8-2017

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DOI: 10.1002/bsl.2312

WILEY

SPECIAL ISSUE ARTICLE

"Life's hurried tangled road": A therapeutic jurisprudence analysis of why dedicated counsel must be assigned to represent persons with mental disabilities in community settings

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Abstract

The right to counsel is a fundamental right for individuals facing criminal processes and involuntary civil commitment. However, individuals with serious mental illnesses are subject to many community proceedings (e.g., being taken by law enforcement to a crisis drop-off center) where counsel is not available. We argue that, unless meaningful counsel is provided in such situations, the cycle of arrest, hospitalization, and stays in the community will continue for these individuals, who are among some of the most disenfranchised citizens in the nation and are often without any meaningful voice.

1 | INTRODUCTION

Although counsel is now assigned in all jurisdictions to provide legal representation to persons facing involuntary civil commitment (Perlin & Cucolo, 2016, §§ 6–3 to 6–4.2), such counsel is rarely available to persons with mental disabilities in other settings outside the hospital. In this paper, we strongly urge that such representation also be made available to this population in community settings. The scope of this representation must include the provision of counsel in matters concerning any involvement with the criminal justice system that currently does not fall within the scope of indigent counsel assignment decisions, such as *Gideon v. Wainwright* (1963) and *Argersinger v. Hamlin* (1972), and in state statutes and court cases implementing these US Supreme Court decisions. Beyond that, it also includes representation in civil matters that are *collateral* to the criminal justice questions, matters such as housing, disability benefits issues, immigration status, and cases in which accessibility – physical or otherwise – could present a barrier to treatment or inclusion in the community. Such representation would best fulfil the Supreme Court's goal of "restor[ing] constitutional principles established to achieve a fair system of justice" and ensuring that "every defendant stands equal before the law" (*Gideon*, 372 U.S. at p. 344) and would make it far less likely that this population would end up in jail or prison on minor, nuisance charges, as is so frequently the case today (see Perlin & Lynch, 2016a).

Portions of this paper were presented at the annual meeting of the Rocky Mountain Psychological Association, Denver, Colorado, in April 2016.

We believe that without this mandated representation, we will not be able to reverse the current state of affairs that results in the wholesale institutionalization of this population; further, without this mandated representation, it is far from likely that this population will ever be able to enjoy meaningful freedom in community settings, as they will inevitably face the ongoing and deadeningly familiar cycle of arrest–institutionalization–release–arrest–institutionalization (e.g., Fradella & Smith-Casey, 2014; Schug & Fradella, 2015). This state of affairs further flies in the face of all precepts of therapeutic jurisprudence (TJ), a legal theory that seeks to reshape legal rules, procedures, and lawyer roles to enhance their therapeutic potential *while not subordinating due process principles* (Perlin & Lynch, 2014), in accordance with the key principles of voice, validation, and voluntariness (Ronner, 2008; see, generally, Wexler, 2008). At a time when urban police departments are finally – if tardily – beginning to understand the need to implement "crisis intervention teams" (based on the so-called "Memphis model" as a means of dramatically reducing "nuisance crimes" arrests (see e.g., Perlin & Lynch, 2016a; Steadman *et al.*, 2000; Teller *et al.*, 2006) so as to avoid contributing to the over-incarceration of this population), it would be ultimately counterproductive (and violative of TJ principles) if counsel were not simultaneously provided for this cohort in an equally important context: ensuring that this population remains successfully in the community through representation in related civil matters.

In this paper, we first briefly discuss issues involving assignment of counsel in criminal cases, and then consider these issues in the specific context of involuntary civil commitment cases. We then discuss the dilemma faced by the cohort of individuals subject to the endless cycle of transfers from jails to hospitals to the street with no expectation that this cycle will ever be broken. We then explain the basic precepts of TJ, and finally offer a series of potential remedies for the situation that we confront. Our thesis is premised on the following arguments:

