

LAW AND ETHICS IN DRUG COURTS: *RECENT DEVELOPMENTS*

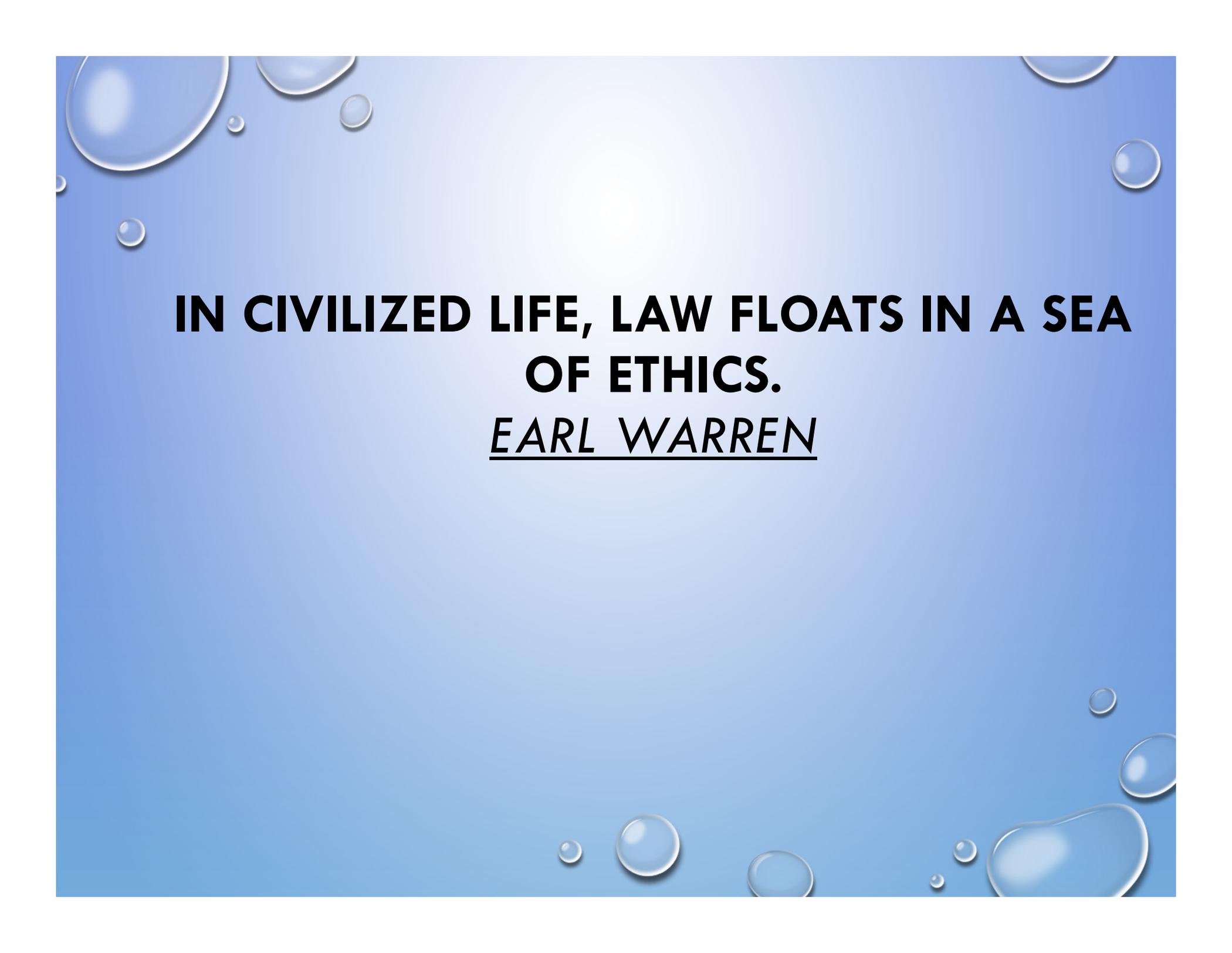
2020 ALL RISE

NADCP NATIONAL CONFERENCE

JUDGE WILLIAM MEYER (RET)

SR. JUDICIAL FELLOW

NATIONAL DRUG COURT INSTITUTE

The background is a light blue gradient with several realistic water droplets of various sizes scattered across the surface, particularly concentrated in the top-left and bottom-right corners.

**IN CIVILIZED LIFE, LAW FLOATS IN A SEA
OF ETHICS.**

EARL WARREN

RESOURCES

- [HTTPS://WWW.NDCI.ORG/LAW-2-2/](https://www.ndci.org/law-2-2/)
- BMEYER@JAGINC.COM

1. BECAUSE IT IS **MEDICALLY** NECESSARY,
MEDICAL MARIJUANA USE IS PERMITTED BY A
PROBATIONER?

- A. ARE YOU KIDDING ME—
ABSOLUTELY NOT
- B. SEEMS REASONABLE TO ME

MARIJUANA AND PROBATION

GONZALES V. RAICH, 545 U.S. 1 (2005)

- TO BE SURE, MARIJUANA REMAINS ILLEGAL UNDER FEDERAL LAW. THE FEDERAL CONTROLLED SUBSTANCES ACT PROHIBITS THE POSSESSION OF MARIJUANA FOR NEARLY ALL USES. THERE IS NO EXCEPTION FOR MARIJUANA USE FOR MEDICAL PURPOSES, NOR IS THERE AN EXCEPTION FOR USE IN COMPLIANCE WITH STATE LAW.

