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## A DOZEN YEARS OF DRUG TREATMENT COURTS: UNCOVERING OUR THEORETICAL FOUNDATION AND THE CONSTRUCTION OF A MAINSTREAM PARADIGM

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### ABSTRACT

The creation of the first drug treatment courts were in response to the revolving door of drug use and recidivism. There was no theoretical basis for these courts and no universal support for them. Twelve years have brought incredible changes. Therapeutic jurisprudence says, in essence, whether intended or not, that legal rules and procedures have therapeutic effects. Drug treatment courts have adopted principles of TJ to enhance their functioning. The Conference of Chief Justices recently issued a resolution supporting “problem-solving” courts. New trial court standards legitimize drug courts’ procedures. Drug treatment courts are now mainstream and can no longer be seen as “boutique” courts staffed by renegade judges. Working therapeutically is an appropriate, effective, and productive way for the justice system to function.

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*Key Words:* Drug treatment courts; Therapeutic jurisprudence; Ten key components of “drug courts”; Coerced treatment; Problem-solving courts; Court supervised treatment; Compliance

## INTRODUCTION

The creation of the first drug treatment courts was in response to the “revolving door” of drug use, incarceration, failures of probation or parole, and recidivism. It was not until quite recently that it was first posited that *therapeutic jurisprudence* could be used as the theoretical basis for drug treatment courts and to enhance their functioning.<sup>[1]</sup> Traditional methods of addressing drug use and misuse in the criminal justice system resulted in the incarceration of vast numbers of people. “*The number of drug offenders sentenced to state prisons each year. . . increased nearly 12-fold from 9000 in 1980 to 107,000 in 1998.*”<sup>[2]</sup> Although it appears that these numbers may be leveling off in state courts,<sup>[3]</sup> by 1996 drug offenders comprised 60% of the federal prison population, 23% of the state prison population, and 22% of the county jail population.<sup>[4]</sup> In the early 1990s, the criminal justice system came to recognize that incarceration alone does not break the cycle of drug use and crime. Further, an increased acceptance of the medical model of addiction and knowledge about addiction as a neurochemical “brain disease”—as Dr. Alan Leshner, Director of the National Institute on Drug Abuse, calls addiction,<sup>[5]</sup>—fostered a greater interest in court-ordered and court-supervised treatment as an appropriate response to criminal behavior by addicts.

Therapeutic jurisprudence does not require acceptance of the disease model of addiction. In fact, therapeutic jurisprudence would not support the continued criminalization of drugs solely for the purpose of treating users.<sup>[6]</sup> When they were first created, the founders of drug treatment courts gave little thought to a theoretical or jurisprudential basis for them.<sup>[7]</sup> Rather, drug treatment courts were a practical response to overwhelming caseloads and the courts’ frustration with the current system. Likewise, the founders of therapeutic jurisprudence now see drug treatment courts as a “fascinating laboratory” providing scholars a place to generate and refine therapeutic jurisprudence approaches.<sup>[6]</sup> Additionally, when the first such courts were developed, there was little institutional support for them. The past 12 years has brought incredible changes to drug treatment courts, in their jurisprudential underpinnings, their institutionalization, and national recognition of their value.



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### THERAPEUTIC JURISPRUDENCE

Therapeutic jurisprudence is an academic body of thinking that arose from the mental health field in 1987. It says, in essence, whether intended or not, that substantive rules, procedures, and legal roles have therapeutic or antitherapeutic effects. Professor David J. Wexler, one of the founders of therapeutic jurisprudence, gives an example of a legal rule's antitherapeutic effect, the military's "Don't Ask; Don't Tell" policy disaster. Under this policy, members of the military were required to forgo discussing their sexual orientation, so that what one did over the weekend, recent films or books, or one's immediate family conceivably would be off limits as a subject matter. To comply, gay men and lesbians were asked to engage in conduct which was destructive to individual psychological well-being and which caused barriers to social relations in the service.

