



## Case workers in family court: A therapeutic jurisprudence analysis

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### ABSTRACT

This study explores interactions between judges and caseworkers in child maltreatment cases. We examined the extent to which judges demonstrated therapeutic jurisprudence principles (TJ) in their courtroom interactions in light of past findings linking such practices with positive outcomes. Ninety-four child maltreatment proceedings were observed over a one-year period between 2012 and 2013. We found that while some judges created respectful, empathetic, and supportive environments that included caseworkers, other interactions were more negative. Although caseworkers had the most knowledge of, and experience with families, their participation was limited, and conversations were often directed through the attorneys. Shaming rituals also occurred, with judges criticizing workers for the quality of their work, the slowness of the bureaucracy, and other deficiencies. The findings highlight the importance of applying the principles of TJ to all court actors, especially in the family court milieu, where courtrooms are populated by a team of professionals who share the common goal of rehabilitating families when appropriate.

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### 1. Introduction

Adjudicating child maltreatment cases is a complex- and often contradictory-mix of the legal and the social and psychological. Its scaffolding is the adversarial system, but its tools are those of a social worker. Its professional work group is also a hybrid, populated by both legal professionals, including judges and lawyers, and social service workers, mainly child welfare caseworkers. It requires judges and lawyers to think like social workers, and social workers to think like lawyers. Its conflicting demands, to both adjudicate guilt and “fix” families, result in often challenging and sometimes combative courtroom interactions.

This paper is part of a larger ethnographic study of child maltreatment proceedings in a traditional family court in an urban city. It draws on the theoretical framework of therapeutic jurisprudence (TJ), which provides a model for positive courtroom behaviors. TJ recognizes that legal processes and legal actors have extra-legal effects on litigants' wellbeing. It recognizes that legal interactions are also social interactions, and that how people are treated in court not only matters, but can also affect outcomes. The overall goal of the study is to inform and improve courtroom practices in child maltreatment cases by delineating and illustrating the differences between positive and negative interactions, as defined by TJ.

The tenets of TJ are a natural fit with Family Court, whose explicit mission is to rehabilitate families and where parents' psychological and social wellbeing is the target of change, rather than ancillary to the legal case. While neglect or abuse charges are adjudicated in trial-

like procedures, most courtroom interactions are more informal and focused on the intimate details of a disrupted domestic life. There are typically wide ranging discussions about the parents' progress and the status of family relationships. As the choreographer of the proceedings, the judge directs these discussions, setting their tone and tenor.

The study's first set of findings focused on the courtroom exchanges between judges and parents, and described the range of judicial styles when interacting with parents. It found that on one end of the spectrum were judges, contrary to the precepts of TJ, who engage little, or not at all with parents, preferring to speak only to the professional court actors. When they did speak to parents they often used shaming rituals, criticizing or lecturing them (Lens, *in press*). On the other end of the spectrum, and less common, was a more therapeutic approach, with judges weaving participants into courtroom exchanges, engaging them in informational and decision-making dialogues, and praising and supporting them. That some judges, no matter how few, were able to transform non-therapeutic courtrooms into therapeutic ones suggests that TJ and other problem-solving techniques can be effectively deployed in even the most overburdened and under resourced of traditional family courts (Lens, 2015).

As described below, much of the literature on TJ has focused on the recipients of legal action, respondents or defendants. Missing are studies that focus on other essential actors in the courtroom. This paper examines the interactions between judges and a key player in child maltreatment cases, child welfare caseworkers. Caseworkers are responsible for gathering information, assessing families, and making recommendations. Their written reports inform what the court does, and they are often physically present in the courtroom, providing testimony or information. As the professional tasked with rehabilitating families,

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caseworkers also have an ongoing and active presence in parents' daily lives. Their interactions with judges thus reverberate beyond the courtroom. For example, a judge who models negative behavior, by berating or criticizing a child welfare worker in the presence of a parent, may be encouraging the parent to disrespect or disregard the worker, while more positive interactions can do the opposite.

### 1.1. Caseworkers' roles and responsibilities in child maltreatment proceedings

The work of a child welfare caseworker is one of contradiction and conflict. They are at once partners and adversaries; their allegiance is to the child, whose safety must be protected, but much of their focus is on rehabilitating parents (Beckett, McKeigue & Taylor, 2006; Butler, Atkinson, Magnatta & Hood, 1995). They carry a large stick—the threat of removing a child from the home or keeping a child in foster care—while also dispensing the carrots of support and resources to parents. The information they gather during an investigation may help parents, but also may hurt them, and may be used against them. This conflict is embodied in federal law, which requires that reasonable efforts be made to preserve families while at the same time protecting children from harm.

This conflict is even more pronounced when child maltreatment cases are adjudicated in family court. The setting is adversarial, and hence only heightens the conflict between two disciplines, social work and law, whose professional values can collide. While law emphasizes zealous advocacy, adversarial relationships, and formality, social work values empathy, a holistic approach, and more informal helping mechanisms (Van Wormer, 1992). Negotiating these differences in an adversarial setting is difficult, with territorial conflicts over which tasks are legal and which involve social work. Conflicts can arise through all aspects of the proceeding, including when charges should be filed, the framing of allegations, who should testify, and what disposition should be sought (Russel, 1988).

