

The Modernization of HIV Laws in Nevada

Changing Legislation

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Objective

This workshop will provide an overview of the work done and lessons learned, in Nevada, to successfully modernize its HIV laws.

About the Presenter

André C. Wade is the State Director for Silver State Equality. In this role, he leads legislative, fundraising, and political efforts in the state of Nevada. André has worked in human services for nearly 25 years in a variety of public and nonprofit contexts, working on issues such as developmental disabilities, child welfare, youth experiencing homelessness, national policy advocacy, diversity, equity and inclusion, and LGBTQ+ advocacy. André is a two-time appointee to Governor Sisolak's Advisory Task Force on HIV Exposure Modernization for the State of Nevada.

About Silver State Equality

Silver State Equality brings the voices of LGBTQ+ people and allies to institutions of power in Nevada and across the United States, striving to create a world that is healthy, just, and fully equal for all LGBTQ+ people.

Silver State Equality fights for full LGBTQ+ equality on multiple fronts:

- Electing pro-equality champions, up and down the ballot
- Passing pro-equality legislation in Carson City, Sacramento, and Washington D.C.
- Advancing LGBTQ+ civil rights and social justice in the courtroom
- Reducing disparities in LGBTQ+ health and well-being through education and advocacy

Discussion

What comes to mind when you hear...

HIV criminalization or

The criminalization of HIV?

What Is Criminalization of HIV?

HIV criminalization is a term used to describe laws that criminalize otherwise legal conduct, or increase penalties for criminal conduct, based on a person's HIV status.

HIV Criminal Laws in Nevada

Nevada had two HIV-specific criminal laws, which criminalize three categories of conduct:

1. Engaging in prostitution and solicitation after testing positive for exposure to HIV and receiving notice of one's results
2. Working as a prostitute in a licensed house of prostitution after testing positive for exposure to HIV and receiving notice of one's results
3. Intentionally, knowingly, or willfully engaging in conduct in a manner that is intended or likely to transmit HIV to another person

Structural Origins of the Laws

- These laws were implemented across the nation in the early 1990's as part of the 1990 Ryan White CARE Act by requiring states to certify that they had adequate laws in place to prosecute individuals who knowingly exposed another person to HIV
- Nevada's 1993 legislative session: "Dr." Paul Cameron, Director of the Family Research Institute
- The laws were based on stigma, fear, and misinformation

What Made These Laws Problematic?

- The laws require someone to infect another person with HIV before being liable for a felony punishable by years of imprisonment
- The laws did not require a person to specifically intend to infect another person with HIV
- The laws criminalize behaviors that we now know cannot possibly transmit HIV

Who These Laws Impacted the Most?

- HIV criminal laws disproportionately impact Black people, Latinx people, and other people of color
- HIV criminal laws disproportionately impact women and sex workers
- HIV criminal laws bring new people into the criminal justice system
- HIV criminal laws undermine Nevada's public health efforts to fight HIV
 - These laws may deter people from getting tested
 - These laws may disincentivize people from disclosing their HIV-status
 - These laws further stigmatize people living with HIV
 - These laws impact the very people states are trying to engage to combat HIV

How the Work Was Done

- Coalition building
- Governor's Advisory Task Force on HIV Exposure Modernization
- Identification of partners and collaborators

Nevada HIV Modernization Coalition

Duties of the Governor's Task Force

- Identify, review and evaluate the current statutes and regulations of Nevada that criminalize exposure to HIV
- Research the implementation and impact of such statutes and regulations
- Identify any disparities in arrests, prosecutions, or convictions
- Evaluate current medical and scientific research with respect to the modes of HIV transmission
- Identify any court decisions enforcing or challenging such statutes and regulations
- Assess changes in other states and nationally related to modernizing HIV criminalization laws
- Make recommendations
- Report due by September 1, 2020

Work of the Task Force

Guiding principles: Elements of modernization from the Nevada HIV Modernization Coalition

- Lower any penalty to the lowest graded misdemeanor
- Eliminate any sentence enhancement that results from being a PLHIV
- Assign all burdens of proof to the prosecution
- Make the law applicable to all non-airborne contagious or infectious disease, not HIV in isolation

Work of the Task Force (continued)

Guiding principles: Elements of modernization from the Nevada HIV Modernization Coalition

