

***TRANSFORMING LEGAL PRACTICES IN COURT AND BEYOND: THE THIRD  
INTERNATIONAL CONFERENCE ON THERAPEUTIC JURISPRUDENCE, PERTH,  
AUSTRALIA, 7-9 JUNE 2006***

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## **BACKGROUND**

To the uninitiated, the question that readily presents itself is “What is Therapeutic Jurisprudence?” This is one question I have had to answer time and again as my curious students and inquisitive colleagues far and near wondered what my latest scholarly fascination was all about as I rigorously prepared my presentation for this conference. Therapeutic Jurisprudence, popularly referred to as “TJ” among its purveyors and protagonists, evolved in the very late 1980s and early 1990s through the visionary efforts of two American legal scholars, Professors David Wexler and Bruce Winick.<sup>[1]</sup> Although Therapeutic Jurisprudence had its roots in the field of mental health law,<sup>[2]</sup> the concept has lent its methods and processes to diverse interdisciplinary engagements with the law. The idea of Therapeutic Jurisprudence has recorded remarkable inroads into the legal dimensions of mental health and medical practice, family and matrimonial causes, personal injury, diverse aspects of criminal justice (in the municipal context), particularly as it relates to child offenders, drug offenders, sex offenders, the treatment of victims, sentencing of repeat offenders, and so on.<sup>[3]</sup> The interdisciplinary scholarly engagement with these numerous fields has thus been tremendous and far-reaching.<sup>[4]</sup>

What, then, is Therapeutic Jurisprudence? Wexler and Winick offer a comprehensive definition of this concept:

Therapeutic jurisprudence is the “study of the role of the law as a therapeutic agent.” It focuses on the law’s impact on emotional life and on psychological well-being. These are areas that have not received very much attention in the law until now. Therapeutic jurisprudence focuses our attention on this previously underappreciated aspect, humanizing the law and concerning itself with the human, emotional, psychological side of law and the legal process. Basically, therapeutic jurisprudence is a perspective that regards the law as a social force that produces behaviors and consequences. Sometimes these consequences fall within the realm of what we call therapeutic; other times antitherapeutic consequences are produced. Therapeutic jurisprudence wants us to be aware of this and wants us to see whether the law can be made or applied in a more therapeutic way so long as other values, such as justice and due process, can be fully respected.<sup>[5]</sup>

In measured but steady steps, the idea of Therapeutic Jurisprudence has continued to earn recognition among scholars and stakeholders in diverse fields who are committed to the promotion of stronger psychological well-being and problem prevention in the legal system. Innovative ideas and new insights continue to be proffered for improved lawyering, policing, judging, conflict resolution, criminal investigations and forensic psychology. However, diverse ethical, social and professional issues are yet to be addressed or even investigated. Indeed, the full potentials of Therapeutic Jurisprudence are yet to be explored in a broad range of human endeavours and disciplinary concerns. The advancement of the cause

of this innovative concept was the basis for the first ever Conference on Therapeutic Jurisprudence held at the University of Southampton, in Winchester, England in July 1998. The Second International Conference on Therapeutic Jurisprudence was held between May 3 and 5, 2001, at the Kingsgate Conference Centre of the University of Cincinnati, Cincinnati, Ohio, USA. What has however not kept pace with the interdisciplinary growth of this concept is the consideration of social and professional ethics arising from those conference initiatives. The need to promote and enhance the articulation of the theoretical and practical problems and prospects of Therapeutic Jurisprudence was a primary objective of the organisers of this edition of the conference.

## INTRODUCTION

This conference was held from 7th to 9th June 2006 at the magnificent Perth Convention and Exhibition Centre in the scenic city of Perth, in the west of Australia. As testimony to the success of the earlier conferences in 1998 and 2001, and perhaps to consolidate the gains of the expansion witnessed in the field of Therapeutic Jurisprudence, the Third International Conference on Therapeutic Jurisprudence was hosted and jointly presented by the Australian Institute of Judicial Administration (AIJA); the Magistrates Court of Western Australia; the International Network on Therapeutic Jurisprudence; the University of Miami Institute on Law, Psychiatry and Psychology; the School of Psychology, Faculty of Business and Law and School of Law and Justice, Edith Cowan University; the International Association of Drug Treatment Courts; the William & Mary Law School's Therapeutic Jurisprudence Programme; Association of Australian Magistrates; and the Commonwealth Association of Judges and Magistrates.

