Therapeutic Jurisprudence and Readiness for Rehabilitation

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After about a quarter of a century, we seem finally to have turned the correctional corner, leaving behind a "nothing works" mentality, and finally embarking upon a more promising path. Indeed, it is now common to see references to what in the correctional context has become known as the "what works" research.

Researchers -- such as those working with the Washington State Institute for Public Policy -- are marshalling the empirical evidence and are urging correctional authorities to use limited resources to introduce and implement successful evidence-based programs and to eschew programs that have been found wanting. Among the failures, according to the Institute's 2006 report, are adult boot camps and psychotherapy for sex offenders. Programs with demonstrated promise, on the other hand, include educational and vocational programs, prison-based therapeutic communities for drug offenders, and cognitive-behavioral treatment programs (programs that focus on thinking or problem-solving), such as the "reasoning and rehabilitation" model, of demonstrated efficacy for the general offender population as well as for drug offenders and sex offenders.

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2 The "nothing works" era of criminological thought can be traced to the 1974 piece by Robert Martinson, What Works? - Questions and Answers About Prison Reform, 10 The Public Interest 22 (1974).
4 The Institute is a creation of the Washington Legislature. See www.wsipp.wa.gov.
6 Id. at 5 (sex offenders) and 6 (adult boot camp). Even some "failures", however, such as adult boot camps, might be "economically attractive if they cost less to run than the alternative." Id.
7 Id. at 4.
8 Id. at 5 (general population and sex offenders) and at 4 (drug offenders).
9 Id. at 5. See also L. S. Tong and David P. Farrington, How Effective is the "Reasoning and Rehabilitation"
I. Readiness

Even if such programs are put in place, however, maximum successful results should follow only if incarcerated persons are motivated to participate and to engage fully in the enterprise. What makes motivated inmates? There is a general body of social science research on determinants of help-seeking behavior, complete with policy recommendations on how such behavior might be increased. The concept at issue is often known as “responsivity” to treatment, or more recently as “readiness” for rehabilitation. In this commentary, I look through a therapeutic jurisprudence lens at how the law -- more precisely, how the behavior of lawyers and judges -- may impact help-seeking behavior and willingness to undertake rehabilitative efforts.

Of course, there are some legal arrangements that can themselves operate as motivating forces -- such as, under the right circumstances, the prospect of parole or conditional release. But my interest is how the behavior of lawyers and judges may increase an offender’s readiness for rehabilitation. Moreover, my interest in this essay goes not to the crucially important task of


13 See generally the website of the International Network on Therapeutic Jurisprudence at www.therapeuticjurisprudence.org.

14 Therapeutic jurisprudence looks at the law in action, and is concerned with legal rules, legal procedures, and with the roles of legal actors, such as lawyers and judges. Therapeutic Jurisprudence: The Law as a Therapeutic Agent (David B. Wexler ed. 1990). My emphasis in the present essay is on the last of the above categories.

crafting proposed non-incarccrative dispositions, but rather to how lawyers and judges might contribute even to the motivation of incarcerated individuals.

This piece follows the direction taken by Australian correctional psychologist Astrid Birgden (a co-author of the “readiness” model noted above), who has explored the use of “motivational interviewing” by criminal defense attorneys, and who has written about harnessing correctional staff as legal actors and potential therapeutic agents.

II. Procedural Justice

Prior work in therapeutic jurisprudence has underscored the importance of procedural justice elements on an offender’s judgment whether the process was fair and on his or her acceptance of and compliance with even adverse judgments. Treating an offender with respect, according the offender “voice”, and genuinely attending to (“validating”) that voice are key elements. Offenders are accordingly more likely to be primed for undertaking rehabilitative efforts if those elements are in place. If they are not -- if the offender feels he or she was mistreated, ignored or got a raw deal -- the rehabilitative prospects may be dramatically lessened.