- Include a requirement that the law apply only to those acts with specific intent to transmit and those who engage in conduct that carries a substantial risk of transmission, or actual transmission occurs
- Include a statement that the prosecution cannot meet its burden of proving specific intent to transmit where PLHIV undertook or attempted to undertake practical means to prevent transmission
- Any penalty must be proportionate to the harm and prioritize alternatives to incarceration, and classification as a sex offender should never result

HIV Modernization (SB275)

Changes:

- Moves statutes from the criminal code to the public health code because the spread of communicable diseases is best addressed through public health measure—not criminalization
- Removes unnecessary references and call-outs of HIV and AIDS in the statutes; and removes incorrect reference to AIDS instead of HIV

HIV Modernization (SB275) (continued)

- Creates an affirmative defense if a person exposed to a communicable disease through conduct:
 - Knew the defendant had the communicable disease;
 - Knew the conduct could result in transmission of the disease;
 - Consented to engage in the conduct with that knowledge; and
 - If the potential exposure to a communicable disease of the person who has the disease was not likely to expose another

HIV Modernization (SB275)

Changes:

- Orders issued by state and local health authorities requiring a person to verify a communicable disease or ordering isolation, quarantine, or treatment must also state the reasons that the actions are being ordered, and the orders should be least restrictive
- Also, a person must be informed of their rights if they are ordered to have a medical examination or test including the right to appeal the order and the process to do so

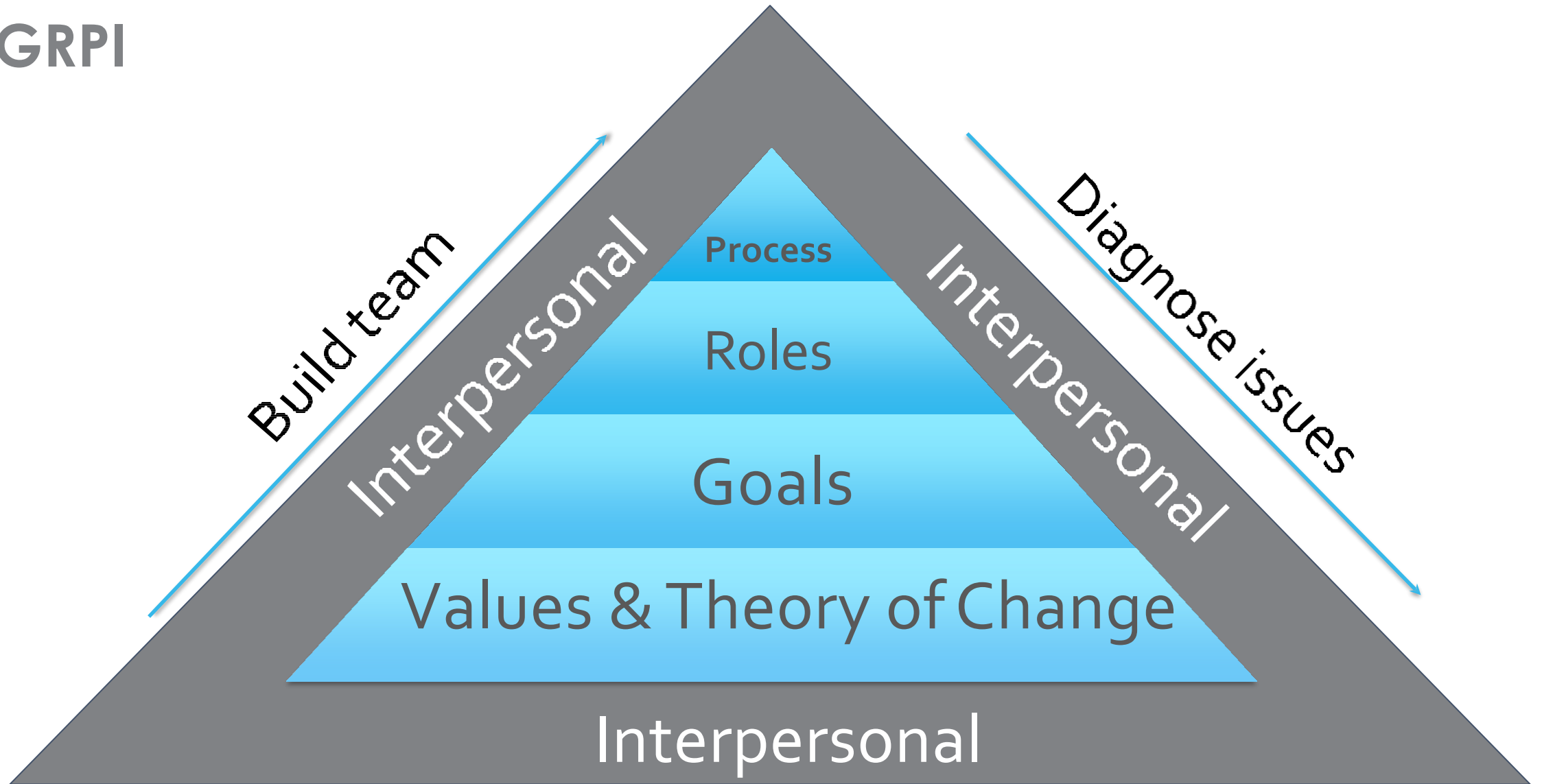
HIV Modernization (SB275) (continued)

