

Didactic Fragments

Summary of Therapeutic Dialogues for Judicial Interviewing

Defining Solution-Focused Interviewing

The mental health court as a “problem-solving” court is particularly suited to the framework of solution-focused interviewing, which is an alternative perspective to medical and problem-oriented models of interaction with mentally ill individuals. Solution-focused interviews are primarily organized around activities involving (1) the development of well-formed goals consistent with the frame of reference of the mentally ill offender and, (2) the development of solutions based on exceptions, or times in the life of the offender when legal and/or mental health problems could have occurred but either did not occur or were less severe in their occurrence. Although the mental health court judge does not act in the same capacity as a clinical therapist, still the dialogue and structural tools of solution-focused interviewing can enhance the process of change to which the mental health court program is dedicated.

Basic Solution-focused Activities:

1. Developing well-formed goals:
The characteristics of well-formed goals are that they are small, concrete, important to the individual, and represent the beginning of a difference in the life of the individual and not the end result. The structure of the solution-focused interview process, no matter how brief, is designed to help the defendant develop a sharper vision of what life will be like when the problems that brought them before the court are effectively managed, or in other words, helping the defendant develop a vivid picture or description of a more satisfying life beyond the criminal justice system (however not necessarily beyond the mental health treatment system). Any goal of the defendant represents a good starting point toward a workable solution; however workable solutions will more readily emerge from the defendant’s answers to questions about what has already worked and what might be different as they engage in the activities of the mental health court program.

2. Developing exception-based solutions:
Developing exceptions is the activity of exploring occasions in the life of the defendant when their problems were less severe or absent, and who or what contributed to this difference. The context of those times when the defendant’s problem could have occurred but did not, in terms of who, what, when, and how, provide the important logistics of the exception and shifts the focus of attention on the positive times in the defendant’s life where the defendant’s strengths are brought into perspective and then reinforced to create solutions for the here-and-now. Exceptions to the clinical and judicial problems that combined to involve the defendant in the mental health court program may occur throughout the course of the program, and can readily be explored for detail about difference.

Defining Motivational Interviewing

Motivational interviewing was originally developed in the 1980's by William Miller, Ph.D and Stephen Rollnick, Ph.D, as a strategy for assisting clients in the process of making commitments to behavior change. It was initially targeted to individuals who were subject to addictive behaviors; however, with the further development of brief motivational interviewing, the approach has been broadened to assist in the management of change with other critical or vulnerable populations.

The fundamental premise behind motivational interviewing is the issue of ambivalence inherent in the change process. With respect to the mental health court, many defendants may be unaware of the necessity for change, or prone to patterns of denial that prohibit successful change, or they may misinterpret the seriousness of their conduct and/or condition and the negative consequences likely to occur if change is not forthcoming. Alternatively, some defendants may understand the need for treatment and the prescribed course of services, but may be unable to see any way to fulfill the treatment objectives without overwhelming difficulty. Consequently, they may lack the confidence or self-efficacy necessary to successfully or fully engage or see the course of treatment through to completion. Such individuals may subsequently get caught in the snare of ambivalence. Ambivalence in turn directly affects defendant motivation and readiness to change and places unnecessary inhibitions in the way of the defendant's ability to acquire appropriate coping strategies important to the success of the change process.

The four principles of motivational interviewing are namely: (1) Expression of empathy, (2) Development of discrepancy, (3) Rolling with resistance, and (4) Support of self-efficacy. These principles are employed as a focused response to ambivalence in the crucial change stages of contemplation and commitment. Through interaction and dialogue with the mentally ill offender that is respectful and empathic, the practitioner facilitates a therapeutic environment of mutual trust and shared intention. By adopting a collaborative and stage sensitive approach, the practitioner is less likely to strengthen the defendant's ambivalence to change and conversely more likely to stimulate open communication. The four primary principles of motivational interviewing are described as follows:

(1) Expressing Empathy

Empathy requires the exercise of active listening in order to accurately reflect what the consumer is communicating which is an important ingredient in generating a sense of recognition and acceptance. Empathy therefore is not an emotional alignment with the defendant in which the judicial practitioner experiences the same affective states as the defendant, but an alignment of deep understanding which communicates meaningful attention and interest in the individual distinct from either their crime or their illness.

(2) Developing Discrepancy

Discrepancy refers to the process of making distinctions between self-defeating actions and more valued courses of action that are consistent with the defendant's intrinsic worth. This involves helping the defendant to elicit and identify those life aspects that are more enduring and meaningful and which stand at variance with current patterns of criminal as well as self-

defeating behavior. In the process of developing discrepancy, the defendant is assisted in shifting their decisional balance in favor of more effective and rewarding choices. The judicial practitioner must gain a deep level understanding of what is truly meaningful and significant to the defendant relative to both immediate and longer-term goals and objectives. In addition, it is important that the practitioner acquire a clear understanding of the defendant's value and belief systems in order to assist in the transition out of the position of ambivalence toward commitment and action for self-change.