In terms of the attendance, there were about 200 delegates in all, from Australia, Canada, New Zealand, Pakistan, Scotland, South Africa, the United States, and of course, Vanuatu. In terms of the presentations and discourses, there were two plenary sessions and over forty individual sessions with speakers drawn from the ranks of judges, magistrates, practising lawyers, legal and other academics, social workers, police officers, paralegals and professionals from diverse service and treatment agencies.

## CONFERENCE PROGRAMME HIGHLIGHTS

### Day 1: Wednesday 7 June 2006

#### *Welcome*

In many ways, the opening rendition by Elder Ben Taylor, an aboriginal Australian from the Nyungar tribe of Western Australia, would remain an unforgettable experience in the minds of many participants at the conference. That the organisers could even allow an aborigine to seize the opportunity of the opening ceremony of such a huge conference to vent what his people consider to be age-long marginalisation and discrimination in the administration of criminal justice in Australia was in itself therapeutic. This was quickly followed by the Welcome Address by the Honourable Justice John Byrne of the Supreme Court of Queensland, who is also the President of AIJA, the main hosts of the conference. The Honourable Jim McGinty, the Attorney-General of Western Australia, made the formal opening remarks immediately thereafter.

#### *Plenary Session 1*

The first plenary session had the twin progenitors of Therapeutic Jurisprudence, Professors Wexler and Winick take the podium to share their reflective thoughts about developments in the field as well as its future. The session was titled "Future Directions in Therapeutic Jurisprudence." Professor Wexler noted with gusto that even though Therapeutic Jurisprudence began in the academia (theory), it has moved into diverse fields of practice and reality. Observing that there are still lots of ground to cover in the discipline, he advocated that the concept should be introduced into legal education curriculum, bar examinations,

legal clinics and so on. The erudite scholar noted that there was no South American participant at the conference and pointed to the possibility of language being a formidable barrier, suggesting that the international expansion of the concept should be an issue of priority for all stakeholders. On his own part, Professor Winick submitted that lawyers' education should go beyond post-crisis and post-conflict activism, but should rather equip law students with the skills that would make them relevant to the psychological needs of adverse parties even before the outbreak of conflict. After some incisive questions and responses, the conference broke into simultaneous sessions following a short tea break.

### *Sessions*

One very remarkable element in the organisation of the conference sessions was the way the sessions were constituted and the papers listed for presentation in each session. The schedule of sessions made every session as alluring as they were engaging for the intellectual mind. The selection of presenters and their topics were equally outstanding. While the first session had such topics as cross-cultural relevance of Therapeutic Jurisprudence, its application in superior courts, its application to family and domestic violence, its implications for mental health tribunals, and death investigations, the second session had presentations on the key challenges in evaluating Therapeutic Jurisprudence in its various areas of application, the role of the concept in breaking the cycle of addiction and crime, its relevance to gay/lesbians and aboriginal people's status in legal systems, and its significance for transitional societies. The third session for the day covered such issues as Therapeutic Jurisprudence as a sentencing tool, its implications for apologies and reconciliation, its impact in mediation. This session also had the presentation by this author of a paper titled "International Criminal Justice and the Promise of Therapeutic Jurisprudence", a cutting-edge effort seeking to advance the discourses in the discipline beyond the frontiers of municipal law.

### *Sundowner Reception*

After the closing of the day's multiple sessions of brainstorming, the conference retired into relaxation mood: an informal welcome reception for all participants. Professor Kerry Cox, Vice Chancellor of Edith Cowan University, delivered a warm message of welcome. This was followed by the exchange of healthy banter among conference delegates.

