

# Therapeutic Jurisprudence

The Juvenile Court as the Integrative Forum for a Community's System of Care

By John Franz

*Designing a comprehensive system of care without including the juvenile court is like building a car and leaving out the engine. Yet as communities work to integrate their efforts to support families with complex needs, a continuing challenge has been finding ways to incorporate the courts and court-related staff into the process. The adversarial orientation of the judicial process seems almost directly opposed to the collaborative spirit of the wraparound approach. But the gap is not as great as it might appear on first glance.*

## Time to join the party

Modern courts do much more than resolve disputes of fact or law. In many ways they are close to the center of the human service response, carrying out important case management and resource access functions. Juvenile courts oversee both delinquency and child welfare matters and as well as related issues such as substance abuse and mental health matters affecting children, and in some places are the forum for educational disputes. Drug courts have been started in many communities. The probate court hears mental health commitments and protective placements for people with developmental disabilities. The family court hears matters involving child custody, paternity and family dissolution. Termination of parental rights, adoption, guardianships, emancipation – taken together, it is estimated that family and human service related matters now occupy 35% or more of the total court docket.<sup>1</sup>

In recognition of the significance and challenge of this growing aspect of court activity, a new methodology that echoes system of care values is becoming part of the discourse in legal journals. The concept of therapeutic jurisprudence first arose in the field of mental health law and policy, but it has since been applied in a variety of settings.<sup>2</sup> It has been defined as “the use of social science to study the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects.”<sup>3</sup> Therapeutic jurisprudence invites us to recognize the intimate connection courts have with human service delivery and to make adjustments on both ends to improve the interface and increase overall effectiveness.

Some in the legal system are uncomfortable with these ideas, but others take to them a bit more easily. To meet one of the later, let's return to Lake County, where our friend Apollina Smith has resettled and begun what she thought would be the slow development of an integrated system of care.<sup>4</sup>

---

<sup>1</sup> Bapp, Barbara and Judith Moran (1999). Substance abuse, Families, and Unified Family Courts: The Creation of a Caring Judicial System. 3 *Journal of Health Care Law and Policy* 1.

<sup>2</sup> Cf. Wexler and Bruce Winick, *Essays in Therapeutic Jurisprudence*, Durham, N. C., Academic Press. (1991).

<sup>3</sup> Slobogin, Christopher (1995) “Therapeutic Jurisprudence: Five Dilemmas to Ponder” *Psychology, Public Policy and the Law*, v. 1, p 193 at 196. He defines “therapeutic” in this context as meaning “beneficial in the sense of improving the psychological or physical well-being of a person.”

<sup>4</sup> Our last visit with Apollina was in “The Politics of Help” in the March, 2001 installment of the WisKids Journal. It is also available on line at [www.paperboat.com](http://www.paperboat.com).

### **Working the links**

Lake County's new judge was young, energetic, likeable, and, to Apollina's dismay, two strokes ahead of her after nine holes. Golf had paid her way through college and she was used to winning. But Tom Cahill seemed to be rolling along effortlessly while keeping up a steady interrogation.

"So fill me in on this wraparound stuff," Tom had said over the phone when he called earlier in the week. "It sounds like some new religion."

Cahill had won a three-way election after the old judge finally retired. He had grown up on a Lake County farm and come back after college and law school to open a successful private practice. In the six months since he took over the county's only judicial position he was carefully leading the court into modern times. They had spoken informally a few times, and Apollina had been thinking about calling him, but with everything else that was going on hadn't gotten around to it. Then he was on the phone offering her 18 holes to explain her ideas about how the court and social services could work together more effectively.

The first three holes were occupied with the social graces and checking out each other's games, but as they were walking toward the fourth tee, the new judge got to the point. "Every week I hear custody cases in family court, abuse and neglect cases in juvenile court, mental health commitments in probate court and take pleas and issue sentences in criminal court. But it's all the same people. They keep coming back as they move through different stages in their lives. I want a court system that can actually help them, instead of just adding another entry to their records."

### **Seeing the court in a new light**

One way to align system of care partners, including the courts, is to develop a common operational paradigm. Wraparound is an example of a unifying human services paradigm. Therapeutic jurisprudence is beginning to play a similar role for the juvenile and family courts.

Susan Brooks, a professor at Vanderbilt Law School, has proposed the use of the family systems model to re-align practice in child protection cases by taking the overall pattern of family interactions, adaptations, forces, and stressors into account in both process and decision-making.<sup>5</sup> Jean Koh Peters, a clinical law professor at Yale, has developed a decision making protocol that integrates the traditional best interests of the child approach with a family network perspective.<sup>6</sup>

---

<sup>5</sup> Brooks, Susan L. (1997) "A Family Systems Paradigm for Legal Decision-Making Affecting Child Custody," *Cornell Journal of Law and Public Policy*, v. 6, p. 1. One of many good introductions to the elements of the family system's model can be found in Jones, Elsa (1993) *Family System's Theory: Developments in the Milan Systemic Therapies*. New York: Wiley.

