The Good, the Bad, and the Ugly: A Competency Restoration Case

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Objectives

- Hospital course of a *competency restoration* patient, to familiarize prosecutors with USH treatment process and interventions, and illustrate:
  - **Clinical challenges**
  - **Systems issues**
  - **USH outcome data**
  - **Treatment programming**
  - **Conundrums involving process of evaluation for whether restored and whether to civilly commit if not**

“Malachi”

- 25 year-old male admitted from jail
- Original charge was Possession of Drug Paraphernalia; now (Felony) Assault by Prisoner
- Resistive, argumentative. No treatment in jail
- Family reports “very crazy” and different from baseline
- “Punitive segregation”: 23 hour lockdown

Jail Competency Evaluations

Evaluator #1

- H/o Aggression
- Rapid speech
- Persecutory beliefs, “mind-rape”
- Throwing feces and urine
- “would become aggressive if cross examined in court”
- Schizophrenia, “Not competent”

Evaluator #2

- Evaluated through steel barrier door
- “Required assistance of entire staff of officers when moving from one area to another”
- Apparent pleasure in fighting, callous, lack of empathy and remorse
- Evidence of gang activity
- Antisocial Personality, “Competent”

Statutory Language
Utah Code 77-15-5

?Amplified

(ii) disclose to counsel pertinent facts, events, and **states of mind**

(iv) engage in **reasoned choice** of legal strategies and options

(vii) **testify relevantly**, if applicable

?Looser standards around incompetence/potential of non-restorability in states with restricted insanity defense (e.g., Montana)

(5) If the expert's opinion is that the defendant is incompetent to proceed, the expert shall indicate: (d) the defendant's **capacity to give informed consent** to treatment to restore competency

Malachi, History

- No juvenile record
- H/o violence/aggression, five past arrests for drug related offenses (methamphetamine) and theft
- Father deceased; abusive stepfather
- Some high school, graduated Job Corps
- One past admission to Lakeview Hospital for a suicidal act; no longitudinal mental health treatment

Admission examination

- “Just do your f@&#$ job and get me the f@&#$ out of here…”
- Reports from a “force field holding him down”, raping mind; actions consistent with significant distress
- Not cooperative
- “Gang mannerisms”
- Numerous tattoos, such as Grim Reaper
- Hostile, angry, guarded, intense eye contact, mild disorientation

USH Treatment Team

- Psychiatrist (MD), Social Worker (LCSW), Nurse (RN), Recreational Therapist, Occupational Therapist; Psychology (PhD) as evaluators, consultants
- **Nonpartisan**: Not a patient or victim advocate
- Dual role: assist both patient and legal system; focus on competency restoration, treatment of other conditions (substance abuse, anger management), community safety, disposition/coordination if needed
- Treatment team is **separate from hospital competency evaluator** role by statute (necessitates evaluator meeting with treatment team; dearth of outside evaluators doing so led to focus of State competency evaluator training in 2000, 2005, 2007, and 2014)
- **But data and informal opinions**! Frequent screening of and assessment of how competency restoration is proceeding

Safety Management

- Collateral information: jail, transporting officer, mother, stepmother (without consent)
- Risk assessment (clinical and administrative)
- Sounding on willingness/capacity to consent to medication if indicated
- Measurement based assessment of symptoms, as much as possible, to track changes
- “Unfreezing/decompression” in wake of punitive segregation

Unfreezing/Decompression

- Locked unit but can't lock down patients (Federal REgulations, JCAHO)
- Keep things simple, concrete, truthful; avoid ingratiation or excessive warmness
- Minimize touching (physical examination)
- Least demanding environment to minimize stress
- Highlight choice, patient input
- Fairly rapid, graduated reintroduction to community
- Calculated risks with low threshold to maximize safety