(3) Rolling with Resistance

Motivational interviewing in its collaborative approach is essentially non-confrontational. This means that judicial and clinical practitioners utilize empathy and reflection to diminish the possibilities of defensive interaction that tend to promote resistive power struggles. The phrase "rolling with resistance" portrays the characteristic of flexibility on the part of the mental health court practitioner. The practitioner must recognize that resistance or difficulty in adherence to judicial prescriptions and rehabilitative plans and goals often demonstrates the energy inherent in the mechanism of ambivalence. When program participants are resistant, angry, or otherwise needing to express independence, rolling with these episodes increases the likelihood that the defendant will remain engaged and potentially more receptive to the process of judicial reconciliation. The degree of flexibility and allowance of deficits of compliance with both clinical treatment and judicial assignments must be appropriately weighed against the court's legal authority however. Rolling with resistance does not necessarily mean that the court simply tolerates a defendant's failure to adhere to the legal and clinical requirements of the program. The court must maintain a position of authority, but do so with a minimum of authoritarian style. Otherwise, the defendant is likely to confuse the court's empathy and flexibility as a weakness and an absence of authority. The traditional approach of criminal justice is generally adversarial in nature, however, the exercise of empathy and flexibility in the management of ambivalence, represents the alternative approach in the mental health court and is characteristic of what is termed "compassionate accountability."

(4) Supporting Self-Efficacy

Consistent with the Social Cognitive model forwarded by Albert Bandura, self-efficacy is an important aspect of human motivation. Self-efficacy beliefs are judgments individuals make about their capability to succeed or perform effectively. How capable we perceive ourselves related to any given task or challenge influences our thought and behavior. Whether we think productively, destructively, pessimistically or optimistically and how well we motivate ourselves and persevere in the face of adversity is influenced by our perceived self-efficacy.

There are four basic domains, as outlined below, through which self-efficacy is cultivated and developed to maturity, each of which is utilized strategically in the mental health court program.

Personal Mastery Experiences

The most influential source for the formation of self-efficacy is the interpreted result of a defendant's previous performance, or what are referred to as mastery experiences. Individuals engage in various tasks, assignments, and activities, interpret the results of their actions, use these interpretations to develop impressions and beliefs about their capability to effectively engage in subsequent tasks and activities, and then act according to the belief system they have created.

Vicarious Modeling Experiences

Another source of self-efficacy development although less influential is the vicarious experience of observing human models performing challenging tasks and activities. The effects of human modeling are particularly relevant when individuals are uncertain about their own capabilities or when they have limited prior experience in particular tasks or activities. Observing the successful performance of human models can positively stimulate the observer's consideration of their own capabilities, especially when the model shares particular characteristics with the observer.

Persuasive Social Experiences

Individuals also create and develop self-efficacy beliefs as a result of the social persuasions they receive from others. This is essentially a coaching model in which mental health court program participants are afforded the opportunity to experience frequent and consistent positive verbal affirmations as well as genuine and constructive verbal judgments. Social persuaders, such as the presiding judge in the mental health court, play an important role in the program. Through the persuasive process, which is not to be confused with trivial, empty, meaningless or gratuitous praise, mentally ill offenders are supported and guided in the recognition of their strengths and potential capabilities.

Somatic/ Emotional Experiences

Finally, somatic and emotional states such as anxiety, stress, arousal, and mood also provide cues about efficacy beliefs as individuals often gauge their degree of confidence by their emotional perceptions as they contemplate an action. Strong emotional reactions of fear, apprehension, dread, or anxiety provide signals regarding the anticipated outcome of either success or failure in any given task. When individuals experience negative thoughts and feelings about their capabilities, those affective reactions tend to lower self-efficacy perceptions and trigger additional stress and agitation that may fulfill the inadequate performance the individual already anticipates. The mental health court program works to raise participant's self-efficacy beliefs through the program's judicial and clinical activities and curriculums which target the improvement of physical and emotional states.

Defining Transformational Interviewing

In part, the work of human change for the change agent in the mental health court is to come to know and understand each defendant as an individual entity and how each one perceives and represents the territory of their experience. A fundamental epistemology or primary way of knowing

and understanding the defendant is through their use of language, and as language functions as the primary way in which human beings model or represent their experience, much of the work of therapeutic dialogue from the perspective of NLP focuses on the use of language as a specific tool of change. The same principles relative to the structure of language utilized in the clinical setting can also be employed to some degree in the judicial interview during the defendant's status hearing. In other words, the language exchange between Judge and defendant, given the proper structure and consistency over time, can be transformational in nature such that it becomes at least a quasi-therapeutic encounter that may more effectively support the defendant's commitment to behavior change throughout their participation in the mental health court program.

Human language as a system of communication contains an implicit structure or organized set of semantic and syntactic rules which identify which sequences of words determine if the communication is well-formed and makes appropriate sense in the representation of human experience. Language behavior is therefore rule-governed even though this linguistic structure or pattern of communication generally operates out of awareness. Transformational grammar is essentially the scientific discipline that identifies and studies the patterns of rule-governed behavior as applied to the expression of human language. As a result of such study, it has been possible to develop a formal and descriptive model of communication patterns utilized in the process of representing and communicating human experience, in other words, the use of language as a representational model of the individual speaker's world, a model of a model, or a meta-model.

The fundamental premise is that language serves as a representational system for our experiences. Our possible experiences as humans are tremendously rich and complex. We code our experiential reality using language, thus creating a representational map of our perception of reality. But we typically delete, generalize and distort information subsequently obscuring its connection to its deeper meaning. Just as the map is not the territory it represents, so the word naming a thing is also not the thing named.

The Meta Model is composed of three main classes of processes each of which violates semantically well-formed communication. As indicated previously, these linguistic processes can foster greater or lesser opportunities of choice in the perceived world of the individual depending on how and in what context they are employed. Ultimately, the Meta Model tool functions to help clarify unspecified language representative of an impoverished map of an individual's experience, thereby restoring a fuller representation of that experience.