Reimagining the Norm:

JUDGES ON JUDGING

Research has consistently found that problem-solving courts—treatment and mental health courts, most commonly—can improve both legal and public health outcomes.[1] The research specifically highlights the powerful role judges can play in helping people address their underlying behavioral health needs and strengthen their ability to avoid further system-involvement.[2]

The challenge is that the infrastructure for this kind of therapeutic jurisprudence is often limited to lower-volume specialized courtrooms—a limitation attributable to formidable logistical[3] and cultural challenges.[4] As research continues to underscore the negative outcomes of traditional case processing and sentencing for those with behavioral health issues[5], two pressing questions emerge. First, how can more judges be encouraged to implement problem-solving approaches in conventional court settings? Second, how can those judges who are already attempting to integrate therapeutic jurisprudence into mainstream courts be better supported?

To explore these questions, in May 2024, the Bureau of Justice Assistance (BJA) with its National Training and Technical Assistance Center (NTTAC) convened more than 50 judges from 22 states for several days of facilitated dialogue.

Several concrete themes and considerations for the next steps emerged from the gathering, including what individual judges can do, how state judicial leaders can better support this work, and the role of national organizations and funders. These recommendations are listed below along with references to selected resources.

The Role of Judges

A significant portion of the convening focused on how individual judges can implement facets of therapeutic jurisprudence in their courtrooms. Therapeutic jurisprudence, as it pertains to judges, generally involves the intentional exploration of strategies to minimize the potentially traumatic effects of court proceedings. This approach seeks to foster an environment that promotes the well-being of litigants, while upholding the requirements of due process. Below are the four most salient themes to emerge from the convening on this topic.

Consider the Full Context of Decisions

Judicial decisions have significant, often life-altering, consequences on the lives of the justice-involved, and also on their families, communities, and the wider public. The National Judicial College urges judges to consider whether "the reaction of what will flow from [a] decision [will be] one which will foster justice being done in the case, or could it lead to irreparable harm which could have been avoided by choosing another course or action."[6] Participants stressed the importance of weighing the human impact of their rulings, recognizing that each decision will shape individual lives and influence public trust in the criminal justice system. They emphasized the need for foresight and empathy in their deliberations, striving to ensure that their decisions minimize unintended harm. Specific recommendations included:

Acknowledge Broader Consequences:

Arrests and incarceration can have devastating effects on people's children and loved ones. The family members of justice-involved individuals are often referred to as "hidden victims" of the criminal justice system, as the hardships they experience are rarely acknowledged. Children face significant challenges when a parent is incarcerated.[7] It is important to consider the impact of a disposition on child custody, housing, and economic stability, among other things.

Know Where You Are Sending People:

It is important that judges understand the conditions of the facilities and programs where they are sending individuals. By visiting local jails and prisons and pushing for transparent tours of facilities, judges can better understand the environment that awaits the individuals they incarcerate and how it may shape future behavior. When deciding on community programming, it is no less important that judges know which residential or non-residential treatment programs, education and training programs, and housing providers are best equipped to help individuals successfully complete their mandates.

Establish Relationships Early:

By fostering constructive and consistent relationships with the people on their dockets, judges acquire an awareness of individual circumstances and can help to clear hurdles that could risk making people unsuccessful in following court orders or completing a treatment mandate.

Switch Default Settings

While judges can be limited by state statutes and sentencing structures, they maintain significant discretion. The exercise of discretion by judges—ranging from the decision to release an individual pretrial to offering community-based treatment to sentencing—should be capitalized upon when appropriate. Judges should feel empowered to use a range of proven innovative approaches and alternative sentencing options such as diversion programs, restorative justice initiatives, or rehabilitation-focused interventions. Rather than default to punishment (usually in the form of long sentences), judges can consider outcomes that prioritize both public safety and the potential for positive change in the lives of those who come before the court.

Participants emphatically put forward three recommended changes to judges' typical default settings: (1) from pretrial detention to pretrial release; (2) from incarceration to community-based sentences (where public safety allows); and (3) from exclusion to inclusion of felony matters in alternative-to-incarceration programs.[8]

Adopt a Trauma-Informed Approach

According to the National Judicial Task Force to Examine State Courts' Response to Mental Illness, trauma-informed practice entails "an underlying understanding that trauma is a common experience, that traumatic experiences impact the way individuals respond and react, and there is intentional effort not to worsen or retraumatize individuals."[9] Judges who are trauma-informed anticipate the presence of trauma, take steps not to reinforce it (through words, actions, or even body language and facial expressions), and recognize how trauma can affect court participants' behavior, as well as their success or failure in community programming or mandated treatment.[10] Through this approach, judges can better understand how to effectively support the individual in front of them. Judges should strive to create an environment of safety, trust, and empowerment. Participants described incorporating trauma screenings and integrating a range of social service professionals in their courtrooms.

