



University of
Salford
MANCHESTER

A path not taken? Mentally disordered offenders and the criminal justice system

Cummins, ID

<http://dx.doi.org/10.1080/09649060601119466>

Title	A path not taken? Mentally disordered offenders and the criminal justice system
Authors	Cummins, ID
Type	Article
URL	This version is available at: http://usir.salford.ac.uk/id/eprint/2155/
Published Date	2006

USIR is a digital collection of the research output of the University of Salford. Where copyright permits, full text material held in the repository is made freely available online and can be read, downloaded and copied for non-commercial private study or research purposes. Please check the manuscript for any further copyright restrictions.

For more information, including our policy and submission procedure, please contact the Repository Team at: usir@salford.ac.uk.

A path not taken?: mentally disordered
offenders and the Criminal Justice
system

AUTHOR: IAN CUMMINS

SOCIAL WORK LECTURER

UNIVERSITY OF SALFORD

ADDRESS: ROOM L814

ALLERTON BUILDING

FREDERICK ROAD CAMPUS

UNIVERSITY OF SALFORD

M6 6PU

CONTACT: 0161 295 6354

i.d.cummins@salford.ac.uk

Abstract

The long stated aim of Government policy has been to divert mentally disordered offenders from the Criminal Justice system to services where their mental health needs can be adequately addressed. An examination of the rates of mental disorder amongst those appearing before the Courts and in the prison population shows that this policy is not achieving its stated aims. This article considers two elements of possible Police and social work involvement to examine the cultural shifts that are required to make this policy more effective.

Key words: *mentally disordered offenders diversion appropriate adult.*

Methodology

A wide range of literature is potentially relevant in this area. This will include literature from psychological, sociological, psychiatric and social work sources. The search focused on three main sources. Bibliographic databases were chosen for their coverage of the fields of mental health and criminology. The search strategy included free text terms (e.g. offenders\$.tw.) and MESH headings (mental illness/offenders). The search included law, psychological, sociological and health databases (e.g. JUSTIS, PsychINFO and Sciencedirect). The internet is firmly established as a research tool. A series of searches was carried out using a variety of search engines (including Google scholar and Lycos). A range of specialist websites in the area of forensic psychiatry were also searched. The search term combinations were similar to those outlined earlier. Reference lists and bibliographies were collected from each text and if relevant were traced. Contact was also established with other researchers, voluntary groups and policy makers in the field.

Introduction

The issue of the people with mental health problems entering the Criminal Justice system and not receiving adequate health care is not a new one. As long ago as 1780, John Howard (Howard 1780) noted that prisons were housing more "idiots and lunatics". He also highlighted the detrimental effects that this had on the prison regime for both sets of prisoners. Similar observations and criticisms have

been at various times since. The period of de-institutionalisation has an increase in these concerns. Arboleda-Florez and Holley (1998) argue that one unforeseen consequence of the policy of the closure of long-stay hospitals has a shift in the position of the Criminal Justice system. It has had to deal with increased numbers of people experiencing mental health problems so that it has taken on a fundamental role. This is despite policy initiatives such as assertive outreach teams to engage those most at risk, diversion from custody and even mental health courts in certain US jurisdictions, which seek to provide appropriate mental health care to those caught up in or at risk of entering the Criminal Justice system. This phenomenon appears to support the hypothesis that Penrose (1939) put forward nearly seventy years ago. He argued that the way that a society decides to deal with those who behave in ways that challenge norms is decided by a range of factors. These will be the prevailing social and political climate, changes in normative behaviour and the resources that are available. According to Penrose's hypothesis, the level of need in terms of institutional care will remain fairly constant. Therefore, in a society which has well-resourced mental health care, an individual who behaves in a bizarre or challenging way will be more likely to be admitted to hospital. If such services do not exist to meet adequately the level of need, such individuals will be drawn into the Criminal Justice system. Penrose's original hypothesis chimes with the experiences of the development of the policy of Community Care in the 1980s and 1990s. Gunn (2000) highlights the fact that the previous twenty years saw a reduction in the number of psychiatric beds but a continued increase in the numbers of mentally ill prisoners. This has occurred in other countries that have

follow de-institutionalisation policies. Borum (2000) highlights that a similar shift has occurred in the United States.

For some commentators the combined effect of the shifts and changes outlined above has been the "criminalisation of the mentally ill". Borzecki and Wormith (1985) cited in K. Hartford et al (2005) argue that for this thesis to hold two conditions need to apply. There needs to be higher levels of contact between mentally ill people and the police than the wider population and the arrest rate for those experiencing mental health problems would have to be shown to be higher. Hartford et al (2005) study is a statistical analysis of police recording of contacts and responses to calls in Ontario. The study confirmed the greater risk that people with mental health problems face in contacts with the police. There are two elements to this. The mentally ill were more likely to come into contact with the police. The result of this contact was shown to be more likely to result in custody. These findings have been supported in a range of studies which demonstrate that: the mentally ill are more likely to come into contact with the police, have a higher arrest rate, are at a greater risk of entering custody rather than being granted bail and are more likely to be arrested for relatively minor offences. (Teplin (1984), Pearson and Gibb (1995), and Robertson (1988)).

