

April 22, 2010

Mike Sherwood
Chairman, Montana Public Defender's Commission
44 West Park Street
Butte, Montana 59701

RE: Public Comment on 4.23.10, Mental Health Protocol.

Dear Chairman Sherwood and Members of the Commission:

I have caught wind of your letter of 4.20.10 to All Public Defender Employees and Contract Lawyers; and if it is appropriate, under the period of Public Comment I would appreciate it if what I'm about to share with you is aired in a constructive fashion.

I write not in particular defense of the Protocol, or the person in the position, Laura Wendtlandt, Ph.D., though I know her and enjoy a good working relationship with her. Instead, I write the Commission to suggest that there will be tensions that arise no matter how the Protocol is written, nor who is in the position, due to the inherent characteristics of the duties associated with this process.

My concerns lie in the integrity of the process and in the Commission reviewing what are the needs of the defendants in these cases, realistically, while attending to nationally recognized standards for the provision of these services. Though I am the President of the Montana Psychological Association at this point in time, so as to assure that there is no confusion - my views do not represent those of the association, and are mine alone.

First, when I initially heard of concerns about the person whose job it has been to administer the Mental Health Protocol, Dr. Wendtlandt, I did contact a number of members of the Commission to urge the old adage from texts, like *Getting to Yes*, to not confuse the *person* with the *problem*. And, I want to reiterate that here.

The person administering the Mental Health Protocol is in the position of being in that narrow space between the millstones of the PDO's budget and the level of need that the defendant's attorney perceives. In such situations, it may be difficult to differentiate the person from that position and/or job...

Second, I have know of, or been involved with the Mental Health Protocol from its inception as Dr. Wendtlandt went about consulting with about three or four forensic psychologists familiar with the system in constructing it. The whole idea behind the first iteration of the protocol was to address defendant 'need', and, budgetary responsibilities through a triage process. But, as you and your fellow Commission Members are well aware, there is a difference between needs, and 'wants'. As all of you know, the Protocol, has *evolved* since that time.

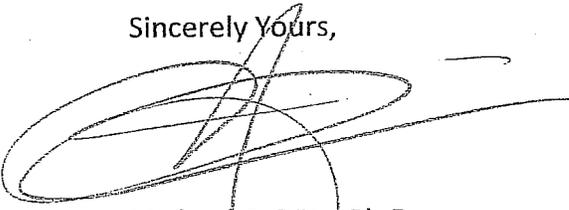
The matter of needs versus wants comes to bear in the construction of a referral question: What does the defendant's attorney need to know about the defendant's status (?), versus, what do they want to know (?). Wants, broad wants, I've heard a time or two referred to as fishing expeditions; and became all too familiar with such expeditions in my first forensic experience. At that point in my career I Co-Directed the Psychology Department at the Wyoming State Hospital in the mid '90s. For those not familiar with Wyoming at that time, it had the State's only Forensic Unit, and the vast majority of defendants sent on to the Forensic Unit by their attorneys were, in a phrase, fishing expeditions. They wanted a Forensic Psychological Assessment, but often they did not need such an assessment.

Third, Dr. Wendtlandt has, in my experience, been thorough in her review of the credentials of those who have the proficiency to provide such assessments and other related services. She rigorously collected and reviewed the credentials of those offering themselves up as providers of forensic services. To be clear, according to National Standards, there are rigorous requirements. Some of these I have enclosed for the Commission's reference. It may go without saying, but, as you may be aware some professionals were not pleased with having their credentials reviewed. Further, many may not be pleased with having their reports reviewed against not only the referral question, but also, these nationally recognized standards. Nationally, there is an expectation of what a final work-product looks like, and who is qualified to create such a work-product. Some may argue rural access for compromising or diminishing these standards; but by the same token most reasonable physicians would not step forward to do brain surgery unless they had been properly trained to do it... Sticking to these standards, may well not endear the person administering the Protocol to providers especially, and amplifying on my point above, if they are questioned for providing *wants* rather than *needs*.

Being aware that public comment periods often have limits, I will simply share these three considerations. In constructing this letter I did feel that the weight of the situation around how behavioral healthcare services are delivered in a forensic environment called for some action on my part that may, or may not, assist in framing the current situation.

I thank you for your time and attention to these matters.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Michael R. Bütz", with a large, stylized flourish underneath.

Michael R. Bütz, Ph.D.
Licensed Psychologist
Montana #365
Wyoming #431

att: *APA Guideline for Test User Qualifications (2001), Standards for Education and Training in Psychological Assessment (2006), The Role of Psychological Testing in a Forensic Environment (1992), and, Guidelines for Child Custody Evaluations in Family Law Proceedings (2009).*