

Michigan Judicial Institute Magistrate Specialty Webinar

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Using Motivational Communication

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2021 Magistrate Specialty Webinar

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*“The single biggest problem in
Communication is the illusion
That it has taken place.”*

-often attributed to
George Bernard Shaw.
Although it’s doubtful
he ever said it.

“If I Understood You, Would I Have This Look
on My Face?” Alan Alda

Goals and Objectives

"A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary."

Michigan Code of Judicial Conduct

1. Enhance Magistrate Communication Skills
2. The Healing Power of the Law:
What have we learned from the Success of the Treatment Courts?
 - A. Lesson Learned # 1.
"The Judge is a Key Component of Treatment Court"
 - B. Lesson Learned # 2
"Change: Motivational Communication"

"A judge should be patient, dignified, and courteous to litigants...witnesses...and others with whom the judge deals in an official capacity." Michigan Code Judicial Conduct

Role of the Courts: Not just the right decision!

As important as the decision,

The communication and process in getting there.

The Research - The way we speak and listen to people affects whether we achieve the goals, values and principles of the Judiciary and gain the confidence of the public:

- Equal justice under the law and substantive due process.
- Procedural fairness – Access to justice – Voice – Trust
- Respect for the Law and compliance with its orders.
- Public Safety - Deterrence and Reduction of Recidivism.
- The 'Healing Power of the Law.'

(Example: Treatment Courts)

Magistrate Role

Substantive Law & Procedure

Behavioral Sciences

Analytical Skills

1. Find the Facts
 - +
2. Determine the Law.
 3. Apply the Law to the Facts
- = Judgement

Magistrates - The Face of the Court

Interpersonal Communication Skills
Understanding the Human Condition
Behavior Change

Magistrates and Communication

“Communication is the Most Important Skill in Life”

Writing

Reading

Four Basic Types of Communication

Speaking

Listening

Enhancing Communication Skills

Speaking

As important as **what** the magistrate says is **how** he or she says it. Messages are conveyed to individuals by speech, by body language and by tone of voice.

Researchers estimate between 65% and 93% of communication is nonverbal.

- Speak loud enough, posture, gesture, Facial expression.
- Respectful tone of voice – Dialogue vs. Lecture
- Proper name – Pronounced correctly
- Clarity – Plain language – Avoid Legalese
- Eye Contact, Eye Contact and Eye Contact
- Attention to Cultural Issues – Meanings can vary
- Ending with “Any questions?”

Army infantry school is doing away with 'mean, nasty' **shark attack** methodology at basic training.



51 YEARS 'TOO LATE'

Enhancing communication skills

Listening

“The difference between hearing and listening is paying attention.” Ruth Messinger

Barriers

- Physical/mental distractions (noise, disruption)
- Thinking ahead of the speaker:
 - Developing counter-argument
- Message overload/listener fatigue
- Stress, physical discomfort
- Fear of appearing ignorant; and
- Preoccupation/boredom
- Time pressures.

Question: Can the Lessons Learned from the success of the Treatment Courts be Applied to:

- **The Traditional Criminal Justice System?**
- **To the Role of the Magistrate?**
- **Mission Statement** – What is the role of the magistrate? Is the role consistent with the values and Principles of the Judicial Branch of Government?
- How do we apply the values and principles to the various duties of the magistrate?



Issue: Time Management for Magistrate

Challenge # 1. Keep an Open Mind

How Can a Magistrate Develop Trust, build a Relationship, and change behaviors in the Time Allotted for our Work?

- The structure of the Treatment Court is not designed to be modeled in the magistrate setting, however, many of the building blocks and Best Practices can, and should be modeled.
- Brief encounters and interactions can be as beneficial as more lengthy interventions.

Challenge # 2: We are all different. Question: How do I adapt and enhance my communication skills to my duties as a magistrate.

Treatment Court Lesson Learned # 1.

“The Judge is a Key Component”



“After reviewing the mounting literature on the success of DTCs, researchers have confidently concluded that **the power of the judge-participant relationship is so immense** that it may have “effectively suppressed all other theoretical mechanisms’ that could potentially lead to desired outcomes.”

“The Judge is the Key Component: The Importance of Procedural Fairness in Drug-Treatment Courts.” AJA Court Review – Volume 52. Citing “Shellli B. Rossman et al., 4 The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts 6 (2011).”

“Judges exert considerable influence and authority over offenders; and, when used in a strategic manner, such influence can elicit positive change.”

Challenge # 3: What ‘strategic manners’ will you employ to influence positive change?

TIPS:

1. Embrace your courtroom experience, the manner in which the judicial officer interacts with parties, witnesses and others.
2. Use Motivational Communication.