- There is a shocking lack of counsel available to persons with mental disabilities in community settings. No state currently provides regularized and dedicated counsel to this population in community settings or in situations not covered by indigent counsel assignment decisions by the Supreme Court or state statutes, and without the presence of such counsel, it is likely that the massive changes in the law and in the operations of state hospital systems will not be replicated in the community.
- The issues here are exacerbated in cases involving persons enmeshed in the criminal justice system, a cohort that, in many jurisdictions, has little access to *meaningful* counsel. Even the most salutary solutions (e.g., the Memphis model) fail to provide counsel for this population at the "drop-off centers" that are often mandated by such programs and used as tools to keep justice-involved individuals with mental disabilities in the community.
- This lack of attention to the critical missing component of community-based counsel is further exacerbated by the omnipresence of "sanism" – an "irrational prejudice of the same quality and character of other irrational prejudices that cause (and are reflected in) prevailing social attitudes of racism, sexism, homophobia, and ethnic bigotry" (Perlin, 1992, pp. 374–75) – which infects the entire legal process (Perlin & Lynch, 2015, p. 216).
- As already indicated, "voice, validation and voluntariness" are universally seen as core TJ values; the current system – in which the population discussed in this paper has no access to dedicated, effective counsel – insures that these mandates cannot be met.

Our title is a lyric from a Bob Dylan rarity, *The Ballad of Donald White*, a song Dylan wrote in 1962, and has sung in person only twice (both in that year). The song's narrator tells his audience:

> My name is Donald White, you see
> I stand before you all
> I was judged by you a murderer
> And the hangman's knot must fall.

He goes on to explain:

If I had some education
To give me a decent start
I might have been a doctor or
A master in the arts.
But I used my hands for stealing
When I was very young
And they locked me down in jailhouse cells
That's how my life begun.

And then, in the remarkably prescient verse from which we have drawn our title:

The jails they were too crowded
Institutions overflowed
So they turned me loose to walk upon
Life's hurried tangled road.

One of the co-authors (MLP) has written about how, with this song, Dylan explicitly made the "connection between poverty and the roots of crime" (Perlin, 2011b, p. 1408). In his encyclopedic work on Dylan's oeuvre, the music critic Oliver Trager identifies this song – by "pointing out modern civilization's inability to nurture its displaced souls" – as being at "the forefront of the [1960s] folk movement" (Trager, 2004, p. 25). To the population that we are talking about today, life's road *is* "hurried" and "tangled." We hope that our recommendations here can, to some extent, ameliorate these conditions.[1]

2 | ASSIGNMENT OF COUNSEL IN CRIMINAL CASES

In 1963, for the first time, in *Gideon v. Wainwright*, the US Supreme Court found a constitutional right to counsel in cases involving *any* charged criminal felony (*Gideon*, 1963). Ever since that decision, lawyers have become familiar with the arguments made for providing indigent representation at criminal proceedings, as well as the arguments that convinced the court to issue such a far-reaching ruling on due process rights. The *Gideon* decision was extended some 9 years later in *Argersinger v. Hamlin* (1972), to include misdemeanor charges where the defendant might face possible incarceration. Significantly, the Supreme Court declined to extend this holding to *any* misdemeanor case in *Scott v. Illinois* (1979), as no term of imprisonment was imposed in that case (Scott had been convicted under a theft statute, for which he might have been imprisoned for a year in jail, but the court's sentence was simply a $50 fine; *Scott*, 1979, p. 368). On the other hand, under their own constitutions or a theory of "simple justice," states have expanded the holdings in *Gideon* and *Argersinger* to hold that the right to counsel applies to any case involving potential imprisonment (*State v. Young*, 2015, p. 250), or other "consequence of magnitude" (see e.g., *Rodriguez v. Rosenblatt*, 1971, p. 222).

Today, in many jurisdictions, it is the role of public defenders to represent indigent defendants who cannot afford to retain counsel themselves.[2] However, despite the Supreme Court's charge in *Gideon*¸ there exists today an unequal system of representation. Many different factors contribute to the quality of assigned counsel in criminal cases, including the location (state, city or town), the structure of the organized public defender program (if any), and, importantly, whether the defendant has a mental illness.[3] Many states have no state-wide public defender system, and quality of counsel often varies drastically from county to county (e.g., Klein, 1986). Even in those counties where there *is* a dedicated public defender's office, the assignment of counsel in "conflict" cases leads to wildly disparate results; a study released this year by the Warren Institute on Law and Social Policy at the University of California, Berkeley School of Law, revealed that while social workers were used in 32% of juvenile cases handled by the Public Defender's Office, they were utilized only 1% of the time by other assigned counsel (Loudenback, 2016). This disparity is of enormous significance to the issues we face.

We also must consider how the Supreme Court has wrestled with issues of due process involving provision of counsel for juveniles charged with a crime. In one of the leading cases, *In re Gault* (1967), the court found that while there are legitimate reasons for treating juveniles and adults differently, in a case in which the juvenile defendant – facing an adjudication of delinquency and incarceration – was not given the opportunity to have counsel provided after arrest, the juvenile was entitled to certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment, including the provision of counsel. Empirically, however, the quality of counsel assigned to juveniles is still seen as "illusory" (e.g., Foxhoven, 2007).