Center Human Dignity

The principle of human dignity recognizes that all people possess intrinsic worth and should be treated accordingly.[11] Policies and practices that demean or degrade people directly contradict this principle. By prioritizing human dignity in their interactions with the individuals appearing before them, judges are not only upholding fundamental principles of justice but are also shaping a legal system that is equitable, humane, and built upon the inherent value of every person. Participants offered the following practices to illustrate a dignity-centered approach from the bench:

Use Person-First and Gender-Affirming Language:

The language judges use in the courtroom matters; it can foster an inclusive and respectful environment, ultimately promoting trust and dignity for all parties involved. Judges should refrain from terms that focus on someone's adverse circumstances, condition, or status, instead using language that focuses on the individual.[12] Additionally, the use of gender-inclusive language is encouraged as much as possible by asking people how they would like to be addressed and respecting their pronouns.[13]

Encourage Personal Interactions:

Efforts can be made to mitigate the inherent power imbalance between the judge and court participant. For example, if personal safety is not compromised, judges may consider stepping off the bench to interact with an individual.

Prioritize Procedural Justice:

Procedural justice refers to "the perceived fairness of the procedures and interpersonal communications that [individuals] experience in the courthouse and courtroom."[14] Research shows that when individuals experience the court process as fair, they are more likely to comply with court orders and recidivism decreases. There are several communication strategies that can be used to enhance perceptions of procedural fairness, including making eye-contact, using plain language, and explaining the court process and sidebars.[15]

The Role of the Chief Justice and the State Administrative Office of the Court

State courts vary in size and structure, but several shared recommendations emerged concerning the role of chief justices and state court administrators in furthering therapeutic jurisprudence.

Create Systemic Change

Participants discussed the measured approach they can take to lead systemic change by being conveners and change leaders at both local and state levels. Specifically, they discussed the endorsement of the recommendations of the National Judicial Task Force to Examine State Courts' Response to Mental Illness by the Conference of Chief Justices and Conference of State Court Administrators, which declares that state court leaders should make actionable steps to lead, examine, educate, and advocate to improve court responses.[16]

"Sharing space with judges working for reform was wonderful. Judges seeking to shift paradigms can often feel alone in their work; it was great to be around others engaging in these important efforts."
– Convening Participant

Build Community Justice Partnerships

Some participants discussed their positive experiences in attending court-led multidisciplinary state summits and recommended that every state support such a convening. This level of collaboration at the state level serves as a model for local courts, justice stakeholders, and community partners to come together to create plans to influence policy and practice changes. Participants also discussed the importance of including people with lived experience in planning and implementation efforts.

Devise Marketing and Communications Plans

Participants underlined the importance of support for therapeutic jurisprudence 'from the top.' When Chief Justices embrace and publicly support changes to policy and practice, it sets expectations within a state judicial system and demonstrates the court's dedication to improving responses to people with behavioral health issues. One example is the inclusion of support for therapeutic jurisprudence in annual State of the Judiciary speeches. In recent remarks, New York State's Chief Judge Rowan D. Wilson advocated the development of alternative to incarceration courts that would not be limited to people with diagnosed substance use disorders or mental health needs.[17]

Proactive communication at the local level was also discussed. Participants stressed the need for avenues to share success stories, as well as support for the development of marketing and communications plans to gain buy-in from the wider community, peers, and outside partners. Local courts often have no access to a trained Public Information Officer. In such instances, the Administrative Office of the Courts could aid in devising marketing strategies and guidance on responding to media inquiries.

Build the Bench

A significant area of concern was how to build and maintain a bench of judges that practice therapeutic jurisprudence. Courts are facing significant workforce issues, including the filling of judicial vacancies. These shortages compound the challenge of ensuring that new programs and practices will outlive judges when they retire or otherwise leave the bench. State court leaders can help to ensure that training is available for new judges on the tenets of therapeutic jurisprudence and that succession planning includes the identification of judges that will continue the programs and practices when judgeships change. In addition to training, state court leaders can create and support judicial mentorship programs so that judges who are considering this work receive guidance from peers who have long followed such practices.

