



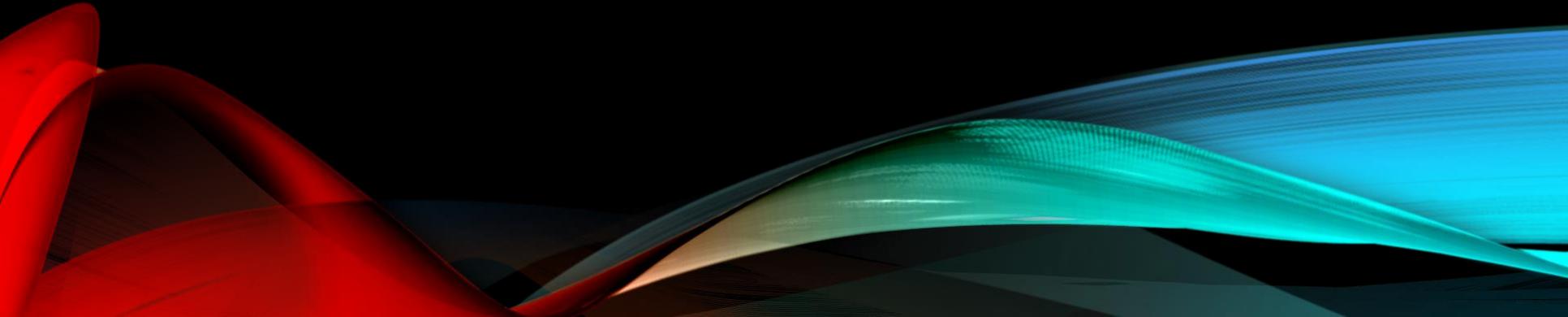
# BEST PRACTICES, CONFIDENTIALITY & LEGAL PRACTICES

Program Excellence Matters

Helen Harberts  
Chico CA

# CONFIDENTIALITY LAWS

The Feds, and the Locals



# CONFIDENTIALITY/PRIVACY

42 CFR Part 2 – The alcohol and substance abuse treatment confidentiality rule.

HIPAA – New federal rules covering all health related information.

# CONFIDENTIALITY LAWS & HIPAA

- This is simply a bunch of laws that can be read, understood, and waived.
- There is no REAL clarity
- In some places it conflicts with the Constitution
- Nobody was contemplating Drug Courts
- Really not the real challenge for counsel in the “big picture”.

# 42 U.S. CODE 290DD 42 CFR PART 2

- First issued 1975, revised 1987
- Designed to help deal with the stigma of addiction.
- Requires notification of confidentiality, consent forms, prohibition of redisclosure
- “I’m sorry I cannot acknowledge whether someone is or isn’t in our treatment program”.

# WHAT 42 CFR COVERS:

- “Any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation or research which is directly or indirectly assisted by any department or agency of the United States.”

# HIPAA

- Health Insurance Portability and Accountability Act of 1996
- 45 CFR Parts 160 and 164, Subparts A and E
- Designed to ensure maintenance of health insurance coverage when you change jobs.
- Administrative simplification – Healthcare processes becoming very complex – look to standardize information – make it easier.
- Protect confidentiality and security of patient information

# PRIVACY STANDARDS

- Places restrictions on the use and/or disclosure of “Protected Health Information” –PHI
- Effective 4/14/03
- Essentially applies “42 CFR p.2-like” requirements to all health care.

# PROTECTED HEALTH INFORMATION (PHI)

- Any health information:
  - *Oral , paper, or electronic*
- Including identifying demographic information
- Relating to:
  - Physical or mental health (treatment) of individual,
  - Provision of health care to an individual (operations)
  - Payment for provision of health care to individual

# SECURITY STANDARDS

- Security of information against non-approved access
- Electronic creation, transmission, and storage of information a significant concern – hackers
- Requirements for logging of access, automatic log offs, encryption of information sent by internet.
- Regulations took effect in 4/05

# MINIMUM NECESSARY STANDARD

- When using/disclosing PHI, only the minimum necessary information should be shared.
- The disclosure should cover only the authorized information
- Individuals, family, visitors, etc. who do not have a need to know PHI should not have access to it.

# HIPAA V. 42 CFR PART 2

- The laws cover a lot of the same material.
- Some points of difference – more specific or more recent rule usually applies.
- For the CD Treatment providers, in most cases the rules of 42 CFR Part 2 are more stringent
- In several cases HIPAA wins.



DO THESE LAWS APPLY TO  
PROBLEM-SOLVING COURT  
PRACTITIONERS?

HOW DO WE KNOW THEY APPLY?

# HIPAA DOESN'T APPLY TO COURTS

- Contrary to myth, HIPAA covered entities do not include the courts, court personnel, accrediting agencies like JCAHO and law enforcement personnel including police or probation officers.
  - GAINS CENTER, "Dispelling the Myths..."  
Feb. 2007

# PERSONS WHO ARE PROTECTED AS “PATIENTS”

- A person is a “patient” if they have sought or received a treatment programs services.
- If someone fails to appear for an initial appointment, that information is protected because they have “sought” treatment.