As an example of a procedure that is antitherapeutic, Dr. Wexler considers family law disputes where parents are forced into extreme positions in order to determine child custody or visitation issues. In these procedures, judges may have to consider a history of spousal or child abuse when making such orders. This can be harmful to the entire family, especially when children are required to testify about who should be given custody of them or which parent should be their primary caregiver. Finally, an example of an antitherapeutic legal role would be, for instance, telling litigants who try to speak directly to the judge that they may speak only through their attorney. This experience may cause frustration in the litigant and cause him or her to feel "unheard." The old saw, "*Tell it to the judge*," is the exception, rather than the rule in traditional courtrooms.

Therapeutic jurisprudence has been defined as "*the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects.*"<sup>[8]</sup> Using a therapeutic jurisprudential lens, laws, procedures, and roles can be viewed to see if they support or undermine their underlying public policy. Using this lens, however, is not an invitation to "trump," as Professor Wexler puts it, important considerations such as "due process." In fact, many times other considerations must necessarily override therapeutic ones.<sup>[9]</sup> "*Basically, therapeutic jurisprudence is a perspective that regards the law as a social force that produces behaviors and consequences. Sometimes these consequences fall within the realm of what we call therapeutic; other times antitherapeutic consequences are produced. Therapeutic jurisprudence wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected.*"<sup>[10]</sup>

"The fundamental principle underlying therapeutic jurisprudence is to select options that enhance the psychological and/or physical well-being of



individuals without subordinating other core values of the justice system.”<sup>[11]</sup>

*“Although drug treatment court developed independently, it can be seen as taking a therapeutic jurisprudence approach to the processing of drug cases inasmuch as its goal is the rehabilitation of the offender and it uses the legal process, and the role of the judge in particular, to accomplish this goal.”*<sup>[6]</sup>

Therapeutic jurisprudence and drug treatment courts have been described as “*vectors in the comprehensive law movement.*” Some other vectors include the preventative law, holistic law, restorative justice, and the collaborative law movements.<sup>[12]</sup> Drug laws themselves, save for the option of diversion, are not enlightening as examples of using therapeutic jurisprudence. A diversion program is usually established by statute and allows the defendant the option of completing treatment instead of being sentenced for a drug-related offense. Diversion may be offered either pre- or postadjudication. Drug treatment court principles, procedures, and the roles of the actors are exemplary of therapeutic jurisprudence in action as set forth below.

## PRINCIPLES OF DRUG TREATMENT COURTS

The principles underlying most drug treatment courts are referred to as the Ten Key Components. They were performance standards created by an interdisciplinary group of drug treatment court professionals made up of judges, prosecutors, defense counsel, treatment providers, and court administrators. The components are based on state-of-the-art information about addiction, treatment, and recovery, and have been adopted by many states, the Conference of Chief Justices, and the American Bar Association. With the specific goals of reducing recidivism, and promoting treatment, recovery, and abstinence as forms of rehabilitation in the offender, the group acted on the best practices and information they had at the time. The authors of the Ten Key Components no doubt never heard of therapeutic jurisprudence when they sat down to draft the document in 1997, but its principles are found throughout.<sup>[13]</sup>

## THE TEN KEY COMPONENTS

### **Key Component #1: Drug Courts Integrate Alcohol and Other Drug Treatment Services with Justice System Case Processing**

In implementing this goal, a team approach integrating the judge, prosecutor, defense counsel, probation or other corrections personnel, law



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enforcement, pretrial services, evaluators, and local service providers is advised. Therapeutically this is seen as a way to “*assist and encourage defendants to accept help that could change their lives.*” Relying on the body of knowledge that concludes that *coerced treatment* is as equally effective as “noncoerced” treatment, and recognizing that few addicts spontaneously recover,<sup>[14]</sup> drug treatment courts use the defendant’s arrest as an opportunity for intervention. The defendant is presented with the choice to participate in drug user treatment as an alternative to traditional case processing, whether or not that traditionally includes incarceration.