"As a relatively new judge, I appreciated hearing from people who have more experience in this space. The collective experience and wisdom from the group sparked ideas that I can take back and apply. I also very much appreciated the pairing with a more senior judge."
– Convening Participant

Identify Funding for the Work

Participants emphasized the connection between wider support for therapeutic jurisprudence and their ability to compete for existing financial resources, identify new funding, and scale up efforts to affect broader system and policy changes. Local courts often lack the resources to identify, apply for, and manage grants. State administrative offices can offer guidance on best practices in leveraging existing resources and in successful grant writing, including taking on the role of grant management on behalf of the local court. They can compile information and resources on available funding and tools to assist local courts in accessing other state funds as well as federal grants funds.

Each fiscal year, BJA and BJA TTA providers host webinars to provide information about specific solicitations, offer guidance on how to apply, and answer questions from potential applicants.

View the BJA Funding Webinar webpage

View the State Justice Institute funding toolkit for state courts

The Role of National Court Support Organizations and Funders

A survey was provided for feedback on recommended next steps in advancing therapeutic jurisprudence at the conclusion of the convening. Results (n=33) indicated that the top five most useful next steps would be: additional in-person convenings to share best practices (85%); access to checklists and resources (65%); mentorship by a judge peer (42%); visits to courts implementing therapeutic jurisprudence (42%); and a community of practice with virtual meetings (31%). Additional details on how national court support organizations and funders might undertake these efforts to support the broader implementation of therapeutic jurisprudence are below.

Create a Community for Judges Using Therapeutic Jurisprudence

Convening participants underlined the need for a formal network of judges employing therapeutic jurisprudence in traditional court settings. At a minimum, this would include opportunities for peer-to-peer connections, the creation and dissemination of best practices and other relevant materials, and opportunities for in-person and virtual learning.

"The most beneficial aspect of the convening for me was being able to hear the perspectives and experiences of other judges who have implemented therapeutic jurisprudence in their courts. The opportunity to engage in peer-to-peer learning was invaluable."
– Convening Participant

Educate Judicial Peers

Participants cited the need for customized on-site TTA. Judges emphasized the imperative need for support in the education of judicial peers and court system leadership (using quantitative and qualitative data). While judicial training on the basics of behavioral health exists, there is no single repository or structured mechanism to deliver the training.

Compile Practical Tips and Tools

Judges emphasized the need for the creation of brief documents or bench cards summarizing the research related to therapeutic jurisprudence and offering practical guidance on how to implement practices in court. These tools are particularly helpful for judges with limited training on how to support people with behavioral health disorders. Online repositories such as the National Council for Juvenile and Family Court Judges' "Bench Card Resource Center" are an accessible resource for judges.[18]

Moving Forward

Throughout the convening, judges noted the long history of success the judiciary system has experienced with problem-solving and treatment courts. For many, their involvement with such a court influenced their desire to broaden the application of problem-solving principles, thereby improving outcomes for court-involved people and their families. At the end of the convening, judges shared that they had 'found their community' and were leaving inspired and energized. With much work to be done to improve outcomes for court-involved people impacted by behavioral health disorders, it will take ongoing collaboration at the local, state, and national level to take therapeutic jurisprudence to scale.

For more information, contact the Bureau of Justice Assistance.

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[1] See, example, National Institute of Justice, 2012, NIJ's Multisite Adult Drug Court Evaluation, retrieved on June 18, 2024, at https://nij.ojp.gov/topics/articles/nijs-multisite-adult-drug-court-evaluation; see also Shelli B. Rossman, et al., "Criminal Justice Interventions for Offenders With Mental Illness: Evaluation of Mental Health Courts in Bronx and Brooklyn, New York," Urban Institute, 2006, retrieved on June 13, 2024, at https://www.urban.org/sites/default/files/publication/25576/412603-Criminal-Justice-Interventions-for-Offenders-With-Mental-Illness-Evaluation-of-Mental-Health-Courts-in-Bronx-and-Brooklyn-New-York.PDF.