There is ample evidence that caseworkers experience discomfort in family court (Ellet & Steib, 2005; Beckett, McKeigue & Taylor, 2006; Butler, Atkinson, Magnatta & Hood, 1995; Dickens, 2006; Faller, Grabarek, & Vandervort, 2009; Kisthardt, 2006; Knepper & Barton, 1997; Russel, 1988; Faller, Grabarek, & Vandervort, 2009; Van Wormer, 1992; Smith & Donovan, 2003). Beyond parents, it is caseworkers whose efforts and assessments are most scrutinized. This scrutiny, by often a multitude of higher status lawyers and the judge, may at times be unduly harsh, and disregarding of workers' knowledge and expertise (Dickens, 2006). Child welfare caseworkers are often balancing extremely large caseloads, involving numerous family members in need of crisis intervention, support, and rehabilitation. As one study found, their interests and those of the judge may collide, with judges more focused on securing documentary proof of events and whether mandated services have been completed, and caseworkers with the substance and utility of those services (Smith & Donovan, 2003). They may become the scapegoat in the courtroom, blamed for not doing enough, or doing it poorly, when complicated and challenging cases go awry (Ellet & Steib, 2005). As the face of the child welfare bureaucracy, they may serve as an easy and accessible target for judges who are frustrated with what they, and often the public, perceive as its incompetency.

Family courts, though, are not monolithic, and practices can vary from court to court, and among different courtrooms within the same court. Caseworkers can become "bureaucratic allies," part of the professional work group, and judges with limited time and information about cases may rely heavily on workers' assessments and expertise (Knepper & Barton, 1997). Overall, though, there is considerable evidence that family courts are stressful environments for caseworkers, and a contributing factor to child welfare worker burnout and attrition (Vandervort, Gonzalez, & Faller, 2008; Flower, McDonald, & Sumski, 2005). This may especially be the case for women and people of color; as one study of

caseworkers found, being older, white and male was associated with higher degrees of comfort in family courts (Faller, Grabarek and Vandervort, 2009).

Adjudication and rehabilitative efforts occur over a course of months, even years, and require repeated and regular court appearances. Caseworkers play a key role, and while much of their work occurs outside the courtroom, these regular court appearances serve as a public display and denouement of their efforts, and the family's progress. Whether they ripen into occasions of support or shame is primarily in the hands of the judge, and the tone and tenor he or she sets. Therapeutic jurisprudence, described next, is one way to insure beneficial courtroom interactions.

### 1.2. Therapeutic jurisprudence and family courts

Therapeutic jurisprudence (TJ) emphasizes the social and psychological impact that law, legal procedures and legal actors (judges and lawyers) have on people and society, and strives for an outcome that enhances people's wellbeing. It encompasses both the micro, or particular rules, laws and interactions, and the macro, or whole bodies of law (Wexler, 1993). The main child welfare statutory scheme—the federal Adoption and Safe Families Act—and the enhanced responsibility it gives to the court to ensure children a "safe, permanent and stable home," is a natural fit with the principles of TJ. As Babb describes, Family Court judges function, in essence, as therapeutic agents, and "strive to protect families and children from present and future harms, to reduce emotional turmoil, to promote family harmony or preservation, and to provide individualized and efficient, effective justice" (Babb, 1996–97, p. 800).

Thus while Family Court judges preside in an adversarial setting, much of the focus is on motivating behavioral change, a task especially suited to TJ. TJ provides a helpful set of practices, drawn from the psychological and behavioral sciences, to influence behavior. Based on the principles of voice, validation, respect, and self-determination, it envisions a more active role for participants (King, 2009). In contrast to more formal adversarial proceedings, where attorneys do much of the talking, participants are encouraged to actively participate in court dialogues, including shaping solutions (King, 2009). Support and positive inducements are preferred over threats and coercion. Sanctions are available, but used sparingly, as an educational and reflective tool rather than a punitive one. More common are rewards for good behavior rather than sanctions for bad behavior (Fay-Ramirez, 2015).

TJ also values collaboration over conflict, and teamwork over winning legal arguments (Fay-Ramirez, 2015; Castellano, 2011; Winick, 2002–2003). Judges, thus, do more than preside over proceedings, maintaining order and issuing decisions. They also fulfill an essential leadership role, providing guidance, and even inspiration, to all of the various court actors working toward a common, rather than an adversarial, goal (King, 2009). As such, they are expected to model positive behavior while encouraging it in others. While traditional judges strike a passive, neutral pose, a therapeutic judge is more active and engaged, displaying compassion and empathy (Nolan, 2002).

TJ is used most often in more specialized problem-solving courts, where its effectiveness has been demonstrated. Several studies have shown that Family Treatment Courts, which incorporate therapeutic jurisprudence techniques for families with substance abuse problems involved in child maltreatment proceedings, resulted in shorter foster care placements and a greater likelihood that children would be returned to their parents as compared to children in traditional courts (Bruns, Pullman, Weathers, Wirschem & Murphy, 2012; Green, Furrer, Worcel, Burrus & Finigan, 2007; Worcel, Furrer, Green, Burrus & Finigan, 2008; c.f. Picard-Fritsche, Bryan, Kralstein & Farley, 2011). Several studies in the related arena of drug courts, which like family court proceedings require behavioral changes to achieve better outcomes, and where a TJ approach is more likely to be used, have found positive effects including better adherence to treatment plans and lower rates

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