- It revises the conditions under which a court may order a person to be tested for a communicable disease upon the petition of first responders
- An order is authorized when:
 - Testing someone is necessary to determine the appropriate treatment for the officer

Lessons Learned

- It is necessary to educate law makers and stakeholders on HIV
- To build a broader base of support, make HIV modernization:
 - A criminal justice issue
 - A public health issue
 - An equality issue, and
 - A Black liberation issue

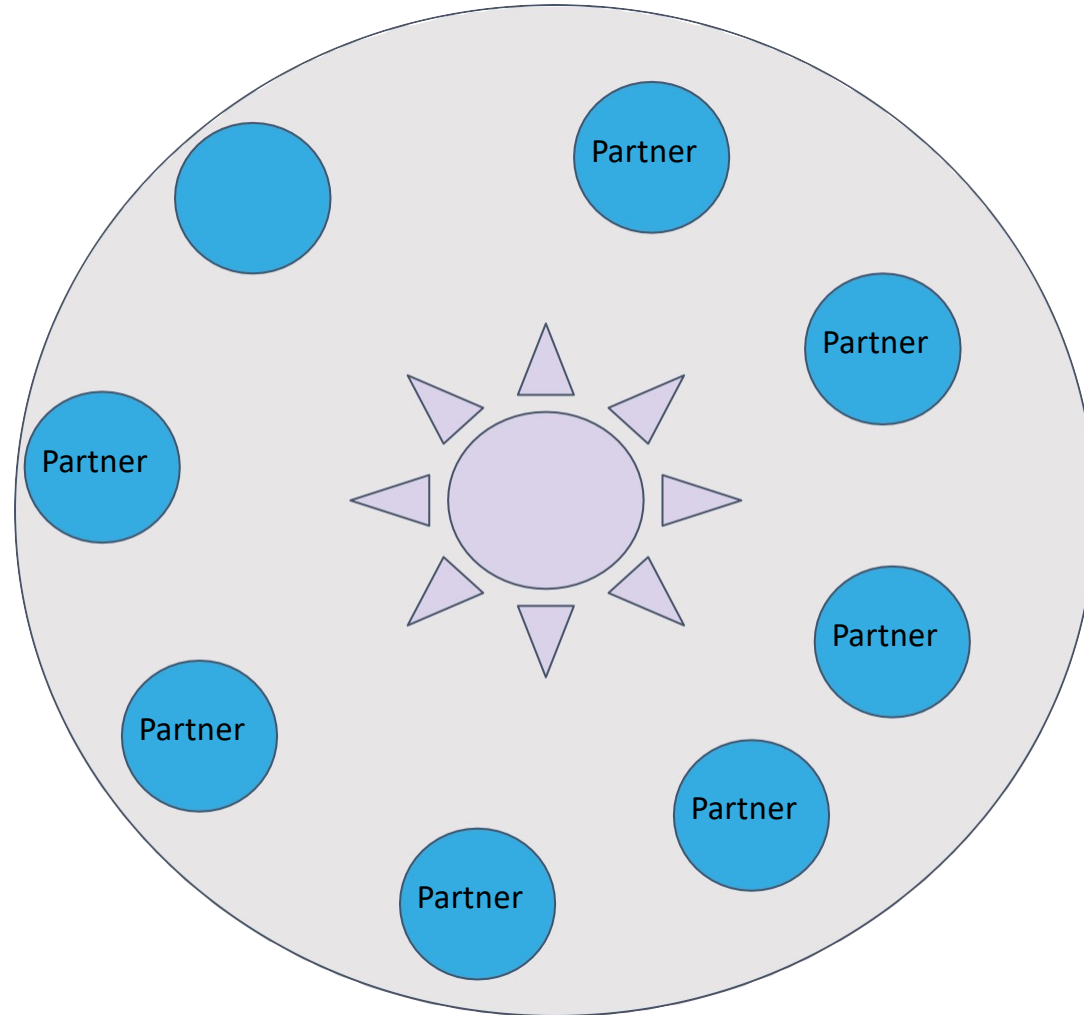
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Faction Mapping

