 6, 2017, police officers in San Francisco responded to a neighbor's complaint about Sean Moore, a man diagnosed with bipolar disorder and schizophrenia.<sup>1,2</sup> During this intense encounter, Moore was shot by an officer in the abdomen and groin. Subsequently, "Moore's family and lawyers claimed that officers should have been able to recognize ... Moore's mental health symptoms and handled the situation differently."<sup>2</sup> Daily and nightly, police officers encounter citizens with mental illness who express troubled, troubling, and sometimes threatening behaviors.<sup>3</sup> About 1% of calls for police intervention involve an individual (eg, a missing person or criminal suspect behaving erratically or threatening harm to self or others) struggling with serious mental illness.<sup>4</sup> People with untreated mental illness are 16 times more likely to be killed by police than other suspects.<sup>5</sup> The stakes are high, ethically complex, and controversial.

### **Court and Carceral Reform**

**Courts.** Across the United States, prosecutors continue to examine criteria and protocols for filing criminal charges against persons with mental illness. Moreover, many jurisdictions sponsor mental health courts to process cases in which there is evidence that mental health care is warranted as an alternative to typical criminal justice processes that generally lead to incarceration.<sup>6</sup> In jurisdictions without mental health courts, judges may factor in a defendant's mental illness at the time of sentencing.<sup>7</sup>

Judges may also place convicted offenders with mental illness on probation so that they can receive residential or outpatient mental health care instead of being incarcerated. In a few cases, defendants may be deemed incompetent to stand trial and remanded to forensic psychiatric care units.

*Incarceration and detention.* Of people experiencing incarceration, approximately 20% have experienced some form of serious psychological distress in the past 30 days, and, when diagnostic criteria are expanded to include anxiety and other symptoms, approximately 55% have experienced an indicator of mental illness in the past 30 days.<sup>8</sup> Many federal and state prisons and local jails have tried to respond more fully to the health needs of people who are incarcerated. Judges and parole boards, for example, may release detainees with histories of severe mental illness when there is evidence that residential or outpatient mental health care would be an appropriate alternative to continued incarceration.<sup>9</sup>

### **Clinicians' Roles**

Behavioral health clinicians (eg, nurses, psychologists, psychiatrists, social workers) are key to helping officers, prosecutors, defense attorneys, judges, and parole boards help individuals with mental illness navigate their lives.<sup>10</sup> Clinicians who train police officers focus on helping officers interact with people with mental illness constructively and humanely to **de-escalate tension** and minimize the need for arrest.<sup>11</sup> Prosecutors consult clinicians when making decisions about whether to file charges against suspects whose mental illness might have influenced their alleged criminal behavior. Defense attorneys consult clinicians about what constitutes evidence that clients' mental illness influenced their alleged criminal behavior in order to argue during their clients' trial or sentencing that the mental illness should be regarded by the court as a mitigating factor that facilitates plea negotiation, reduced sentence duration, earlier probation eligibility, dismissal of a charge, referral to a mental health court, or, in rare cases, a not-guilty-by-reason-of-insanity defense. Some carceral officials consult clinicians to help them respond to detainees' mental health needs, and parole boards consult clinicians about care alternatives to continued incarceration.

### **Five Virtues of the Best Practitioners**

Both clinical and legal responses to citizens, suspects, defendants, and detainees with mental illness should be anchored in evidence and ethics.<sup>12,13</sup> Five focal virtues identified by Beauchamp and Childress<sup>14</sup> should be expressed through clinical, legal, judicial, and carceral workers' deliberations and decisions about people with mental illness.

*Compassion.* Compassion presupposes sympathy, has affinities with mercy, and is expressed in actions intended to alleviate another person's suffering.<sup>15,16</sup> Expressing compassion toward criminals or those alleged to be criminals can be a challenge for many clinicians, even the most experienced. That said, **compassion** is a cornerstone of professionalism, and keen awareness of how psychological symptoms can manifest in the conduct of a person with mental illness is a cornerstone of emotional intelligence. Ideally, the San Francisco police officers who approached Moore would have been trained to identify his mumbling and nonsensical language as symptoms of psychosis and responded without lethal force.

