THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Report by Hilary Hannam - 2002/2 Churchill Fellow

To study court programmes in which judges monitor defendants throughout the entire process, with particular emphasis on prevention of violence and alcohol abuse rehabilitation.

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Dated
1. Introduction – Summary and Acknowledgments

This report sets out my findings from a Churchill Fellowship for travel to the United States of America in December 2002 and January 2003 to study court programmes in which judges supervise and monitor defendants throughout the court process including throughout their rehabilitation. Specific court programmes visited were:-

- Drug Courts –adult and juvenile
- Community Court
- Mental Health Court
- Domestic Violence Courts
- Tribal Courts
- Dependency (Child Welfare) Treatment Court
- Drive while Intoxicated Court

In addition I visited a numbers of facilities and services related to particular court programmes including services for victims of domestic violence and services for offenders with drug and alcohol abuse and addiction problems.

My study would not have been possible without the following:-

- The financial assistance given by the Winston Churchill Memorial Trust
- The judicial officers and court administrators whose courts I visited and who took time out of their busy days to talk with me and answer questions about their programmes and who often referred me to other programmes which were of interest. In particular I acknowledge the invaluable assistance of Judge Bruce Beaudin and Professor Steven Gonzales who took countless hours in assisting me in my study and provided many significant contacts for me.
- The staff at the various treatment facilities and other services for their time and information they shared with me
- My family - husband Don and children Eliza, Georgina and Angus who encouraged and supported me every step of the way especially by accompanying me on the trip.
2. Executive Summary

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Project Description:

A study of court programmes in which judicial officers supervise and monitor defendants throughout the court process including throughout their rehabilitation

Highlights:-

1. Red Hook Community Justice Center, Brooklyn, New York - observing a community court and joining Judge Calabrese on the bench.

2. Observing the Drug court, Domestic Violence court and Mental Health court programmes presided over by Judges Ferdinand and D’Emick of the Kings County (Brooklyn) Superior court.

3. Observing the innovative programme at the Miami Drug Dependency Court and Judge Jeri Cohen, where treatment facilities and child welfare issues are linked.

4. Bernalillo County (Albuquerque) DWI Court - observing this interesting application of the drug court model to the serious problem of drink-driving and observing Judges Baca and Kavanaugh monitoring and supervising participants in the court programme.

5. Domestic Violence Courts, Orange County and Long Beach California - observing Judges Iles and Andrews take different approaches to this difficult problem.

Lessons and Conclusions

The programmes being implemented in the various specialized Courts I observed are effective at addressing the underlying causes of offending of the participating defendants, reducing recidivism and enhancing public safety and confidence in the judicial system. The particular processes and approaches adopted in these courts including integration of treatment services into court processes, a cooperative non-adversarial “team” model, close and intense judicial monitoring and intervention and community participation are all key components to their success. Australian courts may wish to consider adopting this approach in settings other than “Drug Courts” (which already exist in many jurisdictions), particularly in the areas of mental health, domestic violence, drink-driving and child welfare either by establishing specialized courts or incorporating some or all of the features into existing court settings.

I propose disseminating the information I gained to the judicial and legal fraternity through the publishing of articles and speaking at seminars. So far as implementation is concerned, I am able to adopt a similar approach utilising some of the features of the specialized courts in the Local Court in which I sit by means of existing laws and resources. The creation of a specialized court or a comprehensive treatment programme may require a legislative framework and increased resources and would not be within my power to implement. I do propose informing my head of jurisdiction, the Chief Magistrate of N.S.W of my findings.
3. Programme

Week 1 (Dec 17-20) New York

- Brooklyn Treatment Court
- Red Hook Community Court, Brooklyn
- Kings County (Brooklyn) Supreme Court-Mental Health court and Domestic Violence Court

Week 2 (Dec 27 and Dec 30-Jan 3) Washington DC and Atmore, Alabama

- District of Columbia Superior Court-Domestic Violence Court and Drug Court
- Poarch Band of Creek Indians Reservation-Tribal court and domestic violence advocacy services and drug court facilities

Week 3 (Jan 6-Jan 10) Florida

- Judge Bruce Beaudin
- Jacksonville Drug Court and Juvenile Drug Court
- Miami Dade County Drug Dependency (Family Treatment) Court
- Judge Steve Leifman -Dade County-Criminal Mental Health Project

Week 4 (Jan 15-17) Phoenix, Arizona

- Professor Steven Gonzales
- Salt River Pima Maricopa Indian Reservation-Tribal Court
- Fort McDowell Yavapi Indian Reservation and Tribal Court

Week 5 (Jan 21-24) New Mexico, Arizona

- Bernalillo County (Albuquerque) DWI (drink driving) court
- Gallup New Mexico-services relating to domestic violence and alcohol rehabilitation
- Window Rock Tribal Court, Navajo Nation

Week 6 (Jan 27-29) California

- Long Beach Batterers Intervention programmes and domestic violence services
- Orange County Superior Court-domestic violence court
- Long Beach domestic violence court and Drug Court
4. Report

4.1 Background

Although there are competing claims concerning the origins of the first Drug Court in the U.S.\(^1\), it is fair to say that the drug court movement began in the late 1980’s in response to the increase in drug related crime and a recognition of the failure of traditional law enforcement, judicial and corrective strategies to combat the problem.

Following the development of drug courts, other “specialist” or “problem-solving” courts have emerged with a view to improving the outcomes for defendants with particular treatment needs. It is interesting to note that the development of these new specialty courts runs contrary to court reform in the previous decades, which had developed responses to increase efficiency and timeliness. Under the specialist or problem-solving model the court’s focus is the quality of the processes employed to achieve an outcome and the quality of the outcome, rather than the volume of cases processed. These courts also focus upon events following sentencing, rather than viewing the imposition of sentence as the end of the process.

Although the problem solving courts are all called “courts”, this is, a correct label. A court is a judicial body established by Constitution or legislation to which judges are appointed. True “specialized” courts may also be created by statute, which defines their limited jurisdiction, and to which judicial officers possessing particular expertise are appointed. An example of such a specialized court in the US and Australia is the Children’s Court. The courts I visited, which are labeled as “specialized”, “boutique” or “problem-solving” courts are not true “courts”. Rather, they are divisions of courts dedicated to cases or offenders of a particular type and their processes are determined by local rules or policies.

The approach taken in these specialized courts involves a number of fundamental changes to the way in which courts traditionally operate. First, as noted above, the involvement of the court does not end with sentencing, as the rehabilitation process is incorporated into the court system. Rather than have the treatment of substance-abusing offenders supervised and monitored by an external agency, such as the Probation Office and reporting back to the court only in the event of breach, in the specialized court it is the judicial officer who monitors and supervises the treatment using his or her coercive powers to ensure compliance. Next, the adversarial nature of traditional courts is relaxed in order to achieve the desired outcome through the treatment process. The processes are also multi-disciplinary with the judge relying heavily on the expertise of the team members. The treatment process is also holistic in that the focus of the treatment may be abstinence from illicit substances for example, but it is recognised that other issues such as mental illness, homelessness, and educational deficits also contribute to criminality and these issues are also addressed.

It appears that these courts developed as a practical response to the failure of the judicial system adequately to address particular problems, rather than pursuant to legal theory. The notion of “therapeutic jurisprudence” (the promotion of court processes and procedures and approaches taken by judges and lawyers to produce therapeutic outcomes for the participants) has been put forth as the underlying legal theory for the approach taken in these courts.\(^2\)

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\(^1\) The first Drug Court is generally believed to have been developed by Judge Stanley Goldstein in Miami in around 1989

Although it appears that therapeutic jurisprudence as a study preceded the emergence of these specialist courts, the nexus between the two was apparently made at a later stage. In some specialized courts I observed the therapeutic nature of the programmes, that is the extent to which they promoted psychological well-being of the participants, was emphasised to a greater extent than in others.

