ADR NEWSLETTER
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Better Communication through Motivational Interviewing

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When broken down into its most basic parts, communication consists of talking, listening and the environment in which it takes place. However, anyone who has left a conversation feeling misunderstood or frustrated knows there is more to effective communication than these elements. When working with individuals involved with the criminal justice system, it is particularly crucial for reentry team members to understand effective communication strategies.

The practice called motivational interviewing is an evidence-based method of communication that encourages behavioral change by increasing internal motivation. It was developed originally for use in addiction treatment then spread to reentry courts and pre-trial diversion settings. The premise is that the way in which we talk and listen directly affects a person's motivation to change. In addition, a positive, collaborative environment can build self-respect in the individual and trust in the relationship, leading to increased compliance and rehabilitation.

The following is a brief overview of motivational interviewing techniques that have been found to build

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Court Staff Share ADR Expertise with International Visitors

Well regarded ADR practitioners from two federal courts were among the faculty gathered by the University of California Hastings College of the Law last year for an international educational program for judges, attorneys and court administrators from around the world.

The husband-and-wife team of Claudia L. Bernard and Howard Herman participated in the 2013 Summer Legal Institute, which was organized by the law school's Center for Negotiation and Dispute Resolution. Ms. Bernard is the chief circuit mediator of the United States Court of Appeals for the Ninth Circuit, while Mr. Herman is the ADR director for the U.S. District Court for the Northern District of California.

The institute, which attracted attendees from some 25 countries, prepares legal professionals to implement court ADR programs

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Howard Herman, ADR director for the U.S. District Court for the Northern District of California and Claudia L. Bernard, chief mediator of the U.S. Court of Appeals for the Ninth Circuit

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While in San Francisco, participants in Hasting's Summer Legal Institute visited the James R. Browning U.S. Courthouse. They received a tour of the historic courthouse and were invited to a reception. Some of the attendees are pictured above. Seated are Claudia Bernard, Howard Herman and their fellow instructor Sheila Purcell, who serves as the director of Hasting's Center on Negotiation and Dispute Resolution.

in their home judicial systems. Participants learned how to lay the groundwork for a successful court-based ADR program by working with local stakeholders in assessing community needs and choosing ADR processes best suited to those needs.

Participants learned how to implement, evaluate and modify a program once it is underway, particularly how to screen and select appropriate cases. They also received instruction on selecting and training neutrals to work in their programs, including recognizing necessary personal qualities and skill sets, and how to deal with ethical problems and confidentiality issues.

The educational program involved a mix of theoretical and practical classroom presentations and simulation exercises. Participants were able to observe selected court ADR programs in the San Francisco Bay Area. They also received one-on-one consultation with the lead trainers to allow each participant to explore issues specific to his or her own country's legal system and needs.

Attendees visited the James R. Browning U.S. Courthouse, the Ninth Circuit's historic headquarters building, for a reception and a ceremony marking their successful completion of the program.

The Summer Legal Institute, is funded through grants from the JAMS Foundation.

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rapport, increase internal motivation, and improve communication. All information has been taken from Motivating Offenders to Change: A Guide for Probation and Parole. A full copy of the text can be found at this link https://s3.amazonaws.com/static.nicic.gov/Library/022253.pdf.

Talking: Talking is not as easy as it may seem. Without even realizing it, people often speak in a manner that cuts off effective communication and encourages others to emotionally close down. When used purposefully, talking builds bridges between people.

Talk less: Often people talk out of habit because they are in a position of authority or because they are unsure of what to do or say next. Don't be afraid of silence.

Use open ended questions: "Where do you think we should go from here?" "What problems has your drug use caused for you?"

Encourage change: Change is a messy process that takes time. You can increase the person's internal motivation to change with like, "How do you feel about your ability to make changes in your life?" "What are the pros and cons to making this change?" "What kinds of things do you look forward to once you have made this change?"

It is a misconception that discussing negative emotions and behaviors will only increase their occurrence. In fact, the opposite is true. People should be given the opportunity to work out feelings of ambivalence, mixed emotions, and discrepancies in behavior and find solutions to their concerns.

Use scaled questions: "On a scale of 1 to 10, how important is it for you to…? On a scale of 1 to 10, how ready are you to make a change in regard to…?"

Point out discrepancies: "I hear you saying that you want things to change and yet you also chose not to meet the goals you set last week of putting in two job applications. I'm wondering if you are having mixed feelings about making changes?" "I hear you saying you want to make changes in your life. I also hear you refusing to set any goals. How do you feel about this contradiction?"

Seek a solution: Stay solution-focused and ask the participant to solve the problem. "Tell me a time when you were successful." "How can you apply that kind of success to ____?" How do you think you can solve this problem?" "What made it possible to solve the other problem?"

Listening: Active listening is more than hearing what another person says. It incorporates attentive listening and reflective responding. Active listening involves gathering the content and feeling of what a person is saying. Next we reflect back to the person speaking what we have heard. The person feels understood and it opens the door for correction or clarification.

Condense the expressed feelings: Be simple and direct when reflecting understanding. "You wish there was another way to solve this problem." "You feel stuck." "You feel rejected." You can also try reflecting content and feeling when the participant is frustrated. "You think it is unfair that you have more to do here. It sounds like you are feeling very frustrated."

Consciously focus on what the speaker is saying; it is common to hear the first few words of a person's statement and then begin to formulate a response in the mind while they finish speaking. Resist this temptation and stay present with the speaker.

Try taking notes: While the speaker is talking, jot down key words or phrases that will help you remember what you would like to address when they are finished and then return to the conversation.

Avoid statements that minimize or criticize how a person is feeling. Do not say: "Just move on." "You shouldn't feel that way." "You already mentioned this last time we met." "You should be grateful it isn't worse."

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The Environment: Create a positive, collaborative relationship with the participant by adopting a facilitator mind set. Suspend the belief that confrontation is necessary for success when working in the judicial system. It is possible to hold people accountable while creating a positive environment that enables change. This is accomplished by encouraging responsible behavior rather than coercing people into choices and changes for which they are not ready.

Stay calm while trying to redirect anger:
Client: "How am I supposed to get a job? I don't even have a car! There is no way you can expect me to walk that far to work every day!"

Appropriate response: "You mentioned before that you want a job, but you also have obstacles to overcome in getting one. Would you like to brainstorm ways to overcome these obstacles?"
Inappropriate response: "Don't yell at me! I'm not the one who got you into this mess in the first place, am I?"

Always emphasize positive changes as a counterweight to negative topics. Negative comments tend to stick with people far longer than positive ones. More positive comments and fewer negative comments will help improve the working relationship and increase the person's self-worth. This should lead to increased motivation to change.

Focus on productive statements:
"So you've mentioned a few barriers, but overall it sounds like you are excited about getting your GED." "You are interested in getting a job and have mentioned a few obstacles that might stand in your way. How do you think you might accomplish that?"

Reentry court teams in the district courts have seen the benefits of motivational interviewing strategies. One magistrate judge who started a reentry court program defined motivational interviewing as the most important part of his preparation to effectuate change in the participants. If you have questions about the workbook or other training opportunities for your court's reentry team, please contact ADR committee chair, District Judge Ricardo S. Martinez of the Western District of Washington.

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