17 Note 12, supra.


19 Supra note 11.


21 Id. at 129-164. See also the judicial manual produced by the National Judicial Institute of Canada, Judging for the 21st Century: A Problem-Solving Approach (2005), available in English and French on the NJI website at www.nji.ca, in English under “education” and then “publications”; in French under “Français”, then “formation” and then “publications”) (hereinafter NJI).
Indeed, for the latter group, criminologists have even posited a "defiance" effect of persistent, more frequent, or even more serious violations.22

Judges operating in so-called problem-solving courts (drug treatment courts, mental health courts, community courts) have been particularly sensitive to considerations of respect, and are aware of how they themselves may function as positive change agents.23 Such judges are typically adept at communicative and interpersonal skills. They will take pains to listen as well as to explain their decisions.

III. A Judicial Example

Judge David Fletcher of the Community Court in Liverpool, England, probes beneath a client's criminality to uncover problems and to ascertain a client's need for and willingness to accept treatment and other social services. These are discussed with the client at sentencing. Sometimes, an incarcerative penalty is deemed warranted. Even in these instances, however, the court's concern is conveyed in a follow-up letter delivered and explained to the offender, in a matter of days, at the institution. The letter is tailored to the prior in-court discussion. For example, in a letter dated February 3, 2006, Judge Fletcher communicated the following to a prisoner sentenced by him only two days earlier:

Mr. X:
You received a ten-week sentence at the North Liverpool Community Justice Centre on Wednesday, 1st February 2006.
At that hearing it was indicated you needed help with a number of issues that contribute to your offending.

23 JTK, supra note 20 at 129-164.
As part of the Community Justice Centre approach, you will be visited in the very near future by a member of my team who will link you into appropriate services, including Drug Initiatives Team.

Throughout your sentence they will monitor your progress and prior to release give the Court a progress report.

I hope you take advantage of the services whilst in prison.

Yours sincerely,

Judge Fletcher's technique of follow-up, respect, and motivation could, of course, be extended beyond a community court to a general criminal court. Moreover, the underlying principles of respect and explanatory communication suggest that, in a general criminal case, a full-blown Statement of Reasons for a sentence should be written so that it could be read by the defendant personally and could form the basis of an important conversation between counsel and client.

Properly prepared, such a Statement of Reasons could contribute to a defendant's sense of fair treatment -- even in the face of an incarcerative penalty. To do so, the sentencing judge should take pains basically to condemn the act, rather than the actor.

A judge sensitive to this point is unlikely to tell a woman that she is simply “no good as a mother.” And, even when imposing a severe sentence, such a judge is not going to say, “You are a menace and a danger to society. Society should be protected from the likes of you.” David B. Wexler, Robes and Rehabilitation: How Judges Can Help Offenders “Make Good”, 38 Ct. Rev. 18, 22 (Spring 2001).

The general principle of condemning the act rather than the actor is in line with John Braithwaite’s notion of “reintegrative shame” rather than “stigmatization”. With reintegrative shaming, “the offender is treated as a good person who has done a bad deed,” whereas with stigmatization, “the offender is treated as a bad person.” John Braithwaite, Restorative Justice and Therapeutic Jurisprudence, 38 Crim. L. Bull. 244 (2002). Braithwaite, however, now realizes his point should be modified and made more subtle (id at 259):

If a man rapes a child or is repeatedly convicted for serious assaults, is it enough for him to feel that he has done a bad act(s) but there is nothing wrong with him as a person? It would seem more morally satisfactory for him to feel that he has done a bad act and therefore feels he must change the kind of person he is in some important ways (while still on the whole believing he is basically a good person). That is, we do not want the rapist to believe he is an irretrievably evil person; but we do want aspects of the self to be transformed.

A judge interested in promoting offenders’ efforts at positive behavior change should try, as best as possible, to capture this “halfway house of an ethical ideal.” Indeed, an interesting continuing judicial education exercise might be to discuss how situations such as the above could best be handled and communicated. For an interesting case -- and controversy -- regarding the crafting of oral and written sentencing remarks, see United States v. Collington, No. 05-4054 (6th Cir., 8/31/2006). For a well-reasoned plea for carefully crafted sentencing opinions -- but one that does
to point out strengths that can serve as building blocks for a reconstructed self-image, and should elaborate on the various purposes of sentencing, some of which, such as general deterrence, may point toward a period of incarceration even if other factors are favorable to the defense.