*“Experiencing the choice as voluntarily made and noncoerced can be more conducive to success. Judges therefore should not attempt to pressure offenders to accept diversion to drug treatment court, but should remind them that the choice is entirely up to them. A body of psychological work on what makes people feel coerced suggests how the drug court judge can increase the likelihood that offenders experience a sense of voluntary choice in their decision to accept drug treatment.”*<sup>[6]</sup>

This overlay of no coercion is certainly diminished when using a postadjudication, nondiversion model for drug treatment courts. A defendant who is required to either plead guilty or who has been found guilty after trial is less likely to see jail or prison time as an alternative choice freely made. In this sense, defendants are coerced into a drug treatment court as a condition of probation that, if violated, could be terminated and lead to a substantial amount of incarceration. However, the way in which this probation condition is executed can be done either therapeutically or antitherapeutically.

Key Component #1 urges that documents in drug treatment courts be collaboratively developed, reviewed, and agreed upon. This helps the defendant understand exactly what is expected and what constitutes successful completion. The role of the judge in a drug treatment court is expanded to respond to each participant’s positive efforts, as well as to their noncompliance. The authoritative and supervisory power of the judge is critical in this approach to treatment. The participation of a judge in the rehabilitation process represents a dramatic shift in legal thought and judicial behavior, requiring judges to think therapeutically.

Anecdotes from drug treatment court participants often include the importance of their relationship to the judge and how not wishing to disappoint the judge is a factor in their recovery. As a participant in the San Bernardino (CA) Drug Court presided over by Hon. Patrick Morris puts it, “*I got a nudge from the judge.*” Because of their effect on participants, “*judges need to develop and improve their interpersonal, psychological, and social work skills*” using therapeutic jurisprudence in the effort.<sup>[6]</sup>



**Key Component #2: Using a Nonadversarial Approach, Prosecution and Defense Counsel Promote Public Safety While Protecting Participants' Due Process Rights**

The legal system and its participants (judges, attorneys, bureaucrats) do not readily identify with this therapeutic approach to their business because the legal system is oriented towards an adversarial process. It is laden with concepts of “rights protection” and “due process.” Therefore, it dictates, as a condition of participation, that litigants adopt extreme and opposing positions. They must present those positions in the highly technical and ritualized forum of the courtroom to a neutral arbiter (judge or jury). The theory is that the truth will emerge from this process. The traditional win/lose paradigm of the courtroom, focusing on the merits of the pending case, can be antitherapeutic and is not, therefore, used in drug treatment courts.

From the entry of a “not guilty” plea to the requirement to take whatever position would advance a client’s position, no matter how hurtful to the addict’s recovery, the entire adversarial process is set aside in drug treatment courts, so that the participant’s recovery and law-abiding behavior is the only focus. Defense counsel in particular find this shift in role to be confusing and somewhat disturbing.<sup>[15]</sup> Using criteria that ensure public safety, the prosecutor is often the “gatekeeper” to eligibility in drug treatment courts. Defense counsel advises a participant of all legal courses of action, including the likelihood of being successful in a motion to suppress, obtaining a “not guilty” verdict at trial, and possible sentences and other consequences absent from the drug treatment court. In this way, important principles such as public safety and the defendants’ due process rights are addressed. Waivers of rights by defendants need to be done knowingly and intelligently. The very nature of drug treatment court participation is therapeutic in and of itself, and while being so, does not “trump” other important considerations.

**Key Component #3: Eligible Participants Are Identified Early and Promptly Placed in the “Drug Court” Program**

Drawing on research that suggests the trauma of an arrest is an opportune time to intervene in a drug user’s life, prompt placement is a benchmark in drug treatment courts. In most courts, immediate enrollment in treatment services is required, and a short review period is instituted to ensure compliance so that a participant does not get lost in the system. This model was less problematic in the early drug treatment courts

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that tended to be diversion models; postplea courts, however, must be more flexible in using this key component to allow more time for attorneys to explore all options for their clients before exposing them to substantial jail or prison time if they are not successful in the program. Using flexibility in applying this Key Component is an example of not allowing a therapeutic goal to trump a nontherapeutic one. In other words, it may be more therapeutic to force the defendant into a plea quickly but, given the extremely serious potential penalties in case of failure, this therapeutic goal must take a back seat to a more important principle.

