

**SPEECH**  
**Richmond Drug and Health Community Forum**  
**Magistrate David Fanning**  
**Neighbourhood Justice Centre**  
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Welcome, acknowledgements.

There are some familiar faces here today that probably know a great deal about the centre. While for others, this is the first time to come to this site, our home since 2007.

Today, I will provide a brief outline of what the NJC is, its jurisdiction and functions, and then I will also show a brief video. I will then offer some observations on the interaction between treatment providers and the court, and how this interaction is guided by therapeutic jurisprudence principles – with the aim of addressing the underlying causes of criminal behaviour.

**[Show Slide Show]**

I'd like now to play a short video about a client – of course, he is an offender but also a client- who came before me two years ago.

His name is Jason.

**[Play “Jason” video, duration 1 minute]**

Jason's story would sound familiar to you all.

A man born of a tough childhood, six jail terms and a long-standing heroin habit that had consumed his life and lead him into theft in order to pay for his habit.

Jason tells us how low his expectations were of our system - which to date had not assisted him in turning his life around. Jason's story is informative for those of us involved in the administration of justice and to the community at large Jason's story represents a challenge to my work and to your work - how can we make things better?

Just the same as any other magistrate who sits in a regular court in Victoria, I use the law to guide me in determining – with all the evidence provided - what the appropriate sentence for an offence should be.

If you were working with a client like Jason, perhaps as his drug and alcohol counsellor or case manager, you might be asked to provide a report on factors relevant for the Magistrate to consider. Such a report informs the court in fashioning a sentence or approach, and may assist the person in not re-offending in the future. Background is important, so too are the circumstances of the offending. The important difference however, is the way forward.

As a magistrate sitting in a community-based court that is the NJC model, we are trying another way.

The message in Jason's story is not that the NJC has all the answers, or even a checklist to offer you in response to the question he poses. But there are some things that we've seen work for clients coming through the court and post-sentence that might be worthwhile for you, or perhaps your client.

For those not so familiar with the story of the Neighbourhood Justice Centre, we were established to be different from a regular, mainstream Magistrate's court. And my role, as the sole sitting Magistrate, is to continue to learn and refine our practice. We continue to learn at the NJC because the community justice model is the only one of its kind in Australia, and among a very few in the world. It's an innovation which all the evidence and our practice says works and makes a difference to key things such as recidivism rates.

The community justice model is about restorative justice, problem-solving and working with client, victim and community to get a better justice result for all parties – one where the client is strongly supported to not reoffend.

At the NJC, a culture that begins at the front door with our security staff, who probably greeted you, treats people as people – and all people as equals.

**Our integrated client services team** represents some 17 services such as financial counselling (our most popular), drug and alcohol counselling, housing and employment assistance and a mental health clinician. We provide the ‘one-stop shop’ for people in contact with the justice system to help them navigate what can be a confusing, complex and intimidating system.

But it’s more than just co-location of these services. Case monitoring and management mean that different services sit down together, sometimes with or sometimes without the client, to discuss what’s needed to truly support them through something like a community-based order or post-prison sentence.

The NJC also provides integrated treatment and support services.

The legislation also provides us with a Neighbourhood Justice Officer, someone to facilitate a problem-solving process with the client, the family or their community.

Outside the building we have a strong community engagement approach: community strengthening, justice education and crime prevention.

In this approach – someone like Jason would comment that it seems like the system cares.

What does this all mean for people working with in the drug and health sector?

Under the community justice approach, I, as a magistrate, have more options than just finding the right sentence. This means that you, working in the court or providing a service to a client – have more options to work with people like Jason to address underlying causes for offending.

## Reports to the Court

If you work in the Drug and Alcohol sector as a treatment provider, then it's likely that you'll have prepared a report on a client for the court.

Frequently, such reports follow a *pro forma* outline. Typically, there is a paragraph on the treatment provider, a paragraph on the organisation and then a brief statement on the actual client. This client statement is all too often, general in nature:

“The client is doing well, and is in regular contact with our service.”

or

“The client has attended 100 percent of scheduled appointments.”

I very much appreciate that it may be challenging to find the right ‘pitch’ for your report, particularly if the client’s matter is being heard at a regular Magistrates’ Court. If you don’t know the level of knowledge and understanding a particular magistrate might have of drug and alcohol dependence and its impact on individuals, the tendency might be to keep the report simple and generalised.

Doubtless, treatment providers are also aware of their obligation to provide honest and truthful statements to the court, and perhaps this causes authors to err on the side of caution, to keep things to a minimum.

The limited time available to treatment providers with large caseloads to prepare court reports is also a factor to keeping things brief.

However, from my perspective, such *pro forma* reports all too frequently offer little to the therapeutic jurisprudential process.

## Therapeutic Jurisprudence

This court actively practices therapeutic jurisprudence. When you write a report for this court, you can expect that we will know about your organisation. You can expect that we have some understanding of the effects of drug and alcohol dependence, particularly as it relates to offending behaviours.

Most of all, you can expect this court to be as interested as you are in understanding the underlying causes of offending and be committed to promoting better outcomes for both offenders and the community within the context of the law.

Do not mistake this as meaning that the Neighbourhood Justice Centre court will be 'soft' or reluctant to impose significant penalties where a case requires. The court here operates with the same full range of powers as any other Magistrates' Court and the court will exercise those powers and impose penalties as the circumstances require.