Unfreezing, Cont'd

- Educated about rationale for hospitalization
- Food, change of clothes, shower. Offer to facilitate call to family, set up family visit
- States he is "not used to being around people"
- "You won't dummy me up on meds"
- Two days of restriction to unlocked seclusion room; door open; reading material supplied; option of coming out for "Super Bowl" after 36 hours.
- Lights off at night and on request

36 Hour mark

- Came out for Super Bowl; sudden explosive aggression

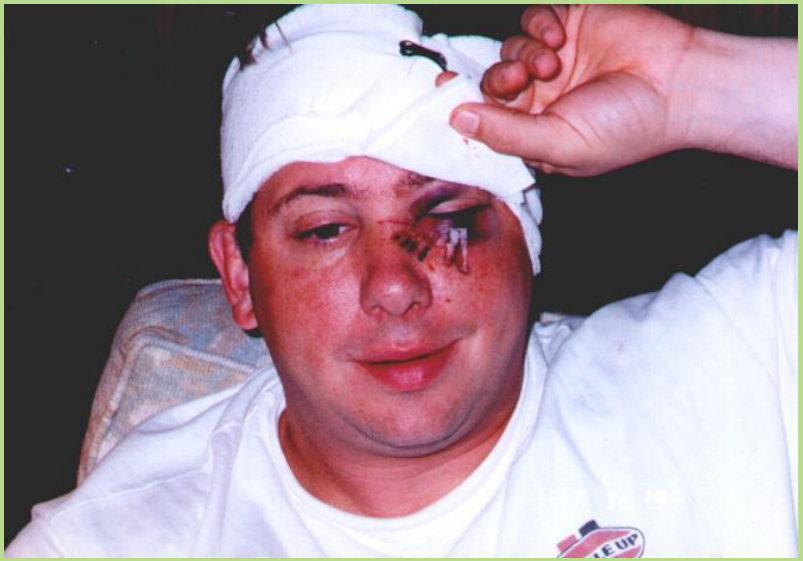
  “I lollipopped him”

- Staff broken nose and orbital bone

- Period of seclusion; Involuntary medication hearing under “Harper” criteria

- Begin low dose antipsychotic medication, increased slowly to medium dose. Well tolerated

- 4 additional seclusion incidents over next week (non violent)



Mandated treatment

- Many people do not enter treatment in a perfectly voluntary choice
- “Mental incapacity” not uncommon in general
- Mandated, Compulsory, or Involuntary ≠ Forced
- Many patients retrospectively agree with need for and mode of treatment
- How it’s done matters
- 2 types of hearings (Harper, administrative vs. Sell, fully panoply)
- Utah Jails historically reluctant to do either

Involuntary Treatment

Family of starved man awarded $144K in settlement

January 9th, 2012 @ 7:12am

SALT LAKE COUNTY

Umana was booked on Oct. 27 for attempted murder. He had been arrested after he allegedly stabbed his mother's boyfriend in the back with a small knife as the man prepared a meal. According to jail records, Umana later told police he thought the boyfriend was trying to poison him.

At the time he was booked, Umana weighed 175 pounds. When he died behind bars four months later, he weighed 77 pounds. A medical examiner reported he died from starvation and dehydration, with mental illness as a contributing factor. In jail, Umana did not receive medication for mental illness.

“Harper Hearing”

- **In-hospital administrative procedure**, stemming from Washington v. Harper 494 US 210 (1990)
- About half of patients require a Harper-medication hearing; the other half take voluntarily and are able to provide adequate informed consent.
- No significant difference in restoration outcome (trend toward shorter length of stay with involuntary hearing)

Sell v. US
539 U.S. 166 (2003)