4.2 Drug Courts

Although drug courts have now emerged across the nation and share some common features, they are not identical to each other, even within the same State. This is because each Drug Court is developed at a local level, often at the behest of a particular judicial officer, in consultation with a range of community representatives to reflect the particular circumstances of that community. None of the drug court programmes I observed had a legislative basis but were operated pursuant to policies and protocol developed at a local level.

Whilst the court programmes I observed varied in a number of aspects, including the point in the proceedings the treatment regime was undertaken (some being pre-plea, others utilizing suspended sentences and others requiring treatment as a condition of a court supervised Probation Order), the content of the treatment programme, the effect of completion of the programme upon the charges and the attitude taken to the imposition of sanctions, each had a number of common key features. All drug court programmes adopted a non-adversarial approach, in which the defendant agreed to undergo a phased treated regime, tailored to his or her treatment needs. Further, all programmes require the defendant to undergo very regular random urinalysis, and all regarded a test result that indicated drug or alcohol use, or a failure to test, as non-compliance. Finally, all adopted a system of graduated rewards for compliance with treatment and sanctions for non-compliance and in each model the court programme was supervised by one, (or two at most) judges to ensure consistency in approach and a sense that a particular significant and powerful person had concern for the individual’s progress.

4.2.1 Brooklyn Treatment Court

4.2.1.1 Background and Structure

Brooklyn Treatment Court is part of the Supreme Court of New York and is located in Kings County (Brooklyn) in New York City. In its criminal jurisdiction the Supreme Court in New York City exercises jurisdiction over felony (more serious) cases. Thus, the Brooklyn Treatment court deals with the rehabilitation of offenders who have been charged with crimes relating to their drug addiction, generally felony possession or supply charges, who have no history of violence. The court opened in 1996 as a pilot court and is now a permanent part of the Unified Court System of New York State and the City of New York. It has been presided over by Judge Jo Ann Ferdinand from the outset, beginning as a model for the emerging drug court movement.
4.2.1.2 Programme

This programme requires defendants who wish to participate to plead guilty to their charges, and then the sentence (always a term of imprisonment—referred to as a “Jail Alternative”) is deferred while the offender undergoes treatment. In this court there is an emphasis on capitalizing on the pressures that arise from the arrest by referring the defendant for assessment at an early stage in the proceedings and immediately commencing treatment when the defendant is assessed as suitable. This is able to be achieved in such a short time frame because the assessment and testing staff and facilities are located at the court premises.

The period of treatment depends upon the seriousness of the charge and the defendant’s prior criminal history. The minimum period of time required for court supervised and monitored treatment is 8-12 months for the most minor cases, whilst those in the most serious category are required to remain in treatment for 18-24 months. Upon successful completion of the treatment regime and performance of mandatory community service, the plea of guilty is vacated and the charge is dismissed at a formal graduation ceremony.

If a drug court participant fails satisfactorily to complete the treatment regime, the court will impose the sentence that had been suspended. In practice however, a great many opportunities are extended to the participants to complete successfully and very few are terminated from the programme. Rather, a system of sanctions is in place, to ensure that all infractions are dealt with. The sanctions range in severity and include essay writing, observing the day’s proceedings from the “penalty box”, jail sanctions from one to twenty-eight days and a change in treatment modality including increased monitoring. The purpose of imposing sanctions is not purely as punishment for disobedience of a court order but is a valuable tool to ensure compliance with the goal of the programme.

All participants in the programme are required to be randomly tested for drug use every few days and attend court regularly. Detailed reports including all results of drug testing are provided to Judge Ferdinand and maintained in a sophisticated computer system to which she has access in chambers and on the bench. In court, Judge Ferdinand (and the other drug court judge I observed, Judge Sullivan) spoke very directly and personally to the participants about their progress in treatment. There was constant praise and encouragement from the Judge. The Judge announced achievements in open court and at times all those present in court applauded the participant, in particular when certificates of completion of a phase were given. The other incentive given for satisfactory progress is a restriction in the requirement to attend court and undergo testing.

As is the case in most Drug Courts, the treatment programme is managed by a case management team which reports to the court about all components of the defendant’s recovery, including not only the treatment programme but all the other issues in a defendant’s life being addressed, such as employment, health and housing.

The Brooklyn Treatment Court five year report covering the period June 1996-December 2001 which took into account other reviews by external agencies, concluded that the programme is a success, having regard to both the number of participants who successfully completed their treatment and an analysis of the recidivism rates for drug court graduates compared to other drug offenders who had been sentenced to prison. Particular strengths of this court’s programme are considered to be the early engagement in treatment (data show that early engagement is crucial to a successful outcome), the
sophisticated information management system, the on-site location of the testing facility, and special attention which is given to women participants who often have more complex problems associated with their addiction and a lower success rate than their male counterparts. A further key component touched upon in this report, which has been identified as critical to successful outcomes in this court, is the duration of the treatment regime. Defendants in this programme must remain in treatment for a significant period of time in order to be regarded as rehabilitated. The report notes that the success rates for defendants undergoing short-term treatment mandates are significantly less when compared with the long-term regimes.

4.2.2 District of Columbia (Washington) Drug Court

The Drug Court in Washington DC is part of the Superior court of the District of Columbia and has jurisdiction over both felony (more serious) and misdemeanor (less serious) matters. As is the case with all drug courts, which receive Federal funding, this drug court will not accept a defendant into its programme who faces charges of violence or who has any charge involving violence on his or her record. The court does however admit offenders who have committed a wider range of offences than other drug courts including offenders charged with dishonesty matters.

The model adopted in this court allows for a defendant to participate in a treatment programme at any stage until a conviction is entered. Upon satisfactory completion, pursuant to legislation, a person who has been charged with a misdemeanor is entitled to have his or her case dismissed and the record is expunged, while a defendant in the felony drug court has a good prospect of receiving a probation order by way of sentence. Typically, the probation order would be for about 2 years duration and would be supervised by the Probation Department rather than the court. Unlike the Brooklyn Treatment court where a sentence is imposed and suspended pending treatment, under this model sentencing is deferred until the outcome of court-mandated treatment is known.

The duration of the treatment mandate in this court is somewhat shorter than in others, with the average programme for a defendant charged with a felony being six months and four months in the case of a defendant charged with a misdemeanor. The programme consists of four phases and a maintenance period with all participants undergoing twice weekly urine testing during all four phases and random testing during the maintenance period. All participants report to court every 30 days from start to end and also if a drug test has been missed or has a positive result. The testing laboratory is also located within the court building and the test may be taken any time between 7.30 a.m. and 7.00 p.m. In addition to the drug treatment programme, assistance is also given with employment and housing etc, and in the cases of participants with dual diagnoses, mental health treatment is also arranged.

As with all drug court programmes, the same judge monitors and supervises all defendants. Once again the highly personal approach is taken with the Judge engaging in personal conversations with the defendant (sometimes “off the record” with the aid of a hushing device) and with praise being regularly given for success, and sanctions imposed (most commonly gaol sanctions) to ensure compliance. One feature of this court, which I was impressed with and which differed from others, was that there was not a “team” who met prior to court and recommended or agreed upon a proposed course of action in the absence of the offender. In this court there was no team meeting prior to court, nothing was decided in the absence of the defendant, all participants were represented in court, and the rights of the
offender were ensured, especially when sanctions were being considered. In this regard the adversarial nature of the proceedings was not relaxed to the same extent as in other courts.