The above studies are based on the North American experience of de-institutionalisation. However, a series of Inquiries (Heginbotham et al 1988, Rithchie 1994) and the Government's own analysis of the failings of Community services for people with the most severe mental health problems (DH 1998)

demonstrate that police officers have been called on to play a role in psychiatric emergencies on a more regular basis. This is particularly the case in inner-city areas. The overall picture of the overlap of the mental health and Criminal Justice systems described by Wolff (2005) is a bleak one of fragmented services, the spatial concentration of individuals with the most complex needs in the most deprived areas of our cities and large numbers of prisoners with severe mental health problems.

ODPM's report on social exclusion (2004) highlights the barriers that this group faces in playing a full role as a citizen. These include access to housing, employment and training, stigma and social isolation. As the report concludes the mentally ill are one of the most socially excluded groups. Kelly (2005) discusses the way that this combination of social and economic factors can have an impact on the course of schizophrenia. Individuals from lower socio-economic groups are younger at first presentation and are more likely to have longer periods of disengagement from services. Both factors are seen as indicative of poorer treatment outcomes. Studies from Eaton (1980) have identified the "downward social drift" of schizophrenia. Kelly (2005) adapts the term "structural violence" from the Liberation Theology movements of Latin America to describe the effects that poverty, racism and stigma have on the life opportunities and health of certain communities. He concludes

"The adverse effects of social, economic and societal factors, along with the social stigma of mental illness constitute a form of "structural violence" which impairs access to psychiatric and social services and amplifies the effects of

schizophrenia in the lives of the sufferers".

As noted above, it has been established that people with mental health problems are more likely to come into contact with the police. I will now consider this process in more depth. Bittner (1967) suggested that the police were reluctant to become involved in dealing with situations where the person has a mental health problem. The increased contact outlined above has exacerbated some of these difficulties. As Robertson et al (1995) argue the police role is a very difficult and at times frustrating one. The major police function is clearly to detect crime and bring offenders before the Courts. Dunn and Fahy (1987) suggest that the sorts of community interventions in psychiatric emergencies such as the use of section 136 MHA powers or the execution of a warrant under section 135 MHA are not seen in the "canteen culture" as real police work.

Officers can be called upon to perform the role of assessing mental health needs with little or no training. Mental health problems can be difficult to assess. They are often masked by alcohol or drugs. In addition, one has to consider the inherent effect of the stresses of the situation. Police officers have to exercise their professional judgment in any situation, with which, they are called to deal. In the cases of people, who are experiencing some form of mental distress section 136 of the Mental Health Act (1983) allows for the officer to take that person to a place of safety if they appear to have a mental disorder and be in "immediate need of care or control". As noted above the aim thrust of policy in this area is the diversion of people with mental health problems from the Criminal Justice

system. If a person is arrested under section 136, they must be assessed by a psychiatrist and approved social worker.

It is hardly surprising that the use of this power varies. It is worrying that the variations are so great. The key factor here is that the use of the power is dependent on the individual officer. Following Goldberg and Huxley's (1980) model of filters in psychiatric services, a similar process exist for diversion from the Criminal Justice system. An individual officer may have had wider training on mental health issues, be more experienced, know an individual or had previous contact with them all will play a part in the decision making process. In addition, one would have to consider the nature of the incident that the officer is attending. Section 136 is clearly designed for dealing with episodes of acute distress. For it to be applicable, the individual must "appear to be suffering from mental disorder and to be in immediate need of care and control". (Section 136(1)). The officer must think that "it is necessary to do so in the interests of that person or for the protection of other persons".

There are concerns about the use of section 136. The first question concerns how effective officers are in recognising mental disorder. However, Mokhtar and Hogbin (1993) have argued that the clinical presentation of patients in cases where section 136 has been use is not dissimilar to those patients detained under section 2 or 3. They suggest that this indicates that the Police are under using the power. Rogers (1990) found that in most cases where officers had used the powers under section 136, the psychiatric assessment that followed led to an

admission to hospital. Taken together these studies would appear to suggest that officers use section 136 powers in appropriate cases. However, they also seem to imply that officers only invoke these powers in the cases of the most extreme distress. The increased contact between people with mental health problems and the police outlined above might imply that section 136 MHA will be used on an increasing basis. Bartlett and Sandland (2003) argue that section 136 raises fundamental issues of civil liberties. There is, in effect, no right of appeal or monitoring of this police power. The crux of the matter here is that non-medical staff is being invested with the power to make a detention on mental health grounds. Carey (2001) argued that few officers felt that they had been trained sufficiently in dealing with mental health issues.

