

## The Bullet Train to Competence

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## Historical, theoretical and legal concepts in Restoration to Competency

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Panel Discussion

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### Historical Concepts

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- Self-representation was common practice
- Counsel prohibited for serious crimes
- Imperative that defendant be competent
- Later counsel mandated by law

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## Historical Concepts

- Doctrine began in mid 1600's England
  - Unable to defend self – violated trial in absentia
  - Defendant "mute" unable to plead and trial unable to proceed
  - Became "mad" shouldn't be arraigned because of inability to plead

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## Historical Concepts

- 2 types of muteness
  - Mute by "visitation of God"
  - Included "deaf and dumb" later "lunatics"
  
  - Mute of malice
    - Subject to torture "peine forte et dure"
    - Progressive weights to compel a plea

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## General Concepts

- Most countries don't have competency to stand trial laws
- U.S. states have fairly consistent laws from state to state
- Theory is that it is improper to try someone in absentia
- Mental illness could constitute "mental absentia"

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## General Concepts

- Law distinguishes those who have free choice to be present versus those who do not (mentally ill)
- Competency to stand trial standard two pronged
  - Rational understanding of charges and procedures
  - Ability to rationally assist attorney in presenting defense

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## Supreme Court Decisions

- Dusky v. U.S. 1960
  - Established general competency standard-all states adhere
  - Orientation to time, place and recollection of some events insufficient
  - Defendant must have a "present ability to consult with his lawyer with a reasonable degree of **rational** understanding" and "factual and **rational** understanding of the proceedings"

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## Supreme Court Decisions

- Jackson v. Indiana 1972
  - Defendant deaf mute Two purse snatching – 9 dollars
  - Committed until "sane"
  - Civil committees in Indiana had definite time limits
  - Placed time limits on length of confinement as incompetent to stand trial
  - Reasonable period to determine there is substantial probability of regaining competency in foreseeable future

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## Supreme Court Decisions

### ■ Sell v. U.S. 2003

- Involuntary forced medications is balance between government interests and individual rights
- Non-dangerous defendants can be forced medicated only under certain conditions
  - Treatment is medically appropriate
  - Side effects won't undermine fairness of trial
  - Less intrusive methods unlikely to work

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## Involuntary medication order

### ■ Requirements (now codified in PC 1370.01):

- Pt. lacks capacity to make such decisions, serious harm to mental or physical health will occur or
- Pt. is danger to others (has inflicted, attempted or cause harm while in custody or reason for arrest) or is a "demonstrated danger" due to MI and behavior up to the last 6 years or
- Pt. charged with serious crime, medication likely render pt. competent, treatment in best medical interests, SE's won't interfere with function, less intrusive methods not effective

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## Procedural Aspects

- Court officer (DA, PD, judge) can raise doubt
- Judge determines "official doubt" based on substantial evidence
- Court appoints 2-3 evaluators
- Speedy trial clock stops
- Bail revoked, if on OR and taken into custody

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## Procedural Aspects

- Hearing held after receipt of reports
- Jury trial if either side requests
- Hearings can only occur in Superior Court

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## Placement Issues

- If found competent trial resumes
- If found incompetent pt. placed for treatment
- Misdemeanor placed in state hospital per
  - PC 4011.6 involuntary
  - PC 4011.8 voluntary

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## Placement Issues

- If pt. charged with felony:
  - Director of County Mental Health evaluates to determine inpatient vs. outpatient treatment
  - Violent felonies committed to secure facility unless not dangerous
- Pt. committed for no longer than maximum presumptive sentence or 3 years whichever is shorter

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## Reporting requirements

- Initial progress report at 90 days then Q 180days
  - Should address clinical progress and likelihood of restoration
- At 18 months pt. returns to court if not competent for hearing
- If unrestorable report submitted at any time 1370(b)(1)
- If unrestorable after 3 years pt. returns to court
  - Can be civilly committed WIC 5008 (h)(1) if alleged crime caused death, serious bodily harm or threat to well being and pt. is still dangerous (Hofferber case)

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## Implications for speedy restoration