The District of Columbia Drug court has been operating for 10 years and statistics have been kept in relation to re-arrests during some of that period. Judge Wright, the presiding judge informed me that, of the 132 graduates from the programme during 2001, 12 had been re-arrested within the following 12 months. These were the only statistics provided, but he is clearly of the view that the court has been a success in reducing recidivism.

4.2.3 Duval County (Jacksonville), Florida - Adult and Juvenile Drug Court

An adult Drug Court has been operating in Jacksonville Florida since 1994 with Chief Judge Donald Moran presiding over it since its inception. Since 1997 a juvenile Drug Court has also been in operation. The programme in both courts, which is intensively court monitored is available to any defendant who has been arrested for a drug related offence (including some violent offenders) and can be undertaken either pre-plea or post adjudication. If the programme is completed successfully and the offender “graduates”, the charges are dismissed. Failure to complete the programme or discharge from it will result in prosecution for those who had not entered a plea and an inevitable term of imprisonment for those who were undertaking the programme post adjudication.

Both the adult and juvenile drug court programmes consist of 4 phases and participants commence in the phase appropriate to the seriousness of their addiction. All participants are required to participate in treatment for at least 12 months and many participate for much longer. Participants are given assistance with issues such as education, employment and family services. Counseling, but not supervised medical treatment, for participants with mental health problems is also offered. Drug testing occurs at least once per week for the duration of the treatment and additional tests may be ordered at any time by the Judge.

Pharmacological treatment is not offered to any participant and the programme consists of intensive counseling, both individual and group (the latter initially 4 times per week) and attendance at a 12 step meeting (such as Narcotics and or Alcoholics Anonymous) at least 3 times per week for all participants. In phase one the participant is required to report to the court once a week, which is reduced to bi-weekly or monthly in Phases 3 and 4.

In the event that a participant fails to comply with his or her treatment plan, a range of sanctions are applied including an increase in the frequency of drug testing, court appearances, attendance at meetings or counseling, additional community service or incarceration. Participants being supervised may be subjected to unannounced home visits by probation officers who have the power to search the participant’s person or premises. In the juvenile drug court the police officer member of the drug court team also makes unannounced visits to the juvenile’s school to check on his or her progress.

Prior to the court session the entire treatment and court team meets with the Judge to discuss the progress of defendants and in particular the proposed course of action for those who had apparently not complied with the programme and the incentives to be offered for those who had. Although the participants received legal advice (but not representation) in court, the legal representatives at the team meetings joined in with the discussion from which consensus was reached. The sanction then appeared to be presented to the defendant in court as a foregone conclusion. The non-compliant defendant (who had at this stage not entered a plea)
was not asked for example if he wished to continue with the programme, it was assumed that he did and a sanction, often incarceration was imposed.

In addition to sanctions there was also a system of incentives for compliance including not only applause and praise common to all drug courts but tickets to entertainment events, shopping vouchers etc and in the juvenile court a watch is presented to successful participants at their graduation ceremony.

The Jacksonville Drug court is very proud of its achievements, especially in reducing recidivism. In one of the courts publications, it is asserted that “in the past three years, approximately 74% of the Drug Court graduates have not been rearrested.” Judge Moran expressed the view to me that the reason why drug courts are successful is due to the recognition by the defendant that a powerful figure (the Judge) cares about him or her, and in his view the powerful authority figure is an important part of the treatment process. In other words, the role of the judge and his approach positively impacts upon the participant, supporting a key claim of the theory of therapeutic jurisprudence.

4.3 Tribal Drug Courts

4.3.1 Background - Tribal Courts Generally

Native American (“Tribal”) Drug Courts, also known as “Tribal Wellness” or “Healing” courts are drug courts which have emerged as a “grassroots” initiative in the same way as all drug courts, but which are adapted to the particular cultural needs of their communities, involving traditional people in the development of the court programme and utilising traditional healing and treatment methods. The development of drug court programmes is a significant component of the tribal criminal justice system as alcohol and/or illicit drug use is a factor in more than 90% of the criminal cases in most tribal courts.

In order to discuss Tribal Drug Courts, some background to Tribal courts generally must be provided. Whilst the US Federal Government has recognised tribal law in various ways for many years, the Tribal Court system is created under and recognised by statute including the Tribal Justice Act 1993. Pursuant to this and other Federal laws, sovereignty of Tribal Government including tribal justice systems is recognised. Each tribe has established a tribal court that has jurisdiction over most Indian offenders who are alleged to have committed a victimless crime (such as many drug offences) and non-major offences alleged to have been committed by an Indian against another Indian.

I visited Tribal courts at the Poarch Creek Reservation in Atmore, Alabama, The Salt River Pima-Maricopa Indian Community and Fort McDowell Yavapi Community in Phoenix, Arizona and the Navajo Nation in Window Rock, Arizona. Although the Poarch Creek Indians and the Pima Maricopa Community both had a drug court programme, I observed the Poarch Creek Drug Court only. Otherwise, none of the Tribal courts visited had any form of programme in which the court was involved in the supervision of offenders throughout the criminal justice process. This was a disappointment to me as a focus of my study was to have

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3 “Juvenile and Adult Drug Courts”(2002) JSO (Jacksonville Sheriff’s Office) Dispatch, Volume 8, Issue 3 p4
4 “Healing to Wellness Courts: A preliminary overview of tribal drug courts” (1999), Tribal Law & Policy Institute p11
been court programmes in indigenous communities following the judicial supervision and monitoring model. Unfortunately my expectations in this regard were not realised.

4.3.2 Poarch Creek Indian Drug Court - Atmore Alabama

This drug court was established in 1996 at the Poarch Creek Indian Reservation in rural Alabama and was one of the first Tribal Drug Courts in the US. It operates as a mentor court in the Tribal Drug Court system. Judge White presides over the court, which supervises and monitors offenders who have been charged with non-major offences and whose offending is related to their drug or alcohol misuse. All cases involve supervision of offenders who have been sentenced and the programme consists of four phases completed over 90 days. For each participant, the penalty imposed in respect of his or her offence is the satisfactory completion of the programme.

The level of services offered to the small number of offenders participating in the programme is very intensive, of a high quality and includes psychiatric treatment, and assistance with education, employment and family services. Community service is sometimes imposed as a component of the programme. Prior to the Drug Court session the team met and discussed each participant’s progress. Any sanctions to be imposed (which appeared in each case to be an increase in the level of intensity of treatment and supervision) were agreed upon prior to court convening, in the absence of the defendant or his or her legal representative. In court, none of the offenders were legally represented, but all seemed to have developed a good rapport with the Judge who had a very caring and personal approach.

The approach taken by the team, which is made up of persons representing a wide range of community interests, is very “holistic” and aimed to meet the total needs of the offender and his or her place in the community. The team members were of the view that the existence of the court with its intense supervision has improved the quality of life of the offenders, their families and the community. This was also borne out by comments made by other community members who I encountered on the reservation when meeting with the providers of the various services offered to members of the tribe.

