

## Observing a Drug Court Hearing: Reflections on Therapeutic Jurisprudence

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### Introduction

A two-hour observation of a drug court hearing in the spring of 2024 produced an experience that was fundamentally different from the adversarial court proceedings I had observed in a prior criminal justice course. The judge addressed defendants by name, asked directly about their progress in treatment, expressed genuine concern about setbacks, and used both praise and graduated sanctions within the same session. Therapeutic jurisprudence, the theoretical framework developed by Wexler and Winick in the 1990s, predicts exactly this pattern: it holds that legal actors and processes can function as therapeutic agents when deliberately structured to promote rehabilitation rather than adjudication alone. This essay uses those observations to examine what therapeutic jurisprudence claims about the role of the court in behavioral change and how accurately the proceedings I observed reflected those claims.

### What Therapeutic Jurisprudence Predicts

Therapeutic jurisprudence holds that the law, legal rules, and legal actors have therapeutic or antitherapeutic consequences for the people who encounter them, and that these consequences can be intentionally shaped. Applied to drug courts, the theory predicts a specific structure: a judge who functions as a motivational figure rather than an impartial adjudicator, a team of legal and treatment professionals who collaborate rather than oppose each other, and a graduated system of responses to participant behavior that reinforces progress and addresses setbacks without simply punishing them. Wexler and Winick argue that this structure changes the participant's relationship to the legal process from one of adversarial compliance to something closer to therapeutic engagement. The drug court I observed reflected each of these structural features with notable consistency.

### What I Observed

The judge's conduct in the hearing departed from every convention of the courtroom proceedings I had previously observed. She stood from the bench to speak directly with participants, called several by first name, asked specific follow-up questions about circumstances she clearly remembered from prior hearings, and responded to reported

relapses with a combination of acknowledged disappointment and continued encouragement rather than punitive language. The team structure was visible: a prosecutor, defense attorney, and treatment coordinator sat at the same table and consulted with each other before the judge addressed each participant. The sanctions applied during the session — community service hours, brief detention — were graduated and explained as responses to specific behaviors, not as expressions of moral judgment. The proceedings matched the therapeutic jurisprudence model more closely than I had expected to find.

### **The Gap: Compliance vs. Internalized Change**

What the observation could not determine is whether what I witnessed in the hearing room translated into the durable behavioral change that therapeutic jurisprudence promises. Participant behavior in the hearing was notably cooperative, but the setting itself creates strong incentives for performed compliance regardless of genuine engagement. The theory predicts that the therapeutic relationship developed through repeated hearings produces internalized motivation to change; what I could observe was only the surface behavior that either does or does not reflect that internalization. Hora, Schma, and Rosenthal (1999) document positive recidivism outcomes for drug court participants compared to matched controls, which is consistent with the theory's predictions. But the outcome data does not resolve the question of mechanism, and the observation raised the question more sharply than the readings had.

### **Conclusion**

Drug court proceedings, as I observed them, reflect the structural predictions of therapeutic jurisprudence more faithfully than most conventional criminal proceedings do. The relational dynamic between judge and participants, the team-based rather than adversarial structure, and the graduated response to progress and setbacks are all consistent with what the theory prescribes. What the observation could not determine is whether the behavioral changes visible in the hearing room translate into the durable identity transformation that the strongest version of therapeutic jurisprudence claims. The literature on drug court outcomes is generally supportive of the model but documents significant selection effects that complicate attribution. Reflecting on that gap clarifies that therapeutic jurisprudence is better understood as a framework for structuring the legal interaction than as a complete account of how lasting behavioral change occurs.

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