# DEFINING THE PROGRAM

1. A unit or office of the problem-solving court itself provide diagnosis, treatment or makes referrals to CD treatment.
  - Is a “Program” under 42 CFR Part 2.
  - Is a “Covered Entity” if it transmits PHI electronically.
  - Requires a valid multi-party consent to disclose information to the problem-solving court team.

# DEFINING THE PROGRAM

2. The program is independent of the problem-solving court.
  - Requires valid multiparty consents for re-disclosure of information to the problem-solving court team.

# GENERAL RULE OF DISCLOSURE

- “Treatment Programs may only release information or records that will directly or indirectly identify a problem-solving court participant as a substance abuser:
  - With a knowing and written consent from the participant,  
AND
  - limited exceptions



HOW DO YOU OBTAIN  
WRITTEN CONSENT FROM  
YOUR PARTICIPANTS?

# ELEMENTS OF A CONSENT

1. Name of person or organization that may make the disclosure;
2. Name or title of person (or organization) to whom disclosure may be made;
3. Participant's name;
4. Purpose of the disclosure;
5. How much and what kind of information may be disclosed;
6. Participant's signature;
7. Date on which the consent was signed;
8. Date, event, or condition upon which the consent will expire  
(Consent cannot be revoked unless in a civil or juvenile court setting)

# AND UNDER HIPAA

- Must be in plain language
- Can be signed by a personal representative (then, must contain a description of the representative's authority to act on patient's behalf)
- Patients must be given copy of written form
- Programs must keep copy of form for six years from expiration date
- Program must ensure that consent complies with applicable requirements of 45 CFR section 164.508

# CONSENTS

- A proper consent can authorize all parties involved in the problem-solving court to share information necessary to monitor treatment progress and compliance.
- To be effective the consent form should be signed at the earliest possible time.
- Judge, coordinator, probation, etc., should get consent and fax it to treatment before 1<sup>st</sup> appointment.

# REQUIRING CONSENTS

- HIPAA prohibits a program from conditioning treatment on a patient signing a consent, but
- The judge (problem-solving court) can condition participation in the court program on the defendant signing the consent form.

# CONSENT GUIDELINES

- Criminal Justice System (CJS) consents
  - Determine whether assessment and treatment participation is an official condition that the person must meet.
  - CJS consents have special rules under 42 CFR part 2 – irrevocable until expiration.
  - HIPAA requires all consent be revocable.

# SATISFYING 42 CFR AND HIPAA

- HIPAA requires all consents to be revocable, but
- HIPAA also allows for the use of an administrative order for information disclosure. Therefore,
- Programs that provide both substance abuse and mental health treatment services can pair their 42 CFR consent with a HIPAA administrative order and/or build HIPAA language into their consent

# OPTION 1- COURT ORDER & IRREVOCAABLE CONSENT

- Use of Court Order (court or administrative body) – Satisfies HIPAA
  - “Standing order”
  - “Limited HIPAA Order”
  - Irrevocable consent – 42 CFR Part 2

# OPTION 2 – REVOCABLE CONSENTS

- “Unlikely” the individual will revoke consent if it means they will be in violation of terms of sentence.
- Saves Court work – no orders
- If revoked, programs will have to inform court that a 42 CFR Part 2 court order is needed.
- Consent needs to describe specifically how disclosed info will be used.

# USE AND REDISCLOSURE

- Under 42 CFR § 2.35, information from a CJS release may be redisclosed and used only in connection to their official duties with respect to the particular criminal proceeding.
- The information may not be used in other proceedings, for other purposes or with respect to other individuals. (42 CFR § 2.12(d)(1))

**WHAT HAPPENS IN VEGAS.....**

# MANDATORY DISCLOSURE -NO CONSENT

- State child or elder abuse laws
- A valid court order
- State laws relating to cause of death
- Duty to protect others, to warn of imminent, serious harm

# PERMITTED DISCLOSURES -NO CONSENT

- Medical emergency
- Crimes on the premises
- Crimes against staff
- Administration / qualified service programs working with treatment facility (must have business associate agreement under HIPAA—see 67 Federal Register 53264 for sample contract language—published by HHS office for Civil Rights)
- Outside auditors, central registries and researchers
- No re-disclosures unless permitted
- All disclosures must be documented

# SUBPOENAS V. COURT ORDERS

- Part 2 allows information to be released by subpoena if patient has signed consent permitting release
- If no consent, then see 42 CFR Part 2, Subpart E for procedures the court must follow, findings, and limits
- HIPAA allows information release under subpoena with assurance patient has been given notice (or reasonable efforts made to give notice) with the opportunity to object

# CAN A JUDGE SHARE TREATMENT INFORMATION IN OPEN COURT?

- The Judge may decide that sharing information about progress/difficulty in treatment is a “legitimate part of the court’s official duties and responsibilities with respect to the criminal proceedings”.
- Remember the Minimum Necessary Information standard.

# SLOWLY WE GET ANSWERS: OPEN COURTS

- The provisions of 42 CFR 2.35 and the need for open courtrooms required denial of motion to close proceedings. Sec. 2.35:
  - a. need to disclose as a condition of participation in program
  - b. disclosure only to those in criminal justice system on a need to know basis
  - c. consent

Florida v. Noelle Bush, Circuit Court  
(Oct. 2002)

# AND ETHICS....

- Tough for defense
- Seriously strange for prosecution
- Odd for Court
- What to do??



