

Interview

LAW AS THERAPY: WHAT IMPACT DO DRUG COURTS HAVE ON JUDGES?

AN INTERVIEW WITH JUDGE PEGGY FULTON HORA

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If someone were to give an award for the most influential criminal justice innovation of the last 20 years, there is little doubt that drug treatment courts would be a top contender. And there is no question that within the drug court movement, retired Judge Peggy Fulton Hora is one of its most influential figures.

Drug courts, which link participants with judicially monitored drug treatment, burst onto the scene in 1989 with a new paradigm. While courts in the past had been known to order an offender to participate in treatment on an ad hoc basis, the nation's first drug court—the Miami-Dade County Drug Court—added unprecedented rigor. Court staff carefully screened participants, developed treatment plans attuned to individual needs, matched participants with appropriate treatment providers, administered frequent drug tests, required regular court appearances and allowed the judge to develop a rapport with individual offenders. In another innovation, the court also fos-

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tered a spirit of collaboration among the judge, court staff, prosecutor, defense counsel, and treatment providers.

But perhaps the most revolutionary aspect of the Miami-Dade experiment was that the court—following the advice of addiction specialists—acknowledged that relapse was often part of the recovery process, responding to each infraction with progressively more serious sanctions. Successes, on the other hand, were met with incentives—everything from applause in the courtroom to fewer court appearances to gift certificates. The ultimate reward, however, was the chance to not only avoid jail but receive help in building a drug-free life.

The Miami-Dade court and other drug courts around the United States that subsequently emerged developed policies that put a spotlight on results (did the participant get sober?), encouraged greater accountability (by responding swiftly to noncompliance, for example), and fostered information-sharing among the judge, prosecutor, defense attorney, court staff, probation, and treatment providers. These policies—eventually honed into 10 key components by the National Association of Drug Court Professionals²—made it easier for other jurisdictions to replicate the model. And, encouraged by reports of positive results, replications occurred apace. The U.S. Department of Justice, with congressional and presidential support, spent tens of millions on grants to support the planning, development and operations of drug courts across the U.S.³

While the nearly 1,700 drug courts (and more than 300 being planned) in the U.S. today might seem to be the Miami-Dade County Drug Court's greatest legacy, in reality the 1989 experiment helped give birth to something larger: problem-solving courts, in general.⁴ Although many other factors have also gone into the growth of the problem-solving court movement (which includes under its umbrella an estimated 300 do-

2. See generally OFFICE OF JUSTICE PROGRAMS DRUG COURTS PROGRAM OFFICE, U.S. DEP'T OF JUSTICE, *DEFINING DRUG COURTS: THE KEY COMPONENTS* (1997), available at <http://www.nadcp.org/docs/dkeypdf.pdf>.

3. AUBREY FOX & ROBERT V. WOLF, *THE FUTURE OF DRUG COURTS: HOW STATES ARE MAINSTREAMING THE DRUG COURT MODEL*, CENTER FOR COURT INNOVATION, 13 (2004), available at http://www.courtinnovation.org/_uploads/documents/futureofdrugcourts.pdf.

4. JUSTICE PROGRAMS OFFICE, AMERICAN UNIVERSITY, *BJA DRUG COURT CLEARINGHOUSE PROJECT SUMMARY OF DRUG COURT ACTIVITY BY STATE AND COUNTY 111* (2007), <http://spa.american.edu/justice/documents/2150.pdf>.

mestic violence courts,⁵ more than 150 mental health courts,⁶ and 29 community courts,⁷ among other problem-solving models), it's clear that drug courts in many ways laid the philosophical and jurisprudential groundwork for other problem-solving courts to follow.

Peggy Fulton Hora, who retired from the California Superior Court in 2006, is a nationally recognized drug court expert.⁸ The author of numerous articles, Judge Hora is associated not only with drug courts but with a related movement, therapeutic jurisprudence. First articulated by law professors David B. Wexler and Bruce J. Winick, therapeutic jurisprudence posits that the law and the criminal justice system play a role in participants' emotional health and psychological well being.⁹ To Judge Hora, drug courts are prime examples of how legal procedures can be adapted to nurture positive, therapeutic outcomes.¹⁰

Like many judges who have presided over drug courts (she served six years at the helm of the Alameda County Drug Court in Hayward and chaired the committee that set up the first drug court in California in 1991), Judge Hora is an enthusiastic advocate. Her advocacy, she says, stems from the fact that drug courts appear to not only reduce recidivism but also save taxpayers money.¹¹ But her advocacy also has another source: the tremendous amount of satisfaction she derived as a judge

5. Susan Keilitz, *Specialization of Domestic Violence Case Management in the Courts: A National Survey*, Williamsburg, Va.: National Center for State Courts, 2000.

