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Therapeutic Jurisprudence's Challenge to the Judiciary

Michael S King*

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Therapeutic jurisprudence offers judges techniques and principles that promote the attainment of therapeutic outcomes such as the resolution of underlying issues associated with legal problems. These techniques and principles also equip judges to perform their daily technical functions concerning the conduct of the court and the gathering and interpretation of evidence and delivery of judgment more effectively. Misconceptions concerning the nature and application of therapeutic jurisprudence have hindered the wider adoption of therapeutic jurisprudence by the judiciary. Through the exploration of therapeutic jurisprudence and the sharing of the experience of using therapeutic jurisprudence techniques, judges have the ability to contribute to the development of therapeutic jurisprudence and to best practice in judging.

Therapeutic jurisprudence has become one of the most significant influences in court practice and approaches to judging over the last decade or more. While producing skepticism in some quarters, it has growing appeal, particularly for judges dealing with offenders with significant offending-related problems who have been unable to resolve their problems during prior contact with the court system. It is a part of a wider trend within the legal system towards more comprehensive, participatory,

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and psychologically optimal means of resolving conflict (Daicoff, 2000; King et al, 2009). Therapeutic jurisprudence has led to the production of bench books to assist judges and magistrates seeking to judge in a therapeutic key and to training programs on the topic. Its influence extends to the judiciary of a growing number of countries around the world.

Therapeutic jurisprudence is concerned with the law in action and with law reform from the perspective of wellbeing related goals and practices (Wexler, 1990, 2000; Winick & Wexler, 2003). It asserts that laws, legal processes and legal actors may have a positive, negative or neutral effect on parties, victims, witnesses, jurors and other people involved in their application. Some aspects of legal processes, for example, may have positive effects, while others may be negative. Therapeutic jurisprudence draws from findings from the behavioral sciences to make suggestions for reform. As Winick (2003, pp. 1062-1063) notes:

Legal rules and the way in which they are applied are social forces that produce inevitable, and sometimes negative, consequences for the psychological well-being of those affected. Therapeutic jurisprudence's basic insight was that scholars should study those consequences and reshape and redesign law in order to accomplish two goals - to minimize antitherapeutic effects, and when it is consistent with other legal goals, to increase law's therapeutic potential.

For example, therapeutic jurisprudence has used findings in the areas of health and psychology to suggest methods of judging and legal practice that can help promote offender rehabilitation (e.g., Wexler, 2008; Winick & Wexler, 2003; King, 2009). Therapeutic jurisprudence does not contend that wellbeing should be the dominant value that the law should consider in each situation. It does assert that the

law should take wellbeing into account along the other values that the law must take into consideration. The weight the law places on the need to minimize negative effects and promote positive effects on wellbeing will vary according to the circumstances of the case.

It is understandable that therapeutic jurisprudence should appeal to the behavioral sciences for findings and insights that could inform the development of a more therapeutic approach to the law – whether it is in the context of judging, legal practice, or the drafting and application of the law in practice. The law and the behavioral sciences share an interest in the nature of the psyche and human behavior and how the psyche may be healed and dysfunctional behavior prevented (King, 2006, pp. 92-93). Areas in which the interests of the law and behavioral sciences overlap include the prevention of crime, offender rehabilitation, the healing of dysfunctional families with children at risk, and the healing of victims of crime.

There have been a variety of responses from judicial officers to therapeutic jurisprudence. Although acknowledging the value of therapeutic jurisprudence in particular judging contexts, Chief Justice French (2009) noted that the term “may continue to raise eyebrows amongst some members of the judiciary” (p. viii). Taking the latter kind of response further is the contention that it is contrary to the judicial function for judges to be actively engaged in processes such as those utilized in drug courts to promote offender rehabilitation (e.g., Hoffman, 2002). Others have recognized some of their own practices as therapeutic jurisprudence and concluded that they already apply it. A further response is to embrace it and use it to justify existing practices that have therapeutic purposes but not to appreciate all of the subtle nuances of therapeutic jurisprudence.

Perhaps the most graphic illustration of the last response is in the area of problem-solving courts. Thus, advocates of drug courts – courts that seek to promote the rehabilitation of offenders with substance abuse problems – have claimed therapeutic jurisprudence as their underlying philosophy (Hora, Schma & Rosenthal, 1999), yet it is arguable that some of their practices depart from what therapeutic jurisprudence would regard as best practice (King, 2009, in press a and b; Wexler & King, 2010). Another response borne of the close association between therapeutic jurisprudence and problem-solving courts is to consider therapeutic jurisprudence principles and practices only relevant to judging in problem-solving courts or in contexts where offender rehabilitation is to be promoted.