SO...

- What are the legal rules that guide our conduct?
- What are the ethical rules that guide our conduct?
- What are the informal rules that guide our conduct?
- How does a system built on vigorous advocacy work to solve problems in a “non-adversarial” way?

# WHAT IS THE DIFFERENCE BETWEEN CONFIDENTIALITY LAWS, EVIDENTIARY PRIVILEGES AND ETHICAL DUTIES?

- Confidentiality laws are statutes and regulations that prohibit specified disclosures (usually subject to specified exceptions). Improper disclosures of information covered by confidentiality laws can lead to criminal prosecutions and civil lawsuits.
- Unlike confidentiality laws, evidentiary privileges generally do not constrain those who choose to disclose information. Instead, privileges protect against compelled disclosure.
- Like confidentiality laws, ethical duties prohibit the disclosure of information. Ethical duties, which are ordinarily embodied in professional canon, apply to communications between professionals and those they serve.

# QUIZ:

- A participant in the drug court approaches the prosecutor in the court hallway and begins talking to them about “life”
- A participant in the drug court approaches the prosecutor in the court hallway and hugs them.
- A participant in the drug court calls the DA from the street and asks for help with a police matter involving a DV incident.

# WHAT ISSUES DO YOU SEE?

- Defense?
- Prosecution?

# QUESTION:

- A participant tells you that they are cheating on the drug tests. What do you do?
- A participant tells you they are using and dirty and they just took a test that will prove it. What do you do?
- A participant is trying to set up a fight between you and the treatment provider. What do you do?

# ETHICAL PUZZLES FOR THE DEFENSE

- A team? How does that work?
- Where does the duty lie? More than one place?
- What is the short term vs. long term view for the client's interests?



# ETHICAL & SKILL CHALLENGES

- The distinction between Attorney at Law and Counselor at Law
- When do you wear each hat?
- Legal work vs. Social Work?

# ETHICAL PUZZLES FOR THE DEFENSE

- What about privileged information or information/conduct that constitutes a fraud upon the Court?
- How to work through new crimes.
- Advocacy in the face of the 10 Key components-a delicate balance.

# Ethical puzzles for the defense

- The Courtroom as a classroom- what are your other clients hearing when you speak? What is the impact?
- How to handle conflicts if you are the only defense attorney in the court.

# COUNSEL RELATIONS:

- On a team with a prosecutor?
- Your peers may have different feelings
- Why aren't you doing REAL legal work?
- Are you sure you ARE working?
- The other defense "dump truck"

# COUNSEL RELATIONS:

- You're selling out your clients!  
FIGHT!
- When the model comes clear to you...how do you feel about your peers and their work?
- What about your clients wanting to talk to the prosecutor?

# ETHICS IN DRUG COURT: *THORNY ISSUES*

1. *Ex Parte* Communications and Staffing
2. Judicial Fraternalization/Impartiality
3. Role of the Defense Counsel

# EX PARTE COMMUNICATION

- Ex parte communication must be specifically waived or asserted (Model Code Judicial Conduct, Canon 3B(7))
  - Who is present at staffing?
  - Is it ok to attend team meetings w/out client?
  - How many levels of hearsay in staffing?
  - Are 42 CFR waivers executed for everyone present?
- 
- Brown v. State, MD Ct of Appeal 5-18-09

# EX PARTE STAFFING

- Permissible to have *ex parte* communications at staffing with appropriate waivers and outside of drug court
- Best practice to inform defense counsel of content and nature of communications
- NY has specific administrative orders permitting such communication

# ABA RULE 2.9(5)

- No ex parte communications except:

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

# ABA RULE 2.9

- Comment [4]

A judge may initiate, permit, or consider ex parte communications ...when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

# STATE JUDICIAL ETHICS AMENDMENTS

- Idaho, Maryland, Montana, Minnesota, New York, Indiana and Arkansas
- Amended their Codes to specifically address and permit *ex parte* communications in problem-solving courts including staffings
- Perhaps a better approach would be amending the Rules of Prof. Resp. for counsel requiring them to be present at staffing and progress reports

# OUT-OF-COURT CONTACT WITH PARTICIPANTS



# THE JUDGE AND DRUG COURT PARTICIPANTS

Judge attends group activities, softball games, bowling night, holiday party, spring picnic, Disneyland trip, with drug court participants.

# JUDICIAL DISCIPLINE

- *Matter of Blackman*, 591 A.2d 1339 (N.J. 1991)  
“[J]udges who attend a public or social event will be perceived as endorsing or supporting not only the event itself but also persons associated with the event.”
- *In re Jones*, 581 N.W.2d 876 (Neb. 1998)  
Canon 1 and Canon 2 violation to meet individually with probationers.

