

THE WALL STREET JOURNAL.

MONDAY, AUGUST 21, 2006

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Trial Run

In Brooklyn Court, A Route Out of Jail For the Mentally Ill

Judge D'Emic, With Humor, Guides Felons' Treatment; Model for Others in U.S.

'Never Heard of Jimi Hendrix?'

BY GARY FIELDS

BROOKLYN, N.Y. -- Judge Matthew Jude D'Emic of the Brooklyn Mental Health Court summoned Calvin Berry to the bench to find out why he had been arguing with his court-appointed therapists.

In a series of staccato gripes, Mr. Berry said he'd been mistreated. Before he could finish, Judge D'Emic, a towering man with ruddy cheeks, cut him off: "Your bull -- arguing will get you thrown out of the program and into prison. Do you understand?"

Mr. Berry, 23 years old, was shocked into silence. The court's mental-health program, an increasingly popular way of dealing with mentally ill criminals, is the only thing standing between him and two years in jail. Mr. Berry suffers from severe depression caused by a childhood brain injury. Last April, he pleaded guilty to threatening to blow up a bus, among other charges. Instead of being locked up, however, he was put

under the supervision of Judge D'Emic's court.

Brooklyn's mental-health program has become a model for localities trying to deal with a seemingly intractable problem: the increasing number of mentally ill people filling the nation's prisons. The problem stems largely from the shuttering of state-run mental-health facilities a generation ago. Once behind bars, the mentally ill



Matthew Jude
D'Emic

are rarely paroled. If released, they usually end up back in prison because of a lack of outside treatment options. The Justice Department estimates that about 330,000 of the nation's 2.2 million inmates are mentally ill.

Mental-health courts, which work in tandem with prosecutors' offices, are slowly emerging as a promising alternative. They came on the scene in the late 1990s and are designed to allow the mentally ill to avoid prison time, provided they adhere to extensive treatment plans set up and monitored by the new courts. Defendants must plead guilty and pass intensive psychiatric evaluations before being admitted. Once under the court's authority, they undergo regular therapy sessions and often their medication is monitored. Prosecutors and judges typically have complete discretion as to whether a defendant can seek this alternative path.

What makes the idea appealing to many is that it represents a middle ground between locking up the mentally ill and letting them roam free.

"The easiest thing we do is put people in jail, [but] you cannot prison-build your way into reducing crime," says Charles Hynes, the longtime Brooklyn district attorney, who helped create the Brooklyn Mental Health Court.

The Brooklyn court routinely hosts visiting judges and court officers interested in the concept. In the past four years, eight mental-health courts have been created in New York state, and three other local jurisdictions are preparing to open such courts of their own. When all are up and running, New York will account for about 10% of the 120 mental-health courts in the U.S.

Most mental-health courts treat only defendants accused of misdemeanors. That's because many lawmakers and prosecutors worry that criminals will game the system and that the mentally ill will relapse and commit new crimes. Brooklyn is one of the few that accept serious felons. Judge D'Emic is keenly aware of the risk that involves.

"If something went really wrong that could be not only the end of your mental-health court, but of mental-health courts in general," he says in an interview.

There have been some close calls. One participant -- a pharmacist who had been self-medi-



Mary Brown

cating and who had pleaded guilty to driving under the influence -- crashed into a line of parked cars while driving drunk. The judge kicked him out of the program and sent him to prison, where he may be held up to four years.

Another defendant, diverted into the program after stealing a car in Brooklyn, went to Florida last October, stole a Mercedes and led police on a high-speed chase. He has also been imprisoned.

This danger is one reason mental-health courts have been slow to take off. Legislators in Oklahoma, where more than a third of the state's 24,000 inmates have identifiable mental illnesses, have struggled to set up such a court. And mental-health experts question the court's reliance on medication.

The Brooklyn Mental Health Court was started in 2002 in the aftermath of two notorious New York crimes. Andrew Goldstein, then a 30-year-old schizophrenic with a history of violence, had requested treatment from a number of hospitals but had received only short-term care before he pushed Kendra Webdale in front of a New York subway train, killing her. A few months later, Edgar Rivera lost both legs when another former mental patient shoved him under a train.

"I got tired of reading about the poor soul who pushes another poor soul off the subway platform onto the tracks," says Mr. Hynes, who was first elected in 1989.

Anyone can request a transfer to the mental-health court at any point after an arrest, and sometimes prosecutors themselves suggest it. Potential participants undergo extensive assessments by the court's psychologists. The findings must show persistent mental illness and that the illness contributed to the crime charged. A judge then decides whether the psychiatric evidence is sufficient.