4.4 DWI Courts

4.4.1 Bernalillo County (Albuquerque) Metropolitan DWI/Drug Court

As noted, the drug court movement is a grass roots movement in which court programmes are developed in response to a particular problem faced by an individual community. One of the first refinements of the original drug court model was the development of so-called “DWI” (drive while intoxicated) courts, which emerged in communities where drink-driving and a high road toll were particularly prevalent. One such community is in Albuquerque, New Mexico, a State which had the highest rate of arrests for DWI offences and DWI related deaths in the US in the early 1990’s. The court programme developed by Judge Michael Kavanaugh in response to this problem, focuses on alcohol abusers who have committed numerous drink-driving offences and who are facing mandatory sentences of imprisonment. It commenced in July 1997 and has the goals of promoting public safety and reducing recidivism in the offender population.

The programme is available on a voluntary basis for defendants who have been convicted (either as a result of a plea of guilty or a finding of guilt) of a third or more misdemeanor
DWI offence and participants take part in it prior to having their sentences determined. The programme consists of a number of phases and can be completed over a minimum period of 9 months. Each phase consists of a judicial component which requires regular attendance at court (initially every two weeks and reduced to every six weeks), a probation component which involves regular (twice-weekly, reducing to monthly) meetings with a probation officer, an individualized treatment component, and regular testing for drug and alcohol use (twice weekly urine tests and breath tests at any time when required throughout most of the programme).

So far as the judicial component is concerned, this court has all the hallmarks of other drug courts including a highly personalized approach taken by the two very impressive judges who preside over this court. Both judges are bi-lingual in English and Spanish and conducted proceedings in both languages. Both also appeared to me to be naturally comfortable when offering praise, applause and personal encouragement by way of incentive, especially for advancement to a new phase. Judge Kavanaugh has been described as “part cheerleader, part father figure, part enforcer” and his approach was certainly consistent with that description on the day I observed him in court. The judges also take a very strict view of sanctions, which are imposed when there is any evidence of continued alcohol use, however small, or one of the treatment sessions is missed. Sanctions include incarceration or repeating of a phase. If a defendant is clearly failing to commit him or her self to the programme, he or she will be terminated and be immediately sentenced.

The participation of the Judge also extends to the review of each of the cases prior to the court hearings. At the two reviews I attended the judge paid a great deal of attention and time to the “problem” cases presented and listened carefully to the advice of the team members present. The team, consisting of representatives from the treatment provider (this court opted for all treatment to be provided by the one private organization), the probation department and the volunteer coordinator expressed its view and the decision taken as how to deal with the individual was a group decision.

The treatment component includes twice–weekly alcohol abuse counseling, other counseling if required, attendance at Alcoholics Anonymous at least once weekly, compliance with medication such as Antabuse if prescribed, obtaining and maintaining contact with a sponsor and undertaking acupuncture sessions. The judges or programme director were not able to provide any evidence as to why acupuncture is so important to be included as a mandatory component of the treatment, but confirmed that it is regularly a feature of such programmes and is regarded by them and many participants as valuable in their recovery. Random breath testing occurs regularly throughout all phases of the treatment, beginning with several times per week in phase one.

A significant component in phase two is participation in a Victim’s Impact Panel convened by “Mothers Against Drunk Driving”, a powerful lobby group. After completing the first three phases in which attendance at court, meeting with the probation officer and testing are reduced, and in the case of phases two and three mandatory community service is undertaken, the participant then moves to phase four, also known as “transitional care”. During this phase regular counseling, and regular AA meetings continue whilst court attendance is reduced. At this stage the defendant is also allocated a voluntary mentor to assist in supporting him or her in maintaining sobriety. Upon successful completion of all components of each phase the defendant “graduates” and is sentenced.

Unlike many similar court programmes where the defendant is sentenced and the sentence is deferred or bail conditions are imposed requiring satisfactory completion of a treatment programme, in this court sentencing is deferred until graduation and the Judge commits himself or herself to sentencing the defendant to the minimum mandatory sentence at that stage. This may involve a sentence of imprisonment (which may be suspended or ordered to be served as home detention) and/or a fine. The imposition of a sentence, rather than the charges being dismissed upon graduation (as is the case with most drug courts) is undertaken, as the latter approach clearly would not be acceptable in the community having regard to the nature of the offence. The likelihood of receiving a lighter sentence is the principal motivator for most participants at first, but ultimately most participants regard receiving treatment for their alcoholism as most significant according to the court administrator, Mr Jim Stoker.

The court programme has been independently evaluated in September 2002, by the University of New Mexico Institute for Social Research. In addition the court also keeps track of all of the graduates of the programme and regularly reviews the re-arrest rates for those individuals. As at June 30, 2002, the court had enrolled 743 offenders, 341 of who had graduated. Of this group only 36 had been re-arrested for a similar offence, representing a recidivism rate of 10%. This rate compares very favourably to the recidivism rate of 40-60% of offenders of this type who have been the subject of traditional probation regimes. It is also interesting to note that the report indicated that the graduates of the programme not only commit a lower percentage of offences of this type but fewer offences generally. In addition to reducing recidivism the programme is also a success according to other markers such as increasing public safety and reduction in public expenditure. The cost of housing a prisoner for 12 months (which is the usual sentence for those not on the programme) is about 10 times the cost of enrolling a participant through the programme.

This court was amongst the first in the US to adapt the drug court model to the problem of repeat drink-driving offenders. Adapting this model to address a different problem group of defendants involved, a number of challenges including the fact that dismissal of charges upon satisfactory completion would not be feasible, and the fact that a “legal” substance was involved which has greater social acceptance and the use of which is difficult to detect. However, it would appear that these challenges and others have been overcome and this court is regarded as a success nationwide. The judges in this court are highly committed individuals who undertake the court session at the end of their busy court days, generally sitting until around 6 p.m., always taking time to carefully consider each participant in the programme.

### 4.5 Mental Health Courts

The expression “mental health courts” is a term applied to courts adopting a variety of models to deal with the particular problems posed by the large number of people in the criminal justice system suffering from mental illness. I visited two jurisdictions where different processes had been developed to manage this issue. The first, in Brooklyn, New York City was a court which adopted a therapeutic model, the hallmark of which was continual judicial monitoring and supervision, whilst the innovative programme developed in Dade County in Miami, Florida was one in which mentally ill offenders who had committed minor offences

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were diverted away from the court system rather being integrated into and supervised by means of that system.

4.5.1 Brooklyn Mental Health Court

Brooklyn Mental Health Court, which operates as part of the Kings County (Brooklyn) Supreme Court deals with defendants who have serious and persistent mental illnesses, have been charged with felonies and who ordinarily would be facing a term of imprisonment. As an alternative, offenders who are assessed as suitable may voluntarily enter into a court-supervised long-term treatment programme. The Brooklyn Mental Health Court is a demonstration court within the New York unified court system seeking to address the health issues of offenders and the safety concerns of the community at large.

The treatment programme is entered into by a method that appears to be a hybrid of a suspended sentence. Defendants are charged with both a misdemeanor and a felony in respect of each matter, and the sentence is determined. The defendant then undertakes the treatment programme. If the defendant completes the treatment regime the felony charge is withdrawn and the defendant receives the (non-custodial) sentence in respect of the lesser offence only.

The duration of the treatment programme is 18-24 months and involves mandatory compliance with medication as directed by medical practitioners. All of the features of other therapeutic treatment programmes form part of this programme including individualized treatment regimes to meet the defendant’s needs as assessed, close judicial monitoring with court appearances weekly at the outset, the application of sanctions and rewards to ensure accountability and assistance via a team approach to all of the interrelated issues faced by such defendants including homelessness, unemployment, substance abuse and physical ill-health.