The result of these responses is that some have underestimated the worth of therapeutic jurisprudence and the potential it offers for promoting the attainment of justice system goals through more humane and psychologically optimal methods of judging and legal practice. Others have departed from what therapeutic jurisprudence advocates as best practice but operate under the banner of therapeutic jurisprudence: From the concept of using judicial practices to promote therapeutic goals they have advocated practices that are heavily influenced by conventional approaches to judging, practices that therapeutic jurisprudence literature suggests are anti-therapeutic or at least not the optimal way of promoting therapeutic goals such as positive behavioral change and offender rehabilitation (King, 2009; King, in press a; Wexler & King, 2010).

This article argues that therapeutic jurisprudence warrants a more careful consideration by members of the judiciary than that suggested by the responses detailed above. It contends that to apply therapeutic jurisprudence in its fullest in judging requires particular interpersonal and intrapersonal skills which, despite being

not normally included in judicial or legal education, can be learned and developed (King, 2009). In particular contexts – such as those in which judging is directed towards promoting positive behavioral change – therapeutic judging also requires an understanding of the stages and processes involved in positive behavioral change and of the practices that support it. The addition of therapeutic jurisprudence related knowledge and skills has the potential to improve not only the therapeutic goals of judging but also its other functions such as the hearing and interpretation of evidence, delivery of judgment and the functioning of the courtroom (King, in press b).

This article examines judicial responses to therapeutic jurisprudence in the light of judicial practices advocated in the therapeutic jurisprudence literature. The article is not concerned with one of the judicial responses noted above: that it compromises the judicial function to apply therapeutic jurisprudence in judging, particularly in the context of drug courts or other problem-solving courts. I have presented an extensive argument elsewhere that properly done, applying therapeutic jurisprudence in judging is entirely consistent with and indeed promotes the judicial function (King, 2010).

We Already Do This

Some judicial officers when first encountering therapeutic jurisprudence say that it is something that they already practice. They remember incidents where they have had a therapeutic goal in mind when judging or have applied a particular strategy that is recognized as therapeutic by therapeutic jurisprudence. However, the risk in assuming one is already applying therapeutic jurisprudence is that one does not explore it further or examine its potential application in the broad range of judicial contexts in which the judge or magistrate is involved.

In any event, the experience of having a therapeutic purpose or using a therapeutic approach on some occasions – whether as judge or lawyer – does not mean that one has the necessary knowledge and skills to apply the law in a therapeutic manner in any situation that demands it. As Freiberg (2010, p. 5) astutely notes: “In the same vein, many English literature students discover that they have been speaking prose all their life. But that does not make them an author or an English literature scholar,”

Unlike other fields of judging such as sentencing, civil and criminal trial practice and appellate judging there is no developed case or statute law that sets out the principles of and directs practice in judging in a therapeutic manner (King, 2009, p. 1). Established legal texts have addressed this topic. The literature in this area has only begun to emerge in the last twenty years.

The knowledge and skills needed to judge in a therapeutic manner have not been the subject of judicial education until very recently. Like other forms of judging and like disciplines beyond the law, the knowledge and skills of therapeutic jurisprudence based judging can only be developed by study, education, training, and practice.

Therapeutic jurisprudence offers a justification for judging in a therapeutic manner. It also provides an understanding as to why particular forms of judging may be and why other forms of judging may not be therapeutic. It is evidence based. It uses findings from the behavioral sciences to inform the development of therapeutic judging practices. An understanding of these findings and their translation into judicial practice is essential to judging in a therapeutic key.

Recognition of past therapeutic practices is valuable – indeed, it may assist other judicial officers in their therapeutic approach to judging. However, therapeutic

jurisprudence challenges judicial officers to become familiar not only with its approach but also with the therapeutic principles of judging that it suggests and the reasons why they are used. It also challenges judges to adopt and apply these principles where appropriate, to each aspect of judging.