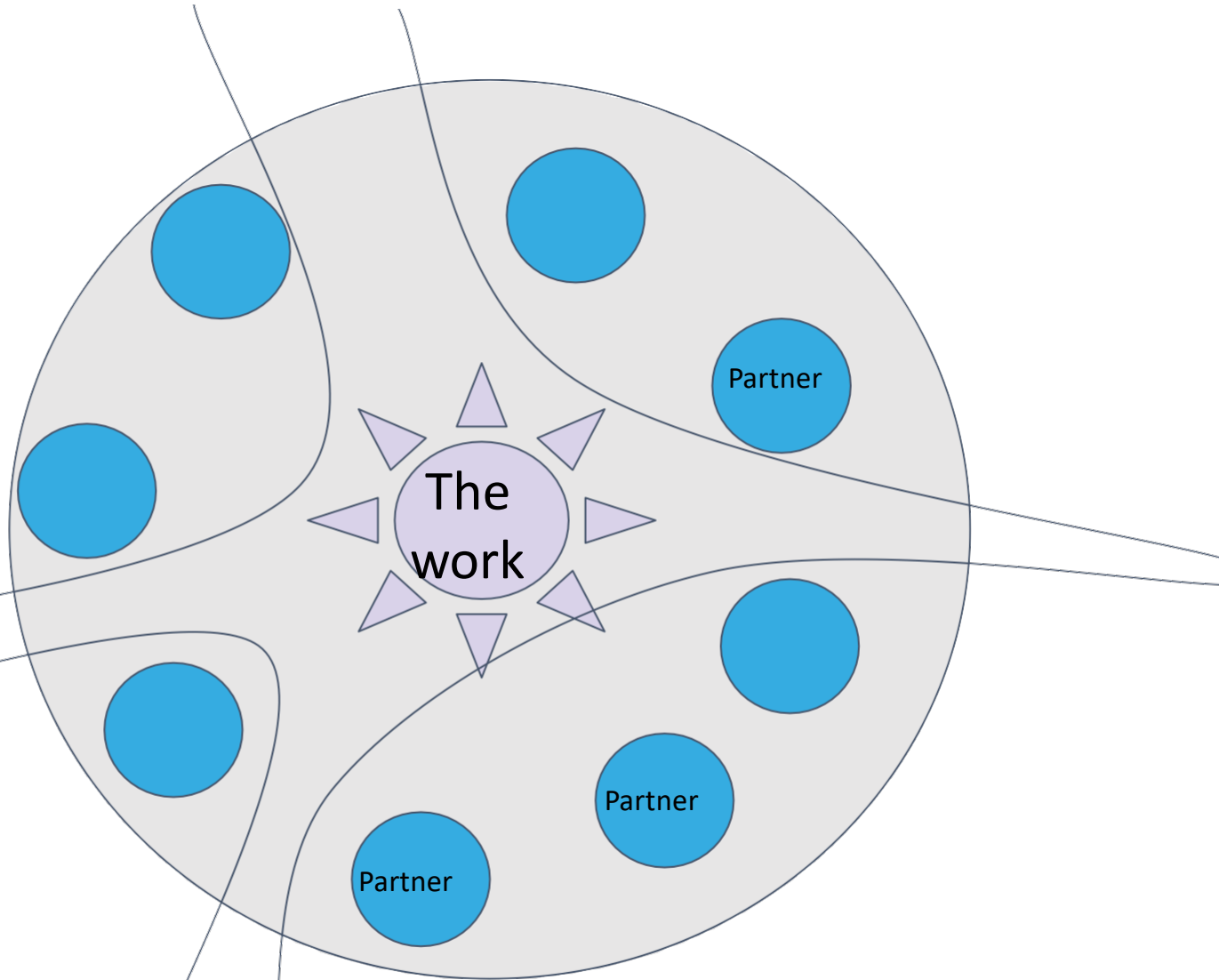
What is the work that brought you together?

