

LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

VOLUME 5

FALL 2018

ISSUE 2

OUT OF SIGHT AND OUT OF MY MIND: HOW RURAL TENNESSEE TREATS THE MENTALLY ILL

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I. INTRODUCTION

Academics have spent countless hours developing studies, assessing statistics, and suggesting solutions to incarceration issues. Books, articles, and speeches from some of the most accomplished professors of psychology and criminology have provided an abundance of evidence-based answers for how we treat the mentally ill in the criminal justice system. This author, also a presenter at a recent symposium covering this topic, is not an academic, but a practicing attorney with experience in local government and in criminal defense. It should be noted that this author has been faced with making legislative decisions addressing incarceration issues, while also having advocated on behalf of the mentally ill within the criminal justice system.

The following article will give you an inside look at how rural Tennessee approaches the mentally ill flowing through the criminal justice system. Being admittedly more editorial than academic, this article will, however, look at some nationwide and statewide statistics to frame the problem. Next, this article will paint a picture of a perfect storm, which has decimated families, communities, and entire counties. This article will also describe the incarceration sales pitch

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given to rural counties from the prospective of an uninformed county commissioner at twenty-four years of age. Lastly, this article will conclude with some parting thoughts and suggestions from the front lines of the mess created by ignorance, complicity, and greed.

The purpose behind this article is to deliver some insight into areas where non-critical academics rarely venture, to give a voice to the silent, and hopefully, inspire more people to take an interest in transforming how mental illness is treated in rural Tennessee, and across the United States. Rural Tennesseans lack some of the education and resources that are available in urban communities. Changing how we treat people afflicted with mental illness will take leadership from within those communities. Legal professionals living and working in rural Tennessee must be the catalyst for this most needed change.

II. MR. SMITH GOES TO JAIL, GOES CRAZY, AND NO ONE CARES

The following story sheds some light on how rural Tennessee deals with mental illness. This story is not remarkable. In fact, the opposite is true. It is a common occurrence across the Volunteer State and, unfortunately, across this nation. Mr. Smith, as this young man will be referred to, and his story provide us with a set of facts to view rural Tennessee's out of sight, out of mind approach to treating mental illness.

On a sunny afternoon, Mr. Smith left his mother's house driving a short distance to a friend's house. Less than a quarter-mile into the trip, Mr. Smith crossed the center line and struck an on-coming vehicle, causing severe injuries to the other driver. Fault was never an issue.

Mr. Smith had struggled for some years with panic attacks, depression, and — like too many folks in rural Tennessee — substance abuse. Fortunately for Mr. Smith, his family was able to scrape enough resources together to access a mental health professional, who was located over an hour away from their home. Several months of intensive treatment, including counseling and medication, gave Mr. Smith and his family some reprieve from the struggles of the past few years. His medication, a benzodiazepine derivative,² would become the basis for his arrest and prosecution for vehicular assault.

Once arrested, Mr. Smith was booked into a rural Tennessee jail,

² "Benzodiazepines are a class of agents that work in the central nervous system and are used for a variety of medical conditions." C. Fookes, *Benzodiazepines*, DRUGS.COM (last visited July 21, 2018), <https://www.drugs.com/drug-class/benzodiazepines.html>.

which was a familiar place to him. This time, Mr. Smith's incarceration interrupted a time in his life when he had been progressing with his treatment and seemed to be moving toward a complete recovery. Mr. Smith informed the jail of his daily medication regimen. The Licensed Practical Nurse assessing Mr. Smith informed Mr. Smith that he would no longer receive the medication the doctor prescribed to control his symptoms.

The decline did not take long. Within days, Mr. Smith had deteriorated such that he was not recognizable as the same person who entered the jail. Rather than consult his doctor or revisit the "cold-turkey" removal of his medication, jail officials stripped him naked, threw him in solitary confinement, and left him there for days. Long-story-short, Mr. Smith left the facility for a much larger state-owned facility, which immediately placed him back on his medication and restarted his counseling sessions. Mr. Smith regressed during his time in the rural jail such that his own family could barely recognize him, but improved under the care of the larger state institution. This is a common story in rural Tennessee.

III. A NATION AND A STATE IN CRISIS

The narrative in the United States has slowly turned its attention to the mental health crisis in multiple political arenas, including gun control,³ healthcare,⁴ and incarceration.⁵ The press, academics, and government officials have struggled to stop an avalanche which has been forming for decades.⁶ Psychiatric hospital closures have disbursed the mentally ill into other areas of society.⁷ Homeless shelters and streets in our cities are now overrun with the

³ See, e.g., Benjamin Mueller, *Limited Access to Guns for Mentally Ill is Complicated*, N.Y. TIMES (Feb. 15, 2018),

<https://www.nytimes.com/2018/02/15/us/gun-access-mentally-ill.html>.