As well as lacking confidence in their own abilities to deal with mental health issues, officers appear to have little confidence in the support from mental health services. Both Dunn and Fahy (1987) and the Home Office Review of PACE (2002) emphasise the slow cumbersome and bureaucratic nature of systems. Officers in the earlier study also felt that intervention from mental health services was inadequate as often individuals ended up in similar situations and were subsequently re-arrested. These factors contribute to the difficulties in successfully diverting mentally disordered offenders from the Criminal Justice system. Hiday and Wales (2003) argue that people with mental health problems are more likely than the wider population to spend time in custody. This group is less likely to be granted bail. Taylor and Gunn (1984) argued that mental illness in itself was seen as a risk factor and thus offenders were seen as being a

greater risk because they were ill. In addition, this group's social circumstances and more chaotic lifestyles counted against them when bail decisions were being made. Finally, studies of police attitudes and practice indicate that arrest is seen by officers as a way of ensuring that a psychiatric assessment is carried out. (Hartford et al 2005).

The role of the Appropriate Adult under PACE (1984)

I will now move on to consider the development of the PACE (1984). I will be mainly concerned with the provisions as they effect the interviewing of adults with mental health problems. However, some of my comments will be applicable to vulnerable adults in the widest meaning of the term.

Maxwell Confait was found murdered in his bed-sit in London in 1972. He had been strangled and the bed-sit set on fire. In November 1972, three youths Colin Lattimore (18), Ronnie Leighton (15) and Amhet Salih (14) were all convicted of arson with intent to endanger life. Colin Lattimore was also found guilty of manslaughter. Ronnie Leighton was convicted of murder. The basis of the prosecution case against all three was confession evidence(Fisher 1977). They appealed against convictions in July 1973. These appeals were unsuccessful. In June 1975, the cases were referred to the Court of Appeal. In October that year, the convictions were quashed. The successful appeals were followed by a Royal Commission that reported in 1981. The changes that the Commission recommended were incorporated into PACE (1984).

The investigation into the murder of Maxwell Confait took place in a different cultural and political climate to the one that now exists. One obvious difference was the fact that interviews were not at that time tape recorded. Police interviews were governed the “Judges’ Rules”. The Criminal Justice system had yet to experience the shocks caused by a series of miscarriages of justice. In one sense the image of British policing was largely one of a community-based force. The confessions in the Confait case were obtained under duress a salient factor in a series of miscarriages of justice in the 1970s and 1980s including the cases of the Birmingham Six, the Guildford Four and the men convicted of the murder of Carl Bridgewater.

The introduction of PACE led to wider protections for those being interviewed by the Police. The “Judges Rules” were abolished a new framework including the taping recording of interviews. However, three groups: juveniles, adults with learning difficulties and adults with mental health problems have been afforded additional protections. It was felt that such individuals were at particular risk of self-incrimination. This is an example of the influence of the welfare model have an impact on the development of the Criminal Justice system. On the whole, these measures have been widely accepted and are regarded as legitimate. In the recent policy debates concerning the Criminal Justice system the role of the appropriate adult have not featured.

Section 66 PACE ensures that special safeguards exist when the Police are

questioning or interviewing people with mental health problems. Evidence that has been obtained under duress can be excluded from any trial (section 76(2) (a)). There are further provisions in section 76 and section PACE (1984), which relate to the admissibility of confession evidence obtained from vulnerable adults. The Confait case and subsequent work by Gudjonsson has established that vulnerable adults can be pressurised into making confession statements. Such statements can have a very powerful influence on the subsequent progress of the case particularly on the decision any jury makes.

I will now go on to examine the role of the appropriate adult in practice before considering the development of case law and wider considerations of its efficacy. As noted above, the decision to involve an appropriate adult rests, in effect, with the custody officer. When a professional has been contacted by the Police, they have to decide if they are best placed to take on the role. It is possible that they will be excluded because of some knowledge of the offence. On a wider issue, we have seen that the involvement of an appropriate adult can be a somewhat haphazard affair. It is possible that a mental health team is contacted when a professional from a learning disabilities background would have skills more relevant to the case. I recognise that in some areas the idea that there might be a choice of who will act as an appropriate adult will be seen as utopian. However, it is a factor to be considered. When taking the referral, the appropriate adult should obtain as much information from the Police as possible. This would include: the nature of the alleged offence, the grounds for regarding the person as vulnerable adult, the timescale of the arrest and proposed interview and

whether legal representation has been sought. Code C (Para 3.13) indicates that the appropriate adult can override the person's decision to refuse legal representation. This might be seen as an example of paternalism and the infantilisation of vulnerable adults.

On arrival at the Police station, the appropriate adult should check the information that they have been given already and examine the custody record. An important point to consider is the role of the Forensic Medical Examiner (FME). In such circumstances, the person should be assessed as to whether they are "fit to be interviewed". This is not the same judgement as to whether an appropriate adult should be involved. However, the effect of an examination by an FME might be to confirm this.

An individual in custody should be informed of their rights, which are as follows:

- 1 The right to have someone informed that they are there
- 2 Free legal advice
- 3 The right to consult the PACE Codes of Practice and to have a copy of the custody record (Code C para 3.1)

The appropriate adult should ensure that the individual is given their rights in their presence along with an explanation of the caution. In this initial period, the appropriate can clarify any issues relating to the initial arrest and detention.