### **Key Component #4: Drug Courts Provide Access to a Continuum of Alcohol, Other Drug and Related Treatment, and Rehabilitation Services**

Recognizing that alcohol and other drug-use-related problems are complex and are influenced by a variety of social and cultural experiences, participants in drug treatment courts are offered a continuum of care based on an individualized assessment. The “therapeutic team” of judge, lawyers, case managers, and other staff communicate regularly to ensure appropriate, culturally competent placement and compliance with the program. The participant is viewed holistically and the services offered to participants can include mental health evaluations, communicable disease (HIV, hepatitis, other STDs, and tuberculosis) testing and education, clean and sober housing referrals, employment readiness or courses to improve job skills, an educational assessment, and counseling to address family troubles including domestic violence, child abuse, and incest survivorship.

Evidence-based research about treatment, such as the latest techniques to address “stimulant abuse,” is used in drug treatment courts.<sup>[16]</sup> Graduation requirements in drug treatment courts may include not only a substantial period of sobriety (6 months typically) and the payment of fees and fines but, less traditionally, a requirement to have a high school diploma, GED, or complete English-as-a-second-language (ESL) courses; completion of parenting, partner/relationship counseling, anger management/domestic violence courses; clearing of all outstanding warrants (often traffic infractions); registration of all vehicles and obtaining a valid driver’s license; full-time employment or enrollment in school; and other programs needed by the participant to obtain and maintain a law-abiding lifestyle. This holistic approach is an example of a legal rule that is therapeutic.





### **Key Component #5: Abstinence Is Monitored by Frequent Alcohol and Other Drug Testing**

Frequent urine testing in drug treatment courts is used to monitor a participant's alcohol or other drug use, not for the purpose of "catching" them using, but to measure treatment effectiveness and make adjustments in the treatment plan in a timely fashion. Urine testing has the therapeutic effect of promoting honesty and a frank discourse between the participant and the treatment team, including the judge. The ability to disclose problems promptly is encouraged in two ways by the court—first, most drug treatment court contracts have a drug-use immunity clause which prohibits disclosure of the participant's statements about his or her drug use in any trial or probation violation hearing, and secondly, many judges impose heavier sanctions if drug use is not disclosed to a team member before taking the urine test. Participants are required to provide a fresh, clean, personal, unadulterated, undiluted observed urine sample. In most courts, trying to "beat" a test<sup>[17]</sup> is severely punished and participants are told that a positive test will be less harshly sanctioned.

### **Key Component #6: A Coordinated Strategy Governs Drug Court Responses to Participants' Compliance**

Drug treatment courts recognize that addiction can be a relapsing condition in which continued use is not uncommon. It may take a lot of patience and several attempts before the court can expect to see long periods of abstinence and sobriety. Therapeutic strategies aimed at preventing the return to substance use are employed throughout the term of the program. These include graduated sanctions<sup>[18]</sup> with increased severity for continued use. The drug treatment court recognizes that structure without support feels punitive and support without structure is enabling. Thus, even small incentives such as movie tickets, baseball game passes, or certificates of completion for phases of the program, can be more meaningful to the participant than spending the weekend in jail. Measured responses that encourage compliance are used by the court and can range from small "prizes" and respect, praise, and encouragement from the bench, to "shock incarceration" or threats of program termination.

The therapeutic balance between punitive measures and program support is important for the participant's recovery. Although the judge is always the final arbiter of issues concerning a participant, he or she takes input from the entire team and may include the participant. If a problem arises, such as a substance use episode, it is not unusual for a participant to





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come to court having already discussed the problem with the treatment provider, probation officer, and/or court coordinator. He or she will present a recommendation to the judge that may include jail time, increased 12-Step or treatment meetings, and/or increased urine testing. When participants themselves propose the sanctions, they are more likely to comply with them and not feel coerced by the “system” or the judge. Persons who propose their own “punishment” can’t help but think it’s fair.