<sup>6</sup> Peters, Jean Koh (1996) "The Roles and Content of Best Interests in Client-directed Lawyering for Children in Child Protective Proceedings." *Fordham Law Review*, v. 64, p1507ff. Adapting her model to the purposes of this article, it would include the following steps:

1. Completing a thorough investigation to understand a child and family's network of relationships, history, and daily life.

Barbara Babb, a professor at the Baltimore School of Law, would use Urie Bronfenbrenner's human ecology approach as the leverage for developing a truly unified family court.<sup>7</sup>

While these models focus on the operation of the court, they echo many of the elements of the wraparound approach. This similarity provides a vocabulary for establishing a partnership between the court and the agencies participating in a system of care. All share a concern for producing a wider, more balanced picture of all the factors affecting the well-being of a child and family, a preference for a participative process that recognizes the complex mesh of strengths and needs that each child and family presents, and an emphasis on finding solutions that will produce sustained positive outcomes. As Barbara Babb puts it:

“In order to assist families by promoting their well-being through family law decision-making, judges must account for and attempt to strengthen various aspects of family's environments or ecologies. There is at present in legal discourse little recognition that family members may need nurturing environments as much as they need rights, or that families themselves may need surrounding communities in order to function at their best.”<sup>8</sup>

### **Score one for the next generation**

From holes four through nine Apollina carefully described her experiences using wraparound to bring together a collaborative system of care. By the ninth not only had the judge played better golf than she, he had also picked up the basic principles of wraparound and was challenging her to move her concepts up another notch. They got couple of bottles of iced tea from an outdoor vending machine while they were waiting to tee off on the tenth.

“What you're doing sounds good, but I don't know if it's enough,” the judge said. “You're still overwhelmed. So are the other services. The police are overwhelmed. The court's overwhelmed. The schools probably have it the worst of all. We're all trying to do better, but we're still working too independently. We're not seeing how all of our separate operations interact. What finally drove it home for me was that hearing you sat in on last week, you know, the little girl with Spina Bifida?”

Apollina had finished her tea and was practicing her swing.

- 
2. Realistically analyzing the service options that are actually available to assist the child and family in light of their strengths and needs.
  3. Making fundamental changes in a child and family's life only when a child's development is clearly at risk, and in ambiguous situations erring on the side of minimizing state intervention.
  4. Using expert recommendations cautiously, taking into account their limited contact and availability, their limitations and biases, and their ongoing roles with the child and family.
  5. Always honoring the perspective of the child and family both in terms of the situation that brings them before the court and the impact of the options that are being considered.

<sup>7</sup> Babb, B. (1997) “An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective.” *Indiana Law Journal*, v. 72, p. 775. Babb, citing Bronfenbrenner, Urie (1979) *The Ecology of Human Development: Experiments by Nature and Design*. Cambridge: Harvard University Press.

<sup>8</sup> Babb, supra at 786.

“Elsie Girard. She’s quite a kid. 9 going on 21. You seemed to like her attitude.”

“I did. Although I was worried she was going to run me over with her chair if I didn’t give her what she wanted. I think the quote was something like, ‘Mr. Judge I’ve got a team and we’re not going to let you take me away from my mom.’”

“That’s Elsie. I hope we can help. Her mom is so young.”

“And her life is so complicated. She touches most of the systems. Your agency is involved because of the neglect allegations. The school is dealing with her daughter’s disabilities. Because I’m the only judge in the county, I hear the other matters as well. There’s a paternity case with `big support problems. You’re aware that Mom has a drug and alcohol problem and has been in criminal court on misdemeanor thefts and bad checks. Now there’s more charges and the DA feels like she has to ask for jail time.”

The tenth hole cleared and they were both on the green in two. As they were walking up Apollina asked, “So are you saying you need us to do something more for the family?”

“No. I’m impressed by what your staff have done. I’m talking about the next Elsie. The point is the lack of connection. I don’t want to spend hearing after hearing watching things get worse for people. All of the elements were there from the beginning – the abandonment by the father, the isolated mother overwhelmed by her daughter’s condition.”

Apollina two-putted for par and the judge did the same. As they headed over to the next tee, the judge continued, “We have to find a way to put all the pieces together sooner, and better.”

### **Weaving a bigger quilt – the court as system integrator**

The court can play a critical role in a community’s system of care. Because of its special status and multiple points of connection, an active court can become a system integrator helping to bring the overall design into better alignment. One way to begin weaving the court into the pattern is to look at the basic functions carried out by all the system partners, including the court, and then to create an arrangement that blends them more efficiently. For example, court functions identified through this process might include:

- Protection of individual liberties
- Insuring accuracy and fairness in proceedings
- Insuring equal voice for all participants
- Clarifying each participant’s concerns and objectives
- Conflict resolution
- Establishing parameters for action
- Facilitating the creative planning process
- Support for resource development and help in overcoming barriers to resource access
- Monitoring process and outcomes
- Acknowledging and supporting progress

Similar lists could be generated for every formal and informal partner in the system of care: child welfare, probation, mental health, the schools, public health, the faith community, the junior league, the chamber of commerce, etc. This is analogous to creating a strengths inventory when using the wraparound process with a child and family team. Once the key functions of each system partner are listed, then the planning group should articulate a common goal, decide what needs to happen to move toward that goal, brainstorm options for addressing those needs, and pick an action plan that builds on and blends each partner's core competencies while making the necessary adjustments to help the pieces fit together better.