[2] See, e.g., Shelli B. Rossman, et al., "The Multisite Adult Drug Court Evaluation: The Drug Court Experience," Urban Institute, 2011, retrieved on June 20, 2024, at https://www.urban.org/sites/default/files/publication/27376/412356-The-Multi-site-Adult-Drug-Court-Evaluation-The-Drug-Court-Experience.PDF; see also Cynthia G. Lee, et al., A "Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center: Final Report," National Institute of Corrections, 2013, retrieved on June 4, 2024,at https://nicic.gov/resources/nic-library/all-library-items/community-court-grows-brooklyn-comprehensive-evaluation-red.

[3] See, example, Donald J. Farole Jr., "The Challenges of Going to Scale Lessons from Other Disciplines for Problem-Solving Courts," State Justice Institute, 2006, retrieved on June 27, 2024, at https://www.innovatingjustice.org/sites/default/files/Lessons.pdf.

[4] See, e.g., Victor E. Flango, 2016, "Why Problem-Solving Principles Should Not Be Grafted onto Mainstream Courts," Judicature, 2016, vol. 100 no. 1, retrieved on June 19, 2024, at https://judicature.duke.edu/articles/why-problem-solving-principles-should-not-be-grafted-onto-mainstream-courts/

[5] Julian Adler and Chidinma Ume, "Toward Community Justice: Upstream Investment Is Criminal Legal Reform," Center for Justice Innovation, retrieved on June 7, 2024, at https://www.innovatingjustice.org/publications/upstream-is-reform.

[6] Honorable Thomas A. Zonay, "Judicial Discretion: 10 Guidelines for Its Use," The National Judicial College, 2015, retrieved on June 26, 2024, at https://www.judges.org/news-and-info/judicial-news-judicial-discretion-guidelines/.

[7] Eric Martin, "Hidden Consequences: The Impact of Incarceration on Dependent Children," National Institute of Justice Journal, 2017, retrieved on June 6, 2024, at https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children.

[8] Julian Adler and Joseph Barrett, "Plenty of Science, Not Enough Passion: Accelerating the Pace of Felony Decarceration," Center for Justice Innovation, 2023, retrieved on June 21, 2024, at https://www.innovatingjustice.org/publications/science-passion-felony-decarceration

[9] "Trauma-and-Trauma-Informed-Responses," National Center for State Courts, 2002, retrieved on June 4, 2024, at https://www.ncsc.org/__data/assets/pdf_file/0034/77677/Trauma-and-Trauma-Informed-Responses.pdf.

[10] National Association of State Mental Health Program Directors, "Essential Components of Trauma-informed Judicial Practice," retrieved on June 24, 2024, at https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

[11] Ruth Delaney, et al., "Reimagining Prison Web Report: Human Dignity as the Guiding Principle," Vera, September 2018, retrieved on June 13, 2024, at https://www.vera.org/reimagining-prison-web-report/human-dignity-as-the-guiding-principle.

[12] National Center for State Courts, "Blueprint for Racial Justice: Advancing Equity in the Administration of Justice through Inclusive Communications and Person-Centered Language," retrieved on June 14, 2024, at https://www.ncsc.org/__data/assets/pdf_file/0026/87182/Inclusive-Communications-Person-Centered-Language.pdf

[13] National Center for State Courts, "Gender-Inclusive Language in the Courts: How to Communicate with Fairness, Dignity, Impartiality, and Accuracy," retrieved on June 12, 2024, at https://www.ncsc.org/__data/assets/pdf_file/0028/84916/Gender-Inclusivity-in-the-Courts.pdf.

[14] Emily Gold LaGratta, "Procedural Justice: Practical Tips for Courts," Center for Court Innovation, 2015, retrieved on June 25, 2024, at https://www.innovatingjustice.org/sites/default/files/documents/P_J_Practical_Tips.pdf

[15] American Judges Association, "Procedural Justice Bench Card," retrieved on June 13, 2024, at https://www.innovatingjustice.org/publications/procedural-justice-bench-card.

[16] Conference of Chief Justices and Conference of State Court Administrators, "In Support of the Recommendations of the National Judicial Task Force to Examine State Courts' Response to Mental Illness," 2022, retrieved on June 6, 2024, at 07272022-Response-to-Mental-Illness.pdf.

[17] Chief Judge Rowan D. Wilson, et al., "The State of the Judiciary 2024," retrieved on June 3, 2024, at https://www.nycourts.gov/SOJ-2024/24_SOJ-Remarks.pdf.

[18] National Council of Juvenile and Family Court Judges, "NCJFCJ Bench Card Resource Center," retrieved on June 24, 2024, at https://www.ncjfcj.org/bench-card-resource-center/.