- Aggressive treatment of Axis I disorder
- Quickly pursuing court order for involuntary medications/Sell hearing if appropriate
- Prompt psychological testing to assess motivation or malingering

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## Ability to cooperate rationally

- 90% of cases are regarding this issue
- Volitional non cooperation v. mental illness
- Rational v. irrational cooperation
- Ability to assess rationally mental state defense
- Ability to understand and appreciate plea bargain

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# ASH 1370 Process

2007 to 2009

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## Assessment Program Overview

- Four Steps:
  - 1) Revised Competency Assessment Instrument
  - 2) Mock Trial Activity
  - 3) Team Staffing
  - 4) Forensic Staffing

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## ASH in 2006-2007

- Census rising to 1300+
- Pressure to more completely implement the Enhancement Plan
- IST Admissions to multiple programs
- IST post admission care on multiple programs

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## ASH 2006-2007 IST System Changes

- 2006 – Start reducing Hospital Census from 1300+ to 1000
- 2007 – Enhancement Plan elements increasingly incorporated into staff assignments
- Early competency assessment and focused competency treatment initiation delayed as EP elements implemented

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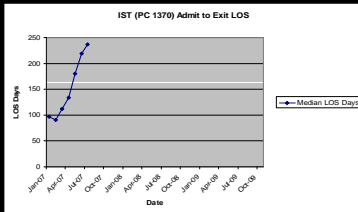
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## The Problem



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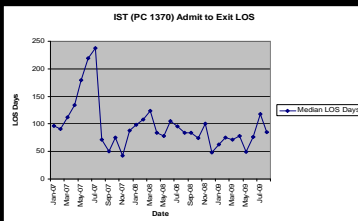
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## The Solution



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## How'd We Do That?

- Concentrate IST Admissions and treatment within a single program
- Focus on improving each element in the competency process in sequence
- Add Forensic Staffing Reviews
- Add Forensic Review Panels
- Closely Track Progress Toward Competency

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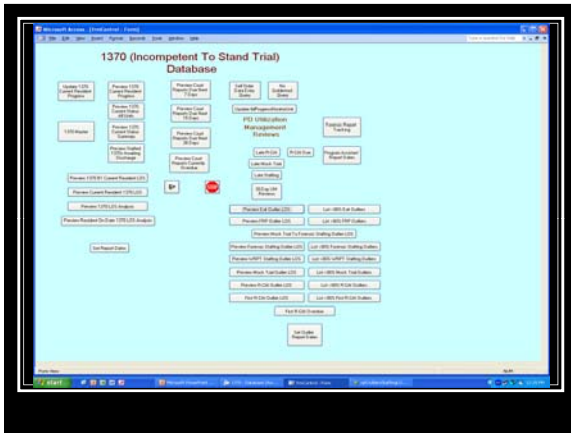
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## Revised Competency Assessment Instrument

- | ■ BEFORE  | ■ AFTER                                   |
|---|---|
| ■ Within seven days of admission                  | ■ Increased oversight                     |
| ■ Once a month after that (not strictly followed) | ■ Within seven days of admission          |
|   | ■ Target every two weeks on admissions    |
|   | ■ Once a month on treatment units         |
|   | ■ More frequently if clinically indicated |
|   | ■ Deferred if indicated                   |

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## LOS Outlier Tracking

- Admission to Exit Outlier LOS Identifiers
- Individuals Exiting Between 1/1/2009 And 9/17/2009
- N = 169
- 25% of Individuals Exit in Less Than 50 Days.
- 50% of Individuals Exit in Less Than 89 Days.
- 75% of Individuals Exit in Less Than 161 Days.
- 80% of Individuals Exit in Less Than 191 Days.
- 90% of Individuals Exit in Less Than 280 Days.
- 95% of Individuals Exit in Less Than 398 Days.

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## LOS Outlier Tracking

- Admission To First R-CAI Outlier LOS Identifiers
- First R-CAI Between 7/1/2007 And 7/31/2007
- N = 30
- 25% Receive First R-CAI in Less Than 16 Days.
- 50% Receive First R-CAI in Less Than 23 Days.
- 75% Receive First R-CAI in Less Than 31 Days.
- 80% Receive First R-CAI in Less Than 35 Days.
- 90% Receive First R-CAI in Less Than 40 Days.
- 95% Receive First R-CAI in Less Than 41 Days.