# DEFENSE COUNSEL



# DEFENSE'S DUTY

- “Duty of representation” of client
- *C.f.*, reasonable diligence and competence in ABA Model Rule 1.3; “devotion and courage” in advocacy in ABA (“Defense Function Guidelines”)
- To competently represent client in DTC must familiarize self with tx, procedures, bases for sanctions or termination, etc. (ABA Model Rule 1.1)

# JUSTICE MELANIE MAY



*SMITH V. STATE FL CT.APP.*  
4<sup>TH</sup> DIST. 3/19/03

- Lawyers must educate themselves about drug court programs.
- They cannot effectively advise their clients otherwise
- “To ignore the need to learn about the drug court process is to ignore the evolution of the justice system”
- “For lawyers to do otherwise is for them to become legal dinosaurs”

# QUESTIONS FOR DEFENSE COUNSEL IN DTCS

- Will the client spend more time in jail?
- Attend court more frequently?
- FTA more frequently?
- Provide judge with personal information?
- Examine the root cause of addictive behavior?
- Focus on long-term rather than short-term goals?

# RESPECT ROLE OF DEFENSE

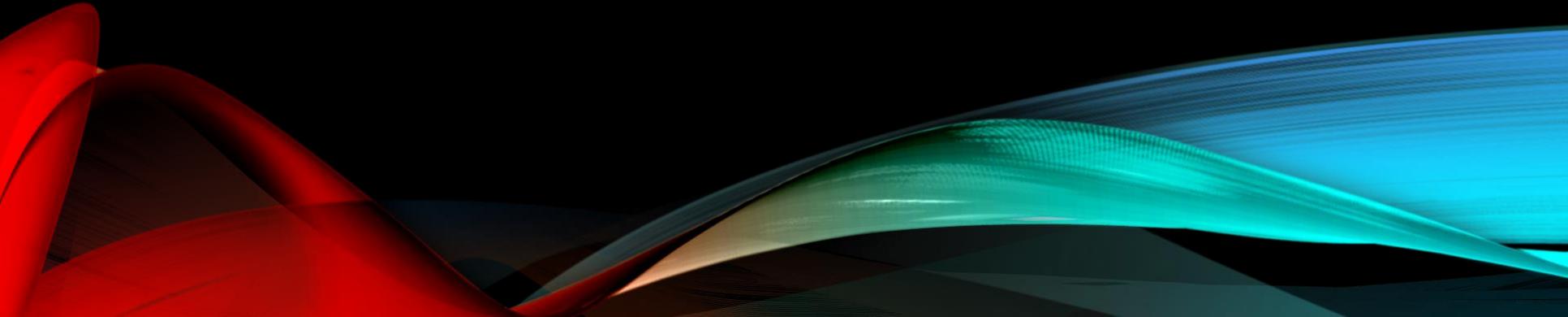
- National Legal Aid and Defender Association:

Nothing in the problem solving court policies or procedures should compromise counsel's ethical responsibility to...challenge evidence or findings and the right to recommend alternative treatments or sanctions.

# BEST PRACTICES

- Ensure that DA and Defense Counsel attend staffings and review hearings
- Advocate change in Canons
- Judges: avoid public activities (non-judicial) with participants, except for cameo appearance
- Respect ethical obligations of defense counsel

# THE LAW, THE CONSTITUTION(S)



# DUE PROCESS

- Procedural protections are due under the 5<sup>th</sup> and 14<sup>th</sup> Amendments when the defendant will potentially suffer a loss to a recognized liberty or property right.
- If due process applies, the question remains what process is due.

*Fuentes v. Shevin*, 407 U.S. 67 (1972).

*Morrissey v. Brewer*, 408 U.S. 471 (1972).

# LEGAL ISSUES

- Attorney participation is critical-both for outcomes, and to protect due process.
- Ethical concerns of counsel (or others) are not gone because “it is a DUI or Drug Court”. Honor the boundaries.
- Due process is not suspended because “we all work together”.
- The law is NOT suspended because we all work together.

# FIRST AMENDMENT:

- **Religion**

*Ex: **NO** mandatory AA/NA without alternatives being offered as well.*

- This is settled law.
- It does not matter that this is a voluntary program
- This is settled law. Adapt.
- Civil liability may attach for intentional violation. (Sacramento CA, again 8/13)

# SO, WHAT TO DO?

- The law says you cannot force them if they object. You must provide an alternative as well. There are plenty.
- Change your order! *“You must attend AA, NA or other community based self help program, as approved by your probation officer.”*
- *REALITY*: this is very few people and they get over it quickly. Recognize the law, make the new order, enforce the order.

# ANOTHER FIRST AMENDMENT ISSUE:

- **Area and place restrictions:**

***Ex: Do not enter any establishment where***

....

- Valid if narrowly drawn and related to rehabilitation needs of the offender.
- Must have allowances for compelling needs of probationer such as child visitation.
- Should be reasonable in size and duration.

# FIRST AMENDMENT

- **Freedom of association**

*Ex: Do not associate with any person on probation or parole, or any person who uses drugs, except in the context of treatment*

- Valid if narrowly drawn and related to rehabilitation needs of the offender.

# FOURTH AMENDMENT

“You are subject to a search of your person, place of residence, vehicle, or any item under your dominion and control any time, day or night, with or without probable cause, or your then and there presence, by any peace or probation officer.”

“You are subject to testing for the presence of banned items and controlled substances for the duration of your participation in the program.”