We Already Do This in Drug Courts

Therapeutic jurisprudence has gained the particular attention of advocates of problem-solving courts. These are courts established to address underlying issues associated with a person's legal problem. Drug courts assist participants to address substance abuse problems that have led to their offending. Family violence courts assist victims of family violence to gain support and protection and may also promote perpetrators' involvement in rehabilitation programs. Mental health courts promote participants' engagement in a treatment regime to address mental health issues connected in some way to their offending. Re entry courts supervise participants while they engage in programs to assist their settlement back into the community after a period in prison. These courts often take a collaborative approach involving professionals from multiple disciplines, have differing roles for legal professionals, judicial supervision, and court engagement with community agencies.

These courts are commonly called 'problem-solving courts' for good reason: the literature commonly conceives that the court resolves the underlying problems of the participants (King, 2009; King, in press a).

Perhaps the most significant connection made between therapeutic jurisprudence and problem solving courts is in the case of drug courts. In the late 1990s drug court advocates asserted that drug courts were essentially therapeutic jurisprudence in action (Hora, Schma & Rosenthal, 1999). Thus, Hora, Schma & Rosenthal (1999, p. 440 & 448) commented that "we propose to establish therapeutic

jurisprudence as the DTC movement's jurisprudential foundation” and “[a]lthough born without the advantage of therapeutic jurisprudence analysis, the DTC [drug treatment court] movement represents a significant step in the evolution of therapeutic jurisprudence – the evolutionary step from theory to application.” They went even further, claiming that “[w]ithout being conscious of its use, DTCs have been applying therapeutic jurisprudence to the problems of addicted criminal defendants” (Hora, Schma & Rosenthal, 1999, p. 536).

In a sense this contention is a variation of the judicial response discussed earlier that judicial officers already apply therapeutic jurisprudence. But in this case drug court advocates also acknowledge that drug court practices can be improved through the application of therapeutic jurisprudence principles (Hora, Schma & Rosenthal, 1999).

This section of the article argues that the suggestion that drug courts already apply therapeutic jurisprudence ignores significant parts of the therapeutic jurisprudence literature, particularly its emphasis on promoting intrinsic sources of motivation, limiting restrictions on the autonomy of those involved in legal processes and empowering those with legal problems and underlying issues to address their problems.

Winick (1992) describes the difference between the nature and effects of intrinsic and extrinsic motivation as follows:

Intrinsic motivation involves self-determining behavior and is associated with an internal perceived locus of causality, feelings of self-determination and a high degree of perceived competence or self-esteem”. With extrinsic motivation, on the other hand, the perceived locus of causality is external and feelings of competence and self-esteem are diminished (p. 1761).

Winick (1992, p. 1761) asserts that intrinsic motivation is more effective in promoting success and satisfaction in action than extrinsic sources of motivation.

The value therapeutic jurisprudence places on empowering individuals in addressing their legal problems is based not only on the understanding that such an approach is more effective in problem-solving but also on its assertion that the state should not unnecessarily limit individual autonomy through the pursuit of therapeutic goals (Winick, 1997). Therapeutic jurisprudence does not support a therapeutic state. Indeed, it suggests that therapeutic goals need to be considered along with other justice system and societal values.

An emphasis on using extrinsic sources to promote participants' motivation to change, such as forms of compulsion, is apparent both in the definition of drug courts and in their operation. For example, Hora, Schma & Rosenthal (1999, p. 459) adopted the following definition of drug court from the National Association of Drug Court Professionals and The Office of Community Oriented Policing Services, US Department of Justice:

[A] court with the responsibility of handling cases involving...[non-violent] drug-using offenders through an intensive supervision and treatment program. Drug Court programs bring the full weight of all intervenors (e.g., the judge, probation officers, correctional and law enforcement personnel, prosecutors, defense counsel, treatment specialists and other social service personnel) to bear, forcing the offender to deal with his or her substance abuse problem or suffer consequences.

Later they noted:

The procedures of the treatment program reflect the premise that the DTC utilizes the coercive power of the court to encourage the addicted offender to

succeed in completing the treatment program. (Hora, Schma & Rosenthal, 1999, pp. 475-476).

Intensive court supervision is seen as “providing the incentive for the defendant to stay in the program” (Hora, Schma & Rosenthal, 1999, p. 523).