Where we differ is that I discharge this core judicial function with an awareness of the underlying problems and the steps required to achieve positive changes in behaviour.

In large part, I rely on the information provided to the court to inform my understanding. Where a client has made progress in treatment or in achieving goals, I want to know. Similarly, I want to know where clients are reporting changes to high-risk behaviours.

An insight into the client's motivations is also valuable. From a treatment provider, based on your professional knowledge and experience, I am looking for clear and concrete recommendations and an outline of the treatment plan.

Therapeutic jurisprudence is able to fashion effective, short and long-term outcomes, informed by an awareness of the underlying causes of offending. One powerful tool available to magistrates is through the practice known as 'judicial monitoring' or 'judicial case management' - which is practiced frequently by this court.

An illustration of judicial case management arises where a client comes before the court and I determine that a community-based order is the correct penalty. Now, let's say, for example, that this order requires the client to complete 20 hours of community work a week over three days each week. However, a report to the court makes it patently clear the client does not currently have capacity to attend frequent appointments.

Failure by the client to turn up will mean he or she is in breach of the order, resulting in a term of immediate imprisonment. The practical effect of the order in this example sets up the client to fail.

This is where judicial case management plays an important role. Once a sentence has been determined, it is within my powers to defer the start date of the order while the clients gets 'back on track' through engaging with appropriate services and supports. Under judicial case management, I would typically see the client in court every two weeks for a few months. At each hearing, I would engage with the client directly and monitor on their progress. This way, the court can ensure that the client is realistically in a position to undertake and complete their community-based order.

So - does this mean that one hundred percent of clients successfully complete their orders? No.

However, our statistics say that ten percent more of our clients are likely to complete their order than the statewide average. Stepping out of the revolving door and beginning to get their lives in order can mark a turning point in their lives. Just completing their order is a real achievement and judicial case management plays an important role in this.

This recent data may be of interest to you.

**[SHOW GRAPH SLIDE]**

## **Judicial Case Management**

So what does judicial case management look like?

As the Magistrate, I can encourage and support clients. I can show some empathy for their circumstances. Once again, the information provided to me is vital in allowing me to engage directly with the client. In this court, the client is not a passive observer in the process, but rather, he or she can expect to participate actively in the judicial process. I will speak directly with the client. The process encourages clients to accept responsibility and demonstrate their motivation and commitment to change.

What I am mindful of is not taking over the role of client case management.

I will not involve myself in the detail of a person's therapy or treatment. This is, rightly, left to the professional knowledge and expertise of treatment provider professionals. The old judicial notions of paternalism and coercion inhibit finding solutions to underlying problems. Demonstrating compassion, concern and understanding has a powerful effect for those individuals who come before the court.

This court is greatly assisted in this task by the range of on-site service providers. I would particularly highlight that our on-site drug and alcohol workers, Janette Berry and Matthew Cocomazzo, are committed to engaging with treatment providers and ensuring a quality service for clients. In making referrals to local treatment providers through COATS, the NJC will case-manage closely to ensure a successful referral. Janette and Matthew are always willing and available to any answer any questions, and provide advice and support to local treatment providers.

The physical layout and design of the building and court also assists in making the experience of attending court less intimidating for the client. We want and need the client to understand and engage in the process. It is of no help for anyone for a matter to be heard, the magistrate to deliver their decision and sentence the client, only to have the client to turn to their lawyer on the steps of the court and ask: "so what happened?"

## **Broader view**

Finally, I'd like to offer some general reflections on the practice of therapeutic jurisprudence. For a magistrate, therapeutic jurisprudence is a source of constant tension.

It used to be that all the attention and effort of the court, and the community at large, was in the determination of a matter and delivering a finding of guilt or innocence. The sentence itself, and the sentencing process was almost an endnote.

But in practicing therapeutic jurisprudence - where the matters before this court are not contested, sentencing becomes central to the process.

The magistrate must consider how, in the circumstances and with the powers available to the court, the client can be put in a position not to fail and pass back through 'the revolving door of the justice system' and also not re-offend or do further harm to the community.

As I said earlier, there lies a tension in the therapeutic jurisprudence model of a magistrate not becoming too involved in the affairs of the client, not to intrude too far into peoples lives. A court is reliant on treatment agencies to provide the appropriate intervention and advice, and of course those within the client's family, friends and community who are prepared extend help and support. A further tension is the additional time this approach takes.

The resolution of this tension can be achieved through community care and involvement.

The heart of community-based justice is where the community is involved, not just a system. Addressing the underlying causes of offending is inextricably linked with reducing criminal and harmful behaviour in our local community, which in turn relates directly to the confidence the community places in its justice system.

## **Conclusions**

In concluding, I acknowledge to you today, that working with the Neighbourhood Justice Centre can require a shift in perspective. This approach provides an opportunity to inform the judicial process in addressing not only a client's offending, but the underlying causes of those offending behaviours. This will not be achieved by generalised, pro forma reports, but rather, considered and detailed information and recommendations based on your professional experience and expertise.

I welcome your input. Without it, the therapeutic approach cannot succeed. Thank you for inviting me to speak and I would welcome any questions.