3 | ASSIGNMENT OF COUNSEL IN INVOLUNTARY CIVIL COMMITMENT CASES (SEE, GENERALLY, PERLIN & CUCOLO, 2016, § 6–3.1).

Within a year of the U.S. Supreme Court's *In re Gault* decision, the Tenth Circuit had held that the constitutional right to counsel was equally applicable in mental disability commitment proceedings. In *Heryford v. Parker* (1968), the court was faced with a *habeas corpus* petition brought on behalf of a juvenile with mental disabilities who alleged that he had been denied counsel in his commitment to a state training school. The court specifically rejected the state's argument that *Gault* was distinguishable:

> *It matters not whether the proceedings be labeled "civil" or "criminal" or whether the subject matter be mental instability or juvenile delinquency. It is the likelihood of involuntary incarceration—whether for punishment as an adult for a crime, rehabilitation as a juvenile for delinquency, or treatment and training as a feeble-minded or mental incompetent— which commands observance of the constitutional safeguards of due process. Where, as in both proceedings for juveniles and mentally deficient persons, the state undertakes to act in parens patriae, it has the inescapable duty to vouchsafe due process, and this necessarily includes the duty to see that a subject of an involuntary commitment proceedings is afforded the opportunity to the guiding hand of legal counsel at every step of the proceedings…* (Heryford., *396 F. 2d at p. 396).*

The failure to provide such counsel, the court concluded, "may result in indefinite and oblivious confinement and work shameful injustice."(*Id*, at p. 397).

The quoted language from *Heryford* was soon adopted in the lead case of *Lessard v. Schmidt* (1972), an omnibus challenge to Wisconsin's commitment scheme (Perlin & Cucolo, 2016, §§ 4–2.1.5 *et seq*.). "There seems to be little doubt" that a person facing commitment has a right to counsel (and to appointed counsel if indigent), *Lessard* noted (349 F. Supp., at p. 1097), relying on *Gault* and on the then-recent case of *Argersinger* (1972), which had extended the right to counsel to all criminal proceedings involving "any deprivation of liberty" (*Id*., 407 U.S., at p. 31)

Other courts quickly followed the lead of *Heryford* and *Lessard*, extending representation to "all significant stages" of the commitment process [see, e.g., *Matter of Simons* (1985); see, generally, Stone (1993), 207 n. 13, collecting cases) Thus, *Lynch v. Baxley* (1974) defined "significant stages" as "all judicial proceedings and any other official proceedings at which a decision is, or can be, made which may result in a detrimental change in the conditions of the subject's liberty." (*Id*., 386 F. Supp. p. 389; see also, e.g., *In re* Beverly, (1977). To the best of our knowledge, however, there have been no cases that have considered the applicability of the *Heryford/Lessard* line to the issue we discuss here today: representation of this population in community settings (on the potential role of counsel at outpatient commitment hearings; see Bernfeld, 2012).

It is necessary to acknowledge a depressing reality. If there has been any constant in modern mental disability law, it is the "near-universal reality that counsel assigned to represent individuals at involuntary civil commitment cases is likely to be ineffective" (Perlin, 2008b, p. 241; Coleman & Shellow, 2002), a problem exacerbated by the reality that the ethical issues that arise specifically in the representation of persons with mental disabilities are widely ignored [Perlin & Sadoff, 1982; see Perlin, 2003, p. 701 (" counsel's role traditionally has been so murkily defined and … the

underlying ethical problems have been so widely ignored")]. The sort of zealous advocacy taken for granted in "regular" criminal cases is all too often missing in the representation of persons with mental disabilities (Perlin & Weinstein, 2016). This is particularly significant because empirical surveys consistently demonstrate that the quality of counsel remains "the single most important factor" in the disposition of involuntary civil commitment cases. (Perlin & Dorfman, 1996, p. 120). The reforms that we suggest in this paper will be little more than "paper victories" (see, e.g., Lottman, 1976; Perlin, 2005, p. 737, concluding that such "victories" are often "one of the shameful pretexts in this area of the law") if assigned counsel is not dedicated and robust (see Fritze, 2015; Perlin, 2016b).[4]

Interestingly, compared with other areas of mental disability law, there are virtually no cases being litigated (outside the scope of the Americans with Disabilities Act) that seek to enforce the constitutional rights of this population in community settings [compare Perlin & Cucolo (2016) to Perlin & Cucolo (2017 edition]. The only reasonable explanation is the lack of counsel available to this cohort.