Examples of drug courts described by Hora, Schma & Rosenthal (1999, pp. 488, 492, 495 & 511) require participants to complete particular assigned tasks and to engage in particular programs determined by the court. For example, one court required those engaging in its program to participate in Narcotics Anonymous and another in either Narcotics or Alcoholics Anonymous

Sanctions and rewards are a critical component of drug court processes. They are extrinsic sources of motivation to change. Hora, Schma & Rosenthal (1999, p. 528) describe sanctions as “therapeutic incentives.” They make the following observation concerning the application of sanctions in drug courts:

Instead of immediately revoking a drug offender's probation and putting him or her in jail for a positive urinalysis, a DTC will utilize a form of ‘smart punishment’. Smart punishment by DTCs means ‘the imposition of the minimum amount of punishment necessary to achieve the twin sentencing goals of reduced criminality and drug usage’. Smart punishment is not really punishment at all, but a therapeutic response to the realistic behavior of drug offenders in the grip of addiction (Hora, Schma & Rosenthal, 1999, pp. 469-470).

Punishment is used to compel compliance with the drug court program. Indeed, “the shock of incarceration may serve to break down the person's denial of her addiction” (Hora, Schma & Rosenthal, 1999, p. 474). Drug court advocates suggest that, rather than such court processes being seen as punishment, they are really part of

the treatment process, a form of therapeutic jurisprudence (Hora, Schma & Rosenthal, 1999, p. 473). They suggest that “without knowledge about addiction and the effects of drugs, the DTC judge can not purposely intervene and apply the “smart punishment” necessary to keep the offender on the path to recovery” (Hora, Schma & Rosenthal, 1999, p. 477). Drug courts typically also utilize a range of incentives to promote compliance with the program – such as decreased court attendances, less stringent program conditions and the awarding of vouchers and tokens.

Hora, Schma & Rosenthal (1999, p. 522) acknowledge that defendants can volunteer to participate in drug court programs. However, it would appear that, from the examples they have given, defendants’ decision-making ability is limited once the defendants have entered the program.

The drug court focus on court as problem solver, the emphasis on external sources of motivation to change, and the practice and language of coercion stand in distinct contrast with the therapeutic jurisprudence literature. As Winick (2003, pp. 1067-1068) comments:

...problem solving court judges must understand that although they can assist people to solve their problems, they cannot solve them. The individual must confront and solve her own problem and assume the primary responsibility for doing so. The judge can help the individual realize this, and, together with treatment staff, can help the individual to identify and build upon her own strengths and use them effectively in the collaborative effort of solving the problem.

Whereas therapeutic jurisprudence sees the collaborative effort as being between the individual participant and the court team, the drug court literature sees the

collaboration to be between the court and members of the drug court team alone (King, in press a).

Therapeutic jurisprudence favors an approach that respects the individual as the source of the change process (Winick, 2003; Winick & Wexler, 2003; King, 2009). It advocates techniques that engage with participants and that support their internal change mechanisms. Instead of directly confronting participants with the reality of their problems, it advocates processes that assist participants to engage in the cognitive processes needed for positive change to occur, such as motivational interviewing.

Motivational interviewing uses the expression of empathy, developing discrepancy between the individual's own stated goals and their behavior, avoiding arguments with the individual, rolling with resistance and promoting self-efficacy – the individual's confidence in their ability to change (Miller & Rollnick, 2002; Winick, 2003; King, 2009b, pp. 174-179). In rolling with resistance, the judicial officer or lawyer does not meet resistance to change with confrontation or coercion but rather utilizes techniques such as active listening or reframing in order to assist the individual to work through the resistance (King, 2009, p. 177).

For motivational interviewing, confronting resistance is likely to be counterproductive by promoting further resistance to change. Therapeutic jurisprudence sees paternalistic and coercive processes as promoting resistance to change and as hindering self-efficacy (Winick, 2003, pp. 1071-1078). They can also promote other negative psychological reactions such as diminished self-esteem and resentment (Winick, 2003, pp. 1071-1078).

Rather than imposing program conditions upon participants, such as engagement in directed forms of treatment, therapeutic jurisprudence prefers an

approach that includes participants in the decision-making process concerning the nature of treatment and other program conditions (Winick, 2003, p. 1073). Instead of using processes of confrontation or coercion when problems arise, therapeutic jurisprudence prefers using forms of dialogue with participants that assist them to identify the cause of their problems and possible solutions and encourages them to formulate and implement a rehabilitation plan or relapse prevention plan as needed (Winick, 2003; Winick & Wexler, 2003, King, 2009). While the court and members of a court team may provide input into the formulation of the conditions and support for the participant in implementation, the process of respectful dialogue promotes agreement between the parties. Where there is disagreement as a proposed course of action, therapeutic jurisprudence suggests that the judicial officer utilizes techniques of dialogue and persuasion (Winick, 2003; King, 2009, pp. 172-174). In the most serious cases of breaching program conditions, however, the circumstances of the case may be such that the court may have little choice but to take a coercive approach given the therapeutic and non-therapeutic related justice system values it must promote (King, 2009).

