

The Therapeutic Opportunity in Judicial Settlement Conferences

There is sound evidence that court processes and events can be modified to improve public safety, enhance rehabilitation efforts, reduce recidivism and save money – without jeopardizing the vital traditional roles of the Court, Prosecution, Defense, or compromising victim rights.

Specialty Courts, in particular Drug Courts, have demonstrated a valuable and straightforward principle: **The standing and formality of the Court provide meaningful therapeutic opportunity.**

Introducing this therapeutic opportunity is not a weakening of any aspect of the Court processes, or a move toward reflexive leniency – nor does it interfere with the processes of the Court. It has everything to do with understanding how and why people change, and creating or deepening commitment to change within the Court's process.

This approach requires that the JSC be regarded as a *process*, not only an *event*.

When JSCs are used as brief events just accommodating sign-offs on previously agreed-upon terms, all parties miss a very valuable opportunity to enhance adherence to the probation stipulations and rehabilitation efforts. Here's why: The Drug Court experience shows that the longer a Judge interacts with a participant, the lower the recidivism rate: "Judges who display a more positive judicial demeanor (e.g. respectful, fair, attentive, enthusiastic, consistent/predictable, caring and knowledgeable) produced better outcomes than other Drug Court Judges. The same can be said of allowing participants/defendants a voice – there is a clear correlation between participant success and voice."

Although the JSC cannot adopt the broad collaborative interdisciplinary approach of Drug Court, it can embrace many similar elements. For the JSC process to come to an informed conclusion, clinical data must be brought into the process. A thorough

assessment of the participant is required and must include, at a minimum, a detailed clinical formulation/diagnostic summary, prioritized needs, a determination of readiness to engage in treatment and all accompanying supporting data.

All parties should have a working knowledge of how treatment works and its limitations. If all parties are conversant in the basic mechanics of treatment, they will be able to engage in this productive JSC.

Historically, whether the setting is a Courtroom or an Emergency Room, the Judge or Physician has made the case for change in behavior in a prescriptive manner. Through the use of Motivational Interviewing (MI) techniques, the JSC moves from that approach to a setting in which the participant must articulate the need for her or his own treatment.

Long-accepted research shows that MI can identify cognitive discrepancies between a participant's stated goals and current behavior. Understanding the nature of that discrepancy is key to a participant generating a deeper, more lasting commitment to the change all parties hope to see.

To fully understand this approach, this text is recommended: *Motivational Interviewing – Helping People Change* by William R. Miller and Stephen Rollnick (Guilford Press).

Relevant highlights include these excerpts from the above text:

Three Definitions of MI

Layperson's definition: Motivational interviewing is a collaborative conversation style for strengthening a person's own motivation and commitment to change.

Practitioner's definition: Motivational interviewing is a person-centered counseling style for addressing the common problem of ambivalence about change.

Technical definition: Motivational interviewing is a collaborative, goal-oriented style of communication with particular attention to the language of change. It is designed to strengthen personal motivation for and commitment to a specific goal by eliciting and exploring the person's own reasons for change within an atmosphere of acceptance and compassion.

- **It is important to understand that MI skills can be developed and used by non-clinicians, and the technique can have real value in even the briefest of exchanges.**

MI involves four key processes that build on these and other steps:

Engaging is the process of establishing a helpful connection and working relationship.

Focusing is the process by which you develop and maintain a specific direction in the conversation about change.

Evoking involves eliciting the client's (in this case, participant's) own motivations for change and lies at the heart of MI.

The **Planning** process encompasses both developing commitment to change and formulating a concrete plan of action.

Five key communication skills used throughout MI ask open-ended questions, reflecting, summarizing and providing advice and permission.

(For more detail, you'll need to buy the book!)

A useful way to summarize the thinking behind this approach:

We know that commitments made to groups of people are experienced as more meaningful than those made to individuals.

We know that detailed commitments made to more formal groups in positions of authority or control --- such as the JSC – have more meaning.

We know that detailed commitments made to formal groups in authority when the participant has played an active role in shaping the commitment will have the highest likelihood of success/adherence.

Sources:

"Exporting Drug-Court Concepts to Traditional Courts: A Roadmap to an Effective Therapeutic Court," Jamey Hueston and Kevin Burke, *Court Review: Journal of the American Judges Association*, Vol. 52, Issue 1.

American Judges Association White Papers: "The Judge is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Courts," by Judge Brian MacKenzie and "Procedural Fairness" by Judge Kevin Burke and Judge Steve Leben, both available on AJA website.

"The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews" by Mark W. Lipsey and Francis T. Cullen, available on annualreview.org (Vol. 3, 2007, 297-320)

"Best Practices in Drug Courts," *Drug Court Review*, Vol. VIII, Issue 1, Summer 2012, publication of National Drug Court Institute, ndci.org