4 | THE POPULATION IN QUESTION

Individuals with mental illness are often at higher risk of becoming involved in the justice system, or facing a potential loss of liberty in matters in which the provision of counsel could have helped secure their due process rights. We know that urban jails serve as some of the nation's largest mental health providers (Acquaviva, 2006, p. 978) and that deinstitutionalization is still viewed in much of the community as a dangerous and "failed" experiment (Torrey, 1995, p. 9; on the flaws in Torrey's arguments, see, e.g., Bagenstos, 2012; Perlin, 2013b). As a result, individuals with mental illness regularly face sub-par mental health care in prisons and jails (Perlin, 2016a), face the further loss of liberty via civil commitment, and subsequently lose myriad due process and other civil rights via that process (see, e.g., Perlin & Douard, 2008–09, discussing the institutional civil rights litigation of *Falter v. Veterans Administration*, 1980, 1986).

But, within these legal processes, there are numerous opportunities for other, less formal community-based hearings to take place. Individuals with mental illness would gain enormous benefits by having assigned counsel outside of simply the standard sets of hearings typically scheduled – hearings involving commitment and release from hospitals – in order to facilitate a more therapeutic outcome, one that will not relegate them to a constantly recycled sentence of deprivation of rights and inadequate treatment, inadequacy that has continued well into the 21st century (e.g., *Navarro-Ayala v. Governor of Puerto Rico*, 2016; *Terrance v. Northville Reg'l Psychiatric Hosp.*, 2002).

One area in particular where we believe community supports for individuals with mental illness could be bolstered by the provision of counsel is in the role of crisis intervention by police officers for individuals in mental health crisis. Crisis intervention training has become a formal method of educating law enforcement officers about how to appropriately work with someone in a mental health crisis, and frequently these programs are paired with services that emphasize maintaining individuals with mental illness in the community, rather than arresting them for nuisance crimes that may happen as a result of their psychiatric symptoms (Perlin & Lynch, 2016a). This training is especially critical, given the appalling reality that a significant number of police officers "hold on to the idea that [mentally disabled] persons are completely irrational and cannot be reasoned with" (Panzarella & Alecia, 1997, pp. 335–36). In particular, programs may implement a "drop-off center" where an individual with mental illness would be brought by police officers; rather than face a ticket for a minor violation, the individual would be brought to a center with community supports for housing, mental health services, treatment programs and more (see generally, Compton *et al.*, 2014; Watson Fulambarker, 2012)

For example, there would be tremendous benefit to having counsel available for individuals brought to a "drop-off center," under a newly devised program the New York City Police Department's efforts at addressing the myriad ways in which individuals with mental illness enter the justice system through nuisance crimes. Individuals brought to these drop-off centers are provided with other advocates and treatment providers, but so far there has been no discussion of the need for counsel to be available to assist clients in the resolution of other pre-existing legal problems.

5 | THE PRECEPTS OF THERAPEUTIC JURISPRUDENCE

One of the most important legal theoretical developments of the past two decades has been the creation and dynamic growth of TJ (Wexler, 1990; Winick & Wexler, 2006). TJ presents a new model for assessing the impact of case law and legislation, recognizing that, as a therapeutic agent, the law can have therapeutic or anti-therapeutic consequences (Perlin, 2009, p. 912). TJ asks whether legal rules, procedures, and lawyer roles can or should be reshaped to enhance their therapeutic potential while not subordinating due process principles (Perlin, 2008a). David Wexler clearly identifies how the inherent tension inherent in this inquiry must be resolved: "the law's use of mental health information to improve therapeutic functioning [cannot] impinge upon justice concerns" (Wexler, 1993, p. 21). As we have written elsewhere, "An inquiry into therapeutic outcomes does not mean that therapeutic concerns 'trump' civil rights and civil liberties" (Perlin & Lynch, 2015, p. 213)

Using TJ, we "look at law as it actually impacts people's lives" (Winick, 2009, p. 535), and assess law's influence on "emotional life and psychological well-being" (Wexler, 2000, p. 45). One governing TJ principle is that "law should value psychological health, should strive to avoid imposing anti-therapeutic consequences whenever possible, and when consistent with other values served by law should attempt to bring about healing and wellness"(Winick, 2003, p. 26).