# SEARCH

- Post conviction: 4<sup>th</sup> Amendment waivers are valid under Federal law-reduced expectation of privacy Sampson (2006).
- Pre conviction and non-conviction cases, must be individualized findings to apply search on a case by case basis (also true on some local state cases post conviction)
- Make it a program rule.



# ELECTRONIC DEVICES

- May require special orders, and waivers

## OTHER BANS:

- Alcohol- OK: People v. Beal (CA 1997)
- Articulate why “medical” marijuana cannot be used on record, and place as a term of probation. (interferes with cognition) (Interferes with motivation) (Except: Arizona )
- Articulate why folks cannot consume any item “not for human consumption”, poppy seeds, or other items that will mess up drug testing.

# DUE PROCESS CONCERNS

- Juveniles have the same rights as adults regarding due process, except for jury.

***What process is due when defendants potentially suffer a loss to a recognized liberty or property right?***

- **Program violation: probation-full panoply of rights apply. (PC, counsel, notice, appear, cross exam and witnesses, magistrate, findings)**

# WHAT IS HAPPENING?

- Sanction in program?
- Termination from program?
  
- Different rules may apply depending on the model!
  - DEJ
  - POST CONVICTION

# DUE PROCESS CONCERNS

- Termination is LIKE a VOP hearing in most cases
- Watch your record! Incentives and Sanctions should be noted. Contract analysis does not settle the issue
- States are divided on hearings for non probation programs. Best practice: follow the VOP procedure.
- Clear majority now moving toward due process.

# QUESTION:

- Is a sanction a potential loss of a recognized liberty or property right?
- Does it invoke the same level of due process as a VOP?
- Certainly if you are a post adjudication probation model. Probably if you are not. Best practice: do it. Adds about 45 seconds to the colloquy.

# DUE PROCESS

- Procedural protections are due under the 5<sup>th</sup> and 14<sup>th</sup> Amendments when the defendant will potentially suffer a loss to a recognized liberty or property right.
- If due process applies, the question remains what process is due.

*Fuentes v. Shevin*, 407 U.S. 67 (1972).

*Morrissey v. Brewer*, 408 U.S. 471 (1972).

# OUCH

- Mississippi Commission on Judicial Performance v Thompson 169 So.3d 857 (5/2015)
- (Drug Court Judge removed from office for, inter alia, sanctioning individuals to jail without according due process of hearing. Judge Thompson's conduct of depriving participants in drug court of their due-process rights when he signed orders of contempt without the persons being properly notified of the charge of contempt or a right to a hearing, and by conducting "hearings" immediately after "staffing meetings" without adequate time for the persons to have proper counsel or evidence presented, violated Canons 1, 2A, 3B(1), 3B(2), 3B(4), 3B(8), and constitutes willful misconduct in office and conduct prejudicial to the administration of justice.)

# CONSIDER THIS

- Is really about the factual basis or about the factors in mitigation and sanctions?
- What would you prefer if it was you in the client's shoes? Full due process?

# REMEMBER YOUR RECORD!

- You need to document not just the sanctions but the good reviews and incentives in some manner for potential review.
- If someone questions what happened in a couple of years, how will they know *why* you did, what you did?

# EQUAL PROTECTION ISSUES:

- Poverty-you cannot deny access to indigents. Admission based on ability to pay is a denial of equal protection.
- Discretionary admission criteria must not violate due process (suspect class, semi-suspect class)
- Monitor disparate impacts in admission and program.
- DA may be gatekeeper for admission, and unless constitutional violation, no right to hearing to challenge rejection.

## BEST PRACTICE:

- Keep your lawyers involved
- This is how we protect the program, protect the clients, and protect the Constitution.
- It turns out that lawyers also improve outcomes!!!

# PROSECUTORS

- Attend staffing? Cost savings up 171%
- Attend Court? Recidivism drops 35%

***If your prosecutor is interested in public safety, they should show up***

# DEFENSE COUNSEL

- Defense attends staffing: Cost savings up 93%
- Defense attorney attends court: Recidivism down 35%

***Defense counsel: necessary***

# OTHER DUE PROCESS ISSUES:

- Drug testing: must meet legal standards for adjudications. Not all tests are up to legal standards.
- Get confirmation via GC/MS if there is a question or challenge.
- If they pass you pay, if they flunk they pay...and they get sanctioned for lying.



# TERMINATION & SENTENCING

- Split of authority ,majority now that the original judge may terminate and sentence.
- Judges already know how to recuse if they need to.
- Best practice, if they object, get another Judge.
- Minnesota ruling now controls you.

## OTHER STUFF

- Open Courtroom? Absolutely (Noelle Bush) (rule of minimization)
- Closed staffing? Yes. (State v. Sykes, 182 Wn2d 168)

# INITIAL CONCEPTS

- What are drug courts about?
  - BEST PRACTICES
- What do drug courts pursue?
  - RESEARCH DRIVEN DESIGN and OUTCOMES
- What is the ultimate design?
  - COURT ENHANCED ASSESSMENT DRIVEN TREATMENT.



These are COURTS.

They are not programs.

Everything that goes with  
the word: COURTS, remains.

Attorneys **MUST** be present.