Code C (para 3) ensures that the appropriate adult has the right to consult

privately with the vulnerable adult. The appropriate adult does not enjoy legal privilege in the way that a solicitor would do. The appropriate adult needs to explain their role without becoming involved in discussion of the case as this might compromise their position to fulfil the role. The appropriate adult should assess the vulnerability of the person. This can be another stage in the filters of diversion from custody. One of the reasons for involving the appropriate adult is because of their specialist skills and knowledge. I would argue that this is one of the strongest arguments for social workers taking on the role. Social workers with experience in mental health settings will have developed assessment skills. It is possible that an individual could be diverted from the Criminal Justice system at this stage or that a Mental Health Act assessment is arranged. The appropriate adult has to ensure that the person understands the process of interviewing. In addition, this would be the opportunity to raise any concerns about the person has about the detention.

I will examine the debates concerning the exercise of the function of the appropriate adult in more depth below. During the interview, the appropriate adult should ensure that the interview is conducted properly and fairly and facilitate communication (Code C para 11.16). The appropriate adult has a key role in ensuring that the interview does not become “oppressive”. Given the acknowledged vulnerability of this group noted above, this area that calls for heightened awareness of the issues involved. PACE (1984) established the tape recording of interviews so the appropriate adult has to state their name and role at the beginning of the tape. In addition to the conduct of the interview, the

appropriate adult has to ensure that the person is aware that they have the right to access to the tape recording. The appropriate adult should be active participant in the interview not an observer.

The appropriate adult should make representations at any review of the detention. The appropriate adult should witness any other procedures that follow the interview, for example, the taking of samples, fingerprinting and photographs. (Code D paras 1.11-14). The appropriate adult's role extends to witnessing any caution or charging (Code C para 16.1). They also have the right to request copies of the custody record and a tape recording of the interview. In some cases, further interviews may be required so it will be necessary to ensure that an appropriate adult is present. If the person is to remain in custody, it is important that information is provided to the prison so that their mental health needs are highlighted. The appropriate adult needs to make comprehensive notes as they might be called to Court at a later date. In addition, this might assist in future risk assessment or care planning.

The role of the appropriate adult is full of contradictions. It was introduced with the clear intention of providing an increased level of protection within the Criminal Justice system for groups that were seen as being particularly vulnerable. The legal system in England and Wales is an adversarial one. The appropriate adult's role is somewhere in the middle of the conflict between the suspect and the officers. I should make it clear that the role of the appropriate adult also exists to support vulnerable people when they are witnesses. This is a very important area

but I am only concerned with the issues raised by appropriate adults' involvement in the interviews of suspects. I will examine the extent to which, appropriate adults are present at interviews, which performs the role, how effective appropriate adults are and the case law that has arisen since the introduction of PACE (1984).

Robertson, Pearson and Gibb (1995) carried out a study of how people with mental health problems came into contact with the Criminal Justice System. This was an observational study based at London Police stations and Courts. In the study 37 suspects (1.4%) (n=2721) were considered "actively mentally ill". This sample highlighted that those who were mentally ill were more likely to have been arrested for a violence offence. The most common diagnosis was schizophrenia (25). Officers only formally interviewed 30% of the sample (n=822). In this group, ten were considered to be mentally ill. However, appropriate adults were present for only five of the interviews. The study argues that the decision to involve an appropriate adult in these cases was related to the serious nature of the offence. The implication being that the Police were more careful to ensure procedural accuracy in such cases as officers wanted to avoid the interviews being ruled inadmissible.

The level of involvement of appropriate adults in PACE (1984) interviews does not appear to co-relate with the increased contact between the Police and people with mental health problems and the levels of mental illness in the general population. A range of factors are at play here including lack of awareness of

mental health issues and organisational difficulties in the provision of appropriate services. Parker (1992) argued that the Police have a vested interest in not ensuring that the provisions of PACE (1984) are not applied. As well as the practical difficulties, in an adversarial system, involving an appropriate adult might be seen as giving the suspect an unnecessary advantage. Studies by Nemitz and Bean (1994 ;2001) found that appropriate adults often took little active role in the interview process.

The role of the appropriate adult is a complex and demanding one. It requires a mix of skills and knowledge. These would include an understanding of the legal process and ideally some specialist mental health knowledge. In guidance 1E it advises that a trained appropriate adult is the best choice. However, as the Home Office (2002) review makes clear this is often not the case. The role of the appropriate adult is taken on by volunteers, carers, relatives and professionals. In Medford et al (2003) a doorman even took on this role. As White (2002) argues this situation is fraught with possible complications and an untrained appropriate adult may do more harm than good. In addition, it is important to recognise that individuals, even professionals, can find the situation of the PACE (1984) interview intimidating. Ensuring that an interview is conducted fairly and in a non-oppressive manner will inevitably include situations requiring professionals to challenge police conduct. Harkin(1997) indicates that even social workers find custody suites intimidating, it is probable that this will be even more so for those working in a voluntary capacity. As noted above, the appropriate adult has a key role to play. However, no official qualifications or training is required for those

carrying out the role. The disjointed nature of service and training provision was noted by the Runciman Commission in 1993.

