Challenges with Communicating Keeping the Wheels of Justice Rolling

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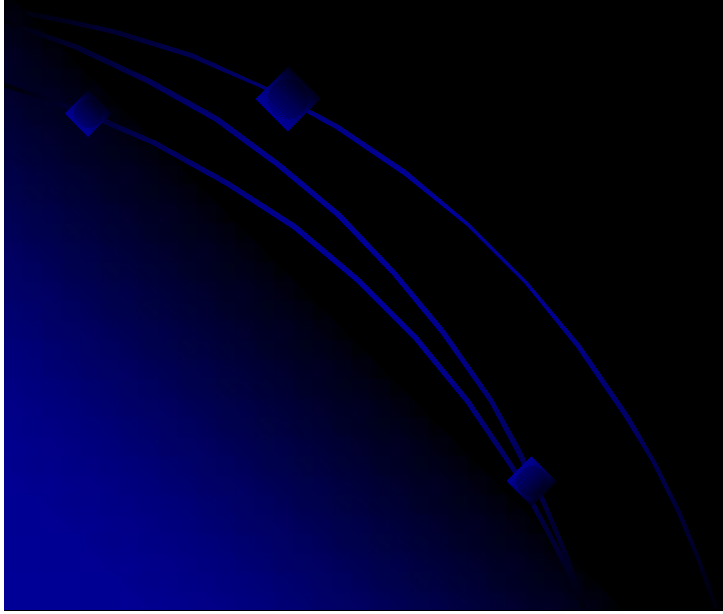
- To effectively communicate, we must realize that we are all different in the way we perceive the world and use this understanding as a guide to our communication with others.

-Tony Robbins

Vignette



For Want of a Better Label

- **Mental Illness**
- **Mental Disorder**
- **Mental Disability**
- **Psychiatric Disorder**
- **Mental Health Disability**
- **Psychiatric Disadvantage**
- **Major Mental Illness**

DSM V-Diagnostic and Statistical Manual of Mental Disorders

No precise definition of mental disorder and from a conceptual point of view it can be defined by:

- **Distress**
- **Dysfunction**
- **Dyscontrol**
- **Disadvantage**
- **Disability**
- **Inflexibility**
- **Irrationality**
- **Syndrome pattern**
- **Etiology**
- **Statistical deviation**

DSM V-Mental Disorder

A clinically significant behavioral or psychological syndrome or pattern that occurs in an individual, and that is associated with present distress or disability, or with a significantly increased risk of suffering death, pain, disability or an important loss of freedom.

- It should not be merely an expectable and culturally sanctioned response to a particular event. Ie. bereavement.
- Whatever the cause, the current presentation should be a manifestation of an underlying behavioral, psychological, or biological dysfunction in the individual.
- Deviant behaviors or conflicts that are between the individual and society are not mental disorders unless the deviance or conflict is a symptom or is a dysfunction in the individual as described above.

An examination of most definitions will allow one to see that there could be a physical component in all mental disorders or a mental component in physical disorders.

Economic Hardship

- It is a known fact that poverty and mental illness have a very close association and many individuals who have mental disorders gravitate into poverty.
- Poverty itself breeds mental illness and contributes to considerable distress and suffering.
- It is also not surprising that many individuals before the courts are from the lower socioeconomic strata of society and crime and poverty too, have interesting connections.

Contextualization of Mental Illness

- What should the courts consider to be a mental illness?
- To what extent should social problems like homelessness and poverty be considered as contributory factors to crime and mental illness and deserving of intervention?
- Does an identified individual in trouble with the law require a psychosocial intervention when true biological underpinnings of a mental illness are absent?
- How important is it to consider a balanced approach to mental illness, taking into consideration medical, psychological and social factors?

Is it time that we looked beyond the medical model?-Dimopoulos (2010)

The Medical Model	The Social Model
Focus on impairment and the individual	Focus on social context and environment
Emphasis on clinical diagnosis	Emphasis on individual's relationship with society
Emphasis on individual's deficits	Emphasis on social barriers
Person is a problem that needs fixing	Discrimination, exclusion, prejudice as problems
Medical, psychological, rehab is the solution	End discrimination and segregation and remove barriers as the solution

The Breadth and Depth of Mental Illness

- Organic Mental Disorders, brain injury and epilepsy
- Psychotic illnesses

  Schizophrenia, Other psychosis, Drug induced Psychosis
- Mood Disorders: Bipolar and Major Depression

- Intellectual delay
- Autistic spectrum disorders
- Anxiety disorders and PTSD
- Other forms of Depression and adjustment disorders
- Alcohol and Substance use disorders
- Personality disorders

(Can we compare apples and oranges when we ask, what is a major mental illness)

Communicating

The most important thing in communication is hearing what isn't said.