# THIS REQUIRES...UNDERSTANDING:

- the law
- the HOLES in the law
- the model
- the disease.
- What works
- How to help treatment
- what can undo good work
- sanctions and incentives to shape behavior
- How to help supervision

# WHAT IS THE GOAL?

- What are the proximal goals?
- What are the distal goals?
- What is the big goal?
- What do you have to know/understand to get there?

# HOW DO YOU BALANCE SCIENCE AND THE LAW?

- Incentives work better than sanctions-but sanctions make the incentives work...huh?
  - How does the DA help with this concept?
  - How does the Defense help?
  - What can goof it up? Excessive lawyering?
- Immediacy and reliable detection are critical?
  - How can lawyers goof this up?

# PUNISHMENT!!!

- Actually, no-it is not the *severity* but the *certainty* of getting caught, and sanctioned that is most important for behavior modification.
- 24-48 hours is often more significant than a longer sentence. Why?

# WHAT ABOUT THE SIMPLE FACTS OF ADDICTION?

- Addiction is a disease of the brain
- Memory problems
- Depression, poor decision making
- Collateral illness
- Slower recovery times for some drugs
- Poor life skills and associates
- The length of time for treatment to work.

# SO, WHEN FOLKS ARE JUST BEGINNING..

- What are the proximal goals? What is reasonable to expect?
- What are the distal goals? When is it reasonable to expect behavior that is heading toward distal goals?

# WHAT CAN ATTORNEYS DO?

- Lots!
  - We can improve outcomes , or kill them

# HOW?

- Placebo
- Motivational interviewing
- Engagement
- Smoothing out legal delays
- Expediting responses to behavior
- Presenting a unified front against the disease.

# ENGAGEMENT STRATEGIES COUNT

- The role of the Prosecutor is very powerful
- We can use that power to motivate performance.
- Next to the Judge, we're the ones who can really make a difference with our praise.
- Our use of our trial skills can translate into improved outcomes in drug courts.
- *Don't underestimate your power to inspire!*

THIS IS WHAT IT LOOKS LIKE WHEN  
YOU DO IT FOLLOWING THE  
RESEARCH.



# STAFFING ALL CASES BEFORE COURT- ONE MESSAGE & ONE DECISION DELIVERED BY JUDGE



# MOTIVATION, MEMORY, ENGAGEMENT-PUBLIC DEFENDER ENGAGEMENT



# PUBLIC DEFENDER TEACHING IN THE HALLWAYS OF THE COURTHOUSE BEFORE COURT

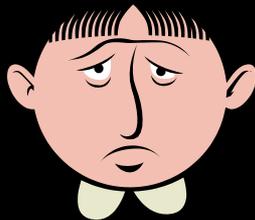


# DA TRAINING & ENGAGING BEFORE COURT- TREATMENT TEAM AND DEFENSE BAR PRESENT



# WHAT MAKES A DRUG COURT?

- Following behavior modification principles that use incentives and sanctions to address behavior and to support change.



Disappointment is a sanction!





You are a star!  
Great work today!  
Keep coming back!

DRUG COURT WORKS!

**CAUGHT DOING  
SOMETHING RIGHT!  
GREAT JOB!**

Drug Court Works!

**BUTTE COUNTY PROBLEM SOLVING COURTS**  
WHERE TREATMENT AND JUSTICE MEET

CHANGE ATTITUDE    CHANGE THINKING    CHANGE BEHAVIOR

ONE DAY AT A TIME

SHOW UP

PEOPLE PLACES AND THINGS

WORK HARD

GOOD DECISIONS

ASK FOR HELP



I AM A STAR !!



Showing up

Working hard

One day at a time

Attending treatment

Meetings

Sponsor

Steps in writing every day

Changing behavior

Changing thinking

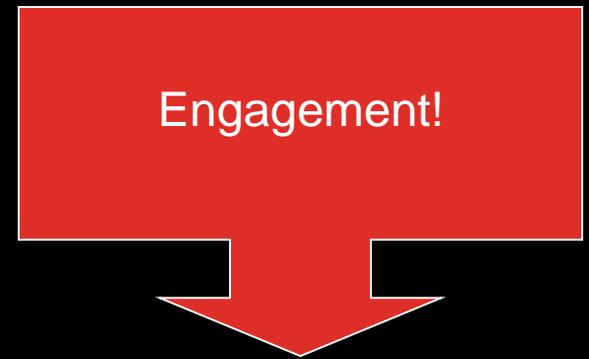
*Changing ME!*

Drug Court Works!