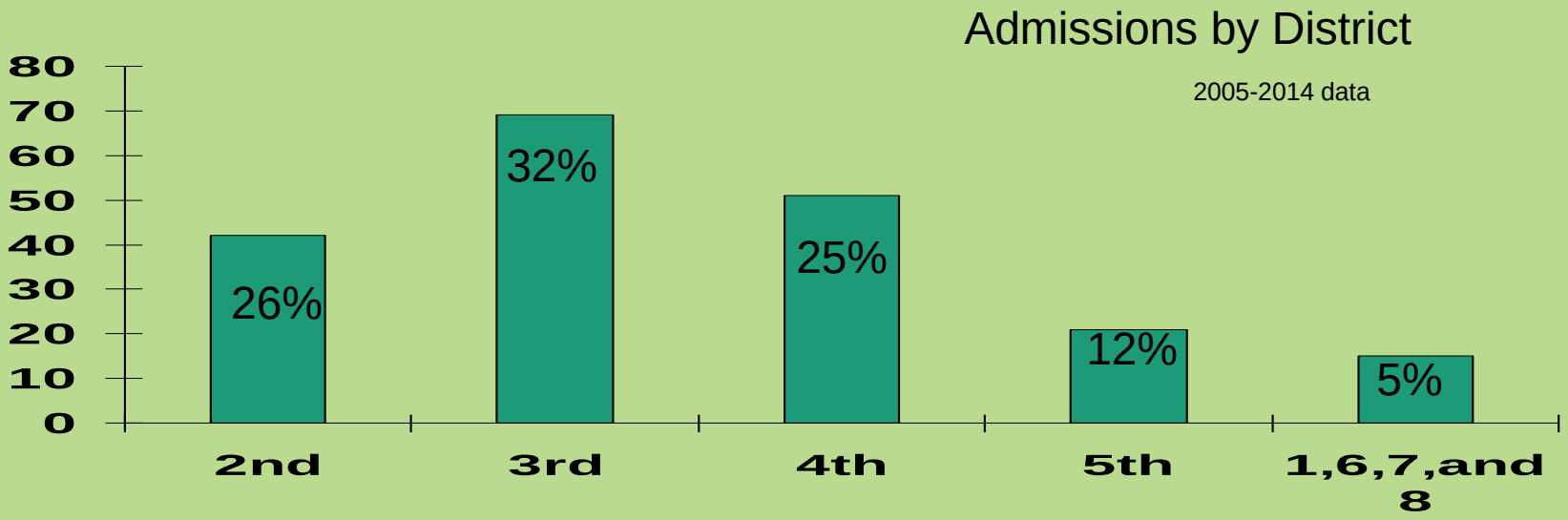
- Utah Code 77-15-6.5
- Court hearing, work with prosecutor
- N=9; 7 approved, 6 took meds, 5 restored
- Dangerousness: when does the clock start?
- “Substantially likely” to restore (What encompasses basis for this opinion?)
- Less intrusive means?
- Delusional Disorder: 10/13 restored in general

- "It is virtually undisputed that these drugs are mind altering" (Guardianship of Richard Roe, Supreme Ct. of MA, 1981)
- "They are powerful enough to immobilize mind and body"
- "We treat these drugs in the same manner we would treat psychosurgery…"
- "…the impact of the chemicals upon the brain is sufficient to undermine the foundations of personality"
- "We admit the possibility and express hope that future medical advances may produce antipsychotic drugs free from severe adverse side effects…it must be noted that the intended effect of the medication—to alter mental processes—by definition cannot be eliminated from these drugs"
- "Antipsychotics take away the true mental state"
- "Defendant has the right to present himself to the jury—in speech, appearance, and personality" (Riggins, 1992)
- "…[antipsychotic] medication may be prescribed for the very purpose of imposing constraints on the defendant's own will…" (Riggins, 1992)
- "It may be important for the factfinder to perceive the defendant in his unmodified personality" (Gold v. Warden, CT Supreme Court, 1992)
- "The chemical flattening of a person's will can also lead to the defendant's loss of self-determination undermining the desire for self-preservation" (Amicus Brief: Natl. Association of Criminal Defense Lawyers)
- "…forcible administration of psychotropic drugs presents a substantial intrusion on plaintiff's liverty interests and an extensive encroachment on plaintiff's bodily integrity" (Woodland v. Angus, US District Court, UT, 1993)
- "In a society whose whole constitutional heritage rebels at the thought of giving government the power to control men's minds…the court must not only reject direct attempts to exercise forbidden domination over mental processes, they must strictly examine as well oblique intrusions likely to produce or designed to produce the same result" (Stanley v. Georgia, 1969)