-Peter Drucker

The Communicative Process

- Communicating with the client
- Communicating with client's representatives: family, lawyers therapists, support providers
- Communicating with the prosecution
- Communicating with the judges
- Communicating with the court staff: bail officers, probation and court officers, etc.
- Communicating with government: Municipal, Provincial, and Federal

COMMUNICATING WITH THE DIFFICULT CLIENT

General Principles

- Safety
- Security
- Privacy
- Trust
- Empathy

The Raging Client

- Your safety
- Client's safety
- Give the client time to talk and express self
- More visits to create familiarity and trust
- Have a colleague sit in
- Have the client bring a colleague
- Offer food or a beverage
- Talk initially about some of the client's general concerns

The paranoid or delusional patient

- Work on the assumption that to the client his or her belief is fact
- Delusions cannot be challenged
- Give the person time and the nature of the delusion will become apparent and then you can work around it
- The delusion may be instrumental in determining the client's behavior
  - Paranoid-mistrust, anger, violence
  - Grandiose-rude, condescending, dismissive
  - Nihilistic-does not care, giving up attitude
  - Bizarre-connect with the non bizarre

The Uncommunicative Client

- Evaluate body language
- Ask for collateral
- Involve friends, relatives, or workers
- Set a tone for trust by using simple straightforward comments
- Use non verbal signals to acknowledge leading statements.
- Encourage client to nod, blink eyes, use a finger to point, write out answers, draw a diagram, get an interpreter.

Intellectually Challenged

- Work on trust
- Address fear
- Create security and safety
- Allow client to talk to evaluate level of functioning
- Involve relatives, family, friends, worker
- Begin at client's intellectual level and gradually move up with level of discussion, evaluating periodically whether client is on the same page as you

Personality Disorders and Malingering

- Look for antisocial traits
- Look for other personality disorders-it helps to understand the context in which a mental disorder can occur
- Malingering (faking ill) to be considered in all cases with legal involvement
- The reverse may be true-dissimulation (denial of illness and/or faking well)

It is our experience that many of the clients referred to our COTA office have had traumatic experiences or adverse life events. Many of them may not or never meet the criteria for PTSD but compounding their problems are economic hardship and homelessness. Their narrative is highly relevant to understand and contextualize the origins of their offending.

Other Barriers

- Language Barriers-Immigrants and Refugees
- Privacy and Confidentiality
- Respect and Sensitivity
- Fitness to stand trial
- Criminal Responsibility v Guilty but mentally ill
- Risk to self
- Risk to others
- Need for legal representation to ensure that case is dealt with in a timely manner and justice is done for the mentally ill.

- In any given year, there are about 200,000 homeless people in Canada. About 50% of them have mental illnesses. Big inner cities are likely to have more homeless people than small towns and cities.

Mental Health Commission of Canada-April 2014

COMMON MISTAKES MADE BY LAWYERS AND MENTAL HEALTH PROFESSIONALS WHEN DEALING WITH THE MENTALLY ILL IN COURT

- Confusing the issue that mental illness is synonymous with unfitness or NCRMD
- Confusing personality disorders, intoxication, transient mood states etc with unfitness
- Failing to look at the strict cognitive test for fitness
- Adhering to the very strict cognitive test (R v Taylor)
- Failing to examine the issue of moral wrongfulness for criminal responsibility (confusing it with legal wrongfulness)
- Confusing psychiatric issues related to intent, specific intent and criminal responsibility

Commonly made mistakes-contd.

- Failing to provide adequate disclosure to the evaluator
- Being focused on diagnosis and not how the illness actually impacts on functioning
- Not having forethought with respect to the outcome of unfitness or criminal responsibility and guilty pleas and potential negative outcomes in the long run
- Failing to spend adequate time talking about the case with the parties involved prior to and during the legal process.
- Failure to spend time asking what the client really wants
- Failing to engage relatives in the discussions
- And many more……..

United Nations Convention on the Rights of Persons with Disability-2006

- Sections (e) of the Convention for the Rights of People with Disability notes that there is no single definition of disability and does not recognize the primacy of the social model.

- Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.

Time to move away from people with disability being viewed as objects of charity.

Charity Approach	Human Rights Approach
Option	Obligation
Disempowered	Empowerment
External control	Autonomy
Fixing weakness	Fixing the environment
Limiting activity	Facilitating activity
Belittling	Dignifying
Dependence	Independence
Discrimination	Equality
Institutionalization	Inclusion
Segregation	Integration

- As one judge who I spoke to in preparing this talk said:

If only we could go beyond the adversarial approach with the mentally ill.

Conclusions

While we are caught in a web of emails, text messages, voicemail and struggle to bridge the communicating gap with court officials, mental health professionals and all connected players, we also wrestle with our own trials of day to day living. We cannot forget about how we communicate with ourselves about the conflicting views of mental disability and its many meanings.

Thanks to all the staff at 1000 Finch Court and my colleagues at COTA