CANNOT LIMIT MM FOR PROBATIONERS

ARIZONA: REED-KALIHER V. HOGGATT, 347 P.3D 136 (ARIZ. 2015) & POLK V. HANCOCK, 347 P.3D 142 (ARIZ. 2015) (ARIZONA MM ACT PROHIBITS A TRIAL COURT FROM CONDITIONING PROBATION ON REFRAINING FROM POSSESSING OR USING MEDICAL MARIJUANA IN CONFORMANCE WITH AMMA)

MONTANA: STATE V. NELSON, 195 P.3D 826 (MONT. 2008), (MONTANA SUPREME COURT HELD THAT THE TRIAL COURT EXCEEDED ITS AUTHORITY IN IMPOSING A PROBATION CONDITION THAT REQUIRED THE DEFENDANT TO COMPLY WITH FEDERAL DRUG LAWS RATHER THAN THE STATE'S MEDICAL MARIJUANA STATUTE)

LIMIT MM FOR PROBATIONERS

- **COLORADO:** THE MANDATORY PROBATION CONDITION OF SECTION 18-1.3-204(1) THAT A PROBATIONER NOT COMMIT ANY OFFENSE INCLUDES FEDERAL OFFENSES PEOPLE V. WATKINS, 2012 COA 15, ¶ 39, 282 P.3D 500 (COLO. APP. 2012) **BUT SEE**
- WALTON V. PEOPLE, 2019 CO 95 (COLO. 2019) THE PLAIN LANGUAGE OF SECTION 18-1.3-204(2)(A)(VIII), C.R.S. (2019) CREATED A PRESUMPTION THAT A DEFENDANT COULD USE MEDICAL MARIJUANA WHILE SERVING A SENTENCE TO PROBATION UNLESS A STATUTORY EXCEPTION APPLIED. THE RELEVANT EXCEPTION HERE APPLIED IF THE SENTENCING COURT FOUND, BASED ON MATERIAL EVIDENCE, THAT PROHIBITING THIS DEFENDANT'S OTHERWISE-AUTHORIZED MEDICAL MARIJUANA USE WAS NECESSARY AND APPROPRIATE TO PROMOTE STATUTORY SENTENCING GOALS. BECAUSE THE COUNTY COURT MADE NO SUCH FINDINGS HERE, THE DISTRICT COURT'S JUDGMENT AFFIRMING THE COUNTY COURT WAS REVERSED.

IT ALL DEPENDS---

- THE CONDITION OF PROBATION MUST HAVE A LOGICAL RELATIONSHIP TO THE CRIME COMMITTED AND REHABILITATION OF DEFENDANT.
- MAINE, CALIFORNIA, AND MICHIGAN, DEFENDANT'S USE OF MEDICAL MARIJUANA MAY BE DENIED OR RESTRICTED IF HIS OR HER CONVICTION BEARS A LOGICAL RELATIONSHIP TO POTENTIAL DRUG USE, SUCH AS DRUG POSSESSION OR USE OR DUI AND POSSESSION OF A FIREARM BY A FELON. [UNITED STATES V FRIEL, 699 F SUPP 2D 328, 330 \[D ME 2010\]](#) *PEOPLE V MAGYARI*, 2017 WL 127744, 2017 MICH APP LEXIS 33 [OAKLAND CIR CT, LC NO. 2014 — 252567 — FH, JAN. 12, 2017; [PEOPLE V LEAL \(210 CAL APP 4TH 829, 149 CAL RPTR 3D 9 \[2012\]\)](#),
- NEW YORK: [PEOPLE V. STANTON](#) 60 MISC. 3D 1020, 80 NYS 3D 888, (2018) (WHERE MEDICALLY NECESSARY, IN CRIMINAL SEXUAL ACT CONVICTION)

ARIZONA, & MONTANA & COLORADO

- WHAT DO YOU DO WITH PROBATIONERS AND MM?

**IF YOU WERE TO MAKE A MEDICAL
MARIJUANA OR CONTROLLED SUBSTANCE
DRUG PROBATION POLICY, WHAT WOULD IT
INCLUDE?**

SHORT TERM USE CONDITIONS

- DEFINITION—USE PERIOD BEFORE CONSIDERED LONG TERM 30 DAYS?
- ELEMENTS OF OBLIGATIONS TO PROBATION & COURT:
 - BONA FIDE RELATIONSHIP BETWEEN DOCTOR AND PATIENT?
 - COPY OF THE DR.'S AUTHORIZATION AND/OR PRESCRIPTION
 - MONITORING?