### **Key Component #7: Ongoing Judicial Interaction with Each Drug Court Participant Is Essential**

Frequent and meaningful contacts with the judge is a hallmark of the drug treatment court and have inevitable consequences for the mental health and psychological well-being of the participants. As Professor Bruce Winick, one of the co-founders of therapeutic jurisprudence, puts it, the judge needs “*a pragmatic, empirically-grounded therapeutic orientation... that promotes healing through the law.*”<sup>[6]</sup> Professor Winick continues by urging judges to “*consciously view themselves as therapeutic agents in their dealings with offenders [as] they can be seen as playing a therapeutic jurisprudence function. Moreover, principles of therapeutic jurisprudence can help the drug treatment court judge to play this function well.*”

The psychological byproducts of drug treatment courts also seem to flow both ways—judge to participant and, somewhat surprisingly, from participant to judge. In a recent survey of judges reported in a special issue of *Court Review*, that focused on therapeutic jurisprudence and the courts,<sup>[19]</sup> researchers found many factors commonly related to job stress—social isolation, feeling disliked by others, lack of interest in and understanding of one’s work, and not feeling appreciated—were lacking in drug treatment court judges. The most common predictor of positive emotional effect on the judge was the perception by the bench officer that litigants were grateful for the help that the court gives them. If the work of the court is beneficial to the participant, this success will express itself in the attitudes of judges with regard to their own job satisfaction. “*If stress reduction and job satisfaction result in improved mental and physical health for judges [as that research seemed to suggest], such benefits are both personal and systemic. [T]he ambiance in a courtroom where the judge is happy and satisfied provides an atmosphere in which the litigants are more likely to be comfortable and perform at their maximum.*” Both the judge and the participant experience therapeutic benefits by frequent and ongoing judicial interaction in drug treatment courts.



**Key Component #8: Monitoring and Evaluation Measure the Achievement of Program Goals and Gauge Effectiveness**

Ensuring scientifically sound research that evaluates drug treatment courts is essential.<sup>[20,21]</sup> On-going evaluations help drug treatment courts refine their procedures that promote good outcomes for participants. Periodic evaluations may show, for instance, a high “dropout” rate for a certain ethnic group, gender, or sexual minority. The court could do an assessment of its cultural competence in dealing with that group and strive to raise retention levels appropriately. Thus, this key component that appears to be therapeutically neutral at first glance, actually could have a profound effect upon participants’ performance in drug treatment courts. Only with rigorous evaluations and constant assessment can problem-solving courts, such as drug treatment courts, be seen as more than just “feel good” experiments.

**Key Component #9: Continuing Interdisciplinary Education Promotes Effective Drug Court Planning, Implementation, and Operations**

Education about addiction theory as well as therapeutic jurisprudence is necessary for a successful drug treatment court operation. Police officers watching a film about neurobiology, treatment providers learning about criminal procedure, and probation officers thinking about how their actions may affect the participant’s well-being, all promote the effectiveness of the treatment team. Cross-discipline education has been a hallmark of drug treatment courts from the beginning. Judicial education, sometimes for the first time, now may include attorneys, probation officers, treatment providers, administrators, and other professionals.

**Key Component #10: Forging Partnerships Among Drug Courts, Public Agencies, and Community-Based Organizations Generates Local Support and Enhances Drug Court Program Effectiveness**

Linkages and unexpected partnerships enhance participant opportunities and performance. Imagine seeing a bumper sticker that states “Drug Court Works” on a patrol car in a drug-infested neighborhood. That is exactly what happened after Hayward, California Police Chief Craig Calhoun returned from the National Association of Drug Court Professionals conference in 1999 and ordered bumper stickers for all



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patrol cars in the city. Not only can the law-abiding citizens of that community feel comfortable about the local drug treatment court and its promotion of public safety, but an illicit drug user, who sometimes desperately wants treatment, can feel that police officers are more interested in recovery than incarceration.