The Judge presiding in this court, Judge Matthew D’Emic adopted a very similar approach to that taken by Judge Ferdinand in the Drug Court. He understood that non-compliance with treatment is a common feature for many defendants suffering from mental illness and gave the participant every opportunity to remain in treatment, (with the application of sanctions if necessary to ensure compliance), rather than discharge such a non-compliant defendant from the treatment programme. As this court programme only commenced less than 12 months ago and none of the participants have yet “graduated”, it is too early to draw conclusions about its success or otherwise. The presiding Judge is of the view that through the programme he is able to maintain control over compliance with treatment and to the extent that most of the participants are not re-offending whilst in treatment, it has been a success.

4.6 Treatment Programmes in Child Welfare Courts.

Families with substance abuse problems who have found their way into the child welfare system face particular challenges in receiving effective responses to their treatment needs for a range of reasons. In a number of locations throughout the United States treatment agencies and child welfare agencies under the auspices of the courts themselves have forged effective partnerships to meet these challenges. One such programme that I visited is in Miami Dade County in Florida where the dependency court (as the child welfare court is known) monitors the progress of substance-abusing and mentally ill parents in treatment with the goal of reunification of a “recovered” family in which the safety of the child is ensured.
4.6.1 Miami-Dada County Drug Dependency Court

Judge Jeri Cohen, a judicial officer who has worked in supervising offenders in treatment programmes for many years started the Miami Dependency Drug court in 1999. Judge Cohen adapted the model she had utilised in a DWI court for alcohol and substance abusing offenders to a child welfare court setting. As with all of the specialized courts utilising judicial monitoring and supervision, there is no legislative framework for the court. Rather it is a court programme developed by Judge Cohen in partnership with relevant stakeholders as a result of her experience. Her court is one of eight mentor courts from various parts of the US in this jurisdiction and she plays a key role in the training of other judges in setting up the more than 100 drug dependency courts now in existence across the country.

Dade County, centred on the city of Miami, with 2.5 million residents, has the fourth largest population of any county in the U.S. So far as child welfare cases are concerned, according to Judge Cohen over 90% of the parents involved have substance abuse problems and a significant proportion suffer from mental illnesses. Just as the underlying aim of treatment courts in the criminal justice system is to reduce or eliminate recidivism by treating drug abuse and addiction, the underlying aim in this court is to identify and treat the cause and effects of addiction. Thus the court takes a holistic approach and services address not only substance abuse but parenting, psychiatric and psychological care, housing, training and education, medical services, family planning services and assessments and interventions for abused and neglected children. The court handles around 300 cases per year and treatment is provided to the entire family according to each person’s needs.

The judge may refer any welfare case in which substance abuse appears to be an issue, to the Drug Dependency court. As noted above, this appears to be a factor in at least 90% of welfare cases. The decision as to which of the eligible families is accepted, is made by the Judge on the basis of greatest need for intensive supervision. Entry into the programme is voluntary, but once the parties have consented to participate they are required to comply with court orders and sanctions for non-compliance are set out and agreed to. In other words, a participant cannot decline to take up services required to be undertaken in the case plan. Judge Cohen stresses that she cannot promise family unification for those who participate in the programme, but that such people do have a better chance of achieving that outcome.

Participants spend between 12–15 months on the programme and appear in court regularly throughout that period. Most participants commence in residential treatment and are required to attend court only once per month at that stage. If they commence in an outpatient intensive supervision regime, they attend court once per week. In the latter part of the programme, clients attend every two weeks and then once per month. In the last three-month phase, the parent does not attend court so ensure that a co-dependency between the himself or herself and the court, which has inevitably developed, is broken.

Throughout the programme the participants are required to contact the Drug court specialist daily, to undergo twice-weekly drug testing and to regularly attend Alcoholics Anonymous or Narcotics Anonymous. In order to graduate the participant must complete all aspects of the case plan. For example, mental health treatment (including medication) must be complied with, counseling or other treatment for parents who have been the victims of sexual or physical abuse must be undertaken and orders removing persons who have a negative influence on the family such as violent or drug-affected partners must be complied with. Parents are also required to undergo parenting classes, obtain suitable housing, obtain employment where possible and seek family planning services.
The staff attached to this court are trained specialists in substance abuse and mental health. There is also a nurse who meets with participants on site at the courthouse on each court day and during the week to assist with ongoing health problems. The addiction specialists undertake the drug and alcohol and mental health assessments and develop a comprehensive case plan for each participant. Substance abuse treatment providers are required to report on the progress of clients to the court and cannot release clients from treatment without the consent of the court. The court also employs psychologists who supervise the addiction specialists in engaging parents and their families to participate in their case plan. The aim is to follow a therapeutic model in which addiction specialists not only report on compliance, but interact therapeutically with and advocate on behalf of the parents.

Although Judge Cohen recognises that relapse is part of the disease of addiction, a participant is required to be held responsible for compliance with his or her case plan. Accordingly, non-compliance is swiftly dealt with by the application of sanctions that consist of the imposition of community service, increased treatment or incarceration. Prior to entering the programme parents sign a contract agreeing to incarceration of up to 15 days in respect of certain non-compliant events occurring. In the event of one of the breaches requiring incarceration, the sanction is simply applied without a hearing. This power has rarely been used by Judge Cohen and is only applied when less severe sanctions have been previously applied. All parents in the court are legally represented but lawyers are only required to attend court if the participant has been non-compliant.

As noted above, the aim of the court programme is to offer services to the entire family with the goal of achieving total lifestyle change to ensure the safety and well being of the children of the participants. Accordingly, a whole range of services are offered to children from infancy to 18 years of age through an early intervention centre which operates in collaboration with the court.

The day I spent with Judge Cohen was the last day that she was sitting in the court after having been the presiding judge since its inception. Each of the cases dealt with represented an example of the highly complex nature of the problems faced by clients in the child welfare court system. As Judge Cohen is recorded as saying “substance abuse is only one aspect of the psychopathology that impairs families in the dependency system”.7 If the measure of success of the court is represented by the number of clients who have been able to transform their lives through the support of the court to a degree that they are able to gain and maintain custody of their children, then it would appear that there is anecdotal evidence to support the success of the programme. Judge Cohen is also reported as expressing the view that even failure to comply with the court programme can be seen as a success if the parents’ lack of commitment can be determined early, as a permanent alternative placement for the child can then be proceeded with expeditiously.8.

The success of this court is due to a number of factors, with the most significant being the close collaboration of all key players, the quicker and more intensive provision of services, the quality of the relationships between participants, treatment providers and addiction specialists and the close and constant supervision and support by the judicial officer. Finally,

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7 Nancy K Young PhD, Sidney L Gardner, PPA, “Navigating the Pathways: Lessons and promising practices in linking alcohol and drug services with child welfare” 2002. SAMHSA Publication No. SMA 02-3639 Rockville, MD: Centre for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, April 2002 at p88
8. Young and Gardner, Note 7 at 87
this court “represents a new concept in therapeutic justice [as it] has increased the morale of all system players, especially the DCF (child welfare) workers who, for the first time, see the dependency process contribute to making families healthy and creating safe permanent homes for children.”

In Australia, the problems associated with child welfare cases are strikingly similar to those faced in the U.S. It is also likely that concerns about the effectiveness of traditional approaches taken by courts and child welfare agencies in response are also similar. I was impressed with the approach taken in the Miami dependency court by Judge Cohen and in my view consideration should be given to adopting a similar model in jurisdictions that deal with child welfare in Australia.