The therapeutic jurisprudence sources cited above in making the argument that drug court practice departs from therapeutic jurisprudence in significant respects are subsequent to the linking of therapeutic jurisprudence to drug courts. However, from its early days therapeutic jurisprudence has stressed the importance not only of participants' choice but of participants' active involvement in decision making concerning treatment and on methods that promote intrinsic motivation rather than resort to extrinsic motivation as a first response. For example, Winick (1992, pp. 1758-1759) suggests that participants set their own goals for treatment as it promotes

their commitment to and ability to achieve the goals. Goal setting is an important tool in therapeutic jurisprudence based judging (King, 2009, pp. 167-170).

Wexler (1993, p. 293), in proposing that criminal courts could use health compliance principles to promote defendants' compliance with probation conditions, suggested that defendants should have active input into determining the conditions of probation and that the resulting determination could be put in the form of a behavioral contract. The contract would be an agreement between the defendant and the court for the performance of the probation conditions and could contain agreed incentives and sanctions. Taking this course would mean that interactions between the bench and defendants should be in terms of what the defendants have agreed to do rather than what they are to be ordered to do. In taking this approach, defendants are accorded respect as individuals who have insight into their problems and who are capable of designing and implementing solutions. The behavioral contract can be referred to by the court in taking a motivational interviewing approach in addressing participant problems (King, 2009, p. 176).

The linking of therapeutic jurisprudence to drug courts was a milestone both for drug courts – and problem-solving courts generally – and for therapeutic jurisprudence. However, a close examination of the principles of therapeutic jurisprudence and the practices and asserted principles of drug court suggests that there are significant differences between the two as to what is therapeutic and as to what is best therapeutic practice in drug courts and in problem-solving courts generally.

The assertion that drug courts apply therapeutic jurisprudence even when taking a coercive approach may simply be a different view as to what is therapeutic jurisprudence from that contained in the existing literature. After all, there are

differences in outlook and practice between therapists and other health professionals and consequently there could be differences in views as to what therapeutic principles and practices should be applied in judging and legal practice (King & Batagol, 2010, p. 416). However, the differences between drug court practices outlined above and therapeutic principles contained in the therapeutic jurisprudence literature and the case for drug courts' departure from these principles have not been considered in the drug court literature.

Therapeutic Jurisprudence is only for Problem-Solving Court Judges

The close association of therapeutic jurisprudence and problem solving courts, especially drug courts, bears the risk that the application of therapeutic jurisprudence to other judicial contexts will be ignored. For example, some commentators have thought that therapeutic jurisprudence is offender-oriented (Stewart, 2005, p. 35; Holder, 2006, pp. 37-40), even though there is therapeutic jurisprudence literature on its application to the situation of victims (e.g., Winick, 2000).

It is clear from the literature that the scope of therapeutic jurisprudence extends to all judging contexts. For example, there is work on the application of therapeutic jurisprudence to judging in appeal courts (e.g., Des Rosiers, 2000; King, 2008a), sentencing (Wexler, 2001), judging in trials of sexual offences against children (King, 2008b) and judging in coroners courts (King, 2008c).

The literature on therapeutic jurisprudence and appeal courts describes ways in which appeal judgments can be structured so as to help minimize further conflict between parties (Des Rosiers, 2000) and how appeal judges should address the issue of errors by lower court judges so as to avoid promoting antagonism (King, 2008a). Work in the area of trials involving alleged sexual offences against children suggests techniques judges can utilize to settle child witnesses and promote a more suitable

environment in which they give their evidence. Therapeutic jurisprudence scholarship also suggests techniques trial judges can use to minimize the possibility that their evidence would be assessed on the basis of myths concerning the functioning and reliability of children (King, 2008b).

Therapeutic jurisprudence also provides suggestions concerning the conduct of sentencing hearings, the inclusion of defendants in the determination of the conditions of probation or similar community-based supervision orders and the structuring of sentencing remarks that can help to promote justice system goals such as offender rehabilitation and victim and offender respect for the court process (Wexler, 2001; King, 2006; Dearden, 2010). For example, in a case involving a charge of dangerous driving causing death, Queensland District Court Judge Dearden crafted sentencing remarks sensitive to the wellbeing and situation of both the family of the victim and the offender: *R v Kohler* (2010).

