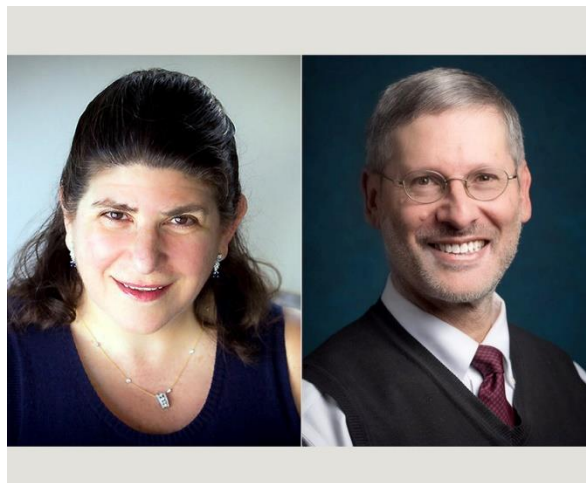


## Therapeutic Jurisprudence: How Judges, Lawyers and Mental Health Professionals Can Be Agents of Change

Elisa Reiter and Daniel Pollack | September 14, 2023



What is therapeutic jurisprudence, and how might family law judges implement therapeutic jurisprudence to serve the best interests of children and their families? Therapeutic jurisprudence (“TJ”) originated in the context of mental health law. While mental health law should focus on helping people, parts of mental health law can be detrimental in practice. [Daniel Wexler](#) is considered one of the founders of TJ. Simply stated, “[t][herapeutic jurisprudence](#) explores how insights from other fields—such as psychiatry, psychology, criminology, and social work—

are useful to the law and how they can simultaneously be consistent with the due process framework.” In addition, TJ

...[introduces a new perspective](#) in the examination and assessment of the outcomes of laws and judicial decisions and the effect of these on the mental health of individuals involved in the legal process: offenders, victims, plaintiffs, and respondents as well as mental health and legal professionals.

The basic assumption of TJ is that the law, as applied, can have both therapeutic outcomes, which should be encouraged, and antitherapeutic ones, which should be minimized. For Wexler, the courtroom and social services should be intertwined. He identifies [five areas of growth](#) and change in the area of TJ:

1. Moving TJ into legal (and other) education.
2. Implementing TJ internationally.
3. Advancing TJ as an interdisciplinary venture, taking a team approach.
4. Crossing boundaries, by taking TJ from mental health law to the entire panoply of law.
5. Taking TJ from a theoretical concept to actual practice.

Retired Judge Philip Marcus, who was appointed a Judge of the Jerusalem Magistrates Court in 1995 and served as a Judge of the Family Court from its opening in 1997, contends that TJ can be used by family court judges as a means of triage for families in trouble. For five years Judge Marcus served as Deputy President for Family Matters for the Jerusalem District in Israel (Chief Judge of the Family Court). He categorizes three different groups of judges, each of whom should be enlightened on the powerful impact of TJ. Judge Marcus contends that

different approaches might be necessary, depending on which category a given judge falls in, to encourage the use of TJ:

- Judges who have experience and knowledge in family matters before starting as judges, and who intend to continue dealing with family cases for several years. These will usually have motivation to continue learning so as to improve their handling of cases, so that the emphasis might be on research on the effects of litigation on children and the need for diversion, etc.
- Judges in large jurisdictions who are sent to family court as part of a rotation for one or two years. These judges may have no experience with family matters, and little or no motivation to learn, and may cause serious damage if they treat family cases like any other case. They need to be educated, preferably before, but at the latest soon after they start to hear family cases, about child development, family conflict, personality disorders, and how to conduct cases in the courtroom, etc.
- Judges in small jurisdictions who have to hear all kinds of cases, including those involving children (child protection, juvenile crime and family disputes), and will likely continue to do so for several years. They also may have no prior experience, but their motivation to learn may be higher. The content for this third category will be similar to that in the second category.

TJ is especially important where there are allegations of familial dysfunction such that a child may risk losing contact with one parent or another close relative, or a case in which contact between the child and such a parent or other relative has already ceased. *Ad litem* attorneys are also a part of the TJ process. Procedures are

established by the court via TJ, with a respectful eye to assure both due process and confidentiality for the litigants involved. The result of TJ? Faster and more enduring resolution of family disputes, and placing litigants and their children in the position of enjoying restored relationships. Like physicians, the mantra is first to do no harm. Judge Marcus implemented TJ as a process in family court, using the following [principles](#):

1. The family court develops a team of social workers who assess each family law case.
2. Rather than allowing the litigants to hire their own child custody evaluators, the parties are instead provided with a list of trained evaluators by the court. The list is composed of individuals with training and experience assessing, treating and making domicile recommendations for divorcing families.
3. The judge may implement effective and immediate decisions, assisted by the family court's social services team. As the team members are trained in assessing cases involving allegations of domestic violence or other endangerment, there is a focus on the protection of children from all types of abuse, be it physical, sexual and/or emotional. This process is akin to the process employed by a mental illness court that is dealing with a psychiatric assessment and/or guardianship matters, where a trained court investigator is part of the team approach to assess the needs of a potential ward.
4. The teamwork of experienced judges working with trained professional social work/psychologist teams allows high conflict families to have their respective positions assessed immediately.