4.7 Domestic Violence Courts

4.7.1 Background and Domestic Violence Courts Generally
Domestic Violence courts are new players in the system. Although an awareness of the pernicious nature of domestic violence and its effects upon victims and the community has been present for some time, the judicial system has been slow to respond. In particular there has been a lack of understanding of the complex nature of domestic violence. The consequences were and in many place remain, that successful prosecutions of perpetrators are too rare and the safety of many victims continues to be jeopardized.

Those working within the judicial system in the US have been looking for new ways and means for solutions to these problematic cases. The solution has been the creation of domestic violence courts and in the US today there are literally hundreds of such courts. In many jurisdictions integrated family courts have been created where the single judge handles the criminal prosecution, civil protection and family law issues that affect a single family, whilst others have also implemented a model whereby the court monitors the progress of defendants and also ensures that services are provided to victims. The aim of both approaches is to ensure offender responsibility and enhance victim safety. Although I visited some courts which fit the former description (and indeed was impressed with many features of the District of Columbia Domestic Violence Court in particular, including an innovative programme in which victims could make application for a protection order via video-link from a major hospital), my interest was primarily with those domestic violence courts which had programmes implementing the latter model. The three courts that I visited, in which judges had programmes implementing the latter model were in Brooklyn, New York and California.

4.7.1.1 Batterer Intervention Programmes
All of the courts I visited involved the supervision of offenders whilst they undertook programmes in which therapy was provided in respect of their behaviour. It is interesting to note that participation in these programmes, (as with most of the treatment programmes referred to in this report) is paid for by the offenders themselves.

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8 Nancy K Young PhD, Sidney L Gardner, PPA, “Navigating the Pathways: Lessons and promising practices in linking alcohol and drug services with child welfare” 2002. SAMHSA Publication No. SMA 02-3639 Rockville, MD: Centre for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, April 2002 at p88-89
In order to appreciate the court supervision programmes, some background needs to be provided about the nature of the issue and the intervention programmes themselves. Although the expression “domestic violence” can refer to any harm including emotional, psychological or physical harm inflicted by a family member upon another family member, the expression is used in this case to describe physical harm inflicted by a person (almost always a male) upon his intimate partner.

Programmes to “treat” these offenders began in the 1970’s at the same time that community awareness of domestic violence was first being raised. Particular types of programmes to deal with these men, that are known in the US as "batterer intervention programmes” gained prominence in the 1990’s, especially those following the so-called “Duluth” model which was developed in the town of that name in the State of Minnesota. Some programmes rely on consciousness-raising techniques in an effort to resocialise men’s behaviour toward women, whilst others are more psychodynamic in approach, assisting men to explore their feelings rather than their attitudes or behaviour. The Duluth model takes aspects of both methods, but can best be described as a gender based cognitive-behavioural approach. The programme is centred on group therapy sessions in which men come to understand that domestic violence is an expression of their desire to maintain power and control over their partners and are taught how to change their behaviour. These programmes are to be distinguished from anger-management, which, although having some usefulness in reduction of violence in other contexts, does not appear to be appropriate to reducing recidivism amongst perpetrators of domestic violence. These programmes are also to be distinguished from couples counseling which is also not regarded as appropriate for the majority of domestic violence offenders.

4.7.2 Brooklyn Felony Domestic Violence Court

Judge D’Emick who supervises offenders in the Mental Health court also is the presiding judge in the Domestic Violence court, another division of the Supreme Court of Kings County (Brooklyn). This court was created in 1996 as the first domestic violence court in the State of New York and has court has jurisdiction over any felony case involving domestic violence. The mission of the court is “to create an effective and coordinated response to domestic crime through intensive defendant monitoring, increased victim access to services and safety planning and extensive collaboration with a network of community justice and community based agencies.”

Features of the court include many which are common to specialized courts such as a single presiding judge, a consistent trained prosecution team and staff who maintain contact with service providers and keep the court informed of the defendant’s compliance or otherwise. The efficiency of the court is greatly enhanced by the court’s sophisticated computer system, which enables the judge to electronically create protection orders from the bench, which are then automatically placed on the State-wide registry and to monitor defendants.

Judicial monitoring of the defendants commences from the outset. After arraignment (the first occasion the defendant comes before the court) and his release on bail, the defendant is required to return to the court every few weeks prior to entering a plea, so that the court can ensure that he has not breached the protection order made in favour of the victim and that he

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9 Pamela Young, ‘An Informed Response – An overview of the Domestic Violence Court Technology Application and Resource Link’ 2001, Center for Court Innovation, a public private partnership with the New York Unified Court System
has enrolled in a batterers programme even at a pre-plea stage. This is the beginning of the process of holding the defendant responsible for his behaviour and ensuring the safety of the victim, which are key to successful intervention.

When the defendant pleads guilty or is found guilty, if he is not sentenced to gaol, a common disposition is a probation order, which is then intensively monitored by the court and the probation department through its Intensive Supervision Unit. So far as probation supervision is concerned, the defendant is required under this scheme to attend the Unit’s office twice a week, participate in a batterers intervention programme and probation officers make random checks of his home and place of employment. Further, the probation officers monitor compliance with protection orders, maintaining contact with the complainant to ensure that there are no further domestic violence incidents. All of this information is relayed to the court via the computer system.

The court supervision consists of the defendant attending court every four to six weeks for at least a year and on each court appearance a representative of the Intensive Supervision Unit provides a report on the progress of the defendant. In addition, the court’s computer system connects it with criminal justice agencies and social service agencies. By means of this technology, the court is linked with all stakeholders and is able to access up to date information concerning compliance with batterers programmes and compliance with protection orders, Judge D’Emick is of the view that it is this level of supervision rather than the content of the intervention programmes themselves which has resulted in a violation rate of 17.5% of probation orders amongst this offender group, as opposed to a rate of over 50% in the general population of felony offenders in the same county. Research concerning the effect of the batterer’s programmes suggests that the programmes alone only have a limited effect on deterring violence and that a significant effect is only achieved when the intervention programmes are a part of an intervention "system", including court monitoring.  

For this reason, in the Brooklyn court “batterers programs are used by domestic violence courts primarily as a monitoring tool rather than as a therapeutic device”.  

Another indicator of success of this court programme is the degree to which victim safety has been enhanced by the provision of services such as housing, job-training and safety planning offered through the court system to the victims. All victims are assigned an advocate to assist in relation to explaining the victim’s role in the judicial process, and keeping the victim informed of the progress of the matter. The Brooklyn Domestic Court statistics indicate that many more guilty pleas result from the use of this scheme, representing a significant saving to the system.

Numerous other domestic violence courts have now been established in New York following on the experience in the Brooklyn Court. The successful features of the system are regarded as the provision of victim services including the allocation of an advocate, the level of judicial monitoring and supervision to ensure accountability and the coordinated nature of the response with all community stakeholders.

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11 Robyn Mazur and Liberty Aldvich “What Makes A Domestic Violence Court Work? Key Principles”, 2002, Center for Court Innovation, a public/private partnership with the New York State Unified Court System at p11
4.7.3 Harbor Justice Center Domestic Violence Court (Orange County, California)

This court which is part of the Orange County Superior Court has jurisdiction over all felony and misdemeanor cases involving family violence from commencement to completion, including judicial monitoring of bail or probation orders, the issuing and enforcement of protection orders and any subsequent criminal prosecutions which arise as a result of breach of those orders.