Antipsychotic medication

- Generally attenuates dopamine anomalies in brain, other side effects
- Efficacy vs. effectiveness: similar to rest of medicine in general
- Up to 75% of schizophrenia patients have fair to excellent response
- Minority of schizophrenia patients don't respond
- Most determinative variable leading to competence: medication
- Reduces violence, recidivism (3-5x)
- High risk of symptom return when discontinue, not immediate
- Not sedation; normalizing in terms of personality/thinking
- Dampen abnormal "salience" attributed to information in environment, likely mediated by overactive dopamine system

Where do they come from?



Diagnostic Make-up

- 70% have a schizophrenia spectrum illness
- 40% have personality disorder, typically with other serious mental illness
- 70% have a substance abuse diagnosis, typically with other serious mental illness
- 80% male

Length of Stay

- Average LOS 246
- Competent 198
- Court Decision 204
- Final Evaluation 178
- 90 days after evaluation

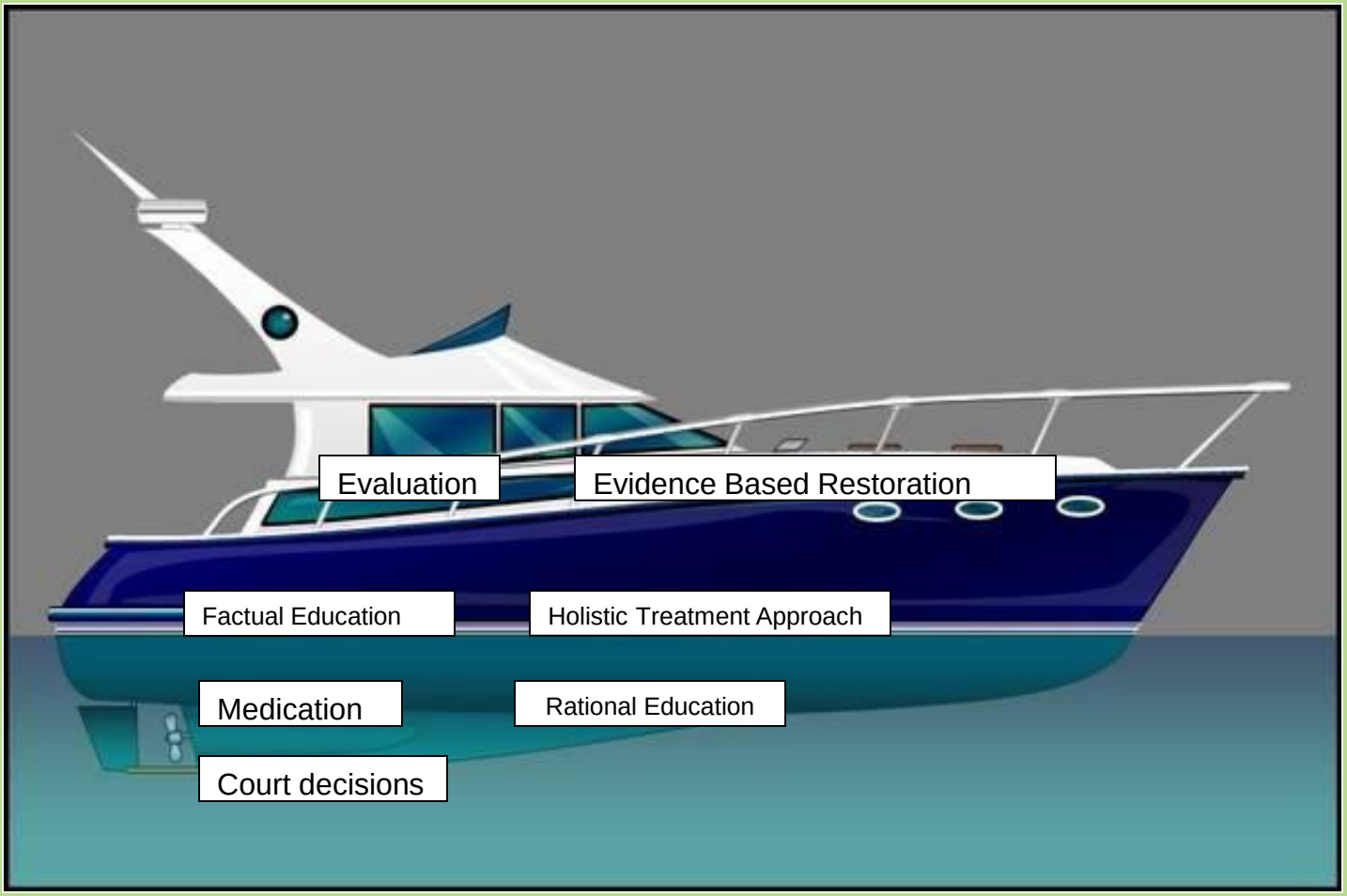
Who are Restored to Competence

- 70% of all admissions
- 70% of all psychotic spectrum disorders
- About 90% of Psychotic Disorder, Not Otherwise Specified
- 90% of substance induced psychosis
- 15 of 16 with Malingering Dx

Who are Not Restored

- Dementia
- Disorganized Schizophrenia 50%
- Borderline Intellectual Functioning 45%
- Mild Mental Retardation 40%
- Hep C+ 50%
- Diabetes 50%

Competency Treatment



Malachi: Outcome

- Settles into milieu, participates in psychosocial modalities. Advances rapidly in terms of privileges, holds a job on the unit.
- No further episodes of aggression or seclusion.
- Good symptom resolution (Symptom measurement scale scores: relative to admission, 35% improvement in total pathology score, 48% improvement on positive psychotic symptoms subscale); in competency-task screenings with treatment team does quite well
- Retrospectively views isolating effects of segregation as what aggravated paranoia and anger
