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## Court Review: Volume 38, Issue 1 - Robes and Rehabilitation: How Judges Can Help Offenders “Make Good”

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# Robes and Rehabilitation: How Judges Can Help Offenders “Make Good”

David B. Wexler

Just over a year ago, *Court Review* devoted a special issue to the topic of therapeutic jurisprudence (often called, simply, TJ).<sup>1</sup> Judge William Schma, a leading judicial voice in therapeutic jurisprudence, introduced the issue in an essay titled “Judging for the New Millennium.”<sup>2</sup>

Judge Schma noted that “it is important for judges to practice TJ because—like it or not—the law does have therapeutic and anti-therapeutic consequences.”<sup>3</sup> In other words, judges are increasingly recognizing that the choice is indeed either to be part of the solution or, instead, to in essence be part of the problem—of “revolving door” justice and the like.

In fact, in August 2000, the Conference of Chief Justices and the Conference of State Court Administrators, in a joint resolution, endorsed the notion of problem-solving courts and calendars that utilize the principles of therapeutic jurisprudence.<sup>4</sup> The resolution noted that well-functioning drug treatment courts<sup>5</sup> represent the best practice of these principles. Regarding therapeutic jurisprudence specifically, the resolution states:

There are principles and methods founded in therapeutic jurisprudence, including integration of treatment services with judicial case processing, ongoing judicial intervention, close monitoring of and immediate response to behavior, multi-disciplinary involvement, and collaboration with community

based and government organizations. These principles and methods are now being employed in these newly arising courts and calendars, and they advance the application of [other policy initiatives, such as] the trial court performance standards and the public trust and confidence initiative.<sup>6</sup>

Problem-solving courts—such as drug treatment courts, mental health courts,<sup>7</sup> and domestic violence courts<sup>8</sup>—may be the most obvious examples of “therapeutic jurisprudence in action,”<sup>9</sup> but it is crucial to recognize the potential application of therapeutic jurisprudence *generally*—in civil cases,<sup>10</sup> appellate cases,<sup>11</sup> family law cases,<sup>12</sup> and, of course, in criminal<sup>13</sup> and juvenile<sup>14</sup> cases. The importance of the therapeutic jurisprudence perspective beyond the specialized problem-solving court context was underscored by a “vision statement” recently agreed to by the District Court for Clark County, Washington.<sup>15</sup>

## CRIMINAL LAW CONTEXT

In the criminal law context, the challenge for therapeutic jurisprudence is multifaceted, and includes a concern not only for defendants, but also for others drawn into the process, such as victims<sup>16</sup> and jurors.<sup>17</sup> The remainder of this essay, however, will focus on defendants and on the opportunity for courts to contribute to offender rehabilitation and reform.

## Footnotes

1. COURT REVIEW, Spring 2000.
2. William Schma, *Judging for the New Millennium*, COURT REVIEW, Spring 2000 at 4.
3. *Id.*
4. CCJ Resolution 22 and COSCA Resolution 4, adopted August 3, 2000. The text of the resolution may be found at [www.problem-solvingcourts.com/resolutions.html](http://www.problem-solvingcourts.com/resolutions.html).
5. The leading article is Peggy Fulton Hora, William G. Schma, & 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). The article is available online under the heading “publications” in Judge Hora’s website ([www.judgehora.com](http://www.judgehora.com)).
6. See note 4, *supra*.
7. LeRoy L. Kondo, *Advocacy of the Establishment of Mental Health Specialty Courts in the Provision of Therapeutic Justice for Mentally Ill Offenders*, 24 SEATTLE U. L. REV. 373 (2000).
8. Randal B. Fritzler & Leonore M. J. Simon, *The Development of a Specialized Domestic Violence Court in Vancouver, Washington, Utilizing Innovative Judicial Paradigms*, 69 UMKC L. REV. 139 (2000).
9. Arthur J. Lurigio, et al, *Therapeutic Jurisprudence in Action: Specialized Courts for the Mentally Ill*, 84 JUDICATURE 184 (2001).
10. Steve Leben, *Thoughts on Some Potential Appellate and Trial Court Applications of Therapeutic Jurisprudence*, 24 SEATTLE U. L. REV. 467 (2000).
11. Shirley S. Abrahamson, *The Appeal of Therapeutic Jurisprudence*, 24 SEATTLE U. L. REV. 228 (2000); Gerald W. VandeWalle, *A Sea Change in the Appellate Process?*, 24 SEATTLE U. L. REV. 567 (2000); David B. Wexler, *Therapeutic Jurisprudence in the Appellate Arena*, 24 SEATTLE U. L. REV. 217 (2000).
12. Barbara A. Babb, *Fashioning an Interdisciplinary Framework for Court Reform in Family Law: A Blueprint to Construct a Unified Family Court*, 71 S. CAL. L. REV. 71 (1998).
13. David B. Wexler, *Therapeutic Jurisprudence and the Criminal Courts*, 35 Wm. & Mary L. Rev. 279 (1993), reprinted in LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE 157 (David B. Wexler & Bruce J. Winick eds., 1996) (hereinafter cited as KEY).
14. David B. Wexler, *Just Some Juvenile Thinking About Delinquent Behavior: A Therapeutic Jurisprudence Approach to Relapse Prevention Planning and Youth Advisory Juries*, 69 UMKC L. REV. 93 (2000).
15. District Court of the State of Washington for Clark County, Division of District Court, approved May 18, 2001. Judge Randal B. Fritzler, a leading judicial voice in therapeutic jurisprudence, is a judge in that judicial district.
16. Richard P. Wiebe, *The Mental Health Implications of Crime Victims Rights*, in KEY, *supra* note 13, at 213.
17. Daniel W. Shuman et al, *The Health Effects of Jury Service*, in KEY, *supra* note 13, at 949.