If prosecutors agree, they'll craft a plea offer while the court's clinical team develops a treatment plan. Defendants plead guilty on being accepted into the program and undergo treatment for up to two years, longer in rare circumstances. At any time before the plea agreement is made final, prosecutors can decide to push the case through regular criminal courts based on factors such as the clinical evidence or the severity of the crime.

Of the 244 felons who have appeared before Judge D'Emic in this court in the past four years, only 19 have violated the terms of the program to such a degree that the judge sent them to jail. There are no data showing what happens to felons after they've completed the court's program.

Most of the participants have setbacks, like failed drug tests as well as missed therapy sessions and court appearances, says Judge D'Emic. But unlike some probation and parole officers who send defendants back to prison for minor infractions, Judge D'Emic doesn't do so quickly or easily. Instead, he urges them, with a mix of humor and schoolmaster sternness, to stick with the program. He has jailed people briefly to get their attention.

After snapping at Mr. Berry, for instance, the judge softened. The court, he told the defendant, is an opportunity to build a strong foundation for combating mental-health problems, but only if

Mr. Berry stuck to his treatment plan. Even Jimi Hendrix understood the importance of a foundation, he said to Mr. Berry, before quoting from the late singer: "Castles made of sand fall in the sea, eventually."

Mr. Berry looked blank. "Who is Jimi Hendrix?" he asked.

"You've never heard of Jimi Hendrix? What are they teaching you in school?" Judge D'Emic replied. "Have you heard of the Beatles?"

At the end of conversation, Mr. Berry apologized and promised to be more cooperative.

Appointed to the bench in 1996 by Gov. George Pataki, Judge D'Emic, 53, has deep Brooklyn roots. He lives in the borough's Bay Ridge section, one street over from where he grew up as one of 10 children. Eight of his nine siblings live within a mile of him, including three who are firefighters.

Judge D'Emic had no special medical training before he joined the court. For about a year, he and his law clerk invited their consulting psychiatrist to tutor them every Tuesday. The weekly 90-minute sessions included lectures on depression, schizophrenia and therapy strategies, as well as medications and their side effects. The two still attend conferences and lectures on mental health.

One early success was a college student who had a breakdown. He was suffering from paranoia and schizophrenia, and voices told him to rob students. The prosecutor was initially reluctant to turn him over to the mental-health court because "it was such an easy case to win," the judge recalls. The student eventually pleaded guilty to robbery, underwent treatment for 18 months, finished the program and is now completing college.

"It's not an impossible task to keep this population compliant and out of jail," he says. "If they don't comply, I have the big hammer, the jail sentence."

Judge D'Emic's courtroom, on the 15th floor of the courthouse on Jay Street, is informal. "The very first day he took the bench, his court clerk did the 'all rise routine' and Judge D'Emic asked him not to bother with that again," says Karen Kleinberg, his clerk.

Moments after he entered the courtroom on a recent day, ushering people back to their seats, those in attendance gasped when a cellphone rang loudly. The owner scrambled to silence it, apologizing profusely and looking fearfully at the bench. "It's OK; don't worry about it," said Judge D'Emic. "Is it for me?"

One man, a Russian immigrant, was there because he tried to rob a bank while brandishing a television remote control as a weapon. He spoke little English and was accompanied by an interpreter. Subdued at first, he became animated when Judge D'Emic talked to him -- in Russian.

Another defendant, Lynval Samuel, his salt-and-pepper beard in two braids, came to the bench dressed in a white robe and wearing white gloves. He carried two red roses and asked to address the court. "First I'd like to bring greetings to you from the orders of the Eastern Star," he said, his voice deep and majestic. He read briefly from the Bible and then asked the judge if he had the Bibles Mr. Samuel had presented to him. The judge said he did.

Mr. Samuel -- 53, and bipolar -- was in court for threatening and stalking a U.S. congressman, Major Owens, a New York Democrat. He was doing well enough in therapy and counseling to move from Phase II to Phase III, which meant he was one level from graduating. He was given a certificate from the Mental Health Court to mark the promotion.

"From my left hand to your left hand," said Judge D'Emic as he passed the certificate to Mr. Samuel, taking care to make the hand-off exactly as he described. The judge's computer summary noted that one of Mr. Samuel's idiosyncrasies is that he accepts and passes items only with his left hand.