IV. Criminal Defense Example

The defendant will presumably best understand the sentencing factors if he or she is given a real role in grappling with them -- which is precisely what is done by Paul Antonio (Tony) Lacy, an Assistant Federal Defender in the Western District of Oklahoma, in not explicitly mention their value to criminal defendants themselves -- see Steven L. Chanenson, Write On!, 115 Yale L.J. Pocket Part 146 (2006), http://www.thepocketpart.org/2006/07/Chanenson.html.

25 Criminologist Shadd Maruna notes the importance of helping an offender use his or her strengths to create a future narrative of one who will desist from crime. Shadd Maruna, Making Good: How Ex-Inmates Reform and Rebuild Their Lives (2001). Lawyers and judges can play an important role in this effort. Consider the following sentencing remarks, drawn from David B. Wexler, Robes and Rehabilitation: How Courts Can Help Offenders "Make Good", 38 Ct. Rev. 18, 22 (Spring 2001):

You and your friends were involved in some pretty serious business here, and I am going to impose a sentence that reflects just how serious it is. I want to add one thing, however. There's been some testimony here about how you showed some real concern for the victim. I'm going to take that into consideration in your case. You know, according to some of the letters that were submitted, it looks like that sensitive nature is something you displayed way back in grade school. Nowadays, it seems to peek out only now and then. But if I could peel away a few layers, I'll bet I could get a glimpse of a pretty caring person way down there. In any case, under the law in this state, I'm able to reduce your sentence by a year for what you did when that caring quality came peeking out last March.

Sometimes, a search for and discovery of a favorable feature or quality may not influence the disposition at all, but it may nonetheless plant a helpful seed, like this:

I don't really know what went wrong here. I do know you committed a robbery and someone was hurt. And I know that it is only right that I impose a sentence of such-and-such. What I don't understand is why this all happened. You are obviously very intelligent and were always a good student. Your former wife says that, until a few years ago, you were a very good, caring and responsible father. You obviously have a real talent for woodworking, but it's been years since you spent time on a real woodworking project. Beneath all this, I see a good person who has gotten on the wrong path. I hope you'll think about this and change that path. With your intelligence, personality and talent, I think you can do it if you decide you really want to.

26 In R. V. Rachid (1994), O.J. No. 4228 (O.C.J.), the Provincial Division of the Ontario Court of Justice imposed a custodial sentence of five months, followed by twelve months probation, on a twenty-six-year-old first offender convicted of possessing and passing counterfeit U.S. currency in the City of Niagara Falls, Ontario. The Court noted the prevalence of this activity in this community close to the U.S. border, which adds to the gravity of the offense and justifies a more serious sentence. The Court balanced the various sentencing factors and tried to tailor the sentence to this individual accused, "while bearing in mind that the most important factor is general deterrence." Id at ¶ 6.
preparing his clients for meaningful allocution. Lacy's allocution approach can work well in a post-Booker world with some flexibility in federal sentencing. (I hasten to add that, in this essay, my interest goes not at all to the intricacies of federal sentencing, but rather to the potential roles of lawyer and judges operating under sentencing schemes -- in the U.S. and elsewhere -- with a decent dose of judicial discretion.)

*United States v. Booker* rendered the strict and mechanical federal sentencing guidelines of advisory import only. Moreover, it revivified the federal statute that looks at “the nature and circumstances of the offense and the history and characteristics of the defendant” and the direction to “impose a sentence sufficient, but not greater than necessary,” to comply with the purposes of 3553(a)(2):

(A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) To afford adequate deterrence to criminal conduct;

(C) To protect the public from further crimes of the defendant; and

(D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

When Lacy meets his client to go over a draft of the Pre-Sentence Investigation Report, Lacy asks the client to answer, in two weeks and usually in handwritten form, a list of questions drawn from the revived statutory scheme. Most allocution statements