Of course, judicial opportunity will be enhanced—but is by no means dependent upon—the presence of a group of lawyers practicing therapeutic jurisprudence.<sup>18</sup> Such a bar is indeed emerging.<sup>19</sup>

Dallas lawyer John McShane, for example, has a substantial criminal law practice that “focuses solely on rehabilitation and mitigation of punishment.”<sup>20</sup> McShane is in private practice, and he can pick and choose his clients. He chooses only those who agree to use the crisis occasioned by the criminal case as an opportunity to turn their lives around.

McShane seeks to defer disposition so as to allow the client an opportunity for rehabilitation. The hope, of course, is that the court will be impressed by, and take into account, such post-offense rehabilitation efforts and gains.<sup>21</sup>

A packet of mitigating information is assembled and eventually submitted to the prosecutor in an effort at plea bargaining, or, failing that, to the court at sentencing. The packet consists of items such as “AA Meeting Attendance Logs, urinalysis lab reports, reports of evaluating and treating mental health professionals, and letters of support from various people in the community, such as AA sponsor, employer, co-workers, clergy, family, and friends.”<sup>22</sup>

This may be illustrative of the role of an excellent TJ defense attorney, but what about the role of the judge? Apart from the important legal niceties such as the possibility of deferred sentencing<sup>23</sup> and the possibility of mitigating the sentence for acceptance of responsibility<sup>24</sup> and for post-offense rehabilitation, what guidance can therapeutic jurisprudence give to judges interested in furthering offender rehabilitation?

Some of the most exciting therapeutic jurisprudence work involves the crafting of creative proposals for importing promising behavioral science developments—such as important research on rehabilitation—into the legal system and into the day-to-day work of lawyers and judges. Such work also offers an excellent opportunity for partnership between academia and the judiciary.

In other work, which I will only briefly summarize here, I have explored how judges might use some basic principles to increase offender compliance with conditions of release.<sup>25</sup> Relatedly, I have explored how courts could encourage defendants to engage in relapse prevention planning.<sup>26</sup>

## COMPLIANCE

The compliance project was inspired by a book titled *Facilitating Treatment Adherence: A Practitioner's Guidebook*.<sup>27</sup> The book itself has nothing to do with law; it is addressed to

healthcare professionals and deals with improving patient adherence to medical advice. But many of its principles seem readily transferable to a legal setting.

Some of the principles are completely common sense, such as speaking in simple terms. Patients sometimes may not comply with medical advice because they never really quite get the message.

Other principles are somewhat less obvious. For instance, when patients sign “behavioral contracts”—agreeing to follow certain medical protocols, for example—they are apparently more likely to comply with medical advice than if such a contract is not entered into. If patients make some sort of public commitment to comply, to persons above and beyond the health care provider, their compliance is likely to increase. Relatedly, if family members are aware of a patient's promise, the patient is again more likely to adhere to the agreed-upon conditions.

Consider how these compliance principles might operate in a legal context. If a judge is considering a petition for the conditional release of an insanity-acquitted offender, or if, at a sentencing hearing, a judge is deciding whether to grant probation, the court could conceptualize the conditional release not simply as a judicial order but as a type of behavioral contract.