LONG TERM USE CONDITIONS

- WHY DIFFERENT THAN SHORT TERM?
- ELEMENTS OF OBLIGATIONS TO PROBATION & COURT:
 - SHORT TERM PLUS
 - PROOF OF DEFENDANT'S DISCLOSURE TO DR. OF DRUG COURT PARTICIPATION AND PAST DRUG/CJ HISTORY
 - MANDATORY RELEASE OF MEDICAL RECORDS RE CONDITION BEING TREATED BY MM OR PRESCRIPTION DRUGS
 - CHANGE IN DOCTORS
 - UPDATED CLINICAL NEED CERTIFICATION FROM DR. EVERY 120 DAYS
 - DR.'S CERTIFICATION OF NON-DEPENDENCE/SUD?
 - DEFENDANT PERMITTED TO BE CAREGIVER????

DEFENDANT'S OBLIGATIONS WHEN NON-COMPLIANCE SUSPECTED

- INDEPENDENT EXAMINATION BY PHYSICIAN WITH ASAM TRAINING

2. IT IS PERMISSIBLE FOR A JUDGE TO HAVE LUNCH WITH A DRUG COURT PARTICIPANT AS A REWARD OR FOR THE JUDGE TO VISIT THE PARTICIPANT AT THEIR JOB?

- A. NO, PROBABLY NOT PROPER BOUNDARY
- B. YES, IF ENTIRE TEAM KNOWS ABOUT IT
- C. WHY WOULD ANYONE THINK THIS IS A REWARD

THE COURT AND DRUG COURT PARTICIPANT

- JUDGE ATTENDED GROUP ACTIVITIES, SOFTBALL GAMES, BOWLING NIGHT, HOLIDAY PARTY, SPRING PICNIC, DISNEYLAND TRIP, WITH DRUG COURT PARTICIPANTS.

DISCIPLINED

- MATTER OF BLACKMAN, 591 A.2D 1339 (N.J. 1991)
- JUDGE BLACKMAN ARGUED THAT HIS ATTENDANCE WAS AN INNOCENT MISTAKE; HE HAD NO IMPROPER MOTIVE AND HAD BEEN FRIENDS WITH THE DEFENDANT FOR MANY YEARS. THE COURT WAS UNPERSUADED AND STATED: “THE LESSON IS THAT A JUDGE WHO ATTENDS A PUBLIC OR SOCIAL EVENT WILL BE PERCEIVED AS ENDORSING OR SUPPORTING NOT ONLY THE EVENT ITSELF BUT ALSO PERSONS ASSOCIATED WITH THE EVENT.”
- IN RE JONES, 581 N.W.2D 876 (NEB. 1998)
- JUDGE MET INDIVIDUALLY WITH PROBATIONERS. THE JUDGE JUSTIFIED A PORTION OF HIS CONDUCT ON HIS SINCERE CONCERN FOR THE WELFARE OF ADDICTS AND THEIR PROGRESS. THE NEBRASKA SUPREME COURT WAS UNPERSUADED AND FOUND THAT JONES’ CONDUCT CONSTITUTED A VIOLATION OF CANON 1 (UPHOLD INTEGRITY AND INDEPENDENCE OF JUDICIARY) AND CANON 2 IN THAT JONES FAILED TO ACT IN A MANNER THAT PROMOTES PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.

IN RE DAY, 362 OR 547, 413 P.3D 907 (2018)

- FOR ALL THOSE REASONS, WE CONCLUDE THAT THE COMMISSION HAS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT JUDGE DAY'S CONDUCT TOWARD BAS—A PROBATIONER IN THE VTC OVER WHICH RESPONDENT PRESIDED—AMOUNTED TO WILLFUL MISCONDUCT IN A JUDICIAL OFFICE THAT BORE A DEMONSTRABLE RELATIONSHIP TO RESPONDENT'S EFFECTIVE PERFORMANCE OF HIS DUTIES AS THE VTC JUDGE, IN VIOLATION OF ARTICLE VII (AMENDED), SECTION 8(1)(B). (MEALS, HOLDING BAS AS AN EXAMPLE, PERMITTING BAS TO HANDLE A GUN)
- RESULT: JUDGE SUSPENDED FOR 3 YRS FOR THIS AND OTHER CONDUCT.

EX PARTE COMMUNICATIONS

- SEVERAL STATES INCLUDING OKLAHOMA, MINNESOTA, MONTANA, NEW YORK, INDIANA, IDAHO, ARKANSAS AND COLORADO HAVE AMENDED THEIR CANONS OF JUDICIAL CONDUCT TO ADDRESS THE EX PARTE COMMUNICATION ISSUE FACING PROBLEM SOLVING COURTS.
- A JUDGE MAY INITIATE, PERMIT, OR CONSIDER EX PARTE COMMUNICATIONS EXPRESSLY AUTHORIZED BY LAW OR BY CONSENT OF THE PARTIES, INCLUDING WHEN SERVING ON THERAPEUTIC OR PROBLEM-SOLVING COURTS SUCH AS MANY MENTAL HEALTH COURTS, DRUG COURTS, AND TRUANCY COURTS. IN THIS CAPACITY, JUDGES MAY ASSUME A MORE INTERACTIVE ROLE WITH THE PARTIES, TREATMENT PROVIDERS, PROBATION OFFICERS, SOCIAL WORKERS, AND OTHERS. COMMENT CANON 2.9