Therapeutic jurisprudence has been described as "... a sea-change in ethical thinking about the role of law ... a movement towards a more distinctly relational approach to the practice of law ... which emphasises psychological wellness over adversarial triumphalism" (Brookbanks, 2001, pp. 329–30). In doing this, it supports an ethic of care.

One of the central principles of TJ is a commitment to dignity (Perlin, 2013a, pp. 214–15). As noted earlier, Professor Amy Ronner describes the "three Vs" – voice, validation and voluntariness – arguing:

> *What "the three Vs" commend is pretty basic: litigants must have a sense of voice or a chance to tell their story to a decision maker. If that litigant feels that the tribunal has genuinely listened to, heard, and taken seriously the litigant's story, the litigant feels a sense of validation. When litigants emerge from a legal proceeding with a sense of voice and validation, they are more at peace with the outcome. Voice and validation create a sense of voluntary participation, one in which the litigant experiences the proceeding as less coercive. Specifically, the feeling on the part of litigants that they voluntarily partook in the very process that engendered the end result or the very judicial pronunciation that affects their own lives can initiate healing and bring about improved behavior in the future. In general, human beings prosper when they feel that they are making, or at least participating in, their own decisions (Ronner, 2002, pp. 94–95; see also Ronner, 2008, p. 627).*

It is necessary to consider Professor Ronner's prescriptions in the context of what we know about dignity, and to contextualize all of this with the notion of dignity. Professor Carol Sanger has suggested that dignity means that people "'possess an intrinsic worth that should be recognized and respected,' and that they should not be subjected to treatment by the state that is inconsistent with their intrinsic worth" (Sanger, 2009, p. 415) A notion of individual dignity:

> *generally articulated through concepts of autonomy, respect, equality, and freedom from undue government interference, was at the heart of a jurisprudential and moral outlook that resulted in the reform, not only of criminal procedure, but of the various institutions more or less directly linked with the criminal justice system, including juvenile courts, prisons, and mental institutions (Miller, 2004, p. 1569 n.463).*

The right to dignity is memorialized in many state constitutions (see Castiglione, 2008), in multiple international human rights documents (Birgden & Perlin, 2009; Perlin, 2011a; Perlin & Dlugacz, 2009), in judicial opinions (see Daly, 2011; Rao, 2008), and in the constitutions of other nations (Chaskalson, 2011). Fair process norms such as the right to counsel "operate as substantive and procedural restraints on state power to ensure that the individual suspect is

treated with dignity and respect"(Arenella, 1983, p. 200). And, in this context, we know how coercive police authority, by shaming and intruding on dignity, violates TJ (Perlin & Weinstein, 2014; on how the Supreme Court has specifically recognized the shame that can result when dignity is not present., see *id*., p. 17, discussing *Indiana v. Edwards*, 2008, p. 176). The decision-making processes made "on the street" by police officers who choose to apprehend and arrest certain cohorts of persons with mental disabilities, rather than seeking other, treatment-oriented alternatives in dealing with them, reflect the persistent use of humiliation and shame, in ways that rob their targets of the dignity to which they are entitled as an aspect of legal and human rights (Perlin & Lynch, 2017).

In a recent article about dignity and the civil commitment process, Professors Jonathan Simon and Stephen Rosenbaum embraced TJ as a modality of analysis, and focussed specifically on this issue of voice: "When procedures give people an opportunity to exercise voice, their words are given respect, decisions are explained to them, their views taken into account, and they substantively feel less coercion" (Simon & Rosenbaum, 2015, p. 51). The question we must ask here is this: what is the impact of the failure to assign dedicated and competent counsel on this cohort of individuals – persons facing lifetimes of arrest/hospitalization/release cycles – in the context of coercion, and Professor Ronner's "3 Vs"?

6 | SOME HOPES AT REMEDIATION

We believe that TJ offers us a way of breaking the endless cycle we discuss in this paper. The importance of dignity in the context of TJ is reminiscent of some of the Supreme Court's rulings on counsel. Individuals, no matter how financially stable (or not), must be given similar opportunities to present their case. Reading subtext into this decision, it is not a stretch to say that the court wanted to allow *all* defendants to have protection of their due process rights and to have their cases heard in an appropriate, dignified way. In the context of defendants with mental illness, TJ takes this analysis a step further and offers dignity in the cases of individuals whose mental illness would make it impossible for them to represent themselves in a constitutionally adequate manner (*Indiana v. Edwards*, 2008; on how the Supreme Court's focus on dignity and the perceptions of justice in *Edwards* are, perhaps, its first implicit endorsement of important principles of TJ in a criminal procedure context, see Perlin & Cucolo, 2016, § 13–2.3.5, pp. 13–143).[5] Representation in community settings will help to diminish sanism and biases that otherwise inevitably detract from the fairness and dignity of the proceeding (on how "deprivation of dignity is often a reflection of sanism on the part of governments and private decision makers," see Perlin & Lynch, 2014, p. 272).