In addition, the hearing can serve as a forum in which an insanity acquittee or criminal defendant can make a public commitment to comply. Compliance should also be enhanced by the presence at the hearing of agreed-upon family members. There is much more to this, of course, and the interested reader can consult the more detailed work.<sup>28</sup> Let us now turn to the related material on relapse prevention planning principles.

## RELAPSE PREVENTION

As with the compliance project, my interest in importing relapse prevention planning into the legal arena was triggered by a particular book, this time James McGuire's anthology titled *What Works: Reducing Reoffending*.<sup>29</sup> The gist of McGuire's book is that certain rehabilitation techniques, known as the “cognitive behavioral” variety, seem particularly promising.

These programs are premised on the fact that offenders often act rather impulsively. Accordingly, the programs are

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18. PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION (Dennis P. Stolle, David B. Wexler, & Bruce J. Winick, eds., 2000) (hereinafter cited as PRACTICING TJ).

19. Susan Daicoff, *The Role of Therapeutic Jurisprudence Within the Comprehensive Law Movement*, in PRACTICING TJ at 465.

20. JOHN V. MCSHANE, THE HOW AND WHY OF THERAPEUTIC JURISPRUDENCE IN CRIMINAL DEFENSE WORK (2000).

21. *United States v. Flowers*, 983 F. Supp. 159 (E.D.N.Y. 1997). See generally Bruce J. Winick, *Redefining the Role of the Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic Jurisprudence/Preventive Law Model*, in PRACTICING TJ, *supra* note 18, at 245.

22. MCSHANE, *supra* note 20, at 2.

23. See note 21 *supra*.

24. *U.S. v. Jeter*, 263 F3d 1032 (2001).

25. David B. Wexler, *Health Care Compliance Principles and the Insanity Acquittee Conditional Release Process*, 27 CRIM. L. BULL. 18 (1991).

26. David B. Wexler, *Relapse Prevention Planning Principles for Criminal Law Practice*, in PRACTICING TJ, *supra* note 18, at 237.

27. DONALD MEICHENBAUM & DENNIS C. TURK, FACILITATING TREATMENT ADHERENCE: A PRACTITIONER'S GUIDEBOOK (1987).

28. See note 25 *supra*.

29. WHAT WORKS: REDUCING REOFFENDING (James McGuire ed., 1995).

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geared to teaching offenders certain problem-solving skills: to understand the chain of events that often leads to criminality, to anticipate high-risk situations, and to learn to stop and think so as to avoid high-risk situations or to adequately cope with such situations should they arise.

Once offenders develop such an understanding, they may prepare relapse

prevention plans. For example, "I realize that I am at highest risk for criminal behavior when I party with Joe on Friday nights. I will therefore stay home and rent a video on Friday nights."

An interesting therapeutic jurisprudence inquiry is to explore how courts can encourage this "cognitive/behavioral" rehabilitative effort as part of the legal process itself. My suggestion—again, developed more fully elsewhere<sup>30</sup>—is for the court to place some real responsibility on the defendant (with the assistance of counsel and others) to think through his or her situation and vulnerabilities.

Thus, a judge about to consider a defendant for probation might say, "I'm going to consider you but I want you to come up with a type of preliminary plan that we will use as a basis of discussion. I want you to figure out why I should grant you probation and why I should feel comfortable that you're going to succeed. In order for me to feel comfortable, I need to know what you regard to be high-risk situations and how you're going to avoid them or cope with them without messing up. And, speaking of messing up, I want you to tell me what happened that led you to mess up last time, and why you think the situation is different this time around."

Under such an approach, a court would be promoting cognitive self-change as part and parcel of the sentencing process itself. The process might operate this way: "I realize I mess up on Friday nights, and from now on I will stay home on Fridays."

Note that this condition is not the product of judicial fiat. Instead, the defendant has thought through a serious high-risk situation and has in essence come up with his or her own condition of probation. The offender is thus likely to regard the condition as fair and, linking back to our earlier discussion, is probably more likely to comply with it than if it had simply been externally imposed by the court.

According to the "what works" research, cognitive self-

change programs seem promising, but, of course, they do not work for everyone. If an offender is committed to continued offending, for example, even substantial exposure to a program of problem-solving skills is simply not going to lead to desistance.