In addition there is an innovative programme of additional judicial monitoring of services provided to offenders, victims and their families in cases in which there has been a domestic violence incident within a relationship where there are children. This programme has been developed by the presiding Judge, Judge Pamela Iles and has been in operation since mid 1998. Her aim in creating such a programme is to reduce recidivism and ensure victim safety, in particular in relation to the “hidden victims”, the children. As with all such programmes I observed, there is no legislative framework, but the Judge simply developed her own practices and procedures.

All participants in the programme have entered a plea of guilty (99% of participants) or have been found guilty (1%) and all are placed on supervised probation orders. The probation orders are supervised by the Judge who is assisted by a multi-disciplinary and multi-agency team which meets two times per week and reviews all of the clients on the programme, being around 150 defendants, their partners and children.

Under the programme, services are offered to the victim and the children in the relationship from the first occasion in court, which is required to be within 5 days of the arrest. Although the Judge recognises that she has no power to compel a victim to accept services, she will only allow an alleged perpetrator back into the family home if the victim accepts services, and in particular participates in a victim education and support group. This approach is considered controversial by many victim advocate groups who feel that any coercive powers being applied to a victim “revictimises” her as it tends to suggest that the victim’s conduct is part of the problem.

Under the programme, psychological and other services are also offered at the outset to children living in a household where a domestic violence event has occurred. Whilst the children are monitored by the “team” throughout the programme, these progress reports are not provided to the judge. An additional feature of the programme is monitoring of protection orders by law enforcement officers, who report to the Judge about compliance.

The defendants are required not only to attend batterer’s intervention programmes, but also to actively participate in them. Reports concerning a defendant’s participation are provided by the service providers and if the defendant merely attends but does not actively participate, this is regarded as a breach. Defendants are also required to attend alcohol and drug treatment if necessary, and some such programmes also include a parenting component. It is estimated by the Judge that around 20% of the defendants participating in the programme suffer from mental illness. These defendants are required to attend regularly upon a medical practitioner who completes a document on each occasion, indicating whether he or she has complied with treatment, which is provided to the court.

The team which oversees the compliance of the defendant with court orders and the services provided to the victims and child household members is made up of representatives of the
probation service, the health care agency, the social services agency, law enforcement, child protection services and victims advocacy services. They meet under the direction of the court staff coordinator. The team makes recommendations to the Judge (who does not attend their team meeting) and generally the Judge acts as recommended.

The defendants attend court every 90 days unless there is a breach of the programme or of the protection order, in which case they are immediately required to attend court. Prior to court, the judge discusses each of the day’s cases with the court staff coordinator and the defendant’s legal representative and an agreed course of action is proposed, which so far as I could determine, was then implemented by court order without further input by the defendant or legal representative.

The Judge paid particular attention to strict compliance with court orders. For example, if the defendant is ordered to have not contact with the victim and he attends court with her, bail or the probation order is immediately revoked. Similarly if the defendant does not actively participate in programmes or otherwise does not comply with the terms of his release or probation order, sanctions are imposed. The sanction may be a sentence, for say 30 days, which may be suspended upon him complying with a new order. Whilst a certain number of breaches may be tolerated, the Judge in this court and in domestic violence courts generally does not consider repeated non-compliance in the same way as non-compliance in drug courts where relapse is regarded as part of the disease of addiction. It is clearly recognised that defendants who commit repeated acts of violence, cannot be considered as suffering from a disease. In the same way, whilst successful compliance with the programme results in praise, rewards or incentives are not offered, as this would be inappropriate in this setting.

Following the period of intense supervision by the Domestic Violence Coordination team and the court for a period of 12 months, the offender continues to be subject to a probation order usually for a further two to four years, which is not intensely supervised. As the Judge also presides over the entire domestic violence court, she has been able to compare the recidivism rate for those offenders participating in the intense court-supervised programme with those on usual probation orders. She notes that whilst the recidivism in this latter group is around 50%, around 65% of the intensively supervised offenders commit no offences in breach of their probation orders. Of the 35% who do re-offend, 25% commit offences of breaching protection orders, 3% commit general offences and only 7% commit a new domestic violence offence. Further, as noted earlier although recidivism is a significant indicator of success, an even more significant indicator is considered to be the extent to which the victim safety is enhanced. Judge Iles believes that her programme with its strong emphasis on victim and family services certainly offers a better alternative than traditional court programmes.

### 4.7.4 Long Beach Domestic Violence Court.

The Domestic Violence court presided over by Judge Deborah Andrews, which is also located in Southern California, represents quite a different approach to that taken by Judge Iles. Judge Andrews developed her approach as a result of her dissatisfaction with the prevailing system of placing offenders on probation orders, which were supervised by the Probation Department and having reports provided by that Department to her each twelve months. These probation orders did require the offenders to undertake batterer’s programmes but did not offer any other social support services, which the Judge believed were key to successful rehabilitation. She also soon realised that a report to the court 12 months after probation commenced was too lengthy a period, and believed that the sooner a report made, the sooner the offender would engage in complying with the order.
The Judge then developed the programme, which involves early and continuing reports being provided directly to her (i.e. not via the Probation Department) as to compliance with the court order. This is known as “informal probation” and occurs by means of the offender himself bringing the progress reports from the service provider to court at each of his attendances, which occur every sixty days.

The programme operates as a sentencing measure, with all participants pleading guilty or having been found guilty. Each offender is sentenced to a term of imprisonment, which is suspended and a probation order for a period of three years is imposed. Compliance with this order is monitored by the court during the completion of the programme which usually takes 12 months. Under the programme the defendant is required to attend a private fee-paying batterers intervention group at his own expense, being weekly group therapy sessions over a fifty-two week period. Further each participant is required to make a donation to a victims’ service such as a women’s shelter, pay a fine, pay restitution to the victim, pay an administration fee to the court for the cost of monitoring and undertake community service. Finally in all cases the court is required to make a three- year protection order prohibiting all contact between the offender and victim. These components of the sentence are mandatory under Californian law for all domestic violence offenders.

Most offenders are also required to attend Alcoholics Anonymous twice weekly for at least 26 weeks and provide proof of attendance. As the method of supervision is informal, that is directly to the Judge, she specifies exactly which programme is to be completed and in the case of alcohol rehabilitation programmes, even the exact mode of treatment is specified.

On the day I attended at this court I observed matters at all stages including a defendant entering a plea of guilty and being sentenced and defendants reporting to court for compliance checks. Rather than tendering a statement of facts and the criminal history to the court and having the court frame the sentence, the judge simply relied upon the “anticipated disposition” which had been proposed by the Prosecutor and agreed to by the defendant’s lawyer, and imposed the sentence accordingly. This procedure was followed in almost identical terms in all courts I observed, and represents a radical departure from the judicial discretion exercised by judicial officers and the role of Prosecutors in the various Australian jurisdictions.

I also observed the judge encouraging offenders for apparent successful progress or completion of the programme, though overt praise and applause was not given. The Judge drew a distinction between this court and a drug court where offenders are regularly tested for drug use, enabling a court to know with certainty that orders are being complied with. In a domestic violence court there is no certain method by which the court can be satisfied that an offender is not continuing to act violently. There are also no “graduation” ceremonies for those who satisfactorily complete the programmes as the cessation of violence is not analogous to the overcoming of the disease of addiction.