**3. MEDICATION ASSISTED TREATMENT
SIMPLY SUBSTITUTES ONE ADDICTION FOR
ANOTHER?**

A. YES

B. NO

STANDARD OF CARE

MAT IS THE STANDARD OF CARE FOR TREATING OPIOID USE DISORDERS:

- U.S. DEPT. OF HEALTH & HUMAN SERVICES (1997)
- NATIONAL INSTITUTE OF DRUG ABUSE (2014, 2018)
- U.S. SURGEON GENERAL (2018)
- SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION (2005, 2018)
- NATIONAL ACADEMY OF SCIENCES, ENGINEERING & MEDICINE (2019)
- WORLD HEALTH ORGANIZATION (2004)
- CENTERS FOR DISEASE CONTROL & PREVENTION (2002)
- AMERICAN MEDICAL ASSOCIATION (2017)
- AMERICAN PSYCHIATRIC ASSOCIATION (2017)
- AMERICAN SOCIETY OF ADDICTION MEDICINE (2015)
- AMERICAN ACADEMY OF ADDICTION PSYCHIATRY
- AMERICAN COLLEGE OF OBSTETRICIANS & GYNECOLOGISTS (2016)
- ETC. . . .

THE UNEQUIVOCAL POSITION OF NDCI

INCLUSION OF MAT AS PART OF OPIOID ABUSE TREATMENT IN DRUG COURTS IS RECOMMENDED BY THE NDCI AS WELL AS THE NATIONAL ASSOCIATION OF STATE ALCOHOL AND DRUG ABUSE DIRECTORS

NDCI. NDCI DRUG COURT PRACTITIONER FACT SHEETS. ALEXANDRIA, VA: NATIONAL DRUG COURT INSTITUTE; 2002. *METHADONE AND OTHER PHARMACOTHERAPEUTIC INTERVENTIONS IN THE TREATMENT OF OPIOID DEPENDENCE.*

Legal Requirements

❖ **SAMHSA/BJA**

❖ **Individualized Sentencing (5th & 14th Amendment) vs. Categorical Sentencing**

❖ **Americans with Disability Act (ADA)/Rehabilitation Act (RA)**

❖ **14th Amend and Cruel and Unusual Punishment--8th Amend.**

BJA/SAMHSA Grant Applicants

❖ **NOT DENY MAT ACCESS TO DRUG COURT**

❖ **EXCEPTIONS**

1. NOT TAKING MEDICATION FOR SUD TREATMENT
2. NOT EXAMINED BY LICENSED CLINICIAN & AUTHORIZED
3. NOT PRESCRIBED BY CLINICIAN FOR SUD

❖ **MANDATORY CESSATION**

Ethical Conundrums

OR How do you call your colleagues/team out?

Policies & Practices that Clearly Violate Professional Standards and Threaten Participant Welfare:

- **Blanket prohibitions against MAT or agonists**
- **Fail first policies**
- **Blanket limits on dosage or duration**
- **Required tapering before graduation**
- **Forced withdrawal during jail sanctions**
- **Abstinence-based recovery support groups as the only practical option**

**#4: TERMINATION FROM DRUG COURT
REQUIRES A HEARING?**

A. TRUE

B. FALSE

DUE PROCESS

- PROCEDURAL PROTECTIONS ARE DUE UNDER THE DUE PROCESS CLAUSE WHEN THE DEFENDANT WILL **POTENTIALLY SUFFER** A LOSS TO A **RECOGNIZED LIBERTY OR PROPERTY RIGHT** UNDER THE 14TH AMENDMENT.
- IF DUE PROCESS APPLIES, THE QUESTION REMAINS WHAT PROCESS IS DUE.
FUENTES V. SHEVIN, 407 U.S. 67 (1972).

MORRISSEY V. BREWER, 408 U.S. 471 (1972).

DUE PROCESS-PROBATION REVOCATION

- WHAT IS REQUIRED?
- P/C DETERMINATION
- WRITTEN NOTICE
- RIGHT TO APPEAR
- CROSS-EXAM AND CALL WITNESSES
- INDEPENDENT MAGISTRATE
- WRITTEN FINDINGS-REASONS
- RIGHT TO COUNSEL (STATE)

GAGNON V. SCARPELLI, 411 U.S. 778, 781-782 (1973). (PROBATION)

GAITHER V. STATE OF FLORIDA CASE NO.
____SO. 3D ____, 5D19-534 (5TH DCA
5/15/2020)

A DEFENDANT PARTICIPATING IN DRUG COURT PURSUANT TO A PLEA AGREEMENT IS ENTITLED TO THE SAME DUE PROCESS AS A PROBATIONER, BEFORE BEING TERMINATED FROM THE DRUG COURT PROGRAM—CITING THE NDCI JUDICIAL BENCHBOOK AND OTHER AUTHORITY

DUE PROCESS

- **REVOCACTION=TERMINATION**

- *PEOPLE V. ANDERSON*, 833 N.E.2D 390 (ILL. APP. 2005); *STATE V. CASSILL-SKILTON*, 122 WASH. APP. 652 (WASH. APP. 2004); *HAGAR V. STATE*, 990 P.2D 894 (OK. 1999). *IN RE MIGUEL*, 63 P.3D 1065, 1074 (ARIZ. APP. 2003) (JUVENILE). EVERY JURISDICTION THAT HAS CONSIDERED THE ISSUE!!!!