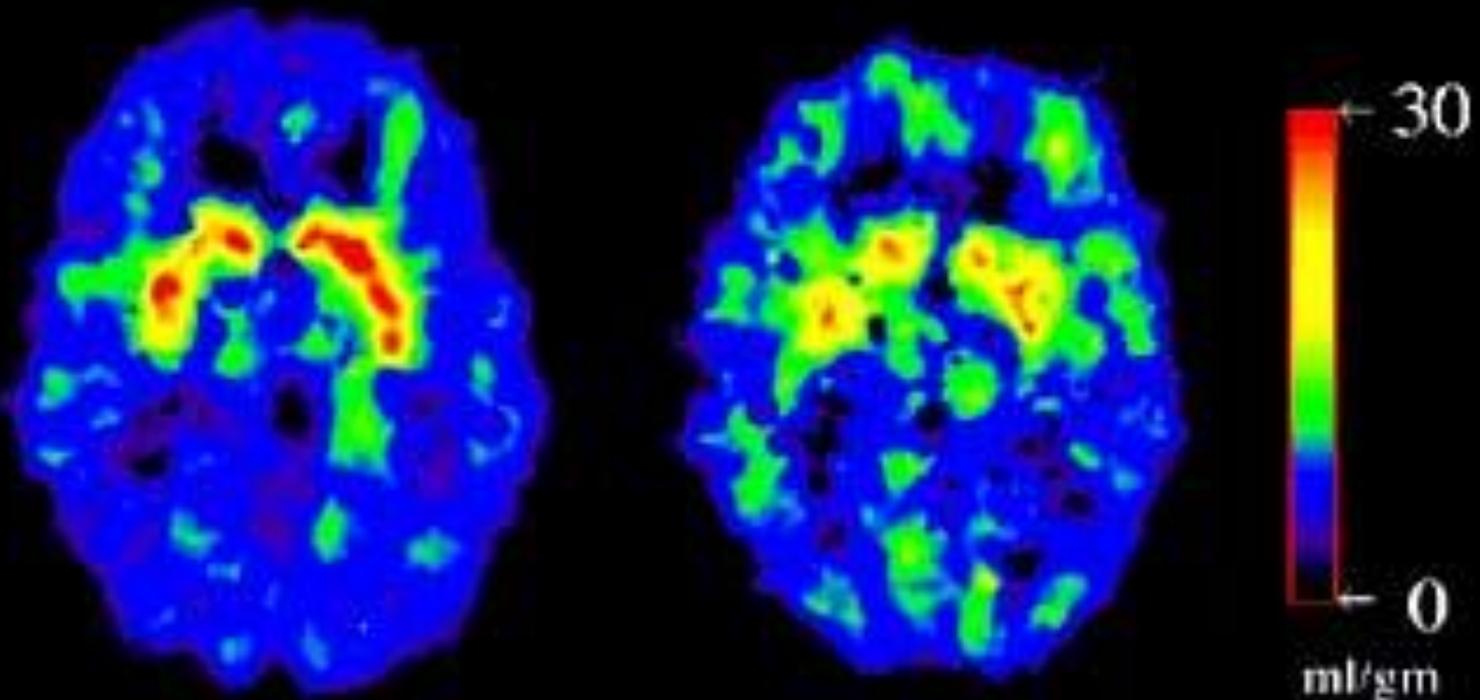


**RECOVERY WORKS  
IF YOU WORK RECOVERY**

- Having treatment staff attend court improves outcomes. Having attorneys and treatment staff attend is even better. (NPC, Oct. 2007)



- Understanding addiction and the psychopharmacology of drugs. Addiction is truly a disease of the brain. It is treatable.



**Control Subject**

**METH Abuser**

# SO HOW MUCH SENSE DOES “THREE STRIKES” MAKE?

- What does the research show us about the brain and recovery?
- How can we motivate the necessary change, and maximize outcomes while protecting the public safety?

# REALITY CHECK

- Counsel can be a great boon to drug courts
- Counsel can be a great impediment
- Our role is NOT limited to the strict application of due process. Our role is to protect the Constitution **and** maximize outcomes.
- A Pyrrhic Victory is no victory.
- Applying this model to lightweights is no benefit to the public.

# ATTORNEY ROLES:

1. Protect the Constitution
  2. Maximize outcomes
- Facilitate the treatment team and the plan when it meets #1 and #2
  - Only counsel can find the legal way to get treatment and probation's goals implemented.

# BEST PRACTICES

- Ensure that DA and Defense Counsel attend staffings and review hearings
- Advocate change in Canons
- Judges: avoid public activities (non-judicial) with participants, except for cameo appearance
- Respect ethical obligations of defense counsel

# FOCUS ON BEST PRACTICES!

- Who should attend staffing and court?
  - Treatment (9 times greater savings)
  - Public Defender (8 times greater savings)
  - Prosecutor (2 times greater savings)
  - Law Enforcement (2 times greater savings)
  - Whole team: (2 times greater savings)



# BEST PRACTICES

- Speed matters! Getting participants into the program within 20 days of arrest = twice the savings
- Single coordinating treatment agency = 10 times the fiscal savings.
- Treatment that has a phase focused on relapse prevention=3 times the savings

# IMPORTANT DETAILS....

- Better outcomes if folks are tested 2 or more times per week.
- Better outcomes if test results are back within 48 hours of test.
- Better outcomes if at least 90 days of documented abstinence before completion have larger savings.

# JUDICIAL IMPACT MATTERS:

- Status hearings every 2 weeks in phase one have more cost savings
- The Judge should spend three minutes per person
- The longer the Judge is assigned to drug court, the better the client outcomes.
- Judges do even better second time around, and they should stay longer than 2 years for greater cost savings.