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28 Id.
29 18 U.S. Code § 3553(a)(1).
30 18 U.S. Code § 3553(a).
31 Lacy has prepared and has shared with me an undated memo entitled “The Story Behind the Allocution Pleading” from which I have derived the factual information in this section. Handwritten statements are common and important because the defendant is often detained pending sentencing and lacks access to a typewriter or computer. Moreover, Lacy believes the handwritten form to be more potent. I asked in an email about illiteracy and language problems, and Lacy noted he was working to have his questionnaire translated to Spanish. Beyond that, he has not
are one to three pages in length, and are filed as an independent allocution pleading or, sometimes, as a combined Sentencing Memorandum and Allocation Statement. The exercise, according to Lacy, “makes the defendant think about the sentencing process and provide insight that would never be reflected in the Pre-Sentence Investigation Report.” The Allocation Statement also keeps the defendant from “freezing up and having nothing to say” when addressed by the court.

Here is a model statement, provided me by Lacy, with questions to the defendant tailored to the 3553(a) factors.

encountered situations of full-fledged illiteracy. Indeed, he feels handwritten statements, even laden with grammatical and spelling errors, serve their function and bring home the fact that the judge is hearing from a real person.

32 The preparation by counsel of a sentencing memorandum is important, and ideally “should provide a ready foundation for the court statement of reasons in adopting it.” Lucien B. Campbell and Henry J. Bemporad, An Introduction to Federal Sentencing, 14 (9th ed., 2006).

33 The statement can be easily adapted to other sentencing schemes with similar relevant factors, such as Section 718 of the Criminal Code of Canada:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(a) To denounce unlawful conduct;
(b) To deter the offender and other persons from committing offences;
(c) To separate offenders from society, where necessary;
(d) To assist in rehabilitating offenders;
(e) To provide reparations for harm done to victims or to the community; and
(f) To promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and the community.
Rule 32(i)(4) of the FEDERAL RULES OF CRIMINAL PROCEDURE permits a defendant the opportunity to speak or present any information to mitigate the sentence. Counsel for About Tobe Sentenced, gave him/her a list of questions relating to reasons he/she should be given leniency. The Allocution Statement is provided for the Court’s consideration in determining what type and length of sentence is sufficient, but not greater than necessary, to comply with the statutory directives set forth in Title 18, United States Code, § 3553(a).

About Tobe Sentenced’s verbatim handwritten (or typed) Allocution Statement addresses the following Section 3553(a) factors:

What are your best accomplishments?^A

What are your best attributes?^A

What have you done that you are most proud of?^A

What are your short term goals?^A

What are your long term goals?^A

^A The nature and circumstances of the offense and the history and characteristics of the defendant [18 U.S.C. § 3553(a)(1)].
Why are you a better person now? A

How does giving you leniency reflect the seriousness of your offense? B

How would leniency promote your respect for the law? B

How will giving you leniency promote other people's respect for the law? B

What is a just punishment for your offense and why? B

Will giving you leniency cause other people not to break the law as you did? C

Why will giving you leniency protect the public from further crimes by you? D

Do you need educational or vocational training? How would leniency provide you educational or vocational training? E

Do you need medical care? How would leniency provide you with medical care? E

What, if anything, would you say to your family?

What, if anything, would you say to your victims?

Why should the Judge give YOU a break?

Respectfully submitted,

/s/ Defense Counsel

DEFENSE COUNSEL
Attorney for Defendant, About To Be Sentenced
OFFICE OF THE FEDERAL PUBLIC DEFENDER
Address, City, State, ZIP
Telephone: Facsimile: E-Mail

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A The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense [18 U.S.C. § 3553(a)(2)(A)].

B To afford adequate deterrence to criminal conduct [18 U.S.C. § 3553(a)(2)(B)].

C To protect the public from further crimes of the defendant [18 U.S.C. § 3553(a)(2)(C)].