⁴ See, e.g., Samantha Raphelson, *How the Loss of U.S. Psychiatric Hospitals Led to a Mental Health Crisis*, NPR (Nov. 30, 2017),

<https://www.npr.org/2017/11/30/567477160/how-the-loss-of-u-s-psychiatric-hospitals-led-to-a-mental-health-crisis>.

⁵ See, e.g., Alisa Roth, *A 'Hellish World': The Mental Health Crisis Overwhelming America's Prisons*, THE GUARDIAN (Mar. 31, 2018),

<https://www.theguardian.com/society/2018/mar/31/mental-health-care-crisis-overwhelming-prison-jail>.

⁶ See Raphelson, *supra* note 4.

⁷ *Id.*

mentally ill.⁸

A recent United States Department of Justice special report found that fifty-six percent (56%) of state prisoners are mentally ill.⁹ Forty-five percent (45%) of the federal prison population suffers from mental illness.¹⁰ Most importantly, sixty-four percent (64%) of jail inmates suffer from mental illness.¹¹ An astounding two out of three people in the incarceration venues with the least resources have mental illness. Those numbers reflect a moral and economic crisis created by the failure of past policies and the toxic combination of mass incarceration fueled by the prison-for-profit crowd.

Tennessee is not immune to this issue. After following the national trend of closing psychiatric hospitals, a 2016 survey found that Tennesseans with mental illness must share five hundred and sixty-four beds across the entire state.¹² Moreover, those with severe mental illness are three-to-one more likely to be incarcerated compared to those treated.¹³ The issue is compounded by the fact that state officials make anything connected to criminal justice reform low priority. To date, Tennessee continues to eliminate psychiatric beds and promote a jail-for-profit narrative feeding off the mentally ill.

IV. A PERFECT STORM IN RURAL TENNESSEE

Issues frequently overlap, with one issue affecting the outcome of another. Criminal justice and mental health issues are certainly two areas with significant overlap. Unless you have been living on a deserted island for the past thirty years, you are aware of the opioid

⁸ Michael Price, *More Than Shelter: Psychologists Look at What It Takes to Get Mentally Ill Homeless People Into More Stable Environments*, 40 *MONITOR ON PSYCHOLOGY* 58 (2009).

⁹ Doris J. James and Lauren E. Glaze, *Bureau of Justice Statistics Special Report: Mental Health Problems of Prison and Jail Inmates*, U.S. DEPT. OF JUSTICE (2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Duris Fuller, ET. AL., *Going, Going, Gone: Trends and Consequences of Eliminating State Psychiatric Beds, 2016*, OFFICE OF RESEARCH AND PUBLIC AFFAIRS (2016), <http://www.treatmentadvocacycenter.org/storage/documents/going-going-gone.pdf>.

¹³ *More Mentally Ill Persons are in Jails and Prisons Than Hospitals*, TREATMENT ADVOCACY CENTER (2013), <http://www.treatmentadvocacycenter.org/browse-by-state/tennessee>.

crisis that has plagued this nation, especially the Appalachian region, ripping apart families and destroying thousands of lives. The opioid problem is just one of many key ingredients in this toxic combination.

The statistics above show the decline in psychiatric hospitals are even more pronounced in rural areas. Rather than just a decrease in beds, rural areas, which have little beds to begin with, now must go even farther to access the beds that are still available. Rural communities have also been decimated by the opioid crisis,¹⁴ using up scarce resources and compounding changing economics. Scientific evidence shows that addiction is a mental illness.¹⁵ Affected persons now have fewer options than ever before – a statement that boggles the mind considering the well-documented progression of this crisis.

Economics play a leading role in health care issues and mental health is no different. Rural Tennessee counties make up some of the most economically depressed counties in the United States.¹⁶ Without necessary funds to treat the mentally ill, rural Tennessee counties turn to incarceration to indirectly deal with the problem. Tennessee's economically depressed communities struggle to address issues that plague both urban and rural communities; however, the economic realities make these counties prone to uninformed choices and faulty quick fixes, which are outlined further in Section V.

Lastly, rural Tennessee leaves much to be desired when it comes to higher education. Rural Tennessee has fewer college educated individuals to assume leadership roles in their communities.¹⁷ A shortage of professionals with post-secondary education places untrained individuals in decision-making positions without the proper

¹⁴ U. S. DEPT OF AG., *Opioid Misuse in Rural America* (last visited July 22, 2018), <https://www.usda.gov/topics/opioids>.

¹⁵ See, e.g., Nora D. Volkow, ET. AL., *Neurological Advances from the Brain Disease Model of Addiction*, THE NEW ENGLAND JOURNAL OF MEDICINE (last visited Jul. 22, 2018), <https://www.nejm.org/doi/full/10.1056/NEJMra1511480>.

