

Practicing Law in
Problem-Solving Courts
...is no easy matter!

What do we know about problem solving courts?

- They work
- There are ways to make them work better
- They work on a basic set of rules (10 Key Components, Guiding Principles of DWI Courts)
- They are research driven, and constantly improving.

Overview: Core Competencies

- Guiding Principles of DUI Courts
- Ten Key Components of Drug Courts
- Psychopharmacology of addiction
- Treatment strategies
 - Placebo
 - Engagement
 - Assistive medications
 - Assumption of co-occurring disorders
 - Complex case management.
 - Competent manualized treatment

Who should be in our courts?

- What is the goal? What is the issue?
- Who is the group most likely to produce significant drops in crime if they get treatment?
- Who needs tighter supervision to protect with public safety?
- Decision tipping point: when does incapacitation become more important than behavior modification?

Principles and Components

- Designed by subject matter experts.
Some are research verified, some not yet.
- They are the framework upon which we build problem-solving courts.

In each case, consider:

- What can attorneys do to implement or improve the performance of each component/principle?
 - As a DA?
 - As a defense counsel?

The rules seem simple:

- But often they change preconceived notions of what we should be doing
 - To protect the public.
 - To advocate for clients.
 - Does that mean we don't fight and disagree?
HECK NO! *But it does mean that we fight in a different place and time.*

So what is the role of counsel in a problem solving court?

- Advocate...for what?
- Protect due process?
- Focus on outcomes that benefit the community and improve the program?

Why would we do something different than we always have?

- Do you think what traditional responses to addiction based offenses work as well as you hoped they would?
- Do you think the public is pleased with the standard criminal justice outcomes?
- Are you pleased with outcomes?
 - What could be better?

What's in it for the defense??

- What about the idea that you're selling your clients down the river?
- What about the idea that this is too tough?
- What about the idea that folks would do less time on a terminal sentence?
- What about the idea that you're not REALLY practicing law?

What's in it for the DA???

- Is it a career killer?
- Do you get promoted from a drug court assignment?
- Isn't this just another soft on crime "hug a thug" program?
- Is this why you became a prosecutor and litigator?

We start with a group exercise:

- I'm going to show you an email
- Take 5 minutes
 - Tell me what is “wrong” with this email from your discipline view.
 - Tell me what is right with this email from your discipline view.

- **From:** , **Public Defender**
- **Sent:** Tue 9/4/2007 9:13 AM
- **To:** Olson, Sheila; Grubbs, Jamie; Harberts, Helen; Nelson, Cyla
- **Cc:** Benson, Steve
- **Subject:** Erik Martinez

- He just called me crying.... He used meth last night. He is asking for help. He wants/needs residential treatment.
- I told him to call Shiela and Jamie.
- This 22 year old young man has had a horrible life filled with abuse and prison. If we can't respond to his request for help now the chances are pretty good the rest of his life will be spent in and out of state prison.
- He has already been to one of the tougher prisons in the state.... For him to call me, crying, and asking for help is rather remarkable.
- I hope BH can and will get him into a residential program immediately.
- He is set for review on 9/5.

What issues do you see?

- Defense?
- Prosecution?

FYI: Same young man...

- Also called me and left a similar message on my phone a month later.
- (Ethics alert!)

Defense Attorney Quote

“I like "winning" as much as the next guy but I don't find that my clients lives change when that happens. Frequently they are back with new problems that aren't "beatable". In the recovery court you have true successes. Many are never seen again (as you know). “

Comments?

- Does that reflect your experience?
- Prosecutors: what happens after you get the conviction? Do you care? Should you care?
- Defense: what happens after you win a VOP, etc.? How can you support accountability and good outcomes?

“Only in Drug Court” stuff...

- Major ethical challenges...
- Major reversal of roles
- Clients crying because....

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.