How do various partners' perspectives on the work differ?



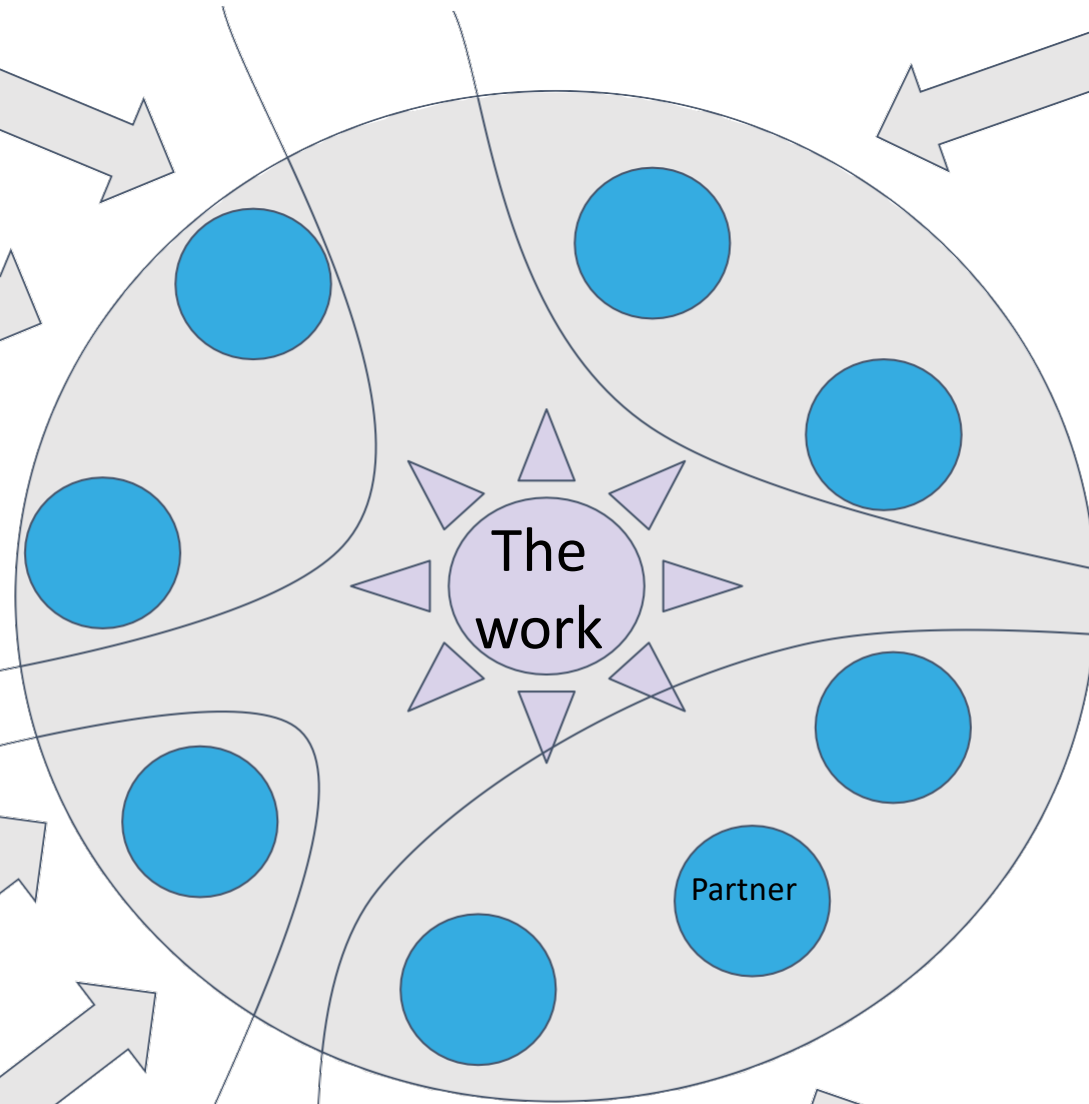
Faction Mapping (continued)

What are those factions?



Faction Mapping (continued)

What influences the factions' approaches?



- Pressures
 - Colleagues
 - Community
 - Funders
- Beliefs
- Past experiences
- Trauma

Thank You!



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