Or consider the effect on participants who are told that the Deputy Sheriffs' Association has given their Oakland A's tickets as prizes for participants who are in program-compliance in a given week. In December 2000 in the Hayward Drug Treatment Court, one police officer brought "leftover" Toys for Tots gifts for all the participants' children so they would have a good Christmas. The therapeutic effect of this type of interaction benefits both a police officer and a participant—the officer no longer views the drug user in a derogatory way and the participant sees the officer as a supporter of his or her recovery. Traditional policing—"You call, we haul, that's all"—has been replaced by community-oriented policing where the beat officer is given the authority to be a problem-solver in the neighborhood. There is a perfect metaphoric marriage of drug treatment courts and community policing, as evidenced by the National Association of Drug Court Professionals COPS Mentor Court Network.<sup>[22]</sup>

## THE COHERENT INTEGRATION OF SCIENCE AND LAW—TIP #33

The integration of science and law, applying therapeutic jurisprudence to drug treatment courts, is illustrated by using the Treatment Improvement Protocol (TIP) on "stimulant abuse" in drug treatment courts. An Editorial Advisory Board made up of primary care, mental health, and social services professionals work with State Alcohol and Other Drug Abuse Directors to select the topics for TIPs.<sup>[23]</sup> A Resource Panel made up of staff from pertinent Federal agencies and national organizations make recommendations on specific areas of focus that are sent to a Consensus Panel of non-Federal experts nominated by their peers. The Panel provides the basis for the draft document that is reviewed in the field. The final document is adopted and published to provide best practices in specific areas of substance abuse.

An inspection of TIP #33 reveals how science's best practices can be implemented in the courtroom using a therapeutic lens. For stimulant use, commonly methamphetamine and cocaine,<sup>[24]</sup> TIP #33 recommends "contingency management" or "contingency contracting" to get desired behaviors by giving immediate reinforcing or punishing consequences for using or abstinent behavior. An example of this principle in the drug



treatment court context would be allowing participants who volunteer at their child's school to earn down program fees. Participants often need to mend their relationships with their children and school participation is encouraged in this therapeutic approach. Another example would be charging the participant for the cost of the test cup and imposing a fixed amount of jail time if a participant fails to disclose drug use before taking a urine test. Having this rule in the drug treatment court helps the goal of honest and open disclosure. The judge and the participant often review the drug treatment court contract in open court. This procedure is based on research that indicates that patients who enter into public contracts have a higher treatment compliance rate when following medical treatment regimes.<sup>[25]</sup>

The TIP goes on to urge providers to explore "*treatment seeking considerations*." Such considerations may include a participant's legal difficulties—an arrest, the filing of criminal charges, arraignment, and referral to a drug treatment court where participation and progress will be closely monitored. Ambivalence and skepticism about treatment is common among drug users. Drug treatment courts can be quite helpful to clinicians who are frequently frustrated by stimulant users' lack of enthusiasm about the goals and methods of treatment by providing an option to traditional case processing. In other words, "fail treatment—go to jail" is a powerful consequence that can overcome initial treatment resistance.

According to the TIP, recovery programs should provide support for treatment participation. The holistic view of the participant's needs taken by the drug treatment court, such as transportation, mental health assessment, childcare, temporary shelter, or government benefits, coupled with careful case management, provides such support. A quick and positive response to initial inquiries is also mentioned in the TIP. This melds perfectly with Key Component #3, prompt identification of eligible participants and quick placement into treatment. Finally, the TIP lists procedures "to enhance treatment engagement" which also fits nicely into a drug treatment court model: keep assessments brief (most courts use an Addiction Severity Index (ASI) which takes one hour); identify clients' expectations and provide clear orientations (case managers, court coordinators, and/or defense attorneys typically go over the program requirements with the participant before extended contact with the judge); offer client options (to achieve maximum effect, as previously discussed, it is important that the participant not feel coerced); and involve "significant others" (participants' families are always welcome in court and many treatment programs have couples counseling and family days).