6. Bureau of Justice Assistance, <http://www.ojp.usdoj.gov/BJA/grant/mentalhealth.html>.

7. Center for Court Innovation, <http://www.courtinnovation.org/index.cfm?fuseaction=document.viewDocument&documentID=669&documentTopicID=17&documentTypeID=10>.

8. For additional background on Judge Hora, visit her web site at <http://www.judgehora.com>.

9. David B. Wexler, *International Network on Therapeutic Jurisprudence*, <http://www.law.arizona.edu/depts/upr-intj/> (last visited Nov. 15, 2007).

10. Hon. Peggy Fulton Hora, Hon. William G. Schuma, & John T.A. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439 (1999), available at <http://www.ndci.org/admin/docs/notredame.pdf>.

11. See AMANDA B. CISSNER & MICHAEL REMPEL, THE STATE OF DRUG COURT RESEARCH: MOVING BEYOND "DO THEY WORK?," CENTER FOR COURT INNOVATION (2005), http://www.courtinnovation.org/_uploads/documents/state%20of%20c%20research.pdf.

working in a drug court. In the following interview, Judge Hora discusses therapeutic jurisprudence and a study she and a colleague conducted of job satisfaction among drug court judges.

How are the concepts of problem-solving justice and therapeutic jurisprudence related?

Therapeutic jurisprudence is bigger than problem-solving courts. Therapeutic jurisprudence is an academic field, and therefore can be applied to many different situations. You can use it in pure criminology, for example, in the way surveys are conducted and outcomes are reported in academic journals. You can use therapeutic jurisprudence principles in any form: in a mental health hearing, for example, or an administrative law or appellate court.

Therapeutic jurisprudence's question is: Can we enhance the likelihood of desired outcomes and compliance with judicial orders by applying what we know about behavior to the way we do business in court? And therapeutic jurisprudence's other question is: Can we reduce the anti-therapeutic consequences and enhance the therapeutic ones without subordinating due process and other justice values? Essentially, therapeutic jurisprudence is designed to make us ask whether the law does things to help people. It proposes that we should look at the law as a healing profession. It requires a new perspective that sees the court system as an interdisciplinary, problem-solving, community institution.

But to be therapeutic, the outcome has to be healing, right? So what about domestic violence courts whose primary goal is to hold offenders accountable for battering and for improving the safety of victims? Many domestic violence courts, in fact, reject the idea that you can rehabilitate batterers, saying there's no evidence that any kind of therapy works.¹²

12. See, e.g., OFFICE OF JUSTICE PROGRAMS NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, DO BATTERER INTERVENTION PROGRAMS WORK? TWO STUDIES (2003), <http://www.ncjrs.gov/pdffiles1/nij/200331.pdf>; MELISSA LABRIOLA, MICHAEL REMPEL & ROBERT C. DAVIS, TESTING THE EFFECTIVENESS OF BATTERER PROGRAMS AND JUDICIAL

I feel that domestic violence courts can be therapeutic but if they're not emphasizing rehabilitation then they're not. But let me be clear: protecting a victim and the community is the primary and more important thing. Therapeutic jurisprudence never trumps fundamentals like equal protection or due process. Professors Bruce Winick and David Wexler say that protection of victims and public safety has to be foremost in the mind of any therapeutic or problem-solving court.

When you talk about domestic violence courts, however, you're talking about ultimately releasing batterers back into the community and back into their families where, if they're not rehabilitated, the crime will continue to occur. We know from the nature of the crime that it will not just recur but usually escalate. . . Any court that doesn't look at rehabilitation or reintegration is not a problem-solving court. Unless every crime results in a sentence of life without the possibility of parole, then you have to look at rehabilitation and reintegration of a peaceful partner in the family.

For rehabilitation in a problem-solving court to be effective, judges and staff need to be well informed about the best treatment modalities. Has there been enough research to guide practitioners about the best ways to treat complex problems like drug addiction and mental illness in each and every case?

Academics can do the research and practitioners can publish papers in journals of the highest caliber, but the lessons still need to be translated into practical applications in the therapy setting and the courtroom. This must include what's realistic for judges and what's available. A former client of mine used to say, "It's like parsley on fish; it don't mean a thing." In other words, unless you can find a practical application for the research, it's nice but totally useless to criminal justice.