The appropriate adult does not enjoy legal privilege in the way that a defence solicitor would. It is therefore possible that they will be called as a witness at a subsequent trial. The most famous example of this is the trial of Rosemary West. The case law that has grown surrounding the appropriate adult has largely been concerned with the suitability of the person taking on the role. In *DPP v. Blake* it was found that the estranged father of a juvenile should not have taken on the role because he was not sufficiently neutral. On different grounds, it was held that the father in *R v. Morse* should not have acted as an appropriate adult because his low IQ score meant that he could not understand the serious nature and wide scope of the role. However, a subsequent decision in *R v. Cox* confuses this point. In the *Cox* case, a mother with both a learning difficulty and severe mental health problems acted as the appropriate adult. If she had been the suspect, she would not have been interviewed without an appropriate adult. However, the confession evidence of her daughter was deemed admissible. Such decisions do not appear to chime with the underlying reasons for the introduction of the role and might serve to reduce the role to a purely administrative function rather than a cornerstone of attempts to protect vulnerable people. The decision in *R v. Aspinall* made it clear that the role of the appropriate adult is to safeguard the suspects' rights but this is in addition to, not instead of, the solicitor's role in this process. Bartlett and Sandford (2003) argue that the details of the role the appropriate adult should play are still unclear. They see at the heart of this confusion

as to what the terms "facilitate communication" and "fair interview" actually mean. In mental health cases, for example, can social workers really be neutral if they have previously assessed an individual under the Mental Health Act (1983). As they rightly point out in juvenile cases, the PACE interview itself can be the point of a family conflict that means the parents are not neutral at all.

The final area I wish to consider is the effectiveness of the appropriate adult role and an examination of who actually carries out this role. The appropriate adult is a specialist role but it is not necessarily one that social workers perform on a regular basis. This serves to make difficult to build up the skills, practice and confidence required to perform the role well. As far as people with mental health problems are concerned, in sixty percent of cases the role is carried out by a social worker (Bucke and Brown 1997). Brown, Ellis and Larcombe (1993) found that the police were actually happier for social workers to take on this role. This is despite a general lack of confidence in mental health services. This might indicate that if services can be delivered properly and in a timely fashion organisational suspicion can be reduced. These findings contrast with Pierpoint (2001) study of the use of volunteers as appropriate adults in juvenile cases. In this study, volunteers were more effective. This probably reflects the family tensions and the difficult position for social workers in these cases. Research has highlighted the fact that on too many occasions the appropriate adult does little more than act as a passive observer during interviews. This was the case in Evans (1993) study of interviews involving juveniles. The appropriate adult has a wider role in the custody process for example, ensuring that a suspect

understands their rights, has appropriate breaks and as noted above the appropriate adult can override a decision to refuse legal representation. These are areas of the role that need to be explored further.

Discussion

One significant outcome of the de-institutionalisation and bed closure programme in mental health services has been to push police officers in greater contact with people experiencing severe mental health problems. This is not necessarily a role that officers have been trained to take on. This results in a lack of awareness of and confidence in dealing with mental health issues. Similar problems exist within the prison system. Despite the diversion from custody (Reed Report 1992, Home Office circular 66/90) the level of mental health needs amongst prisoners seem to be rising inexorably. The historical under funding and fragmentation of mental health services has meant that as Penrose suggested the Criminal Justice system has increasingly been forced to take on the role of providing basic health care. It should be noted that this is with a group, which, community-based services have always found difficult to engage. This has been for a variety of reasons including complexity of need and hostility to services.

The evidence indicates that not only are mentally ill people be drawn into the Criminal Justice System, they are more at risk within that system. The role of the appropriate adult is an attempt to offer additional protection to a very vulnerable group. However, it is difficult to disagree with the Home Office Review of PACE (2002) which concluded that:

“The Review concludes that the present provision of Aas within the Custody Suite is chaotic and unstructured and recommends the establishment of a national policy for the scheme and the development and implementation of full national guidance”.

There are several themes that emerge in the literature. The first concerns the relatively limited involvement of the Appropriate Adult throughout the custody process. The extent and complexity of the mental health needs of the prison population has been well established. One would expect there to be similar levels of need amongst those who the Police arrest as the groups are likely to share many characteristics. There does not appear to be any substantial evidence that large numbers are being diverted from the Criminal Justice system at any early stage. There may be arguments about the causes but it is generally agreed that the Police have more contact with people with mental health problems. This trend is difficult to reverse and will remain a feature of police work for the foreseeable future. As Stone (1982) argues policy makers have always found it difficult to come up with a coherent strategy for dealing with the mentally ill who commit criminal offences. The barriers to the development of such a policy in terms of philosophical agreement, resources and the support of the wider population remain deeply entrenched.

In examining the role of the Appropriate Adult, some fundamental questions need to be considered. The first and most fundamental is can the role be justified. The research reviewed above suggests that in many cases the AA acts as a passive

observer of the proceedings and contributes very little. In Medford et al's study (2003) records of interviews were analysed. This study included interviews with vulnerable adult and juvenile suspects. The study highlights that social workers and volunteers are more likely to take on the role in adult cases. Family members or parents often acted as appropriate adults for juveniles. It is interesting to note that the appropriate adult was more likely to intervene in the juvenile cases. This was explained by some of the family interventions being inappropriate - for example encouraging a juvenile to confess. This is supported by Pierpoint (2001) who argues that volunteers are more effective and often more protection in interviews with juveniles.