- Recommended Competent by hospital at 120 days. Re-evaluation by outside evaluator who **does not speak with treatment team**. Not Competent-Competent-Not Competent-Competent---Found **Not Competent/Not Restorable** after 450 days. Willingness vs Ability
- Prosecutor petitions treatment team to file for civil commitment: Do we civilly commit??

Civil commitment?

- Trend is for states to modify statutes to relax criteria for civil commitment (e.g., Washington); Utah in 2003 from immediate to substantial risk dangerousness
- Potentially affects forensic patients if non-restorable; can be used to discourage malingering, some benefits!
- Hospital beds do not turn-over efficiently
- Utah ?Outdated criterion (impaired ability to provide informed consent)
- Issues of reimbursement and placement, can't move to civil unit
- APA: Reserve civil commitment for a small class of seriously disturbed persons most appropriate for psychiatric intervention and likely to benefit
- ?Constitutional issues with long term detention of patients who do not restore to competency (e.g., much lower standard of proof for potential indefinite confinement of pre-trial detainee vs. criminal sentence, "reasonable relation test", procedural inadequacies)
- ?Relaxing criteria for NGRI plea option: Increase motivation to become competent, sanctioned potential indefinite detention, burden of proof on patient to prove non-dangerousness, "outpatient commitment" if released…
- ?Ideally "either" criminal or civil commitment, but not both…

Final Thoughts?

- In court mental health liaison
- Improved communication inter legal and treatment
- Increased treatment in jail to preclude competency issues
- Forensic Assertive Community Team (outpatient)
- ?Increased use of leveraged, outpatient treatment
- Improved transitional services from correctional settings to community
- *Bring Back the Asylum*: Journal of American Medical Association (January 20, 2015)

END