MENTAL HEALTH COURTS

- **TATE V. STATE**, 2013 OK CR 18, 313 P.3D 274 (2013) (WE FIND THAT THIS DUE PROCESS GUARANTEE IS ALSO APPLICABLE TO MENTAL HEALTH COURT TERMINATION PROCEEDINGS. THEREFORE, A MENTAL HEALTH COURT PARTICIPANT MUST BE SUFFICIENTLY APPRISED AS TO THE EVIDENCE AND THE GROUNDS UPON WHICH HIS OR HER PARTICIPATION IN THE MENTAL HEALTH COURT IS TERMINATED. SEE HOGAR, 1999 OK CR 35, 990 P.2D AT 899 (APPLYING THIS SAME RULE TO DRUG COURT TERMINATION PROCEEDINGS)).

WAIVER OF THE RIGHT TO A HEARING WHEN FIRST ENTERING INTO THE PROGRAM AS PART OF THE DRUG COURT CONTRACT?

- NEAL V. STATE, 2016 ARK. 287(ARK. 2016) CITING LAPLACA AND STALEY, ARK. SUP. CT. HOLDS: “[T]HE RIGHT TO MINIMUM DUE PROCESS BEFORE A DEFENDANT CAN BE EXPELLED FROM A DRUG-COURT PROGRAM IS SO FUNDAMENTAL THAT IT CANNOT BE WAIVED BY THE DEFENDANT IN ADVANCE OF THE ALLEGATIONS PROMPTING THE REMOVAL FROM THE PROGRAM.”

5. YOUR JAIL IS CONSTITUTIONALLY REQUIRED TO GIVE A DEFENDANT MAT, IF HE IS SENTENCED TO 60 DAYS AND WAS ON LEGALLY PRESCRIBED METHADONE, PRIOR TO SENTENCING?

A. TRUE

B. FALSE

PESCE V. COPPINGER

- TO PROVE A VIOLATION OF TITLE II ADA, A PLAINTIFF MUST SHOW THAT HE: (1) IS A QUALIFIED INDIVIDUAL WITH A DISABILITY; (2) "WAS EITHER EXCLUDED FROM OR DENIED THE BENEFITS OF SOME PUBLIC ENTITY'S SERVICES, PROGRAMS, OR WAS OTHERWISE DISCRIMINATED AGAINST;" AND (3) "THAT SUCH EXCLUSION, DENIAL OF BENEFITS, OR DISCRIMINATION WAS BY REASON OF THE PLAINTIFF'S DISABILITY."
- PESCE V. COPPINGER, DIST. COURT, D. MASSACHUSETTS 2018; SMITH V. AROOSTOOK COUNTY, DIST. COURT, D. MAINE 2019, AFFIRMED 1ST CIRCUIT 4/29/19

PESCE V. COPPINGER

TO PREVAIL ON AN EIGHTH AMENDMENT CLAIM OF DELIBERATE INDIFFERENCE BASED ON INADEQUATE OR DELAYED MEDICAL CARE, THE PLAINTIFF MUST SATISFY BOTH AN OBJECTIVE AND SUBJECTIVE INQUIRY:

1. OBJECTIVELY- “SUFFICIENTLY SERIOUS MEDICAL NEED”

--DIAGNOSED AS NEEDING MEDICAL ATTENTION

--WITHDRAWAL/OVERDOSE POTENTIAL UPON RELEASE

2. SUBJECTIVE - DEFENDANTS ACTED WITH INTENT OR WANTON DISREGARD WHEN PROVIDING INADEQUATE CARE.

---INDIVIDUALIZED ASSESSMENT

--- METHADONE ONLY ADEQUATE TREATMENT

BAZZLE V. STATE, 434 P. 3D 1090 (WYO. SUPREME COURT 2019)

- MR. BAZZLE WAS OBLIGATED, UNDER THE PROBATION ORDER, TO SUCCESSFULLY COMPLETE THE TREATMENT COURT PROGRAM. HE WAS AWARE THAT HE COULD NOT PARTICIPATE IN THE PROGRAM UNTIL HE CEASED USING SUBOXONE. IF HE WAS UNABLE OR UNWILLING TO COMPLY WITH THE PROBATION CONDITION, HE WAS REQUIRED TO PETITION THE DISTRICT COURT FOR MODIFICATION RATHER THAN MAKE THE UNILATERAL CHOICE NOT TO COMPLY. THE DISTRICT COURT'S CONCLUSION THAT MR. BAZZLE WILLFULLY VIOLATED THE TERM OF HIS PROBATION THAT REQUIRED HIM TO SUCCESSFULLY COMPLETE THE TREATMENT COURT PROGRAM IS SUPPORTED BY THE EVIDENCE.