The model treatment plan found in TIP #33 includes a treatment framework that the courts translate into written behavioral contracts and



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structured phases of the program. Most drug treatment courts require participants to be engaged in treatment services for at least 12 months,<sup>[26]</sup> much longer than the minimum found in the TIP. According to the TIP, “*Greater frequency of clinic visits [or, read “appearances in the drug treatment court”] can help to establish behavioral accountability, contain impulses, and create daily structure.*” Strategies for initiating treatment include using positive incentives to reinforce treatment participation. This strategy is also employed by the drug treatment court that uses prizes in periodic drawings or certificates of completion for phases of the program. With the consensus of experts in the field, drug treatment courts can use the science of addiction treatment to enhance their performance, and using the therapeutic lens in the policies, procedures, and roles, more easily reach the goals of treatment, recovery, and reduced recidivism.

## INSTITUTIONALIZATION OF DRUG TREATMENT COURTS AND THERAPEUTIC JURISPRUDENCE

Operating in a drug treatment court and applying principles of therapeutic jurisprudence requires a transformation of the court system and a willingness on the part of the legal actors to rethink their traditional roles. Judges in problem-solving courts have come to accept their changing role from neutral, uninvolved arbiter to being problem-solvers who look at cases holistically. The past decade has seen tremendous growth in these areas. New York Chief Judge, Judith Kaye, puts it this way: “*Drug treatment court judges believe they can and should play a role in the problem solving or rehabilitative process. Outcome matters: not just process and precedent. Practitioners in these courts recognize the therapeutic potential of the courts’ powers, and they view themselves not as isolated actors but collaborators and partners in a continuum of care.*”<sup>[27]</sup> Roger K. Warren, Director of the National Center for State Courts envisions this change by comparing the traditional court process and what he calls “transformed” processes (Table 1).

The whole notion of judges as problem-solvers has recently been institutionalized by three powerful organizations. First, the Bureau of Justice Assistance has given impetus to this movement with publication of its Trial Court Performance Standards. Standard 4.5 directs trial courts to anticipate new conditions and to adjust their operation as necessary: “*Effective trial courts are responsive to emergent public issues such as drug abuse. . . . A trial court that moves deliberately in response to emergent issues is a stabilizing force in society and acts consistently with its role of maintaining the rule of law.*”<sup>[28]</sup>



**Table 1.** Comparison of Transformed and Traditional Court Processes\*

Traditional Process	Transformed Process
Dispute resolution	Problem-solving dispute avoidance
Legal outcome	Therapeutic outcome
Adversarial process	Collaborative process
Claim- or case-oriented	People-oriented
Rights-based	Interest- or needs-based
Emphasis placed on adjudication	Emphasis placed on postadjudication and alternative dispute resolution
Interpretation and application of law	Interpretation and application of social science
Judge as arbiter	Judge as coach
Backward looking	Forward looking
Precedent-based	Planning-based
Few participants and stakeholders	Wide range of participants and stakeholders
Individualistic	Interdependent
Legalistic	Commonsensical
Formal	Informal
Efficient	Effective

\*“Re-engineering the Court Process,” presented by Roger K. Warren at the Great Lakes Court Summit, Madison, Wisconsin (1998). Reprinted with permission.

Second, on August 3, 2000, the Conference of Chief Justices (CCJ) and the Conference of State Trial Court Administrators (COSCA) adopted a joint resolution supporting the application of therapeutic jurisprudence in the courtroom. In its “Resolution on Problem-Solving Courts,”<sup>[29]</sup> CCJ/COSTA found that courts have always been involved in resolving problems in society. The resolution commits all 50 Chief Justices and State Court Administrators “to take steps nationally and locally to expand the principles and methods of well functioning drug courts into ongoing court operations.” It also pledges to “encourage the broad integration, over the next decade, of the principles and methods employed in problem solving courts into the administration of justice.”