## **Day 2: Thursday 8 June 2006**

### *Workshop*

The second day opened with vigour as participants engaged in an interactive workshop with the theme "Future Directions in Therapeutic Jurisprudence in Australasia: Practical Steps for Information-Sharing, Education and Research." This was the session where participants were asked to raise ideas and suggestions on how the conference organisers can promote the concept of Therapeutic Jurisprudence in Australasia. The outcome was extensive and far-reaching as contributors emphasised the need for rigorous integration of the concept into legal education, judicial education and the establishment of a repository for the dissemination of information and developments in the field of Therapeutic Jurisprudence across the world.

### *Sessions*

The day's sessions started with the first session covering brilliant topics on the role of Therapeutic Jurisprudence in criminal law practice, ethical conundrums in the field, forensic evaluations, and its role in drug courts. The second session for the day engaged topics such as the place of Therapeutic Jurisprudence in civil and commercial dispute resolution, in general adversarial practice, challenges for its application in

the magistrate courts, and its implications for the training of court staff. The third session for the day witnessed presentations on Therapeutic Jurisprudence as a preventative model of law practice; the role of volunteers; ethical issues for judges in the application of the concept; and the significance of architectural designs of court houses for therapeutic purposes. The final session for the day had a panel discussion on “Therapeutic Jurisprudence and Legal Education” and individual presentations on how to enhance the effectiveness of the concept, alternative strategies in Therapeutic Jurisprudence, and its relationship with restorative justice.

### *Conference Dinner*

The official dinner for this great conference was held at the University Club of the University of Western Australia. The Dinner Speaker was the Honourable Chief Justice Wayne Martin, the Chief Justice of Western Australia. The three-course meal was sumptuous and participants were treated to the best of famed Western Australian wines. The dinner was a quintessential closing for a day of rigorous intellectual discussions.

### **Day 3: Friday 9 June 2006**

#### *Plenary Session 2*

The day’s business commenced with the second plenary session on “The Synergy between Therapeutic Jurisprudence and Drug Treatment Courts: national and International Perspectives.” The speakers were Judge Peggy Hora, a retired judge of the Superior Court of California, USA, and Professor Paul Moyle, the Foundation Centenary Chair in Justice Studies at the Edith Cowan University. These two eminent persons highlighted the positive trends that Therapeutic Jurisprudence has brought to bear on the treatment, rehabilitation and sentencing of drug offenders and particularly repeat drug offenders around the world. Both of them were quick to point out that there remains quite a lot of work to be done in integrating the concept into every facet of drug treatment courts. After morning tea, the conference broke into the day’s sessions.

#### *Sessions*

The first session had presenters who examined “Judging in a Therapeutic Key”, the possibility of merging Therapeutic Jurisprudence with restorative and community justice, Therapeutic Jurisprudence from the perspective of court administrators and social workers. After lunch, the second sessions for the day had such topics as Therapeutic Jurisprudence in the drug courts of Scotland and New South Wales; the role of the concept in “problem-solving courts”; and the dimension of child protection. The day’s final sessions covered the application of Therapeutic Jurisprudence in specialist court jurisdictions across diverse jurisdictions.

The conference was ‘wrapped up’ for closing at about 5.00pm by Dr. Andrew Cannon, Chair of AIJA’s Education Committee.

### **CONCLUDING COMMENTS**

The hitherto hazy and humble interdisciplinary concept which Professors Wexler and Winick developed less than two decades ago has transformed into a baobab of ever-widening intellectual endeavours. These twosome scholars have indeed bestowed a lasting legacy on our world. The Third International Conference on Therapeutic Jurisprudence held at the Perth Convention and Exhibition Centre, a bravura of an edifice, in June 2006, will remain an ineffaceable testimony to this assertion.

From its organisation, the presentations, the intellectual discourses and the atmosphere of camaraderie, this was a successful conference in every way. The vision of its organisers was clear and all participants

were unmistakably enthusiastic and vibrant. One can only look forward to broader platforms for Therapeutic Jurisprudence discourses and engagement – beyond the Western world. On the whole, the practical experiences shared at this conference from diverse geo-political regions of the globe confirm that the future of Therapeutic Jurisprudence is bright and promising.