The above studies highlight the danger that the role of the appropriate adult can become a largely administrative one with little contribution being made. However, Medford et al conclude that the presence of the appropriate adult has an important effect on police behaviour. In interviews with adults, it increases the likelihood that legal representation is sought. This, in itself must be a positive for the interests of justice. The study also indicates that the legal representative will be more forceful in such cases. The overall effect is that the interview is less aggressive. This is the result of a combination of factors such as the Police wanting to ensure that they are procedurally correct and that such interviews cannot be challenged at a later date. It should be noted that studies of the interventions that appropriate adults make concentrate on the interview. This is not that surprising. However, the role is wider than this including examining the custody record, possibly seeking legal representation and overriding the wishes

of the suspect and ensuring that the person in custody understands their rights. One could carry out all these tasks and not necessarily intervene in the actual interview. However, the general conclusion that too many appropriate adults remain passive observers is still valid.

A root and branch reform that would remove the role of the appropriate adult would serve to increase the vulnerability of a much marginalised group. The general thrust of the PACE review in this area is that the Police need more support from mental health services. The primary function of the appropriate adult is not one of diversion but to remove this layer of support would make it more difficult for Police officers and could put individuals at increased risk. White (2002) has argued that legal privilege be extended to those taking on the role of the appropriate adult. I find it difficult to establish the benefits of such a change. It involves a fundamental shift in the balance of the role. In the adversarial legal system, the appropriate would shift from the current neutral to an almost representative function. The problems that have been highlighted revolve around the training and skills that individuals being asked to take on the role have. Fennel (1994) has argued that the way to ensure that those with mental health problems are offered adequate protections is to develop a group of legal representatives with specialist knowledge and skills in this area. Members of the group would then be called in such cases. This would negate the need for an appropriate adult. Such a scheme would require a significant investment in the training of legal representatives and a commitment from the legal profession. It also involves a philosophical shift. I would suggest that the combination of the

roles would be very difficult.

I would argue that the provisions of PACE (1984) if implemented on regular basis and adequately resourced should provide sufficient safeguards for vulnerable suspects. However, the current practice position raises concerns. It is clear that the policies of de-institutionalisation and bed closure have not been adequately supported by appropriate increased community resources (DH 1998, Wolff 2005). One result is the so-called " criminalisation of the mentally ill" - the drawing in of those with mental health needs into the Criminal Justice System. Few would dispute that the aim of "diversion from custody" is a laudable one. The current evidence from the prison estate is that this policy has not succeeded. There is evidence (James 2000, McGilloway and Donnelly 2004) that early diversion schemes can be effective. In both studies, CPNs were attached to Police stations to divert those involved in minor offences and attempt to engage this difficult to reach group with mental health care services. There is a moral justification for the support of such policies in the idea of equivalence - those in custody should receive the same level of healthcare as other members of society. In addition, such services may help to prevent repeat offending or an escalation in the level of offences committed. Some jurisdictions in the United States have introduced mental health courts to try to tackle this issue. The PACE review calls for the development of such schemes and for greater healthcare involvement at Police stations. This is to be welcomed. I would argue that there is a need for an interprofessional approach so that staff from medical and social care backgrounds is involved in the development and provision of such services. The

review goes on to consider other wide reaching suggestion such as "cell-blocking" charges and the development of more secure unit provision. The majority of offenders would not need this level of security.

White (2002) argues that there is a confusion about the exact nature of the role of the appropriate adult and the best way to protect vulnerable suspects in police custody. The judgment in R v. Lewis indicates that the role overlaps with the legal representative and includes ensuring that the vulnerable suspects fully understand their legal rights. In addition to this quasi-legal role, there is a welfare role. The Code of Practice indicates that ideally this role will be taken on by a mental health professional. However, no one authority has overriding responsibility for the provision of this service. Throughout the country there is a patchwork of provision with a mixture of social work staff, volunteers and family members carrying out the role. In Bucke and Brown's study (1997); it was found that social workers took on the role in sixty percent of cases. Evans and Rawstone (1994) highlighted the fact that SSDs were better at providing social workers to take on this during the day. It is clearly more logistically difficult when emergency duties teams are covering an area as there is fewer staff, which has to cover a wider range of service provision. PACE (1984) has its roots in a grave miscarriage of justice. As Haley and Swift (1988) argue the ultimate aim of these safeguards is to try and reduce the risk of unreliable evidence. This will not be achieved if these fundamentals are not addressed.

Williams (2000) argues that there is a need for wider training for those who act in

the role of the appropriate adult. This lack of a consistent approach had been identified by the Royal Commission (1993). This lack of confidence and expertise is not limited to non-professional staffs who take on the role. Harkin (1997) discussed this in terms of the social worker's experiences. He suggests that social workers can find the whole experience isolating and intimidating. The ambiguous nature of the role, the legal knowledge required and the fact that for many this is not a regular working occurrence serve to make this an area of difficult social work practice. As it stands there are no formal qualifications required for taking on this role. The National Appropriate Adult Network is working to produce a set of national standards which will govern the recruitment, selection and supervision of all those who will take on the role.