5. If later legal disputes emerge, such as a modification, the family court team reevaluates the family to assist the judge in making new rulings, if such rulings are warranted.
6. Judges have the authority to assess sanctions against litigants, including fines and imprisonment, against any parent or other litigant who does not adhere to court orders. It is rare in the American system to have immediate relief when one parent is cut off from access to child(ren) by the other parent. That failure may be to the detriment of children, left in the care of a parent whose bad behavior may not only continue, but whose bad behavior appears to otherwise be rewarded by the court. When children remain with a severely mentally unhealthy parent without therapeutic intervention, the errant parent may inflict additional psychological and emotional damage on their child(ren).
7. If the assessment team concludes that the behavior between divorcing parents and their children indicates a history of destructive behavior that will suggest the need for counseling, the liaison team outlines recommendations for referral to an expert, and helps define the matters to be dealt with. This assessment and referral system is categorized as jurisprudential therapy.
8. If the assessment team concludes that there is indicia of domestic violence or other dysfunction in the family relationship, appropriate recommendations are made by the social services team, and codified by the judge.
9. Collaboration between judges and their social services team is essential. Consultations should occur between the judge and their team as needed. A judge's referral to the social services team should include a statement of the parameters of what the team is to evaluate, to consult with the family

about, and to assure that the social services team will outline initial treatment recommendations as part of the assessment. The team may draw issues to the judge's attention, based on the teams' interviews with family members.

Dallas County, Texas District Attorney John Cruetzot, while serving on the bench in Dallas County, developed a TJ program. In addition, the [Judge John Cruetzot Judicial Treatment Center in Wilmer, Texas](#) offers both inpatient and outpatient services to those in need. The [Hon. John Roach developed a TJ approach focusing on veterans](#) in Collin County, Texas. TJ is also employed by the [Legacy Family Court Foundation in Dallas](#), in conjunction with Judge Sandra Jackson, Judge Vonda Bailey, Assoc. Judge Delia Gonzales, Assoc. Judge Tamika Jones Abendroth, and Assoc. Judge Jean Lee, following a liaison initiated by the Hon. Frances Harris, and furthered by the Hon. Tena Callahan, working with Family Compass (then Child Abuse Prevention Center). Such programs are now found worldwide.

What are the objectives in these TJ forums? [Judge Marcus](#) focuses on three types of courts in encouraging the holistic approach that TJ provides within the legal system:

1. For criminal courts, a key objective is to avoid recidivism, to reduce costs to the community, and to keep families intact.
2. For civil courts, TJ incorporates Alternative Dispute Resolution options as a means of effectively settling disputes.

3. For family courts, there are special issues. In family law matters a holistic approach should be a cornerstone as “the parties typically have a long history together before the dispute arose, and are likely to remain in contact after the determination of the specific issue before the court, especially where minor children are involved.”

Why employ TJ? To mitigate “[t]he danger of juridogenic harm, that is, by analogy with iatrogenic harm, damage caused unintentionally by the court, simply by using traditional juridical methods which are inappropriate to the specific family, is very high.” The Israeli Family Court system provides a working model to assure a practical team approach, for courts, litigants seeking redress via the judicial system, and their families. Conciliation, counseling and finding ways of bridging apparent impasses are of the utmost importance, with judicial intervention as needed. The goal is to mitigate short term and long-term tolls on families, and most importantly, the toll of prolonged litigation wreaks on children. [Judge Marcus](#) opines that:

In cases involving children, litigation makes huge demands on the resources – time, emotional availability, as well as money – of the parents. The parents are fully occupied with their anger at each other, which may manifest itself as outright hatred, and with the litigation: meetings with lawyers, trying to find witnesses, considering the tactics and strategy of the proceedings, finding finance to pay the lawyer and other experts, preparing for court hearings and attending court, and worrying about loss of earnings because of their days away from work. All of these take away time and emotional availability from the children, and this at a time when the children, who are

deeply disturbed by the disharmony, which sometimes deteriorates into verbal or physical violence, see their family breaking up, and are faced with uncertainty about the future, need their parents more than ever.

Justice, we are told, should be blind. Sadly, there are judges who continue to be shortsighted and who minimize the importance of the intersection of law and the social sciences. Judges must resolve cases with high conflict litigants daily. They may suffer from burnout as a result of the high stress inherent in such cases, and may grow frustrated when working with litigants who are high conflict or who present with mental health issues. That frustration may stem from a lack of understanding of how to grapple with cases involving mental health issues, and how to best deal with the challenges of mental health issues when they intersect with family law cases. There are many judges who may not have had [trauma based training](#). This may lead to a lack of confidence when working with mental health professionals.

[Due process is not undermined](#) by taking an interdisciplinary approach to family law issues. Child Protective Services is charged with the reunification of families unless there is proof of endangerment or other issues posing a threat to children. TJ is one of many devices to ensure that judges do not issue rulings that simply codify their own [hidden biases](#).

Lawyers are charged with advocating for their clients. When a court takes a holistic team approach, zealous advocacy must bow to serving the best interests of families, and especially, the best interests of children. The courtroom can be a therapeutic change agent.



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