# CLIENT INFORMATION MATTERS:

- Courts that have written rules and guidelines for team responses have 3 times the savings.
- Courts that use electronic data storage save money.
- Courts that evaluate and follow the recommendations have 4 times the savings.
- Courts who have community partners save twice as much.



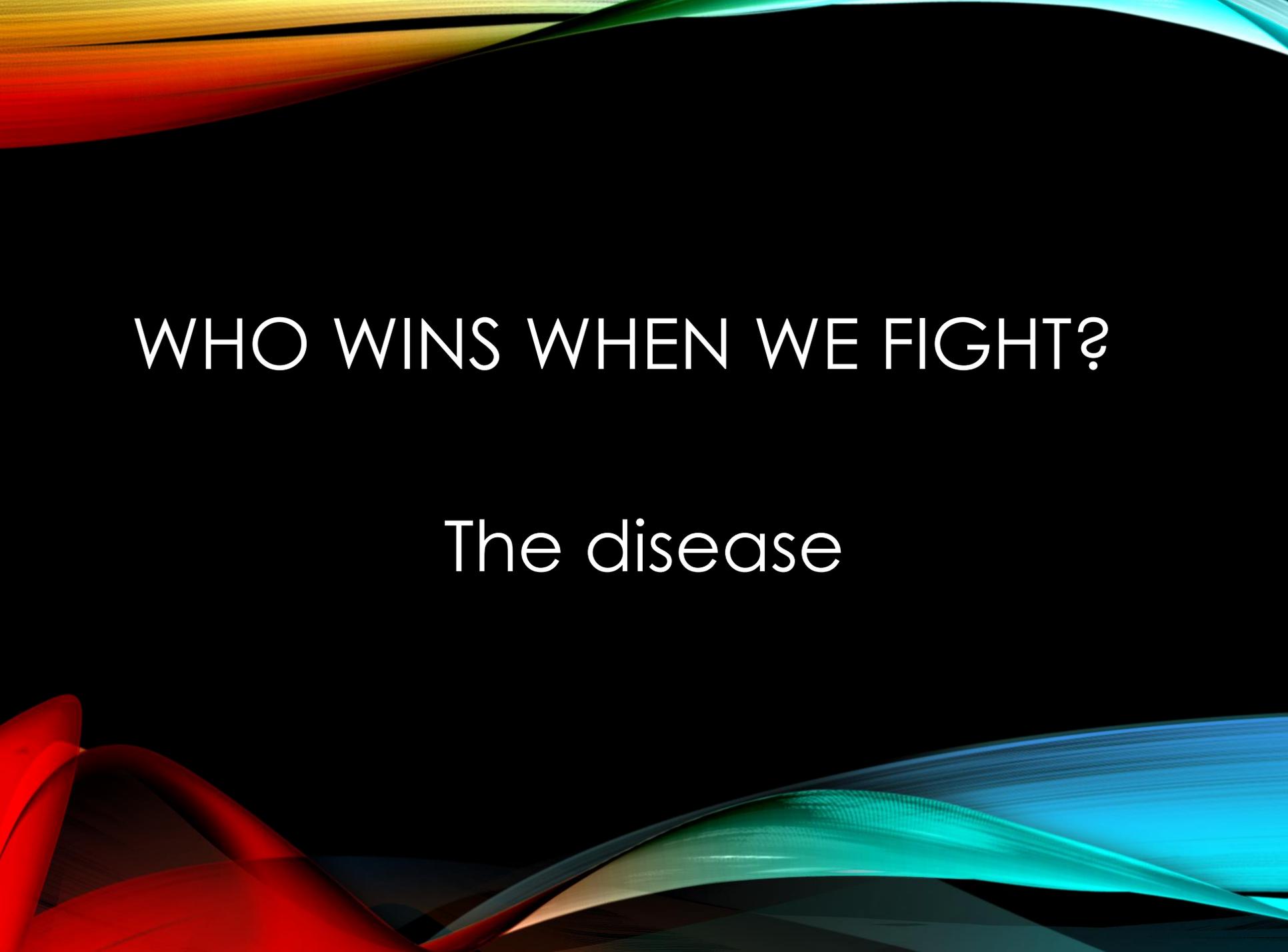
# MONITOR THE RESEARCH AND THE LAW!

- NPC Research Portland Oregon and others inform our practice!
- NDCI, NADCP and legal updates!
- [Porter93@msn.com](mailto:Porter93@msn.com) to email me.

# FUNDAMENTAL QUESTION REMAINS THE SAME.....

- Why do you have a problem solving court?
- What problems can you solve to make it more effective?
- What are your barriers?

As counsel in the Court, you have tremendous power.  
Use it wisely and maximize outcomes.



WHO WINS WHEN WE FIGHT?

The disease

# RESOURCES

- LEGAL ACTION CENTER, “Confidentiality and Communication”, (LAC 2006)
- NDCI, “Ethical Considerations for Judges and Attorneys in Drug Court” (May 2001)
- NDCI, “Federal Confidentiality Laws and How They Affect Drug Court Practitioners” (2001)
- NDCI, “Critical Issues for Defense Attorneys in Drug Court” (2003)
- GAINS CENTER, “Dispelling the Myths...” Feb. 2007
- Chapters in Judicial Manual on Ethics, Confidentiality & Legal Issues