But there are some things that we're fairly certain about and apply in drug court. In trainings for problem-solving

courts, we teach everybody that a sanction doesn't necessarily mean jail. A judge saying to someone, "I'm so disappointed—I'm just shocked and upset that you did this," can have a huge impact. The judge's disapproval can be a bigger sanction than previously understood and probably bigger than sending them to jail for a few days.

When we first started this whole movement, we didn't want to be seen as a soft-on-crime initiative. We stressed the sanctions, the rigorous monitoring, how tough drug courts were. But now they're broadly accepted. They're state supported, federally supported, in tribal courts, international. Problem-solving courts have been endorsed by the conferences of chief justices and court administrators. With all that support, we as judges can start to look at other things, things like motivational interviewing, which tells us that you can interview participants in a way that will enhance the likelihood of compliance. . . .

All this is a work in progress, it's still a very new field, but we know a lot more than we used to know. The challenge is to not necessarily do more research—certainly more needs to be done—but the bigger challenge right now is to integrate what we already know into mainstream judicial education.

How do you respond to critics of therapeutic jurisprudence who say, "Not only aren't judges qualified to be social workers, but being part of the treatment team and playing a therapeutic role in the courtroom undermines judicial independence."

I absolutely agree. Judges shouldn't be social workers. Social workers should be social workers. But what judges should be is effective, and what they should rely on is the evidence we have to be most effective, and the most effective way we can operate is through a problem-solving matrix. We know that we get better outcomes, we know we reduce recidivism, we know we improve the health of the individual, family, and community by using an integrated and interdisciplinary approach to the problems that bring people to court.

Of course, we don't want to trump due process or equal protection for even the best therapeutic goal. Ultimately,

whatever the team decides, the judge is driving the bus and it is still a court of law. A judge has to act like a judge and follow judicial ethics.

If people could solve these problems themselves they wouldn't be standing in front of us every day. There is a genesis, with rare exceptions, of these behaviors that gets people into court. If we can improve their life situations, play on the strengths they have, then gosh, we're in the catbird seat.

What other criticism of problem-solving courts have you heard and how do you respond to it?

Is it more costly? No. It's clear that these courts save money.¹³ Does it take more time on the docket? Yes. It's clear that you have to spend more time on individual dockets but it pays off in the lack of recidivism in the long run and lack of foster care for children reunited with their families of origin and the lack of emergency room visits for people with mental health issues who've gone off their medications and have to have them completely recalibrated and balanced out again.

In my drug treatment court, I had at one time three participants with schizophrenia. On average, they were hospitalized twice a year in emergency psychiatric settings, costing \$50,000 a visit or \$100,000 a year. On those three people alone, the drug court helped save \$300,000 in a single year because they stayed on their medications and didn't have psychotic breaks that needed to be addressed. In California, according to the Administrative Office of the Courts, drug courts save \$18 million annually.¹⁴

13. A study commissioned by the Judicial Council of California found that outcome benefits ranged from about \$3,200 to over \$20,000 per participant. SHANNON M. CAREY, DAVE CRUMPTON, MICHAEL W. FINIGAN & MARK WALLER, NPC RESEARCH, A METHODOLOGY FOR DETERMINING COSTS AND BENEFITS PHASE II: TESTING THE METHODOLOGY FINAL REPORT, at iv (2005), available at http://www.courtinfo.ca.gov/programs/collab/documents/drug_court_phase_II.pdf.

14. COLLABORATIVE JUSTICE COURTS ADVISORY COMMITTEE, PROGRESS REPORT 3 (2003), available at <http://www.courtinfo.ca.gov/reference/documents/colljust rept2003.pdf>. See Press Release, Administrative Office of the Courts, Judicial Council of California, New Report Shows Drug Courts are Cost-Effective, Help Rebuild Lives (Apr. 15, 2003) (summarizing the Collaborative Justice Courts Advisory Committee Progress Report), available at <http://www.courtinfo.ca.gov/presscenter/newsreleases/NR26-03.HTM>.

Yes, problem-solving courts ask participants to sign appropriate waivers about confidentiality of medical and treatment information, but is it a violation of the client's rights to have them waive those things? No. Rights are waived all the time. People on probation waive their constitutional rights. What about the Fourth Amendment prohibitions on search and seizure? Probationers regularly waive their rights and agree to conditions such as "submit to a search of your person, personal effects, automobile or home any time of the day or night with or without probable cause." . . . And the right to associate? You give that up when you're told that as a condition of probation that you can't associate with known felons. It's a normal procedure to have people give up their rights as a condition of getting a deal. Drug courts are no more or any less stringent in the waiver of rights in order to participate in the program.