Further, there is a growing trend towards the mainstreaming of therapeutic jurisprudence processes already used in some problem-solving courts. For example, in magistrates' courts in Australia, there is increasing judicial application of therapeutic jurisprudence principles in dealing with a wide range of offences and offending related problems, particularly in the case of court diversion programs, problem-solving style court lists, and Indigenous sentencing courts (King et al, 2009).

The Wider Application of Therapeutic Jurisprudence for the Judiciary

The knowledge and skills advocated by therapeutic jurisprudence can assist in promoting both the therapeutic and technical aspects of the judging role in mainstream courts as well as in problem-solving courts (King, in press b). Technical aspects are the role of and processes of the court in receiving and interpreting evidence, applying the law to the facts and delivering judgment or sentence.

Perhaps the most basic skills that therapeutic jurisprudence sees as vital to the judicial role are communication skills. Good communication skills are fundamental to all forms of judging, whether it be for a therapeutic purpose or not. There is increasing recognition of the need for the development of judicial communication skills. For example, a recent white paper on procedural justice produced for the American Judges Association (Burke & Leben, 2007, pp. 13-14) noted inadequate body language as a problem amongst judges.

For therapeutic jurisprudence, a wide range of communication skills and a keen understanding as to the nature and elements of communication are essential for judging in a therapeutic manner. These skills include:

1. Knowledge of the factors that inhibit communication and those that promote it
2. Awareness of the effect of one's communication on others
3. Awareness of the effect of particular language and expression, body language and tone and manner of delivery on communication with others
4. Listening skills, including active listening
5. The expression of empathy
6. How to respond to promote dialogue (King, 2009, pp. 121-149).

Lawyers and judicial officers are accustomed to manipulating language to produce particular effects in court, but they generally have not been trained concerning the use of language to produce a therapeutic effect or to avoid an anti-therapeutic effect. For example, a simply question to a drug court participant – “Why did you not do counseling this week?” – may produce immediate defensiveness and even resentment as the participant may well interpret it as containing an implication that the participant is at fault (King, 2009, 132). However, counseling may not have gone ahead because the counselor was ill or the participant was given the wrong

appointment time. A more neutral and less accusatorial form of the question would be: “What happened with counseling this week?”

These skills can be applied in general courtroom situations such as dealing with querulous litigants, settling and communicating with witnesses with special needs, communicating with parties, addressing juries, delivering judgments, and demonstrating to parties that they are being listened to and their case being carefully considered by the court. According to procedural justice, demonstrating to the parties that they are being heard, their cases taken into account and that the court cares about them and their position is important in promoting party respect for the court and its orders (Tyler, 1992-1993; Winick, 2000).

Knowledge of how and why people change and of processes that uphold and those that may hinder the change process is valuable for judicial officers operating in any context where the need for behavioral change on the part of parties is important to the comprehensive resolution of the legal problem. These are areas in which therapeutic jurisprudence has contributed significantly to the development of best practice. While problem-solving courts are the most common example of the operation of these principles and practices in the judicial context, they are also relevant in the area of child protection, family law, general criminal law, mental health law, and in some civil cases.

Conclusion

Judges have the potential to refine their judging skills through a study of the principles and practice of therapeutic jurisprudence. Judges should put aside any preconceptions they have concerning the relevance of therapeutic jurisprudence to their particular area of judging.

It is not suggested that judges should approach therapeutic jurisprudence uncritically. However, approaching therapeutic jurisprudence with an open mind provides judges with the opportunity to learn, to add tools that they consider to be potentially useful to their judging tool box and to put aside those they consider would not assist them. While therapeutic values may need to be subordinated to other justice system values according to the need of the case, communication and other techniques suggested by therapeutic jurisprudence may still assist judges to perform their vital role.

Judges also have the ability to contribute to the development of therapeutic jurisprudence and in particular therapeutic judging practices. Judges have already contributed significantly to this development. By sharing their own experiences in applying therapeutic principles in judging, they can assist other judges who may be in similar situations in judging in the future and may help to refine particular approaches to judging. This development of judging techniques can contribute to producing better outcomes for those involved in or affected by the court processes and for the community generally.

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