On the other hand, if an offender has a self-concept of being a basically good person who often finds himself in a jam, or in the wrong place at the wrong time, or mixing with the wrong crowd, such a person may well decide he wants to straighten out and take control of his life. For such a person, a cognitive skills development program may well help change his course.

## DESISTANCE

Who decides to change course, and how and why, seem to be questions locked away in what Shadd Maruna calls the "black box"<sup>31</sup> of the "what works" literature. Maruna's book, *Making Good: How Ex-Convicts Reform and Rebuild Their Lives*,<sup>32</sup> published in 2001 by the American Psychological Association, is, like *Facilitating Treatment Adherence*<sup>33</sup> and *What Works*,<sup>34</sup> a meaty work chock full of therapeutic jurisprudential implications. In the remainder of this essay, I would like to explore how Maruna's findings might be relevant to judges—how, with these insights, judges might help offenders "make good."

Briefly, in his "Liverpool Desistance Study," Maruna interviewed both "persistent" offenders and those who, after a steady diet of criminal behavior, eventually become "desisters." His objective was to use a "narrative" approach—consistent with the notion of "narrative therapy"<sup>35</sup>—to see how the two offender types described and made sense of their lives.

Maruna's principal contribution, of course, relates to the "desisters." These ex-convicts need to develop a "coherent, prosocial identity,"<sup>36</sup> and need an explanation for "how their checkered past could have led to their new, reformed identities."<sup>37</sup> Presumably, these explanatory narratives are not merely a *result* of desistance behavior, but should also be understood as "factors that help to sustain desistance."<sup>38</sup>

Maruna notes that there is much drifting and zigzagging in and out of criminal activity.<sup>39</sup> Accordingly, desistance is best seen as a "maintenance process,"<sup>40</sup> rather than as a specific event.

Generally, a desister's narrative establishes that the narrator's "real self" is basically good; that the narrator became a victim of society who turned to crime and drugs to cope with a bleak environment; that the narrator then became trapped in a vicious cycle of repeated criminal activity and imprisonment; that someone in conventional society believed in and recognized the potential of the narrator, thereby allowing him or her to make good.<sup>41</sup>

But "reformation is not something that is visible or objective

30. See note 26 *supra*.

31. SHADD MARUNA, MAKING GOOD: HOW EX-INMATES REFORM AND REBUILD THEIR LIVES 111 (2001) (hereinafter cited as MAKING GOOD).

32. *Id.*

33. See note 27 *supra*.

34. See note 29 *supra*.

35. NARRATIVE THERAPY IN PRACTICE: THE ARCHAEOLOGY OF HOPE

(Gerald Monk, John Winslade, Kathy Crocket, and David Epstein eds., 1997).

36. MAKING GOOD, *supra* note 31, at 7.

37. *Id.* at 8.

38. *Id.* at 42 (emphasis supplied).

39. *Id.* at 44.

40. *Id.* at 26.

41. *Id.* at 87.

in the sense it can be ‘proven.’”<sup>42</sup> It is a construct that is interactional in nature: desisting persons must in some way accept conventional society and conventional society must in turn accept them.<sup>43</sup> Thus, their conversion “may remain suspect to significant others, and most importantly to themselves.”<sup>44</sup>

Accordingly, the desisting interviewees in Maruna’s study “seemed almost obsessed with establishing the authenticity of their reform.”<sup>45</sup> During the interviews, many provided supporting documents—letters from college teachers and from parole officers, copies of offense records showing the date of last conviction. Others urged the investigator to speak with family members, girlfriends, or to the manager or receptionist of a drug treatment clinic.<sup>46</sup>

Not surprisingly, “while the testimony of any conventional other will do, the best certification of reform involves a public or official endorsement from media outlets, community leaders, and members of the social control establishment.”<sup>47</sup> In his final chapter, Maruna undertakes an exercise that is essentially a therapeutic jurisprudential one: he speaks of instituting and institutionalizing redemption rituals. These include graduation ceremonies upon successful completion of correctional programs,<sup>48</sup> reentry courts “empowered not only to reimprison each felon but also to officially recognize their efforts toward reform,”<sup>49</sup> and “rebiographing” clean ex-offenders through officially recognized record expungement procedures.<sup>50</sup>

#### HOW COURTS CAN HELP

Two judicially related proposals mentioned by Maruna—graduation ceremonies and reentry courts—are matters of considerable current interest.