The Judge allows a participant to miss up to 3 meetings per year without being regarded as being in breach. She did however, take a strict approach to breaches stressing that there is always a consequence for such behaviour. Generally she ordered a participant to undertake more weekly meetings or further community service may be ordered. In an extreme case the offender may be required to begin the entire course of meetings again. In the cases of re-offending the probation order is revoked immediately and a warrant is issued for the arrest of the offender.
Monitoring of court orders in this court is done manually by the judge who does not have access to a computer system as is the case with other specialist courts. Further, the county does not keep records of the offenders after they complete their order and the Judge is not certain whether the programme is effective in reducing recidivism. She believes that the programme is successful as in her view strict judicial oversight does make a defendant more likely to comply with a court order. The Judge also said that the success of the programme is also supported by anecdotal evidence, which suggests that early supervision by the court and a range of affirmative orders such as donations and community service as part of the programme are key in that success.

4.8 Community Courts

The emergence of Community courts in the US context and to some extent the approach taken by judicial officers in them cannot be regarded in Australia as revolutionary, as is the case in the US. This is because the development of these courts is in part due to the abolition of the Magistrates courts in the US, which continue to play a central role in the judicial system of all Australian jurisdictions.

The first community court to be created was the Midtown Community court in New York City in 1998. The court developed from the sense of frustration felt by those who lived and worked in a community in which a high rate of low-level crime occurred, and where the justice system was seen as remote from and not responding to community concerns. The idea of creating a judicial system that responds to the needs of the community, that is “community justice”, emerged from the concept of “community policing” which was being applied in New York City at the same time as a more effective way of addressing neighbourhood crime and disorder.

To a certain extent the creation of this court was a return to an old model, the Magistrates courts, which had been closed in 1962. Although closing these courts did result in a more efficient judicial system, it also resulted in one that was more remote from the community. In particular few resources were devoted to minor crimes such as offensive conduct and prostitution, which although trivial, can have a major impact on the quality of life of those who reside or conduct business in the community. Typically these offenders received short gaol terms or fines that were most often unpaid. These sentences had no effect upon the offender’s rehabilitation nor did they serve the needs of the community itself, which was the victim.

4.8.1 Red Hook Community Justice Center - Brooklyn, New York

Following the establishment of the first community court, the idea has spread across the US. The community court I visited, Red Hook Community Justice Center in Brooklyn New York is situated in the heart of a low-income, depressed and crime –ridden neighbourhood, and its existence has been key to restoring the community. The court has jurisdiction over a range of civil, family and criminal matters that each have a connection with the neighbourhood, but would ordinarily be heard in different courts. It is felt that by combining these jurisdictions into one court, the judicial response to problems can be swifter and more coordinated.

In the criminal jurisdiction, the Judge follows the model that operates in drug courts. That is, he tries to come to an understanding of the problems that lead to the commission of the offending and seeks to address them by monitoring and supervising the offender in various
programmes. Drug treatment, and educational programmes, health and housing services can all be incorporated into sentences, which are monitored by the judge beyond disposition. Many of the services are available on site at the courthouse which, as is the case of all community courts, is a state-of-the-art building, reflecting the goals and values of the court. On the day I observed the Red Hook Court, which is housed in a former school building and serves a focus point for community renewal, I observed literacy classes, excellent child-minding facilities for court users, job-training, drug treatment and domestic violence counseling facilities onsite.

In addition to the imposition of sentences aimed at addressing the offender’s criminogenic factors and the supervision of such sentences, the court is also conscious to address the need of the victim, being the community itself. Many sentences are orders to perform community service, which is highly restorative to the harm done. For example, the performance of community service involves removing graffiti, cleaning subway stations and planting trees. The community service office is also located in the court building and whenever a community service order is imposed the defendant is required to report immediately to the office so that arrangements for the commencement of work can be made. Court staff has found that there is greater compliance rate with orders where immediate reporting is required. As treatment and social services facilities are also located onsite and defendants are also required to report to those facilities and engage in services at an early stage, there is likewise a higher degree of compliance with these orders.

It is apparent that this court serves as a source for social change and community renewal as there is an obvious high degree of relevance between the court and the community it serves. In this way the court has actually moved beyond an immediate addressing of the legal matter that brings a person before the court but is able to make a wider contribution to the entire community. As expressed in a brochure produced by the Center for Court Innovation the principles (of a community court) are well worth pursuing: a court that realizes them well becomes a powerful investment in the future of neighborhoods and the credibility of law”.

3.9 Conclusions

In general, it is important to bear in mind that responses that have been developed in the US to problems which appear to be similar to those encountered in Australian jurisdictions may not necessarily be the most appropriate in the Australian context. As can be seen in this report, although the two legal systems are similar in many regards and are both part of a common law tradition, there are many fundamental differences between the Australian and American systems including mandatory sentencing which must be applied in the latter. This may mean that some features of the specialist courts are more appropriate and easier to implement in the US. Further, Australian courts are created under Federal or State law, and a “county” court equivalent does not exist. It is in these county courts in the US that individual judicial officers are able to create specialized programmes (which are referred to as “courts”), in response to the needs of those particular communities. Judicial Officers in this country do not have the same ability to implement local programmes and generally, though not always, specialist courts such as Drug Courts have been created under statute.

Notwithstanding the comments I have just made, there remain many lessons to be learnt from the US experience. So far as Drug Courts are concerned, as the experience with this model is

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12 John Feinblatt and Greg Berman, 1997 “Community Court Principles-A Guide for Planners” at p 11
more extensive in the US, there are likely to be some changes and modifications which have been made in those jurisdictions which should be noted by similar courts here and implemented if appropriate. Further, there are a number of short-term programmes being implemented in Australian jurisdictions in which the court is involved in supervision and monitoring of drug offenders in treatment. In this regard it may be worthwhile to consider some of the features of supervised treatment models in the US that I have noted in this report. For example, all of the treatment programmes were of a more lengthy duration than some of the short-term programmes in this country, and there is evidence from at least one court review that the success rates for offenders undergoing short-term treatment are significantly less compared with long-term regimes. Further, a common feature regarded as integral to the success of all treatment programmes in the US whether short-term or long-term, is very regular urinalysis so that the court can be absolutely certain of compliance whereas in short time programmes regular urinalysis is usually not undertaken. I was also impressed with some of the features which ensured that the programmes were available to a wide cross-section of defendants, including those who may work long or unusual hours, such as the lengthy opening hours of testing facilities, the on-site location of testing facilities and the availability of counseling and other treatment after hours.

It is also possible to include many of the features of the specialist courts in the US, in court programmes in Australian jurisdictions without the need for special legislation. Legislative provisions, which allow for sentences to be deferred for a lengthy period of time, can be utilized to give the defendant an opportunity to participate in programmes to assist in rehabilitation. This can be monitored by the court by means of adjournments, and compliance can be ensured by means of bail conditions.

In my view consideration should also be given to the creation of further specialized courts in Australian jurisdictions. The experience in drug courts in the US and in this country has shown that drug court programmes are an effective means of reducing substance abuse and offending. Based on this experience it is worth considering whether a similar model implemented in other contexts should be tried. In particular, it would seem worth considering in respect of domestic violence offenders, offenders who suffer from mental illness and in child welfare courts. In the domestic violence context, it would seem that in the US the success of these courts is as much due to the court providing services to victims as supervision of offenders which represents a significant change in emphasis. However, as noted in this report, the approach taken in drug courts also involved a number of fundamental changes particularly in the continuation of the role of the judicial officer beyond disposition, the incorporation of the judicial officer in the treatment process, the multidisciplinary team approach and the relaxation of the adversarial process. Those involved in the criminal justice system were able to recognise that a new approach was needed due to the failure of that system to combat the drug problem. The time may also have come to consider trying this approach to combat other problems that may not be successfully dealt with under the traditional criminal justice system including the problems of domestic violence and offenders suffering from mental illness.
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