The defendants came steadily, an average of one every three minutes, all suffering from some form of mental illness. There was the burglar who walked into a neighbor's home and started eating a chicken dinner that had been left on the dining-room table. Another robbed ATM patrons by putting a knife to his own throat and threatened to slash himself unless they gave him money. One woman, of Irish descent, tried to snatch babies out of their mothers' arms, convinced that she was rescuing Irish children kidnapped by Jewish women.

Mary Brown, 43 and a mother of three, was a newcomer to the program. She quit school in the 11th grade after becoming pregnant and is only now learning to read. For the past seven years, she has been married to Eddie McQueen. The pair -- who both hail from South Carolina -- met at the Tar-Heel Lounge, a Brooklyn nightspot, where Ms. Brown had come to hear rhythm and blues. Mr. McQueen was performing on the piano.

Mr. McQueen, when asked for his age, would say only that he was in his late 50s. He says he often woke at night to find his wife wandering around their apartment building, knocking on neighbors' doors asking, "Where's Eddie?" On occasion, Ms. Brown would vanish outright. "I stayed up half the night hoping she'd call," he says. Sometimes she'd wander into oncoming traffic.

Last October, Ms. Brown stopped taking medication for schizophrenia. Early one morning, she walked into a neighbor's unlocked apartment and entered the bedroom where her neighbor was asleep. As Ms. Brown passed back through the living room, she took a cup filled with \$23 in change, according to court records. By the time she walked out of the apartment, the neighbor was awake. Ms. Brown was arrested and pleaded guilty to second-degree burglary.

Despite the relatively benign nature of the crime, the charge of second-degree burglary lumped Ms. Brown into the category of defendants who were armed and injured their victims. Mr. McQueen learned of the mental-health court and asked if his wife might be eligible. The prosecutor ultimately agreed.

Mr. McQueen says he was looking for anything to keep her out of prison. These days, he gets up before 6 a.m. to fix her breakfast. "I like his cooking," Ms. Brown explains. "I don't want anybody else's cooking."

Joyce Kendrick, Ms. Brown's attorney, who works for Brooklyn Defender Services, a legal-aid organization, says that without the mental-health court, her client was facing mandatory prison time. "I don't know if she understands how serious the charges are against her."

At Judge D'Emic's courtroom, Ms. Brown approached the bench reluctantly and stood there with her head down, like a child waiting to be chastised.

"You're doing great," Judge D'Emic told her. "You're making all your meetings and all your counseling sessions. You're doing perfect. Keep it up." The judge then called her husband to the bench. Shaking Mr. McQueen's hand, the judge thanked him for attending every one of his wife's court appearances and therapy sessions.

As Ms. Brown left, she walked past Harry Rivera, who was wiping a tear from his cheek. He had just learned that his appearance in court would be his last. "What? Nobody told you? Well, you're graduating," said Judge D'Emic, smiling as Mr. Rivera was presented

with a gift bag of chocolate.

On graduating, the charge is dropped to a misdemeanor, although the probation part of the sentence remains active.

Mr. Rivera, 27, was a longstanding member of the program. In 2002, he was arrested for armed robbery after he and a co-defendant robbed a victim at gunpoint. Instead of five years behind bars, Mr. Rivera, who suffers from anxiety, depression and a stress-related disorder, pleaded guilty and joined the newly formed mental-health court.

When Mr. Rivera was 5 years old, he scampered into the street and was hit by a car as his pregnant mother, arms laden with groceries, watched helplessly. He stayed in a coma for five days. Learning disabilities and hyperactivity followed, along with depression and anxiety attacks.

His court-mandated treatment plan included a year at Aurora Concept Inc., a mental-health facility in the New York City borough of Queens, a year in the psychiatric and chemical dependency program of St. Vincent's Services, in the Canarsie section of Brooklyn, as well as weekly meetings with a therapist and monthly meetings with a psychiatrist. He also had to appear almost weekly before Judge D'Emic. While participating in the program, Mr. Rivera received his GED and is training at Interborough College to become a medical technician.

His voice filled with emotion, he thanked the court for giving him a second chance. Judge D'Emic called him to the bench and whispered: "I saw your progress little by little. Now look at you. You're making something of your life."

Six weeks later, Mr. Rivera was back at Rikers Island on a probation violation. His return to jail saddens court officials who don't know whether he will be funneled back to the mental-health court, where he will start at the beginning, or into prison.

"It happens," says Lucille Jackson, clinical director of the Mental Health Court. "It shows the difficulty of this program. If someone has cognitive disorders and their judgment and thinking is impaired, the court doesn't make all that go away."