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## Focus on Initial R-CAI

- Improve the timeliness of administration of the initial Revised-Competency Assessment Instrument (R-CAI).

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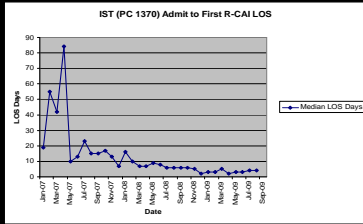
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## Admit – First R-CAI LOS



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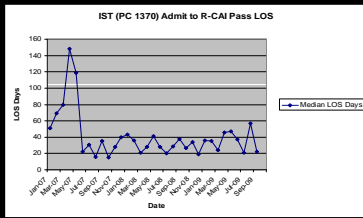
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## Admit – R-CAI Pass LOS



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## Mock Trial Activity – Behavioral Assessment Under Pressure

- Before
  - Once a week
- After
  - Twice a week

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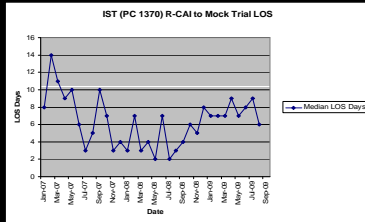
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## R-CAI Pass – Mock Trial Pass LOS



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## Staffing – Clinical Evaluation

- **Before**
- “Team Staffing”
- **After**
- “Team Staffing” Team PLUS “Forensic Staffing”
- Probably increases LOS

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## Focus on Staffing Issues

- Track Mock Trial to WRPT Staffing LOS
- Track WRPT Staffing to Forensic Staffing LOS
- Lack of consensus among WRPT members and Forensic Psychiatrist reviewers
- Stress WRPT – Forensic Reviewer timely communication re competency issues

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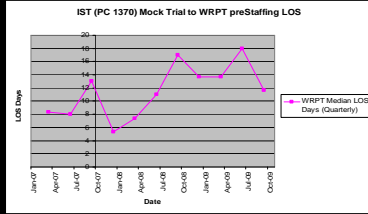
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## Mock Trial to WRPT pre-Staffing LOS




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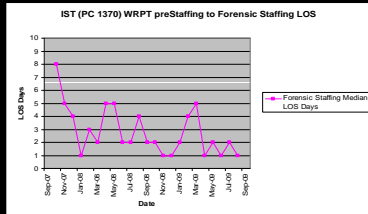
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## WRPT pre-Staffing to Forensic Staffing LOS




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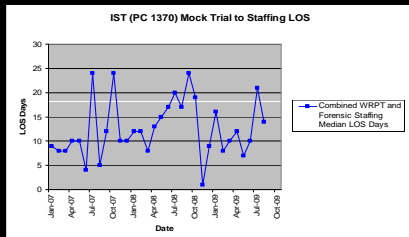
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## Mock Trial To Staffing LOS




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## Forensic Review Panels (FRP) Added as Additional Oversight

- Track Forensic Staffing to FRP LOS

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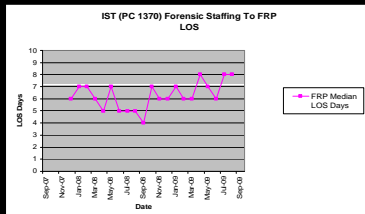
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## Forensic Staffing to FRP LOS



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## The Bottom Line

- Using a systematic and measured approach you can make a difference and still provide full implementation of the Enhancement Plan elements

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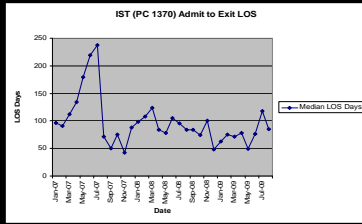
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## IST Admit To Exit LOS



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## The Role of the Forensics Consultant

How to Amaze and Confound 1370 Treatment Teams

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## 1370 Progress and Eighteen-Month Reports

- Template for these reports is modeled on the Consent Judgment recommendations
- ASH provides frequent CAI-R testing and mock trial sessions
- There is a goal of three to five hours of 1370-themed groups per week per patient.
- From the time of admission, there is an emphasis on detection of malingering.