In drug treatment courts, for example, applause is common, and, in some courts, even judicial hugs are by no means a rare occurrence.<sup>51</sup> In Judge Judy Mitchell-Davis’s Chicago courtroom, “upon successful completion of a drug court sentence, the offenders invite their friends and family to a graduation ceremony in the courthouse.”<sup>52</sup> Some of the graduates make speeches, and all receive a “diploma” from the court.<sup>53</sup> In some such courts, “participants have asked that their arresting officer be present at their graduation.”<sup>54</sup>

These lessons from drug treatment courts can be extended, of course, to other specialized treatment courts and to ordinary juvenile and criminal cases. Judicial praise, family and friend

attendance, and graduation ceremonies can all occur, for example, at the successful completion of—or early termination of—a period of probation imposed in a “routine” criminal case.

Such a ceremony would acknowledge a former offender’s progress and, taking a page from Maruna, may, at the same time, itself contribute to the maintenance of desisting behavior. The strong suggestion that these ceremonies are themselves therapeutic, and are therefore not merely “ceremonial,” might readily justify their widespread use. Relatedly, if they seem themselves to contribute to reduced recidivism, that crucially important societal benefit could easily justify their time-consuming nature.

Besides graduation ceremonies, Maruna endorses the notion of reentry courts “empowered not only to reimprison each felon but also to officially recognize their efforts toward reform.”<sup>55</sup> The apparent success of drug treatment courts, based on a team approach and ongoing judge-defendant interaction, has led to proposals for importing the model to the prisoner reentry process.<sup>56</sup>

Reentry courts could tap many principles of therapeutic jurisprudence, and could serve a very important function. The problem, however, is that, at least in the United States, “in most jurisdictions, the authority for reentry issues is not within the judicial branch.”<sup>57</sup>

Nonetheless, the function Maruna would like to see served—official recognition of efforts toward reform—can be performed by courts in at least some contexts. For example, unlike adult criminal courts, juvenile courts do typically retain a post-dispositional review authority, and such courts can in effect serve a major reentry function.<sup>58</sup>

The main lesson, of course, is that review hearings—for juveniles, for probationers, for conditionally released insanity acquittees—need not only be meaningful if one is to be “vio-

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42. *Id.* at 158.

43. *Id.* at 155.

44. *Id.* at 158.

45. *Id.* at 156.

46. *Id.* at 157.

47. *Id.*

48. *Id.* at 162.

49. *Id.* at 164.

50. *Id.* at 164-65.

51. Adam W. Lasker, *Her Stock in Trade Is “Therapeutic Jurisprudence,”* CHICAGO DLY. L. BULL., June 13, 2001.

52. *Id.*

53. *Id.*

54. Deborah J. Chase & Peggy Fulton Hora, *The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*, COURT REVIEW, Spring 2000 at 12.

55. MAKING GOOD, *supra* note 31, at 164.

56. OFFICE OF JUSTICE PROGRAMS, REENTRY COURTS: MANAGING THE TRANSITION FROM PRISON TO COMMUNITY (Sept. 1999).

57. *Id.* at 7. In Italy, judicial authority does exist, although that authority has typically been exercised in a very traditional, legalistic manner. American jurisprudence might profit from looking comparatively at legal structures that provide for ongoing judicial monitoring. Similarly, the Italian legal system, where the legal structure is in place, might profit from the American experience with therapeutic jurisprudence, specialized treatment courts, and the like. Such is the thrust of a recent article in an Italian criminology journal. S. Ciappi, D. Wexler, F. Agrait, & G.B. Traverso, *Therapeutic Jurisprudence. Alcune considerazioni su di una concezione postliberale del diritto e della pena*, 6 RASSEGNA ITALIANA DI CRIMINOLOGIA 1 (2001).

58. Wexler, *supra* note 14, at 97.

**The judge, of course, is the perfect prestigious person to confer public and official validation on . . . the offender's reform efforts.**

lated” and there is a real threat of revocation. Such hearings can and should also be meaningful—and not just routine and perfunctory—when all is going *well*. In many legal settings, courts have the discretion to set review hearings at intervals shorter than those mandated by law. Judges should consider taking such action even when they are not

especially worried about an offender's compliance, for such a hearing could indeed recognize and applaud an offender's efforts and itself contribute to the maintenance of desistance.

Recall that desistance is best thought of as a “maintenance process.”<sup>59</sup> And recall that desisters—especially at the early stages of desistance—desperately need outside validation to convince *themselves* of their conversion.