Whatever systems and policies are put in place, they will still be dependent on the skills and professionalism of individual officers. Parker (1992) suggests that officers will seek to ignore PACE (1984) provisions as they are time consuming. In addition, in an adversarial system, you are not encouraged to do anything that will help the other side. If an officer does not recognise an individual has a mental health problem, s/he will not put any policy aimed at protecting vulnerable individuals into place. There is an identified need for greater training for police officers in the awareness and recognition of mental health problems. Carey (2001) and Dew and Badger (1999) identified that few officers felt that they had been given sufficient training in this area and that most of the training took place "on the beat". It is also apparent that a lack of confidence in mental health services means that the Police become disillusioned and cynical about the

efficacy of involving their mental health colleagues. This may be part of a cultural or value clash about what is seen as a realistic intervention with the Police emphasising hospitalisation and medication. It is also a reflection of professional frustration.

Conclusion

It is impossible to sustain the argument that diversion from custody has been a success. One bleak interpretation of Penrose might be that it never can be : prisons always have and always will have a role in providing psychiatric care. To my mind, this is too defeatist. The channels that exist to link those in the Criminal Justice system with the mental health services they require should be fully exploited. Despite the best efforts of staff, prisons cannot be expected to provide the levels of care that acutely mentally ill individuals need. Police attitudes to people with mental health problems certainly need to be examined in more depth. Pinfold et al's study (2003) demonstrated that short training courses can tackle some of the deeply engrained stereotypes about mental illness. This study found the benefits included improved communication between officers and subjects. The officers also felt more confident in their own dealings with these individuals. However, it is interesting to note that the view that people with mental health problems are violent was the most difficult to tackle. A greater confidence in community services will only come from an improvement in services that tackles the long-standing of under funding, poor organisation and lack of a commitment to inter-professional working that have dogged mental health services for far too long.

REFERENCES

- Aboleda-Florez, J., and Holley, H.L. (1998): Criminalization of the mentally ill: Part II. Initial detention. *Canadian Journal of Psychiatry*. **33** 87-95
- Bartlett, P. and Sandland, R. (2003): *Mental Law Policy and Practice*. (2nd edition) Oxford. Oxford University Press.
- Bittner, E. (1967): Police discretion in emergency apprehension of mentally ill persons. *Social Problems* **14** 278-292
- Borum, R. (2000): Improving high risk encounters between people with mental illness and the police. *Journal of the American Academy of Psychiatry and the Law* **28** 332-337
- Borzecki, M., and Wormith, J.S (1985): The criminalization of psychiatrically ill people: A review with a Canadian perspective. *Psychiatric Journal of the University of Ottawa*. **10** 241-247
- Brown, D. (1997): *PACE ten years on: a review of the research* (Home Office Research Study no 155) London HMSO
- Brown, D., Ellis, T., and Larcombe, K. *Changing the Code: Police Detention under the Revised PACE Codes of Practice*. London HMSO
- Bucke, T. and Brown, D. (1997): *In police custody: police powers and suspects rights under the revised PACE Codes of Practice*. (Home Office Research study no 174.) London HMSO
- Carey, S. J. (2001): Police officers' knowledge of, and attitudes to mental illness

in southwest Scotland. *Scottish Medical Journal* **46** 41-42

Department of Health and Home Office(1992): *Review of Health and Social Services for Mentally Disordered Offenders and Others Requiring Similar Services. Final Summary Report*. London: HMSO

Department of Health (1998): *Modernising Mental Health Services, sound safe and supportive*. London HMSO

Dew, K., and Badger,S. (1999): Police perceptions of the mental health services and the mentally ill. *New Zealand Medical Journal* **112** 36-38

Dunn, J. and Fahy, T.A (1987): Section 136 and the police. *Bulletin of the Royal College of Psychiatry* **11**224-225

Eaton, W.W. (1980): *The sociology of mental disorders*. New York. Praeger

Evans, R. (1993): The conduct of police interviews with juveniles. *Royal Commission on Criminal Justice Research Study 12* London HMSO

Evans, R. and Rawstone, S. (1994): *The Protection of Vulnerable Suspects*. (A report to the Home Office Research and Planning Unit cited in Brown, D. (1997): *PACE ten years on: a review of the the research* (Home Office Research Study no 155) London:HMSO

Fennell, P. (1994): Mentally Disordered Suspects in the Criminal Justice System. *Journal of Law and Society*

Fisher, Sir H. (1977): *Report of an Inquiry by the Hon. Sir Henry Fisher inot the circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road London SE6* . London HMSO

Goldberg, D. and Huxley, P.(1980): *Mental Illness in the Community*. London :Tavistock

Gudjonsson, G. and MacKeith, J. : *Disputed confessions and the Criminal Justice System*. Maudsley Discussion Paper 2 (www.iop.kcl.ac.uk accessed 13/4/05)

Gunn, J. (2000): Future directions for treatment in forensic psychiatry. *British Journal of Psychiatry* **176** 332-338

Harkin, E. (1997): *Acting as an appropriate adult for suspects with learning difficulties*. Social Work monograph 158. University of East Anglia

Hartford, K., Heslop, L., Stitt,L., and Hoch, J. (2005): Design of an algorithm

to identify persons with mental illness in a police administrative database. *International Journal of Law and Psychiatry* **28** 1-11

Heginbotham, C., Hale, R., Warren, L., Walsh, T., and Carr, J. (1994) : *The Report of the Independent Panel of Inquiry Examining the Case of Michael Buchanan*. London NW London Mental Health Trust.