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### Typical Forensic Consultant Recommendations

- The consultant should offer interventions for “under the radar patients” who are not progressing
- The consultant offers an objective evaluation for the presence of malingering.
- For a patient who has been re-committed under 1370, the consultant suggests focus of clinical treatment to address a patient’s areas of deficiency.

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### For Patients Who Fail Forensic Staffing

- The consultant confers with the treatment team to identify barriers to achieving competency.
- At ASH oral communication with the treatment team is augmented by e-mail communication to the treatment team.
- The consultant is available to the treatment team in an on-going and collaborative manner.

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### The Role of the Treatment Team Psychologist

- The initial psychology assessment is crucial in the early detection of malingering.
- Once malingering is suspected, the team psychologist performs psychological assessment tools specific to the sub-type of malingering.
- The forensic consultant incorporates relevant psychological testing in the forensic report so that the report functions as a stand-alone document.

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### Keys to Successful Forensic Consulting for 1370 Patients

- Early and continuous consultation with the treatment team.
- Proactive consultant recommendations
- Prompt and collaborative intervention for suspected malingering patients
- Encourage two-way communication between the consultant and the treatment team

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### Educational Program

#### WELCOME TO THE 1370 PROGRAM

Welcome to the 1370 Program and Unit 11 at Atascadero State Hospital. This is a short-term psychiatric treatment program to help you return to court as soon as possible. The program will help you understand why you were found incompetent to stand trial, what you have been charged with, the various legal strategies available to you, and how to act in court.

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### Educational Program

- Educational Materials
- Milieu based
- Group Types
  - Didactic/ educational
  - interactive

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## Educational Materials

- Golden Rod
  - Charges
  - Terms
- Booklet
  - 17 languages
  - 5 pleas
  - Court room personnel
  - Plea Bargain components/process
  - Terms: probation, charges, etc.

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## Educational Materials

- Arabic
- Armenian
- Cambodian
- Chinese
- English
- Farsi
- Filipino
- German
- Japanese
- Korean
- Laotian
- Romanian
- Russian
- Spanish
- Thai
- Vietnamese

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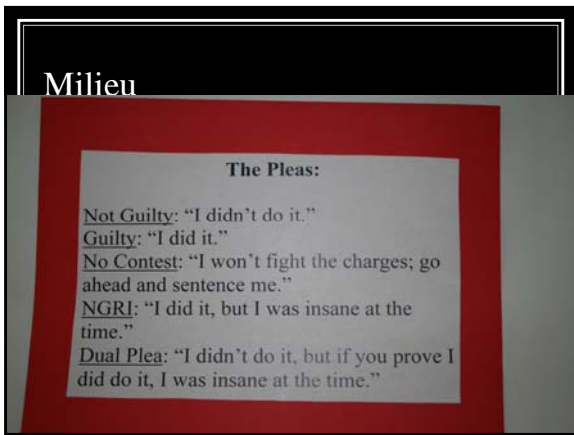
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# LAW & ORDER

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## Group Types

- Sponsor Groups
  - Sponsor learns individual's specific challenges
- Didactic/ Educational
  - On unit
  - Lecture style
  - Based on booklet

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## Group Types

- Interactive
  - Games
    - Jeopardy
    - Wheel of Fortune
  - Recreation Therapy
    - Activities based on working through feelings experienced in court or with attorney

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## Summary

- Positive Effects of Changes
  - Shorter LOS
  - Increased detection of malingering
  - Increased communication with courts
  - Decreased work load for treatment teams
  - Reduction of dual agency issue for treatment team allowing for better recovery oriented treatment alliance
- Negative Effects of Changes
  - Increased re-commitment rate

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## Special Thanks

- Dr. Maskel whose inspiration was the impetus for this presentation

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