Therapeutic jurisprudence principles can be successfully used to argue that representation for this population must be expanded. Specifically, we offer these policy recommendations:

- TJ must be integrated into all community practices, with a special focus on the need to mandate the right to counsel as "the core of TJ" (Ramirez & Ronner, 2004, p. 119).
- Communities must learn from the experiences where a TJ-centric approach has been tried, focusing on the successes and failures of the federally-funded Protection and Advocacy Systems (that currently provide some legal services to persons with disabilities in all jurisdictions, in both institutional and community settings) so as to better mold a regulatory scheme for provision of counsel in the community (on the setting of priorities in federally funded disability rights programs; see http://www.ndrn.org/about/paacap-network.html).
- Counsel must be provided to this population where they will be in the community – as one example, the development of drop-off centers as part of the New York Police Department's crisis intervention program is an important starting point with which to make this connection [on how the state of Virginia has begun to do this, see McClellan, 2014 (author is a member of the Virginia House of Delegates)].
- Systems must be put in place to ensure quality; competent, effective counsel for this population is a requirement, not only because of the difficult, intractable legal issues faced but because of the omnipresent biases that come from this population's association with the mental health system and the criminal justice system, and the resultant

taint of sanism (the irrational and stigmatizing prejudice faced by persons with mental disabilities enmeshed in the criminal justice system, and often exhibited by their own attorneys). As the authors have discussed in a recent article, sanism regularly permeates the legal representation process both in cases in which mental capacity is a central issue, and those in which such capacity is a collateral question (Perlin & Lynch, 2016b). Sanist lawyers regularly trivialize their clients' complaints (Perlin, 2003); the use of TJ targets sanism, sets up a legal system where the therapeutic benefit of legal solutions is not just discussed but actually made to be a targeted outcome, and teaches attorneys and judges how to appropriately interact with individuals with mental disabilities in all stages of the trial process (Perlin & Lynch, 2016b)

In short, we believe that the provision of counsel to this population will help break the cycle with which we are all too familiar: a seemingly never-ending cycle of arrest–institutionalization–release–repeat. The road faced by this cohort of individuals is, per Dylan's lyric, hurried and tangled. We hope that these recommendations can, at the least, be the first step in untangling it.[6]

ENDNOTES

[1] As readers will note, this is not an empirical article; it is a theoretical one, grounded on policy considerations and legal precedents.

[2] Some states have established a state-wide public defender system in which a state public defender commission regulates and supervises the public defender offices in the different counties. Others continue to allow counties to choose their systems, and some counties choose public defender systems. These systems may be funded by the state or the municipality, or both. In these systems, full-time, salaried public defenders are appointed to represent indigent defendants. Ideally, these systems are preferable to private, assigned counsel systems because the attorneys are trained for indigent defense, and they can focus their attention on their indigent clients without worrying about making a profit (Moore, 1996, pp. 1637–38).

[3] There is no question, in the mental disability law context, that it is only when counsel is provided in an organized, specialized and regularized way that there is more than a random chance of lasting, systemic change (Perlin, 2003, p. 708).

[4] See, e.g., Perlin, 2005, p. 744 n. 61, discussing *In re C.P.K.*, 1987, p. 1325 (reversing commitment order where trial court failed to comply with statute expressing explicit preference for representation by state Mental Health Advocacy Service, and rejecting as "untenable" argument that trial court should be excused "since it did not know ... whether the Service really existed").

[5] On how, in the context of Supreme Court opinions, dignity needs to be unpacked into the concepts of institutional status as dignity, equality as dignity, liberty as dignity, personal integrity as dignity, and collective virtue as dignity, see Henry, 2011.

[6] On the importance of continuity of care as a way of breaking this cycle when people are released from prisons and jails, see Weinstein & Perlin, 2017.

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How to cite this article: Lynch AJ, Perlin ML. "Life's hurried tangled road": A therapeutic jurisprudence analysis of why dedicated counsel must be assigned to represent persons with mental disabilities in community settings. *Behav Sci Law*. 2017;35:353–363. https://doi.org/10.1002/bsl.2312