*Discernment.* Discerning professionals' decisions and actions are informed by "sensitive insight, astute judgment, and understanding."<sup>14</sup> Decisions unduly influenced by fear and

racial bias are to be guarded against by anyone responding to the needs and vulnerabilities of people with mental illness. Inequitable numbers of police shooting victims are people of color like Moore.<sup>17</sup> Clinicians and officials charged with the care and custody of people with mental illness must cultivate awareness of and practice resistance to pervasive racial bias in US health and carceral systems.<sup>18</sup>

*Trustworthiness.* Trust requires reliance upon another person's character and competence and belief in the beneficence of their motivations. Whether as agents of a state or representatives of a profession, clinical, legal, judicial, and carceral workers have fiduciary responsibilities to express respect for the needs and vulnerabilities of those in their care or custody. Such workers are now not widely assumed to be trustworthy simply because of their roles or authority<sup>19</sup>; they must demonstrate trustworthiness in their actions consistently and reliably over time.

*Integrity.* Consistent, reliable expression of virtues and values over time generates integrity. Clinical, legal, judicial, and carceral workers who possess integrity must also **challenge unethical conduct** by colleagues. For example, integrity is key in the growing "active bystander" movement among police departments to train officers to intervene when a colleague mistreats a suspect who is mentally ill.<sup>20</sup>

*Conscientiousness.* An individual who acts conscientiously makes a good faith effort to determine and act upon what is right. Clinical, legal, judicial, and carceral workers must make conscientious, deliberate, consistent efforts—not casual or sporadic efforts—to treat people with mental illness respectfully and humanely.

#### **Four Ethical Values of the Best Practitioners**

The 4 core moral principles of Beauchamp and Childress<sup>14</sup> are worthy of reiteration here.

*Autonomy.* Respect for autonomy implies that self-governance should generally be free, undeterred by others. However, when people with mental illness lack insight into their illness, **lack capacity to make decisions** about their actions or health interventions, or pose a threat to themselves or others, clinical, legal, judicial, and carceral workers must balance respect for the autonomy of a person with mental illness with other ethical values, such as nonmaleficence, beneficence, and justice. For patients experiencing incarceration, further restriction of their autonomy related to their health and welfare deserves careful consideration, and respect for these individuals' autonomy should be expressed to the greatest extent possible (eg, under some circumstances and when feasible, by honoring their refusals of interventions or, if needed to keep the individual or others safe, by using force that is the least intrusive and least restrictive). In Moore's case, this might have meant initiating civil procedures for a psychiatric inpatient stay as an alternative to arrest, incarceration, or use of lethal force.

*Nonmaleficence.* Nonmaleficence means avoiding, or at least mitigating, harm. When feasible, clinical, legal, judicial, and carceral workers should do their utmost to avoid harming those in their care or custody. Avoiding abuse, traumatization, or retraumatization of people in custody is key for officers. Prosecutors and judges should avoid knowingly discounting documentation of defendants' mental illness. Parole boards should not ignore parolees' mental illness when rendering decisions about whether to revoke parole and reincarcerate people who violated conditions of their parole due to their mental illness.

*Beneficence.* Beneficent actions are those intended to benefit others. Examples of beneficence include prosecutors who actively seek a mental health court in which an alleged offender will be tried and judges and parole boards who consider care-based alternatives to incarceration.

*Justice.* Clinical, legal, judicial, and carceral workers should be dedicated to equitable treatment of people with mental illness and primarily constructive rather than primarily punitive responses to behaviors symptomatic of mental illness that could lead to arrest, prosecution, conviction, and incarceration. Ideally, someone like Moore, whose severe mental illness attracted police attention, would receive competent and comprehensive psychiatric care as opposed to being met with a punitive or lethal response.

### Conclusion

Clinical, legal, judicial, and carceral workers' skill in managing crises is key in their encounters with people with mental illness. In both theory and practice, professionals should aim to act in the interests of those in their care and custody by expressing the virtues and values considered here.

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#### Conflict of Interest Disclosure

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