You recently conducted a study of judicial satisfaction among drug court judges. What led you to pursue that line of inquiry?

In the mid-1990s I was in Washington D.C. at the National Association of Drug Court Professionals conference, sharing a room with a judge from San Diego, an old friend. We hadn't seen each other in months, and we're getting ready for bed and we're talking about everything: movies, books, and what the grandkids are doing, and then we started talking about our drug courts. And finally we said, "We have to go to sleep." And then one would ask, "Are you still awake?" and we kept going on like that, talking about our work until three in the morning. The next day, it's break time at the conference, and here are all these judges who can't shut up about their drug court and the wonderful things that are happening, and I said to myself, "I've never seen so many people get so excited about their work. I mean that just doesn't happen when judges discuss the Uniform Commercial Code." What is it that gets people so excited about this? I said to myself that something different is going on here.

So Deborah Chase [a psychologist and senior attorney with the California Judicial Council and The Center for Families, Children and the Courts] and I designed a survey, and the first

groups we surveyed were drug court judges and family court judges, and then we compared them. What we found was that on every measure the drug court judges were happier, more satisfied.¹⁵

Then we decided to ask family court judges who work in unified or integrated settings. We speculated that they might have greater satisfaction than regular family court judges because they handle all cases involving a single family. Since they handle everything, there aren't conflicting orders, services are more appropriate; it's grounded more in therapeutic jurisprudence than regular family law court. What we found was that, in terms of judicial satisfaction, the drug court judges came out first, unified family court judges came out second, and the regular family court judges came out third. Drug court judges also expressed more hopefulness, a greater belief in people's ability to change.¹⁶

So then we thought we should survey a fourth group: criminal court judges who don't work in problem-solving courts, and once again, drug court judges came out on top followed by unified family court judges, the two groups that work therapeutically.

We interpret this as saying that judges who take a problem-solving approach have higher degrees of judicial satisfaction. Some questions on the survey received a 100 percent positive response from drug court judges, like when they affirmed that "I feel that people can change and that I'm helping people."

Other research has shown that drug court judges affect participants, that participants feel connected to the judge and that what the judge thinks of them is important for achieving sobriety and mature recovery.¹⁷ But what we didn't know was how much the judges were affected by that as well. What it seems to come down to is that if you believe that you're helping people, if you're watching people change and feeling effective, then you have a higher degree of job satisfaction.

15. Peggy Fulton Hora & D. J. Chase, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, 37 CT. REV. 12, 12-20 (2000).

16. *Id.* at 8-28.

17. See AMANDA B. CISSNER & MICHAEL REMPEL, *supra* note 12 (summarizing and analyzing drug court research).

Don't drug court judges sometimes—because they spend more time on each case—have more work to do? Doesn't that counterbalance some of the satisfaction they feel?

They don't seem to care, and there are plenty of drug court judges who every single day are handling their drug court dockets in their spare time, who are doing it at lunch time or after five o'clock in jurisdictions that still think of it as some kind of boutique court. For them, is it more work? Hell yes. They're giving up their lunch time, they're free time. Why? Because they're incredibly satisfied with the work they're doing in drug court.

Satisfaction derives from being effective, from watching people whose lives are a mess being able to integrate back into society. That's what kept my friend and me up until 3 in the morning: to see something that actually works.

Are there lessons from your experience for non-drug court judges?

You don't have to be in a specific problem-solving docket to employ problem-solving techniques. The National Judicial College produced a brochure called "Effective Judging for Busy Judges" that explains how the basic principles of problem solving can be integrated into a judge's regular docket.¹⁸ If I ruled the world, every judge would be a problem-solving judge by taking an integrated approach, linking participants to effective resources, monitoring outcomes, and having the most information available to make good decisions.

I don't think we went to law school saying our dream job would be calculating long prison terms for young men of color. Probation officers didn't come to their field to keep busting people on probation violations and sending them back to prison; they did it to help people rehabilitate. Police officers, too, were attracted to the job because they wanted to help people. And that's what the problem-solving approach is all about—and ultimately why it produces greater judicial satisfaction.

18. THE NATIONAL JUDICIAL COLLEGE, *EFFECTIVE JUDGING FOR BUSY JUDGES* (2006), available at http://www.judges.org/pdf/effectivejudging_book.pdf.