D To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner [18 U.S.C. § 3553(a)(2)(D)].
CERTIFICATE OF SERVICE

X I hereby certify that on Monday, April 24, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Prosecutor, Assistant United States Attorney

I hereby certify that on , I served the attached document by on the following, who are not registered participants of the ECF System:

Defense Counsel

DEFENSE COUNSEL
V. A Defendant’s Allocution Statement

Below is one Allocution Statement shared with me by Lacy. It was submitted by twenty-year-old Mr. X in a case involving escape from a halfway house. He will have to return to Bureau of Prisons custody to complete the sentence he would otherwise have served in the halfway house, and his Allocution Statement seeks leniency in sentencing on the subsequent escape charge:

1. What are your best accomplishments?
   - Being sober over a year, completing my drug class in prison,

2. What are your best attributes?
   - Caring, people person, good work ethics, determination

3. What have you done that you are most proud of?
   - I was proud of myself for working on a job longer than two months. I set a goal to work my second job ever for six months, but it turned out to be nine months.

4. What are your short term goals?
   - To achieve my G.E.D. within the next year. I would also like to enroll in a small college to take up business and real estate classes. Plus seek help with my drug, and anger problem as well as my higher power.

5. What are your long term goals?
   - Having my G.E.D. while working toward a degree in something major. Plus living a life with sobriety. Raise me a family and introduce my kids into a life I never had. Also having a relationship with my higher power.

6. Why are you a better person now?
   - After being incarcerated for almost 2 year’s now I realize what I had taken for granted. Because this is just as hard on my family as it is for me. I guess it took this situation to happen again for me to open my eyes and get myself together before it’s too late for me.

7. How does giving you leniency reflect the seriousness of your offense?
   - My time is reflective of the seriousness of my offense. Leniency reflects your ability to see the person behind the paper.

8. How would leniency promote your respect for the law?
   - It would show me that the law system is capable of seeing all aspects of the crime and the people involved. I was a kid who got out of hand and made the biggest mistakes in my life, but not dangerous or criminally minded. I realize you can get punished for
breaking the law and if shown leniency I will have the up most respect for the law for being able to see I do have something to offer. I can still be successful if giving the change to.

9. What is a just punishment for your offense and why?
   - I think by me sitting in this county was a big punishment. Because I still had 5 months left on my sentence and could have just got a violation and sent back to prison. I don’t feel that I should be sentenced to any more time, yes I made a really big mistake and realize the seriousness of my decision. Plus I don’t want to spend the best years of my life behind bars.

10. Will giving you leniency cause other people not to break the law as you did?
    - Yes, because all my friends, family, and acquaintance see how serious the law is about the rules and the consequences it can impose on you if given the opportunity.

11. Why will giving you leniency protect the public from further crimes by you?
    - The sooner I can get out the sooner I can get my life together so that the public can be shown that they need no protection when it comes to me. I also feel that I can live and act civilize like your average citizen.

12. Do you need educational or vocational training? How would leniency provide you educational or vocational training?
    - Yes, I still need to get my G.E.D. and will work on that regardless of what happens or where I’ll be incarcerated or in the streets. Because that’s something I’m going to accomplish for myself. See leniency would help to provide the option to finish my education because I would be doing it in the right place to help me be successful.

13. What, if anything, would you say to your family?
    - That I’m sorry for taking even my family for granted and putting myself in this situation again and not finishing it the first go around. I’d tell them that I will make up for this time I have been away from them and let them know that I’d spend the rest of my life behind bars if it would take away the pain of ever having to go through this again with me. Plus I promise this will be the last time we have to be apart from each other anymore.

14. Why should the Judge give you a break?
    - Because I really didn’t have the chance to try and make it in the real world. I was only out for two weeks and came back to jail with a new escape case. I feel like a loser to the one’s who had faith in me and supported me while incarcerated the last time. Their willing to help in anyway they can for me to stop using drugs. Plus I’m willing to participate in any program to deal with my substance abuse problem. I also feel like sending me back to prison doesn’t really help. Yes, I know theirs consequences that I’ve got to face for my mistake I made and I’m ready to get it over with. So I can get back out to my family and love ones who need me out their. I have two little brother’s who look up at me as a roll model. I would like to try and help them before its too late. Because I wouldn’t wish this type of punishment on anybody, and if I can help a person from going
threw this situation I will. See I look at this as a blessing for me and a second chance to be successful the right way. Because I've only let my mother and family down once again and this is hard on them as it is for me.