6. COURT CAN IMPOSE ONE DAY JAIL TIME AS A SANCTION WITHOUT A HEARING FOR DEFENDANT WHO PASSED DILUTE SAMPLE, WHEN DEFENDANT DENIES WATER LOADING

A. TRUE

B. FALSE

DILUTE=POSITIVE

- IN RE INTEREST OF ORLANDO D., NEB: COURT OF APPEALS 2018 NOT SELECTED (RECOGNIZING THAT DILUTE SAMPLES CAN BE CONSIDERED AS POSITIVE DRUG TESTS)
- STATE V. SNOW, NOT SELECTED FOR PUBLICATION, 32144-4-III (WASH. APP. 12-9-2014)(DEFENDANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED DURING TERMINATION PROCEDURE, INCLUDING RELYING ON REPORTS REFLECTING DILUTE DRUG SAMPLES, PARTICULARLY WHERE HE DID NOT CONTEST TESTING RESULT)

NO HEARING

- BROOKMAN V. STATE, 190 A. 3D 292 (MD. CT OF APP. 7/31/2018)
(SANCTIONS IMPOSED REVERSED AND REMANDED FOR A HEARING. DEFENDANTS WANTED TO CONTEST SANCTIONS IMPOSED WITHOUT A HEARING FOR LOW CREATININE RESULTS AND FAILURE TO APPEAR FOR A DRUG TEST. COURT HELD IT WAS A DUE PROCESS VIOLATION TO NOT ACCORD AN ADVERSARIAL HEARING, INCLUDING THE RIGHT TO COUNSEL, THE ABILITY TO CALL WITNESSES, THE RIGHT TO PUT ON MITIGATING EVIDENCE AND A CONTINUANCE, IF NECESSARY FOR PREPARATION.

ETHICAL ISSUE FOR JUDGE AS WELL

- MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE V. THOMPSON, 169 SO. 3D 857 (MISS SUPREME COURT 5/21/2015)
(DRUG COURT JUDGE REMOVED FROM OFFICE FOR, INTER ALIA, SANCTIONING INDIVIDUALS TO JAIL WITHOUT ACCORDING DUE PROCESS OF HEARING.)

7. YOU SHOULD REFRAIN FROM “DRUG FREE” CONDITIONS OF PROBATION, UNTIL SEVERE SUD DEFENDANT IS STABILIZED BECAUSE AN ADDICT’S USE IS NOT WILLFUL, GIVEN THAT ADDICTION IS A BRAIN DISEASE, AND A CHRONIC RELAPSING CONDITION.

A. TRUE

B. FALSE

NEURO-DETERMINISM

- ADDICTION IS A BRAIN-DISEASE
- REWIRES THE NEURO-TRANSMITTERS
- A CHRONIC RELAPSING CONDITION
- CRAVINGS
- CONTINUED USE DESPITE MOUNTING LOSSES/CONSEQUENCES
- HOW CAN RELAPSE BE WILLFUL??????????

FREE WILL

- OPERANT CONDITIONING AND CONTINGENCY MANAGEMENT STUDIES SHOW THAT PEOPLE CAN AND DO CHANGE THEIR BEHAVIOR—EVEN WITH A SUD
- THE SUCCESS OF DRUG COURTS—A CLASSIC EXAMPLE OF THE APPLICATION OF OC/CM, DEMONSTRATES ADDICTS DO HAVE FREE WILL TO CHANGE THEIR BEHAVIOR—WHEN GIVEN THE PROPER TOOLS

NO PHILOSOPHER'S DREAM-BUT

- THE CIRCUMSTANCES OF THE DEFENDANT'S CASE EXEMPLIFY WHY THE IMPOSITION OF A DRUG FREE CONDITION OF PROBATION AND THE ENFORCEMENT OF SUCH CONDITION ARE PERMISSIBLE WITHIN THE CONFINES OF THE PROBATION PROCESS. FROM CRAFTING SPECIAL CONDITIONS OF PROBATION TO DETERMINING THE APPROPRIATE DISPOSITION FOR A DEFENDANT WHO HAS VIOLATED ONE OF THOSE CONDITIONS, JUDGES SHOULD ACT WITH FLEXIBILITY, SENSITIVITY, AND COMPASSION WHEN DEALING WITH PEOPLE WHO SUFFER FROM DRUG ADDICTION. COMMONWEALTH V. ELDRED, 480 MASS. 90 (2018)

EXEMPLARY RESOLUTION

- TRIAL COURT JUDGES, PARTICULARLY JUDGES IN THE DRUG COURTS, STAND ON THE FRONT LINES OF THE OPIOID EPIDEMIC. IN CIRCUMSTANCES WHERE A DEFENDANT IS LIKELY ADDICTED TO DRUGS AND THE VIOLATION IN QUESTION ARISES OUT OF THE DEFENDANT'S RELAPSE, JUDGES ARE FACED WITH DIFFICULT DECISIONS THAT ARE ESPECIALLY UNPALATABLE. THIS IS PARTICULARLY TRUE AT A DETENTION HEARING WHERE A JUDGE MUST DECIDE WHETHER THE DEFENDANT SHOULD BE DETAINED PRIOR TO A FINAL VIOLATION HEARING. THE CORE OF THIS DILEMMA IS THAT ALTHOUGH PROBATION VIOLATIONS OFTEN ARISE OUT OF A DEFENDANT'S RELAPSE, WE RECOGNIZE THAT RELAPSE IS PART OF RECOVERY.