¹⁶ See UNITED STATES DEPARTMENT OF AGRICULTURE, PERCENT OF TOTAL POPULATION IN POVERTY, 2014 (2016), http://www.ers.usda.gov/data-products/county-level-data-sets/poverty.aspx#P345c97c54e8c48339ab8327ebfca5161_2_233iT3 (follow hyperlink; then select "Tennessee" from "State" field.).

¹⁷ See, Rachel Ohm, *Report: Access to College a Challenge for Rural Students in East Tennessee*, KNOXVILLE NEWS SENTINEL (Jun. 20, 2017), <https://www.knoxnews.com/story/news/education/2017/06/19/report-east-tennessee-has-startling-gap-between-rural-and-urban-counties-access-higher-education/408921001/>.

background to understand the complexity of mental health issues, let alone address them. Jail administrators, generally speaking, either have no post-secondary education or an education inapplicable to their job title. Sheriffs in rural communities do not have the proper training or backgrounds to deal with complex mental health issues either.

This toxic combination of decreased access to resources, poor economic situations, lack of education, and a significantly increased number of those with mental illness has deteriorated rural communities across the board. Factories struggle to find suitable employees, hospitals are overrun with uninsured patients, and those rural Tennesseans who obtain a post-secondary education leave rural communities, never to return. The economic pressure has continued to rise since the 2008 financial crisis. During that time, rural communities faced with this growing problem have been susceptible to the immoral falsities spread by the mass incarceration crowd.

V. RURAL TENNESSEE BUYS A PIG IN A POLK

As noted above, the past couple decades brought a plague upon rural communities, which only compounded the proliferation of mental health issues. Lack of access and a lack of answers had rural Tennesseans searching for a way out. Smelling blood in the water, the incarceration-for-profit sharks began to circle these struggling populations. The following account cannot be given a footnote citation to an article, a book, or even a video. We lived it. The following is a first-hand account of the pitch used to hook rural Tennessee on mass incarceration.

A. THE FEAR MONGURING AND THE JAIL-FOR-PROFIT LIE

It has become an accepted part of civilized society to have some sort of incarceration system. Every rural county in Tennessee had its own version of the “Mayberry jail” manned by the infallible Sheriff Taylor. The progression of incarceration set forth above gave lobbyists in the prison-for-profit camp all of the ammunition necessary to scare up prisons across the state. Designing prisons, building prisons, and managing prisons provided opportunities for a variety of business interests to make a profit. The most effective sales pitch relies on fear. The following is this author’s first-hand account of the how fear built

mini-prisons to house our mentally ill.

Pickett County Tennessee, with a population around 5,000,¹⁸ surrounds beautiful Dale Hollow Lake in the Upper Cumberland region. Old family farms mixed with vacation homes make up the landscape. The jail, still to this day, resides in the upstairs of a courthouse rebuilt in the 1930s after a fire destroyed its predecessor. Is the jail outdated? No question. Did Pickett County need to make changes? Absolutely. But then, in came the caravan of state officials and interested parties to tell county officials how best to address the issue.

This account comes from my experience twelve years ago serving as the Fourth District County Commissioner in Pickett County, Tennessee. In 2006, our politics on the commission were extremely conservative, typical for Republicans, and even Democrats, in the area. Our view of mental illness, if we had one, specifically regarding drug-related issues, were that jails were a great answer to this growing problem. “More, bigger, tougher” was my philosophy. But those views were balanced against a sheer determination to not raise property taxes, which is an unacceptable act in Pickett County.

Criminal justice and jail studies experts came with one clear message: Build a large quasi-prison or else anarchy might ensue. Repeatedly, supposed “experts” fear mongered uninformed commissioners, like myself, telling them that crime was a growing problem in our communities, our county jail was wholly insufficient, and without quick, decisive action from the commission, crime and lawlessness would only proliferate. Knowing that fear would only get them so far with this fiscally conservative group, these so-called “experts” then used monetary incentives to convince the frugal group.

Overcrowding in Tennessee’s prisons had spurred state officials to look for ways to off-load mass incarceration onto local communities. Real criminal justice reform might squelch business. So, the pitch goes like this: The state government will pay the county government a per-day-fee for holding a “state” inmate, presumably one under a felony sentence. It was told to our Pickett County Commission that not only could we pay for our new jail with this money, but this intake of state money would make a profit for the county. That’s right, build a much bigger jail than necessary, and make money from it. This effective sales pitch worked in virtually every

¹⁸ United States Census Bureau, *Quick Facts: Pickett County, Tennessee* (last visited July 21, 2018),

<https://www.census.gov/quickfacts/fact/table/pickettcountytennessee/BZA210216>.

county in the region to inspire local officials to get into the prison-for-profit business.

