

## **SOME PRINCIPLES OF THERAPEUTIC JURISPRUDENCE**

**Michael O. Smith, MD (Lincoln Recovery Center, Bronx 1999)**

Drug court involves referral to treatment with a close monitoring and validation of that process. Drug court becomes the center of the defendant's recovery. Therapeutic jurisprudence defines the pivotal role of the court in this process.

In the drug court setting, the defendant's relationship with the judge is the most important element. The judge represents society and commonly held social values. However, in this setting, his or her personal presence is most critical. A drug court is, then, a familial or community context. The atmosphere and strategies of a drug court depend on the judge's personality and the goals of the particular jurisdiction. There is no single approach to drug court.

The relationship with the judge is the most important source of growth and discipline for the defendant. Nevertheless, constructive communication of any kind is difficult for a drug abusing defendant. Usually these defendants have had a long history of dysfunctional relationships, low self esteem, shame, manipulative habits, and chemically related chaos [in their lives]. Expecting such a defendant to speak honestly in court from the beginning is unrealistic. Honesty and mutual respect are valuable goals, but they must be earned through repeated court visits and the defendant's developing sobriety. One should not be misled by bravado and hustling behavior; virtually all of these defendants will seek sobriety and respectful relationships, given the right circumstances. The high rate of graduation from drug court programs as opposed to conventional management [and treatment] is a strong indication of this potential.

Drug court involves teaching discipline. This lesson is presented on two levels. First of all, the court represents the conventional rules of the criminal justice system. However, drug court is a necessary innovation precisely because this first conventional level of discipline has not been effective. The second level of discipline relates to the improved process of teaching discipline that characterizes drug court. Within the prescribed limits that each local justice system has set for its drug court, there is an area of relative flexibility. Consistent attendance is required, but lapses are tolerated during the defendant's struggle to attain consistent compliance. Sobriety is required but slips often occur during even the most successful recovery process. This area of flexibility also extends to matters of attitude and communication in the court room and the treatment program. It is important for the judge to take advantage of these areas of flexibility. The court helps the defendant gain discipline and sobriety by applying a constructive focus during the day-to-day struggle for survival and sobriety.

First of all, the judge must accept the defendant as a person of real and potential value. By setting up frequent, encouraging court visits, the judge demonstrates his or her concern and commitment. Defendants typically have low self esteem. It will take time for them to realize that the judge's concern is real. The increasing acceptance of personal value by the defendant is a theme that will continue throughout the drug court process. Because of the defendant's limited capability the judge must focus short term goals and avoid temptations to focus on long term challenges. Building a safe and secure future may be the best "reason" to enter treatment. However, the necessity of prolonged achievement is often

quite intimidating for the defendant and hence may actually be a source of failure. The judge should ask the defendant about their daily issues and try to [address the challenges the defendant is facing in his/her] own terms.

The judge and the court staff should not be overly concerned by day-to-day slips and frustrations. They are part of the process of recovery. Court staff will often disagree about the relative value of a defendant's actions. These staff splits are also quite typical of the therapeutic situation. Ambivalence on all levels occurs as part of any profound change. Consequently, it is important to focus on small specific units of behavior as measured by attendance and toxicology results. The court should always strive for simplicity and clarity, but it should be prepared to share [and address] some of the ambivalence and chaos that typify a defendant's life.

In terms of behavior modification, positive reinforcement is considerably more effective than negative re-enforcement. Whenever possible the judge should use the strategy of encouraging constructive behavior rather than blaming negative activity. Sanctions will be more productive if they are short and specifically tied to a particular adverse behavior. Within, the drug court setting, use of sanctions has the fundamental role of communication and teaching. These sanctions should not be confused with the conventional sentencing process.

The judge and the court staff must be able to perceive the depressions and frustrations that accompany a defendant's struggle for sobriety. There will be ups and downs in every conversation with the defendant. It is a mistake to encourage the defendant to express a false level of enthusiasm. Let each court appearance reflect the energy and feelings of that moment. The sincerity and respect shown by the judge will be a major support for the defendant even though the defendant may not be able to express it at that time.

Drug court sessions function effectively as an educational social drama. Defendants are usually quite attentive to the judge's conversations with other defendants. They are encouraged by examples of concern, bonding, tolerance, and progress. The defendants look for evidence of general fairness and concern; they are not likely to make precise comparisons between statements and sanctions made to one defendant versus those made to another defendant. The drug court setting provides an excellent opportunity to encourage defendants at each level of success. It also provides the best way to express the community's concern and support during periods of struggle and conflict. Even though the judge and the defendants are the primary speakers in the drama, it is very helpful to have other court staff personnel and other defendants make comments as well. These secondary comments can highlight additional aspects of the case or express the judge's viewpoints in other terms. Due to the defendants' low self esteem, this collective process of communication can be more effective than a conventional one-to-one conversation. The spirit of the struggle for sobriety is very suited to a group setting.

Drug courts play an increasingly important role in setting the priorities for local drug treatment policy. Drug courts require prolonged outpatient sobriety prior to graduation, therefore outpatient treatment has to be the cornerstone of drug court based treatment. Depending on the individual assessment process, a number of defendants may spend time in a residential setting. Nevertheless, the responsibility of the drug court is to graduate only those defendants who have been consistently drug-free

while living in the community. The drug court judge must look for outpatient treatment programs which treat the appropriate types of drug dependencies. It is also helpful to have programs which can accept patients on short notice so that the onset of treatment can begin soon after arrest and the first court visit. It is often helpful to invite treatment policy makers to visit a drug court setting so they can observe the greater degree of cooperation and motivation that is present.

Ironically, fear of success is a common problem among drug court attendees. A person may not recognize their own strength and fear that failure is almost inevitable. In this viewpoint, every compliment creates an immediate fear of disappointing that person and eventual rejection. Using the strategies of “one day at a time” and “keep it simple” minimizes these problems. Recovery from addiction is indeed a lifelong challenge. A careful, humble, and diligent approach is useful. The defendant needs to continue to attend meetings and support functions based on their own commitment, not just as a consequence of the court’s rules. Graduation from drug court is indeed “a commencement”, that is, a beginning of a lifelong effort. Defendants who successfully complete drug court will often feel a “loss” in their lives when they are no longer able to participate in the court sessions. The court should recognize this loss and invite graduates to return to court occasionally and participate in alumni activities.