COMMONWEALTH V. ELDRED, 480 MASS. 90 (2018)

- QUICK PROBABLE CAUSE DETERMINATION FOR PROBATION VIOLATION
- DETENTION DETERMINATION
 - OPIOID ADDICTED
 - JUST USED FENTANYL
 - NO FAMILY SUPPORT
 - REJECTED INPATIENT
 - HOLIDAY WEEKEND COMING UP
- RE-GRANTED PROBATION, ADDING INPATIENT TREATMENT

8. IT IS NOT APPROPRIATE FOR A JUDGE
TO CALL A DRUG COURT DEFENDANT A
F***** ADDICT

A. TRUE

B. FALSE

STATE V. LEMKE, 434 P. 3D 551 (WASH. COURT OF APPEALS, 1ST DIV. 2018)

NO JUDGE WIELDING THE POWER OF THE STATE IN ANY COURTROOM HAS ANY GOOD REASON TO CALL A LITIGANT A "FUCKING ADDICT" AND "JUST A CRIMINAL." THE JUDGE'S MANIFESTATION OF PERSONAL ANIMOSITY TOWARD LEMKE IS NOT SOMETHING WE CAN WRITE OFF AS A BYPRODUCT OF THE INFORMAL AND CONFRONTATIONAL CULTURE OF DRUG COURT. A "FAIR TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF DUE PROCESS." IN RE MURCHISON, 349 U.S. 133, 136, 75 S.CT. 623, 99 L. ED. 942 (1955). THE SENTENCE MUST BE REVERSED.

MINNESOTA V. CLEARY, 882 N.W.2D 899 (COURT OF APPEALS OF MINNESOTA 2016.)

- WHEN THE SOLE BASIS FOR REVOKING PROBATION IS A PROBATIONER'S TERMINATION FROM DRUG COURT AND THE DRUG COURT JUDGE PARTICIPATED IN THE DRUG COURT TEAM'S DECISION TO TERMINATE THE PROBATIONER FROM DRUG COURT, A PROBATIONER IS ENTITLED TO HAVE A JUDGE OTHER THAN THE DRUG COURT JUDGE PRESIDE OVER THE PROBATION REVOCATION HEARING, BECAUSE OF THE APPEARANCE OF LACK OF IMPARTIALITY.

STATE V. MARCOTTE, (WISC: COURT OF APPEALS, 3RD DIST. 4/14/2020)

- [CITING THE NDCI BENCHBOOK, AMONG OTHERS FOR AUTHORITY: IN THIS CASE, MARCOTTE ARGUES THAT JUDGE MORRISON WAS OBJECTIVELY BIASED.[3] OBJECTIVE BIAS CAN EXIST IN TWO SITUATIONS: (1) WHERE THERE IS AN APPEARANCE OF BIAS; AND (2) WHERE OBJECTIVE FACTS DEMONSTRATE THAT A JUDGE TREATED A PARTY UNFAIRLY. (CITATIONS OMITTED) ...

MARCOTTE--CONTINUED

- APPLYING THESE STANDARDS TO THE INSTANT CASE, WE CONCLUDE MARCOTTE HAS MET HIS BURDEN TO DEMONSTRATE OBJECTIVE BIAS, BASED ON THE COMBINED EFFECT OF: (1) JUDGE MORRISON'S COMMENTS INDICATING HE HAD DETERMINED BEFORE THE SENTENCING AFTER REVOCATION HEARING THAT MARCOTTE WOULD BE SENTENCED TO PRISON IF HE DID NOT SUCCEED IN DRUG COURT; AND (2) JUDGE MORRISON'S DUAL ROLE AS THE PRESIDING JUDGE IN THE DRUG COURT PROCEEDINGS AND AS THE JUDGE WHO SENTENCED MARCOTTE AFTER THE REVOCATION OF HIS PROBATION. TAKEN TOGETHER, THESE FACTORS CREATED THE APPEARANCE OF BIAS SUFFICIENT TO GIVE RISE TO A GREAT RISK OF ACTUAL BIAS.

9. BECAUSE A URINE SCREEN IS A SEARCH,
AND DRUG COURT DEFENDANTS ARE ON
PROBATION-LIKE SUPERVISION, URINE
SCREENS REQUIRE REASONABLE SUSPICION

A. TRUE

B. FALSE

STATE V. OLSEN, 399 P. 3D 1141 (WASH. SUPREME COURT 2017)

[AS] NOTED BY THE NATIONAL DRUG COURT INSTITUTE, "IT IS CRUCIAL THAT SAMPLES BE COLLECTED IN A RANDOM, UNANNOUNCED MANNER," AS RANDOM TESTING PREVENTS INDIVIDUALS FROM PLANNING AHEAD AND AVOIDING DETECTION. REQUIRING REASONABLE SUSPICION AS A BASIS TO TEST COULD MAKE IT PROHIBITIVELY DIFFICULT FOR THE PROBATION OFFICER TO CARRY OUT HIS OR HER RESPONSIBILITIES OF SUPERVISING THE PROBATIONER AND ACCURATELY ASSESSING PROGRESS TOWARD REHABILITATION.