The resolution supported training on these principles and methods, and encouraged collaboration with other agencies and organizations. The organizations called for the establishment of a National Agenda on Problem-Solving courts that would:

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- ask the Department of Health and Human Services (DHHS) to fund treatment in state courts;
- ask the National Center for State Courts (NCSC) to develop principles similar to the Ten Key Components for problem-solving, non-drug treatment courts; and
- ask NCSC's Best Practices Institute to examine problem-solving courts and convene a national conference to educate policy leaders on principles and practices of problem-solving courts.

The body voted to continue the CCJ/COSCA Task Force on Therapeutic Jurisprudence to oversee and advise on implementation. Support for problem-solving courts (examples include drug treatment courts, mental health courts, homeless courts, Driving Under the Influence courts, and domestic violence courts) by every state Chief Justice is as astounding as it is a powerful statement on therapeutic jurisprudence.

Finally, the American Bar Association, Judicial Administration Division, recently proposed standards relating to drug treatment courts. The procedures adopt the Ten Key Components and recognize the nonadversarial nature of the proceedings. The Standard advised the Court to “ensure that [substance abuse] treatment is ordered and implemented on the basis of adequate information, in accordance with applicable law, and with due regard for the rights of the individual and of the public,”<sup>[30]</sup> thus implicitly recognizing both best treatment practices and therapeutic jurisprudential concerns.

The first drug treatment court was created in Miami, FL in 1989. As of June 2001, there were 688 drug treatment courts nationwide and 435 more in the planning stages. All but three states have drug treatment courts (Vermont's first is in the planning stage, and South Dakota has a tribal court) as does one Federal Court, various Tribal “Healing to Wellness” Courts, Puerto Rico, and international sites such as Ireland, Bermuda, Scotland, Canada, and Australia. The first drug treatment courts were funded by the courts that developed them or by private grants. In 1995, the Drug Court Program Office, Office of Justice Programs, U.S. Department of Justice opened with the explicit purpose of providing Federal grants to drug treatment courts. Last year (2000) Congress funding of drug treatment courts was \$50 million. During the announcement of his selection for director of the White House Office on National Drug Control Policy, President George W. Bush reiterated the Federal government's support for drug treatment courts. In a story on the nomination, *The Washington Post* reported, “Drug courts, which can offer treatment instead of incarceration and which will be expanded under Bush, will carry out the treatment through a program known as ‘coerced abstinence.’”<sup>[31]</sup>





Just as the drug treatment court movement has grown from its first conference in 1993, attended by 100 people, to over 2600<sup>[32]</sup> practitioners attending the 2001 annual conference, and from a celebration of the “First Hundred” drug treatment courts to the anticipated celebration of the “First Thousand,” so too has the theoretical basis for such courts and the institutionalization of them expanded over these dozen years.

Drug treatment courts, as with all innovative programs, have their criticism and critics.<sup>[15,33]</sup> In one of the few negative articles on drug treatment courts, the great English philosopher, C.S. Lewis, is quoted as saying, “*Of all tyrannies a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies.*”<sup>[34]</sup> To which one drug treatment court judge, Hon. Barbara Beck, Santa Barbara, CA, replied, “*God Bless all us busybodies. I never plowed a field yet that didn’t have a few rocks in it that would do all they could to dull the plow. That’s why you always kept a good sharpnin’ tool close at hand. In our case [drug treatment courts] those sharpnin’ tools are the smiling faces of one success story after another.*”

It behooves all of us in both our citizen and professional roles to learn from the criticisms, from the failures, and from the successes of these new courts if they are to be an integral part of effective substance user intervention. The mindless get-tough-on-crime mentality of the last three decades which led to the prison explosion and incarceration of two million Americans was clearly wrong. Drug treatment courts, which attempt to provide a rational reaction and a therapeutic overlay, are a fabulous first step.

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