To include the court as a partner in the system of care, careful attention should be paid to insuring alignment at both the general operational level and in terms of individual case process. The planning team should compare the current documentation needs of all of the partners. What information is needed when, by whom and for what purpose? Can better efficiency be achieved by reducing redundancy and excess in paperwork and producing better coordination in the nature and form of the data that various partners collect? Similar attention should be paid to timelines, decision-points, decision-makers and decision criteria within each system. Building a functional system of care is like sewing a quilt in three dimensions. It can be done, but it takes a thorough understanding of all of the pieces.

### **A slice in time**

On the 15<sup>th</sup>, Apollina picked up a stroke with a 16 foot birdie putt that somehow found the hole across an uneven break.

"What you're talking about is huge," she said after the Tom tapped in a gimme for par. "Our system of care is still just taking baby steps." She couldn't believe she was taking the conservative line in a conversation with a judge.

"I'm not saying we have to do everything tomorrow. But we have to start somewhere. What if we set up a drug court that could link to one of your child and family teams when the defendant was a parent? On my side, we could look for some way to join issues when all of a person's problems were connected to their substance abuse. You know, have one hearing instead of two or three for folks like Elsie's mom?"

"Would the DA go along with that?" Apollina asked. Delores Thorstad was known more for demanding the maximum sentence than consorting with collaboration.

"She came back from some conference and is up for a drug court," the judge answered as they set up for the 16<sup>th</sup>. "She tells me she would be happy to look at alternative methods if she could be sure that a defendant was going to get services that would really make a difference."

"I guess I misjudged her," Apollina said, before addressing the ball and overpowering her drive. The ball sliced off the fairway, ricocheted off a large maple tree and angled back onto the course in perfect alignment for the dogleg.

The judge smiled. “You take what you can get. She’s no Mother Theresa, but she is workable. The commissioner tells me you have an informal planning group. I think he called it the jury-riggers?”

Apollina nodded. The judge’s drive was beautiful, but came to rest about ten yards short of hers. He smiled again and shook his head and they started toward the balls.

“Do you think it would be okay if Delores’s assistant and my clerk started showing up? If it would help, I’d be glad to pop in now and then as well.”

### **Pieces of an evolving pattern**

Growing an effective system of care is hard work. We know we want to move from slot-based solutions to goal-directed planning. But putting our values into action can be difficult. Joining forces with those who are working to reform our court systems is just another step in the ongoing transformation.

The proponents of therapeutic jurisprudence offer a few new insights to guide our efforts. We see that to be successful we will have to find ways to expand our criteria for making decisions from a narrow focus on the immediate conflict or incident to a broader perspective that includes underlying driving forces. Where our choices have been determined by service availability, they should now be defined by need. Where a referral or placement was once enough to constitute case resolution, success should now be demonstrated through documented and sustained outcomes. Most importantly, we have to learn how our separate attitudes and actions can affect the efforts of our system partners and impede or promote the well being of the children and families we serve.

### **Its not whether you win or loose ...**

#### **Its how you score the game**

The day after the golf game, Apollina was on the phone with her friend Carol Hartwig. Carol was excited by the judge’s ideas. “We had a situation today in Kenyon that fits exactly: the parents have a divorce action in family court and their son is in juvenile court on a delinquency charge – but the same issues run through both actions. It would be so much better if we could deal with them in one place.”

“It could also be so much more work.”

“Apollina, you have a way of finding a cloud behind every silver lining. Speaking of which, you still haven’t told me the final score.”

“Carol, he’s ten years younger than me and can hit the ball a ton.”

“So you got beat by a judge?”

“I didn’t say that. Somewhere between the 17<sup>th</sup> and the 18<sup>th</sup> we decided to prepare a memo of understanding. The idea was to have a simple set of criteria that any of our joint enterprises would have to meet. There are 7 of them. He wrote them down on the back of the scorecard, and sent me a copy after he got back to the office. It goes like this: “Will the project or plan:

- Build on the strengths of the child and family;
- Increase their positive relationships and capabilities;
- Reduce their vulnerabilities;
- Address any legal accountability a family member may have;
- Reflect the input of the child, family and other interested parties;
- Involve all needed community members; and
- Increase the safety and well-being of the child, family and community?”

“That’s a hell of a start. I guess it was worth losing a round of golf.”

“Or even winning one. Our MOU also included a confidentiality statement in that regard.”

*©2001 by John Franz. Permission is granted to reproduce this article for educational purposes so long as it is distributed without cost to the recipients and this notice is included. John has a private consulting practice in Madison, Wisconsin. He can be reached via email directed to [info@paperboat.com](mailto:info@paperboat.com).*