All of the commissioners knew that Pickett County needed a new jail. Hearing how taxpayers across the state would pay us to house all of those criminals from Davidson, Shelby, and Hamilton counties—where the crime was really happening in our minds—would allow us to build a jail to keep all of our own undesirables locked away at no cost. We were going to make money, or so we thought. This approach appealed to our fiscal conservative nature and our ignorant view of the issue.

B. THE ISSUES THAT WERE NEVER DISCUSSED

Throughout my tenure dealing with this incarceration issue, the folks feeding the commission all of this information never delved into the numerous ancillary issues involved with incarceration. How much would the staff cost? What are the liability implications? What training do local officials need in order to house large inmate populations? How well equipped is a small, rural community to deal with the logistics of feeding and caring for large inmate populations? Answers to these questions never came. As I recall, the focus remained on the cost of building the new facility, which always circled back to making a profit from housing the state inmates.

While the forgoing questions (a) must be answered and (b) can financially cripple a small community, the major issue really is how ill-equipped local officials are to address mental health issues inherent in populations of incarcerated individuals, i.e., rehabilitation. Understanding the core of these issues will lead to more rehabilitation and less recidivism. Only one medical practice operates in Pickett County and not a single mental health professional is accessible in the county or any adjacent county. Local Sheriffs are tasked with managing these mini-prisons, typically speaking, with nothing more than the basic training required to be a police officer.

Mentally ill inmates enter the criminal justice system in rural Tennessee with little prospects of getting out. Between the fines and imaginary financial incentives to house these inmates, the mentally ill enter this system destined to be caught inside an immoral cycle built to suck them in, punish them, and hopefully turn a profit. Treatment options are non-existent. Desperate inmates and their family members struggle with a system monetizing incarceration, while ignoring, and even denying, any real treatment options. This trap has ensnared

virtually every rural county in the Upper Cumberland region.

The end result of this cycle has played a leading role in eroding away at these rural communities. Large jails, compared to the size of the county, filled with hopeless young people living without proper treatment have become the norm. Budget deficits and large liability settlements have also become the norm. Still, the mentally ill in these prisons languish without proper treatment. Our jails perpetuate mental health problems by withholding medications or stopping on-going treatment when inmates have had some access to treatment. Some of these facilities refuse to maintain an area for inmates to even walk outside. The treatment of the mentally ill in prisons, like was said at the symposium, is obscene and inhumane.

VI. DIGGING OUT

Breaking the cycle will require a change in attitude. Lawmakers, law enforcement, prosecutors, and the defense bar, like it or not, are in this together. Mass incarceration has been a miserable failure, both morally and economically. We know mentally ill inmates will continually remain in the cycle of the criminal justice system if we continue on this path. Keeping our current course of inhumane treatment will only further erode rural communities. The facts are clear: Rural communities lack the training and resources to deal with the mentally ill. Large jail populations inherently deal with many mental health issues. Rural Tennessee needs to move away from this failing model while it still can.

The same philosophy that perpetuated the problem could provide some guidance going forward to fix the problem. Tennessee's mass incarceration model revolves around communities pooling resources, i.e. one county houses another county's prisoners. Tennessee should push local communities through monetary incentives to build regional mental health facilities. Instead of locking people away and trapping them into a never-ending cycle, we could easily, and more economically, provide regional centers for mental health treatment. Imagine the economic impact of turning just one individual around in a community who can now contribute to society, take care of their children, and live a productive life.

With an attitude focused on rehabilitation, we could create a ripple effect and resurgence in rural communities. The prime workforce in many small communities can be found in the local mini-prison dealing with addiction or other mental health issues. For local officials, the next great entrepreneur or even just a reliable part of the

workforce may very well be living in your local jail. Tennessee's rural communities have nothing to lose at this point. Between the pharmaceutical industry, medical professionals, and the mass incarceration folks, rural Tennessee has been robbed of a generation.

The way out of this cycle begins with information, education, and radical changes in the criminal justice system. Judges and district attorneys must either retool their approach toward mental health issues, including addiction, or reconcile with the fact that they are as much part of the problem as the people they lock up. When it comes to mental health, ignorance abounds in our rural communities, where these issues are too often treated as lifestyle choices. Elected officials have a duty to make the best choice based on well-researched, scientific information, not the most politically popular at that moment. The latter seems to rule the day in Washington, Nashville, and our local legislative bodies in rural Tennessee.

VII. CONCLUSION

In the end, the tide seems to be turning across the nation. We are beginning to hear the conversation turning to mental health treatment. Hopefully, rural Tennessee can implement some of these changes or at least have a conversation about how we treat the mentally ill. We are all suffering because of this crisis. Rural Tennessee can no longer continue to put these issues out of sight and out of our minds.