Engage Elicit
Focus Plan



- **Engage:**
 - Humanize the experience: Appearing approachable and accessible.
 - Make eye contact and appear alert, and knowledgeable about the case before you.
 - **Engage** in Dialogue. (Open-ended questions)
- **Elicit:**
 - Use Plain English.
 - Words Matter. Avoid negative language, sarcasm.
 - Avoid creating ‘oppositional patterns.’ (‘You would think’ questions)
- **Focus:**
 - On case at hand: No disruptions (files, computer, staff, etc.)
 - Listening (Empathic Listening)
- **Plan:**
 - Structure your courtroom setting; optimal communication.
 - Manage the courtroom to promote perceptions of fairness

Treatment Court Lesson #2 “Motivational Communication”



- Motivation Interviewing is an ‘Evidence-Based Practice’ that Promotes Meaningful Change.
SAMHSA (2008)
- A “collaborative conversation style for strengthening a person’s own motivation and commitment to change”
Miller & Rollnick, 2013
- Communication Plus: Involves going beyond the basic communication skills that further the values and principles of the justice system to enhanced communication that partners with the therapeutic alliance for changing behavior.

Change: Behavioral Science In a Treatment Court:

How Does a Judge Drive Participants into Self-Directed, Sustained, Positive Behavior Change?

Answer: *They Don't!*

Who is Driving the Bus?

The research is clear:
Change rests with
the PARTICIPANT.



It is the participant’s own reasons for change that will ultimately result in behavioral change.

Humans: Ubiquitous Resistance to Change

The Risk of Heart Attack

Static and *Dynamic Risk Factors

1. *Elevated LDL and low HDL levels
2. *Smoking
3. *Diabetes
4. *Hypertension
5. *Abdominal obesity
6. *Psychosocial (i.e., stress or depression)
7. *Diet (i.e., lack of fruits and vegetables)
8. *Failure to exercise

More highly predictive of having a heart attack than others. Compare to difficulties of those affected by change in brain chemistry and cravings.

Behavior Change

- Where does change come from?
- Who does change belong to?
- Answer: **All change is self-change!**
- Most people are 'ambivalent' about change (even though need is there)



The Issue Is: What are we doing in relation to the participant's change? Are we:

- a. bolstering, reinforcing, encouraging, supporting and facilitating change, or
- b. hindering or undermining change.

When talking about Motivational Communication, we're talking about a process that is often the antithesis of traditional criminal justice processes.

Offender Rehabilitation and Risk Management

A Judicial 'Balancing' Act Between Two Goals

Compliance: Rules/Sobriety

Follow the rules. Short-term acquiescence to power and authority. While offender following rules, public safety enhanced.

Problem: that may not extend beyond a term of supervision.

Compliance communicates:

'A brief stabilization of Behavior'

Behavior Change/Recovery

This involves a combination of motivation, self-evaluation, and the development of new behaviors. Lasting behavior change is motivated by self-important values. Result is a reduction in recidivism.

Using M.I. techniques tailors motivational strategies to the participant's stage of change.

(Prochaska and DiClemente)

Can a Judge and Court Team (Magistrate) be Trained in Engagement Strategies?

Tempering the 'Traditional' Style

- We are 'trained' to talk (not listen), to reason, to persuade, to opionate, to correct, to confront, to challenge, to explain consequences for bad behaviors, to identify and argue for the needed change, to argue period, and to HURRY.

Learning 'New M.I. Style

- Avoiding the 'Visceral' reaction.
- Resist the 'Righting Reflex'
- Roll with 'Resistance'

Learning 'New M.I.' Style (cont'd)

- Set aside our goals and values and listen.
- Accept and understand the participant's goals and values.
- Use Reflective Listening
- Without judging! HUH?
- Develop discrepancy
- Promote self-efficacy (The Participant is responsible for choosing and carrying out personal change and must feel able to do so)

The Basics of Motivational Communication (Interviewing)

Motivational Interviewing establishes an empathic, person-centered counseling approach that prepares people for change:

- By engaging the participant and building a relationship
- By listening
- By resolving ambivalence (both wanting and not wanting something at the same time)
- By enhancing intrinsic motivation
- By understanding and supporting the participant's goals and values.
- And, by building hope and confidence to change.