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

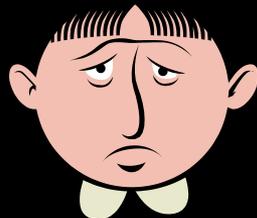


DA training & engaging before Court-treatment team and defense bar present



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

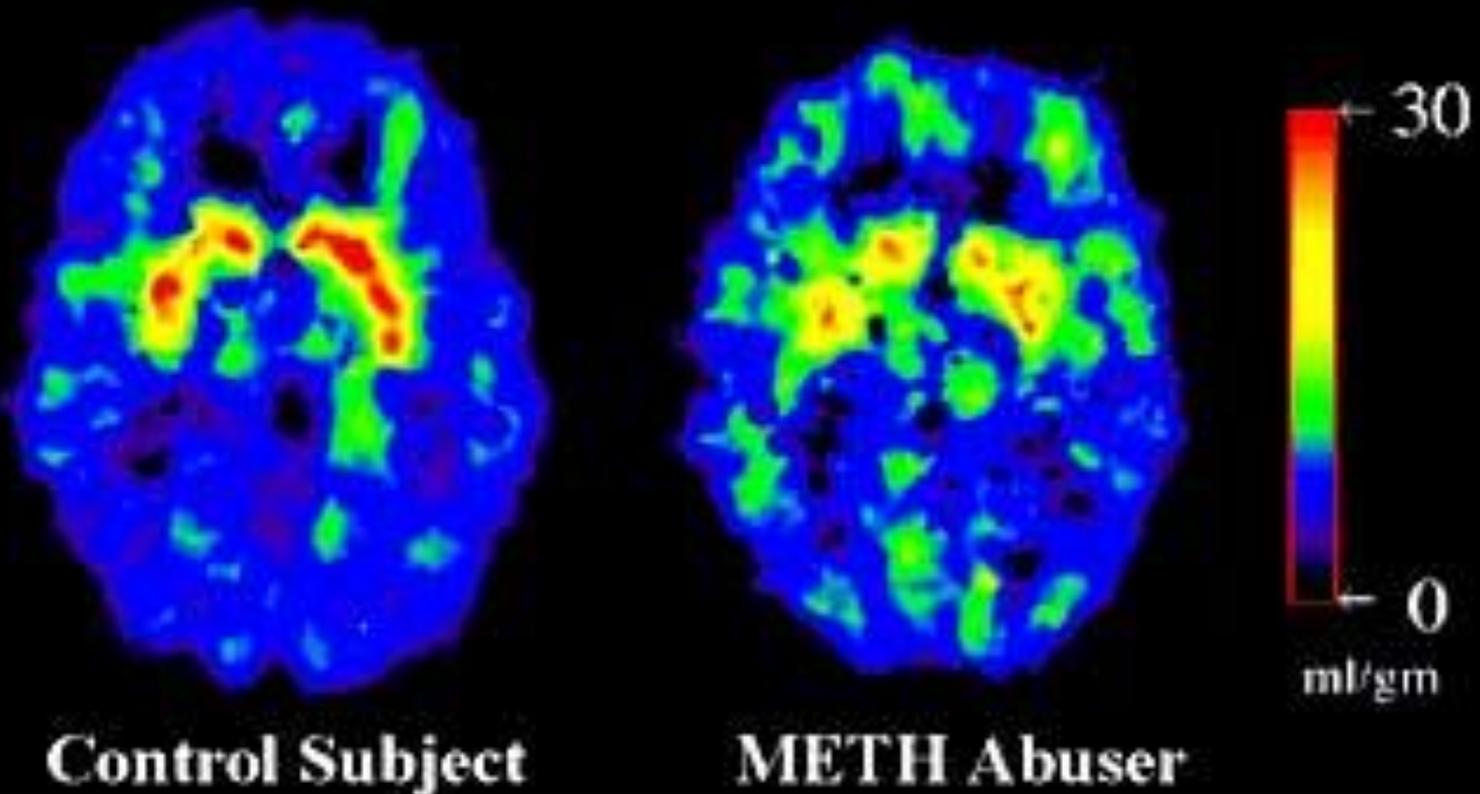
Changing thinking
Changing ME!

Drug Court Works!



**RECOVERY WORKS
IF YOU WORK RECOVERY**

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



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?
- Do not discharge folks too quickly. Be patient. Think “stroke patient”.

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.

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