**10. COURT CAN SIMPLY RELY ON DRUG
COURT TEAM'S RECOMMENDATION
REGARDING TERMINATION FROM DRUG
COURT**

A. TRUE

B. FALSE

**STATE V. WATSON, 507 S.W.3D 191
(TENN. COURT OF CRIMINAL APPEALS
2016)**

CITING PREVIOUSLY UNPUBLISHED CASE THAT DRUG COURT JUDGE'S
DECISION TO LEAVE THE TERMINATION DECISION TO TEAM WAS AN
ABDICATION OF RESPONSIBILITY AND A VIOLATION OF DUE PROCESS

11. OUR COURT SOMETIMES PLACES A
DRUG COURT PARTICIPANT IN JAIL
AWAITING A BED, BECAUSE WE ARE AFRAID
IF LEFT ON THE STREET (S)HE WILL
OVERDOSE?

A. TRUE

B. FALSE

The background is a solid light blue color with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The text is centered in the upper half of the image.

**WHAT ABOUT INCARCERATING
PARTICIPANTS WHILE AWAITING A
TREATMENT BED?**

COUNTY OF RIVERSIDE V. MCLAUGHLIN, 500 U.S. 44, 52, 111 S. CT. 1661, 114 L.ED.2D 49 (1991).

- IN [GERSTEIN V. PUGH, 420 U. S. 103 \(1975\)](#), THIS COURT HELD THAT THE FOURTH AMENDMENT REQUIRES A PROMPT JUDICIAL DETERMINATION OF PROBABLE CAUSE AS A PREREQUISITE TO AN EXTENDED PRETRIAL DETENTION FOLLOWING A WARRANTLESS ARREST.
- TAKING INTO ACCOUNT THE COMPETING INTERESTS ARTICULATED IN *GERSTEIN*, WE BELIEVE THAT A JURISDICTION THAT PROVIDES JUDICIAL DETERMINATIONS OF PROBABLE CAUSE WITHIN 48 HOURS OF ARREST WILL, AS A GENERAL MATTER, COMPLY WITH THE PROMPTNESS REQUIREMENT OF *GERSTEIN*.

ARREST ON ORIGINAL CHARGE VS PROBATION REVOCATION

- ALTHOUGH STRICT 48 HR. RULE IN RIVERSIDE MAY NOT APPLY TO ARREST FOR PROBATION VIOLATION, DUE PROCESS AND STATE STATUTE/RULE GENERALLY REQUIRE **PROMPT** PROBABLE CAUSE DETERMINATION TO CONTINUE TO DETAIN THE INDIVIDUAL. GAGNON V. SCARPELLI, 411 U.S. 778, (1973); MORRISSEY V. BREWER, 408 U.S. 471 (1972) SEE ALSO: WARNER, C. “THE WAITING GAME: HOW STATES DENY PROBATIONERS THEIR CONSTITUTIONAL RIGHT TO A PRELIMINARY HEARING”, 8 CRIM. LAW BRIEF 13 (2012-2013); FOWLER V. CROSS, 635 F. 2D 476, (5TH CIRCUIT 1981) (DENYING QUALIFIED IMMUNITY AND FINDING CIVIL LIABILITY FOR DENIAL OF PROMPT PRELIMINARY HEARING IN PROBATION REVOCATION)

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PREVENTIVE DETENTION

- KANSAS V. HENDRICKS, 521 U.S. 346, (1997) (UPHOLDING THE PREVENTIVE DETENTION OF SEXUAL PREDATORS BECAUSE THE DETENTION WAS PRECEDED BY AN ADVERSARIAL HEARING THAT AFFORDED THE INDIVIDUAL ROBUST PROCEDURAL PROTECTIONS, INCLUDING THE RIGHT TO STATE FUNDED COUNSEL, THE RIGHT TO PRESENT AND CROSS-EXAMINE WITNESSES, AND THE RIGHT TO AN ANNUAL CASE REVIEW TO DETERMINE IF DETENTION WAS STILL WARRANTED).
- KANSAS V. CRANE, 534 U.S. 407, 415 (2002) (HOLDING THAT A STATE LAW AUTHORIZING THE CIVIL COMMITMENT OF SEX OFFENDERS WAS UNCONSTITUTIONAL BECAUSE IT DID NOT REQUIRE AN ADVERSARIAL HEARING AS TO WHETHER THE OFFENDER LACKED CONTROL OVER THE DANGEROUS BEHAVIOR).

TIMELINESS OF TERMINATION/SANCTION HEARING

- HOFFMAN V. JACOBI (S.D. IND., 9/29/2015)

(MAGISTRATE JUDGE RECOMMENDS CLASS CERTIFICATION ON 42 USC §1983 DAMAGES AND INJUNCTIVE RELIEF SUIT AGAINST DRUG COURT JUDGE AND TEAM FOR INCARCERATING PARTICIPANTS FOR LENGTHY PERIODS OF TIME, WHILE AWAITING PLACEMENT IN DRUG TREATMENT FACILITIES. PLAINTIFFS ALLEGE THAT THE DECISION TO HOLD THEM IN JAIL PENDING PLACEMENT WAS MADE WITHOUT COUNSEL, HEARING, CONSIDERATION OF BOND, OR OTHER RIGHTS OF DUE PROCESS)