(Kraybill and Morrison, 2007)

The Motivational Continuum

Motivational Approaches:

- Old thinking: Client must demonstrate a level of motivation to change prior to entry into treatment, and without it - Counseling would be ineffective.
- Motivational approaches, however, disprove this notion.
- Current theory: Most individuals enter treatment under some sort of duress, (trauma) which results in resistance, or, at best ambivalence, regarding any change in behavior.
 - (Likewise: Many individuals enter the court system under some sort of duress and a history of trauma, often manifested in resistance, anger and hostility.)
- Motivational approaches focus on ways to engage offenders in considering, initiating, and continuing treatment and change.

”Seek First to Understand, Then to be Understood.*

If you want to interact effectively with me, to influence me, you first need to understand me!

Overcoming the barriers: Building Trust

- ▶ Many individuals come to the court setting with trepidation, fear, anger, and defensiveness.
- ▶ For many, prior experiences have not been favorable
- ▶ Many believe the odds are stacked against them.

How Does the Court and Staff Address the Barriers?

“Most people do not listen with the intent to understand; they listen with the intent to reply. They’re either speaking or preparing to speak. They’re filtering everything through their own paradigm, reading themselves into other people’s lives.”

*Stephen R. Covey, The 7 Habits of Highly Effective People



Engage the Defendant

Create the structure and the atmosphere that are conducive to change.

- By openly exploring a person’s interests, concerns and values with **curiosity**.
- People come in with a range of readiness but what we say beyond that makes a difference in how that person speaks, thinks, and ultimately chooses to act.
- Help the participant find their goals and values and their reasons and desires to change, any potential barriers, and then bolster their ability while guiding them in the direction for meaningful rehabilitation.
- Using M.I. techniques the judge, P.O. and treatment tailor motivational strategies to the individual’s ‘Stage of Change.’

M.I. teaches you to strategically steer a conversation in a particular direction:

- People can talk themselves into change (linguistic research)
 - Goal: Notice and Elicit Change Talk (Self-Motivation speech)
 - Goal: Move away from Sustain talk (I am happy using drugs)
- MI helps people recognize the discrepancy between their present behavior and their important personal goals.
 - Goal: Connecting the need for change to something they care about and helping them find direction as they move forward with change.
- We all have ambivalence: Holding mixed views about a subject without a clear resolution in sight. Feeling both positively and negatively about the same thing at the same time.
- MI internalizes the change process moving people more quickly toward their values and away from ambivalence.

Participant Interaction: Change Statements

A person who talks about the benefits of change is more likely to make that change:

‘My use has gotten a little of hand at times.’

Strategy: Open-ended Questions.

- What have you tried before to make a change?
- What do you think you will lose if you give up?
- What do you want to do next?
- **Strategy: Affirmations.**
 - That was not easy. You handled yourself really well in that situation.
 - That’s a good suggestion. I can see that you are thinking about your recovery.
 - It is obvious that you are working hard, keep up the good work.

Listening: Use Summaries

Summaries are special applications of reflective listening.

- Particularly helpful at transition points:
 - After the person has spoken about a particular topic, or
 - Has recounted a personal experience, or
 - When the encounter is nearing an end.
- Summarizing helps to ensure that there is clear communication between the speaker and listener. Also, it can provide a stepping-stone towards change.
- **Structure of Summaries:**
Begin with a statement indicating you are making a summary:
 - Let me see if I understand so far...
 - Here is what I've heard. Tell me if I've missed anything.
 - Point out discrepancies between the person's current position and future goals.

Empathic Listening

Listening with the intent to understand.

- ▶ Getting inside another's frame of reference
- ▶ You see the world the way they see the world
- ▶ You understand how they feel.
- ▶ Empathy is not sympathy.
- ▶ The essence of empathy is not that you agree with someone; it's that you fully, deeply, understand that person, emotionally as well as intellectually.

How to learn how to Listen?

Practice – Practice - Practice

What Principles of Effective Communication Can We Mine Out of the Scenario?

1. Did the magistrate first seek to understand and then to be understood?
2. Did Mr. Smith have 'voice?' Was the proceeding fair?
3. Was magistrate listening? Attentively Listening? Pay attention and focus energy on the words that were being said.
4. Was there effective non-verbal communication? Eye to eye contact? magistrate nodding?
5. Was there a summary of Mr. Smith's argument. A rephrase of Mr. Smith's position and did magistrate 'reflect the feeling.'
6. Empathic Listening – Did magistrate communicate that he understood Mr. Smith's feelings. (Frustration is the feeling, speeding ticket is the content)
7. **Note:** Mr. Smith 'opened up a bit?' Why?

"The Healing Power of the Law."

When you authentically seek to understand, as you rephrase content and reflect feeling, you help others work through their own thoughts and feelings.

Barriers fall, discrepancy builds, trust develops, understanding grows, change from within occurs.

Result: Professional Reward/Satisfaction



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