In a world deeply troubled by mass and individual conflicts and tensions, and one riddled by increasing challenges for the administration of law and justice, the significance and relevance of the discipline cannot be overemphasised. Without being immodest, the future of credible pursuit of criminal justice, peace and conflict resolution, and indeed numerous civil disputes, lies in the auspicious concept of Therapeutic Jurisprudence. The task at hand is to propagate its tenets, methods and processes across legal, moral, social and interdisciplinary planes.

Far from being an *ex cathedra* view of all the dynamic highlights from this remarkable conference, this piece would have served its purpose if it becomes a constant reminder of the continuous need to investigate the unexplored potentials of this emergent concept.

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[1] See Ellis S. Magner, 'Jurisprudence Forum: Therapeutic Jurisprudence: Its Potential in Australia' (1998) 67 *Rev. Jur. U. P. Rev.* 121, 121; David B. Wexler, 'Therapeutic Jurisprudence and Legal Education: Where Do We Go From Here?' (2002) 71 *Rev. Jur. U. P. Rev.* 177, 178-180.

[2] Bruce J. Winick, 'The Jurisprudence of Therapeutic Jurisprudence' (1997) 3 *Psych. Pub. Pol. & L.* 184, 185.

[3] Notable scholarly efforts on some of the fields mentioned here that directly implicate "therapeutic jurisprudence" include: David B. Wexler, 'New Directions in Therapeutic Jurisprudence: Breaking the Bounds of Conventional Mental Health Law Scholarship' (1993) 10 *N.Y.L. Sch. J. Hum. Rts.* 759; Bruce J. Winick & David B. Wexler, 'Drug Treatment Court: Therapeutic Jurisprudence Applied' (2002) 18 *Touro L. Rev.* 479; John A. Bozza, 'The Devil Made Me Do It: Legal Implications of the New Treatment Imperative' (2002) 12 *S. Cal. Interdisc. L. J.* 55-84; Mark A. Hall, 'Law, Medicine and Trust' (2002) 55 *Stan. L. Rev.* 463-527; James McGuire, 'Maintaining Change: Converging Legal and Psychological Initiatives in a Therapeutic Jurisprudence Framework' (2003) 4(2) *W. Criminology Rev.* 108-123; Bill Glaser, 'Therapeutic Jurisprudence: An Ethical Paradigm for Therapists in Sex Offender Treatment Programs' (2003) 4(2) *W. Criminology Rev.* 143-154; Jennifer Marie Sanchez, 'Therapeutic Jurisprudence and Due Process in the Juvenile Parole Revocation Process: An Arizona Illustration' (2005) 7(1) *Florida Coastal L. Rev.* 111; David K. Malcolm, At the Cutting Edge: Therapeutic Jurisprudence, 6 May 2005, at [http://www.supremecourt.wa.gov.au/speeches/pdf/CuttingEdge-Therapeutic\\_%20Jurisprudence\\_%20Conf2005.pdf](http://www.supremecourt.wa.gov.au/speeches/pdf/CuttingEdge-Therapeutic_%20Jurisprudence_%20Conf2005.pdf) (Accessed 06 July 2006).

[4] See Alan Tomkins & David Carson, 'International Perspectives on Therapeutic Jurisprudence – Part II' (2000) 18 *Behav. Sci. & L.* 411, 411 (observing that "Therapeutic Jurisprudence is flourishing"). See also Wexler, *TJ and Legal Education*, above note 1, at 179 (noting the expansion of scholarly efforts in the field of therapeutic jurisprudence); Susan Daicoff, 'Law as a Healing Profession: The "Comprehensive Law Movement"' (2006) 6(1) *Pepp. Disp. Resol. L. J.* 1, 11 (remarking that therapeutic jurisprudence has received recognition in "more than 581 articles and eighteen books" since 1990).

[5] David B. Wexler & Bruce J. Winick, *Law in Therapeutic Key: Developments in Therapeutic Jurisprudence* xvii (1996).