Hiday, V.A. and Wales, H.W (2003): Civil commitment and arrests. *Current Opinion in Psychiatry* **16(5)** 575-580

Home Office (1990): *Provision for Mentally Disordered Offenders* Circular 66/90

Home Office/Cabinet (2002): *PACE Review Report of the Joint Home Office/Cabinet Office Review of the Police and Criminal Evidence Act 1984*. London: HMSO

Home Office(1995): *Police and Criminal Evidence Act 1984 Codes of Practice* London: HMSO

Home Office: *Guidance for Appropriate Adults*. London

Howard, J. (1780): *The State of the Prisons in England and Wales* (2nd edition) Warrington and London: T. Cadell

James, D. (2000): Police station diversion schemes: role and efficacy in central London. *Journal of Forensic Psychiatry* **11** 532-555

Kelly, B.(2005): Structural violence and schizophrenia. *Social Science and Medicine* **61** 721-730

McGiiloway, S. and Donnelly, M. (2004): Mental illness in the UK criminal justice system: A police liaison scheme for Mentally Disordered Offenders in Belfast. *Journal of Mental Health*. **13(3)** 263-275

Medford, S., Gudjonsson, G., and Pearse, J. (2003): The efficacy of the appropriate adult safeguard during police interviewing. *Legal and Criminological Psychology* **8(2)** 253-266

Mokhtar, A. and Hogbin, P. (1993): Police May underuse section 136. *Medicine Science and Law* **33(3)** 188-196

Mental Health Act (1983) London: HMSO

Nemetz, T. and Bean, P. (1994): The use of the appropriate adult scheme (a preliminary report) *Medicine, Science and the Law* **34(2)**

Nemetz, T. and Bean, P. (2001): Protecting the rights of the mentally disordered

in police stations: the use of the appropriate adult in England and Wales.

International Journal of Law and Psychiatry **24(6)** 595-605

Office of the Deputy Prime Minister (2004): *Mental Health and Social Exclusion: Social Exclusion Unit Report*. London HMSO

Penrose, L. S. (1939) : Mental Disease and crime: outline of a comparative study of European statistics. *British Journal of Medical Psychology*. **18** 1-15

Pierpoint, H. (2000): How appropriate are volunteers as "appropriate adults for young suspects? The "appropriate adult" system and human rights. *Journal of Social Welfare and Family Law* **22(4)** 383-400

Pinfold, V., Huxley, P., Thornicroft, G. Farmer, P., Toulmin, H., and Graham, T. (2003): Reducing psychiatric stigma and discrimination. Evaluating an educational intervention with the police force in England. *Social Psychiatry and Psychiatric Epidemiology* **38(6)** 337-344

Ritchie, J. (Chair) (1994): *The Report of the Inquiry into the Care and Treatment of Christopher Clunis*. London:HMSO

Robertson, G. (1988): Arrest patterns among mentally disordered offenders. *British Journal of Psychiatry* **153** 313-316

Robertson, G., Pearson, R. and Gibb, R. (1995): *Entry of Mentally Ill People into the Criminal Justice System*. London. Home Office

Robertson, G. Pearson, R. and Gibb, R. (1996): Police interviewing and the use of appropriate adults. *Journal of Forensic Psychiatry* **7(2)** 297-309

Rogers, A. (1990): Policing Mental Disorder: Controversies, Myths and Realities. *Social Policy and Administration* **24**

Royal Commission on Criminal Justice (1993) (Chair) Viscount Runciman of Doxford CBE FBA. **Cmd 22363 Report** London: HMSO

Stone, L.(1982): *An Exchange with Michel Foucault*. New York Review of Books New York.

Taylor, P. and Gunn, J. (1984): Violence and Psychosis.I. Risk of violence among psychotic young men. *British Medical Journal* **288** 1945-1949

Teplin, L. (1984): Criminalising mental disorder. *American Psychologist* **39** 794-803

Williams, J. (2000): The inappropriate adult. *Journal of Social Welfare and Family*

Law **22(1)** 43-57

White, C. (2002): Re-assessing the social worker's role as an appropriate adult.

Journal of Social Welfare and Family Law. **24(1)** 55-65

Wolff, N.(2005): Community reintegration of prisoners with mental illness: A social investment perspective. *International Journal of Law and Psychiatry* **28** 43-58.

Legal Cases

DPP v. Blake

R v. Aspinall

R v. Cox

R v. Lewis

R v. Morse