The judge, of course, is the perfect prestigious person to confer public and official validation on the offender and the offender's reform efforts. Ideally, at a deferred sentencing hearing or at an “all is going well” review hearing, the judge also can comment favorably upon the sorts of matters that Maruna found to be so important to desisting offenders: impressive meeting attendance logs, for example, and letters from or the occasional live testimony of members of conventional society: college teacher, probation or parole officer, mother, girlfriend, manager and receptionist at the drug clinic, and the like.

When all goes well, of course, it is relatively easy for the judge to constitute the respected member of conventional society willing to “believe in”<sup>60</sup> the defendant and to see the defendant's “real me”<sup>61</sup>—the diamond in the rough.<sup>62</sup> But all does not always go well. Review hearings will often be rather “mixed,” and sometimes they will require revocation. Sentencing hearings will not invariably lead to probationary dispositions. Often, judicial discretion regarding disposition will be severely circumscribed.

Even in these far from favorable situations, the court can play a highly important—albeit a more long-range—role in potential offender reform. Consider the “vision statement” of the District Court of Clark County, Washington.<sup>63</sup> That vision specifically embraces the use of principles of therapeutic jurisprudence to “make a positive change in the lives of people who come before the court.”<sup>64</sup>

Some of the vision statement's “guiding values” relate remarkably well to Maruna's findings regarding desister narratives. One guiding value, for example, is that “individuals are not condemned to a life of crime or despair by mental condition or substance abuse and that everyone can achieve a fulfilling and responsible life.”<sup>65</sup> Another is the belief that “every-

one, no matter whom, has something positive within their make up that can be built upon.”<sup>66</sup>

A judge committed to this vision will not regard these guiding values as mere fluff. Such a judge, for example, is unlikely to tell a woman that she is simply “no good as a mother.”<sup>67</sup> 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.”<sup>68</sup>

Instead, especially in light of Maruna's findings, a judge committed to the vision statement should search for and comment on whatever favorable features might eventually be woven together by the offender to constitute the “real me” or the “diamond in the rough.” Sometimes, such a favorable feature might mitigate the sentence. If the judge takes the pains to emphasize it as a real quality—not simply as a mechanical mitigating factor—it may eventually constitute a meaningful component of the offender's self-identify. Such a judge might say something like this:

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.

59. MAKING GOOD, *supra* note 31, at 26.

60. *Id.* at 87.

61. *Id.* at 88.

62. *Id.* at 95.

63. *See* note 15 *supra*.

64. *Id.*

65. *Id.*

66. *Id.*

67. *See* MAKING GOOD, *supra* note 31, at 88.

68. *See id.* at 158.

With your intelligence, personality, and talent, I think you can do it if you decide you really want to.

## CONCLUSION

Even if the sentence imposed is unaffected, following this process is likely to be worth the judicial effort. Maruna notes that both narrative development and desistance each constitute ongoing processes. In rewriting the narratives of their lives, desisting offenders often look to instances in their pasts when their “real” selves shone and when respected members of conventional society recognized their talents and good qualities.

Thus, even in instances where desistance seems not to have occurred, judges can use principles of therapeutic jurisprudence in the hope that their judicial behavior may constitute the building blocks of eventual reform and rehabilitation. This sort of judging may therefore have both short-term and long-term benefits. Ultimately, the benefits may be for offenders, and, in turn, for society as a whole.

And let’s not forget the benefits to the judges, whose sense of professional satisfaction may soar.<sup>69</sup> Who would not feel immense satisfaction receiving letters, as Chicago drug treatment court Judge Judy Mitchell-Davis (dubbed “Judge Judy” by defendants) often does, like this one?:

Judge Judy, I just want to thank you for being the loving and caring woman that you are. You’ve really helped make a positive change in my life. I believe I’m going to make it. It feels so amazing to control my own thoughts and feelings. I feel so good about myself for the first time.<sup>70</sup>



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*Practicing Therapeutic Jurisprudence: Law as a Helping Profession (Dennis P. Stolle, David B. Wexler, and Bruce J. Winick eds., 2000). The website of the International Network on Therapeutic Jurisprudence ([www.therapeuticjurisprudence.org](http://www.therapeuticjurisprudence.org)) is a resource for the field and contains a comprehensive bibliography. Professor Wexler may best be contacted by email, at [dwxler@compuserve.com](mailto:dwxler@compuserve.com).*

69. See note 54 *supra*.

70. See note 51 *supra*