15. I do realize that their going threw this with me. That's another siress I'm putting on my mother for my mess up. It's really a trip because my mother drove me to Prison on Oct. 4, 2004 to turn myself in. Plus she also came and got me from Prison on Dec. 24, 2005 to make sure I made it to the halfway house safe with out an escape. But I let her down and still haven't been man enough to talk to her and tell her I'm sorry for the stupid choice I made that day. See, I'm willing to make a chance for the best of me, but most of all my family. I just pray and hope that you give me a break when that time comes. Plus I would like the chance to prove to the law and everyone else I have learn from my mistake, and I do want to be someone in life not just an inmate to the system. I feel by me only being 20 years old I still have a chance to learn and grow. So no matter what happens one of my goals are to be successful with in the next 10 years. Yes, I can only live and learn from my mistake and I know for a fact not to make this one again. So if you can, Mrs. Vicki Miles-LaGrange, would you give me a break, and another chance to work toward being successful in the world. Thanks.

VI. Therapeutic Jurisprudence Implications

The Allocation Statement technique brims with therapeutic jurisprudence potential for maximizing an offender’s "readiness" for rehabilitation. It educates the defendant regarding the sentencing factors, wholeheartedly solicits the defendant's voice, and induces an optimistic and future-orientation by focusing on the defendant's strengths, goals, and educational, vocational, and treatment needs. Counsel can reinforce and validate the defendant's voice by submitting a sentencing memorandum that, in part, quotes or summarizes the defendant's views, and a sensitive sentencing judge can do the same in a Statement of Reasons accompanying the judgment and commitment order.

Counsel will have the delicate task of advocating for the client and, in private conversations, explaining to the client counsel's concerns. For example, in a hypothetical case (not related factually to Mr. X's case) counsel might say: "You're asking for leniency in your allocution statement, and, as you can see, in my sentencing memorandum, I'm pushing for
probation. We're doing our best, and I hope we get it. But remember, it's kind of iffy. As I mentioned to you before, what I'm most worried about is how the judge will feel about whether giving you leniency will cause other people to break the law. You passed some counterfeit money, and, although it wasn't much, the courts have treated that very seriously, especially in a tourist town like this one. In counterfeit money cases, the courts emphasize the importance of incarceration for the purpose of 'general deterrence' - to keep others from breaking the law."

Such a conversation sets the stage for a later one that needs to be had if incarceration is indeed ordered. "Yeah, as I feared, the judge gave you some prison time because she wanted to send a message to others that passing counterfeit bills won't be tolerated. As you can see from the Statement of Reasons, the judge was really impressed by lots of what you said and about your recent behavior, like getting your GED. But because she wanted to send a strong message about the risk of passing counterfeit money, especially in a tourist area, she just didn't buy our plea for probation."

The delicacy of counsel's task is analogous to the task of the appellate lawyer in explaining to a client an appellate affirmance -- an explanation which can also impact an offender's "readiness" for rehabilitation:

The appellate lawyer's task is a highly sensitive one. On the one hand, it is important for counsel to convey the message of voice and validation. On the

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35 One would hope the combined behavior of the judge (in sentencing and in the accompanying Statement of Reasons) and the lawyer (in advocating for the defendant but also clearly explaining the various sentencing factors and predicting what might happen) would lead the client to believe the imposed sentence is not unfair in the sense of being seriously disproportionate to the sentence expected or deserved. Of course, excessive sentences are only one source -- though a very major one -- of defendant perceptions of unfairness. One may also experience unfairness in the manner in which a sentence is communicated, but sensitive sentencing judges should be able to deal well with that concern. More troubling sources of perceived unfairness occur when one is or feels "singled out" for prosecution (selective enforcement) and when the penalty itself seems substantively unfair (stiff mandatory sentences). How courts and lawyers might best deal with these evils is beyond the scope of this essay but well worth future thought.
other hand, it is crucial that counsel not simply serve as an apologist for an appellate affirmance; that appellant know that counsel is truly on the appellant's side, giving the case the best possible shot.36

Further, the following advice, again originally addressed to matters in the appellate arena, seems fully applicable to attorneys and courts at the sentencing stage:

Unless counsel truly believes the [sentencing] court was muddled, inattentive, or outright stupid, it would seem to be without much purpose so to characterize the ruling. Such a characterization suggests that the client was not accorded "voice" and "validation," even with a professional advocate speaking for the client, which would be likely to affect adversely the client's acceptance of the ruling and adjustment to the situation. In the great majority of cases, one would hope the [statement of reasons for sentence] would reflect the fact that the [defendant] – and thus the attorney as well – was accorded voice and validation.37

VIII. Conclusion and Future Directions

These, then, are some thoughts on how lawyers and courts can perhaps actually help – and at least not hinder – efforts of rehabilitation. The fact that my points were made by using concrete illustrations from practice – Tony Lacy's Allocution Statement and Judge Fletcher's follow-up letters – leads me to close this commentary with an observation and a proposal.

I've not yet had the pleasure of meeting Tony Lacy in person. He and his important work came to my attention fortuitously – during a conversation with Joel Parris, a former student of mine and now an experienced Assistant Federal Defender in Tucson with an interest in

36 Wexler, Rehabilitative Role supra note 16, at 768.
37 Id.
therapeutic jurisprudence. Parris noted, too, that he himself is preparing a document to give to his clients on “Why I Deserve Probation.”

Judge Fletcher’s work came to my attention when he presented, in June 2006, at the Third International Conference on Therapeutic Jurisprudence, held in Perth, Western Australia. On that same panel, Western Australia Judge Julie Wager, who previously served on the Perth Drug Court, caught my attention when she spoke of some of her practices. For instance, when a number of family members attend a drug court hearing – particularly prevalent in cases involving aboriginal defendants – she adjusts the seating arrangements so as to maximize hearing and comprehension for all concerned. Furthermore, she insures that the entire court staff is educated in matters such as HIV and Hepatitis C virus transmission. This is done largely to reduce misunderstandings and to improve the interpersonal courtroom atmosphere. Now, staff are less likely than before to distance themselves from drug court clients because of erroneous fears of the risk of virus transmission.

My final point, then, is that much of the most important therapeutic jurisprudence work is now occurring in practice and is “disseminated” to the broader community only sporadically and unsystematically – almost accidentally. In my view, a crucial future direction for therapeutic jurisprudence scholarship, teaching, and practice is to collect this material, share it, comment on it, modify it, use it, and disseminate it further. This is, in any case, a new project of the International Network on Therapeutic Jurisprudence (INTJ), working in conjunction with Ottawa attorney Michael Crystal and the interdisciplinary team-oriented Crystal Criminal Law

38 On the judicial front, this practice has been started by social worker Dr. Carrie Petrucci, who has gathered valuable information internationally (US, Canada, Australia, UK, New Zealand) on practices judges actually use when they engage in a therapeutic jurisprudence approach. See NJ, supra note 21, at 18.
39 See <www.therapeuticjurisprudence.com>. The INTJ website is a resource with an extensive bibliography, announcements of upcoming activities, a listserv, a mailing list, and relevant links.
The Crystal Law Office is a criminal defense firm specifically dedicated to therapeutic jurisprudence, and it hopes, through its website and otherwise, to work with the INTJ and to serve as a major resource for this international endeavor. For this project to really work, we of course will need many creative participants. If you are interested in playing a part in collecting, commenting, critiquing, I encourage you to contact me by email.

See <www.accidentaljurist.com>. The website notes the problem-solving and interdisciplinary team approach taken by the firm.

The law firm website already contains a number of relevant essays, written by Michael Crystal or his associate, Dr. Karine Langley, a counselor and drug treatment specialist, on their cases (e.g., The Reena Visk case, the Felon as Phoenix and the Transforming Power of Forgiveness; The Best Case I Never Had: Lessons in Solicitor-Client Communications; Catching Criminals One Hug at a Time: The Case of Curtis Dagenais; The Case of Robert Piamonte: A Victory for Therapeutic Jurisprudence; The Therapeutic Sentence: Chicken Soup for an Ailing Criminal Court.) There are now plans to create a page where relevant documents (their own and others, such as the ones noted in this commentary) can be linked to or archived.

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