

# In Chambers

A close-up photograph of a wooden gavel resting on a red leather pad. The gavel is positioned diagonally, with its head in the foreground and its handle extending towards the background. The lighting is dramatic, highlighting the texture of the wood and the smooth surface of the leather. In the background, a stack of books is visible, adding to the judicial theme of the image.

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The staff of In Chambers strives to provide current information about national and local judicial educational issues and course opportunities for Texas judges.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for In Chambers. Contact Staci Priest, Publications Coordinator, by calling 800-252-9232, faxing 512-469-7664, or e-mailing stacip@yourhonor.com.

## *In Chambers*

Volume 34, Number 1, Spring 2007

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# JUDGE MENTALITY

## Recovery Courts and Character Changes

### How Jail Plays a Role in Recovery (Part 2)

by Judge K. Michael Mayes, 410th Judicial District Court

**CONTINUED from the Winter 2006 edition of *In Chambers*.**



#### **JAIL SHOULD BECOME AN ALLY AND A FRIEND**

Jail should become an ally to the court and a friend to the addicted defendant. I remember a 45 year old alcoholic that had drunk for years. Call him Rodney. I knew his wife and she asked me to talk to him soon after he was placed in our jail. His wife had refused to bail him out when he was arrested for DWI. That alone had gotten his attention and the jail time had started him to thinking about a real recovery. I talked to him by video conference from the jail to my courtroom.

"Well, Rodney, where are you?" I asked.

"I am in jail," he said.

"No, I mean, where are you?" I repeated.

"Well," he began, "I'm tired. I don't know if my wife will let me back home and I don't know if I have a job. I am lost."

"You want out of jail?"

"I will do anything to get out of here."

"Anything?"

"Anything."

"Even stay in jail until I say you are ready to go home, until I say you have found your new beginning?"

"Yes."

"Then I say you stay in there until we can get you an appointment with a professional counselor out here. We will talk again before the appointment and we will decide if you are really

ready. In the meantime, write a letter to your wife and talk about what is in your heart. Write your kids and tell them too. Not short letters, but ones from your heart that clean the slate about who you really are."

"Who I am?"

"Yes, you are an alcoholic. Tell them. And tell them you are not leaving jail until you are ready. And don't ask me when that time will be. I don't know. But trust me; we will both know when that time is here."

This man saw his assigned Judge a week later, and that Judge, not knowing about our conversation, told him he was going to release him on bond since he already had served more time than most DWI defendants serve for their first offense. But when he was told this, Rodney refused.

"Judge," Rodney said, "I have committed to Judge Mayes and to my family to stay in jail until I am really ready. I am not ready. Please do not release me yet."

Rodney stayed in jail a full 21 days. When he was released, he started on a recovery that is still strong today. While in jail, he found a sense of needing to stay there, to prove to himself and to others that he could keep his word and that he had earned the right to be given a chance at recovering. He wrote the letters and he read assignments on addiction and spirituality. After 21 days he and I agreed that he was ready and he was released from jail.

This type of acceptance is not uncommon among drug abusers, old and young alike, when they are jailed and especially once their bodies have been cleaned out through a forced

abstinence. One teen I will call Carl had a video session with me from jail. I asked him to begin working on his addiction through reading and writing. At first he refused since he was still mad for being detained over his relapse with Xanax pills. But just a few days later, after time for reflection and writing assignments that required him to delve deep into his inner emotions, Carl was brought before the regular Juvenile Court Judge. He asked the Judge to let him stay longer because he needed to work on his thinking and be truly ready to confront the world outside.

These were not persons with unusual fears; these were addicts who began to accept that they were eaten up with their own rationalizations. Jail became a friend through which they rediscovered what was important to them. They realized while in jail that they needed time to gain strength through knowledge so they could face the world and its challenges in an honest way. They also were addicts who came to healthy realizations, ones they never would have reached if they had not been jailed long enough to clear their thoughts from the cloud of chemicals. It was as if they needed a hiatus from the real world, the world that was so painful to them, so they could stay sober long enough to begin thinking rationally and not addictively.

Rational thinking does not come to an addict overnight, it takes time. Rational thinking does not come from jailhouse conversion experiences, though that may also happen with some. What I observe in Recovery Court cases are realizations by the

*See "Judge Mentality" continued on page 9*



# PROBATION: Alternatives to Recidivism

## by Judge Jim D. Lovett, 6th District Court

Based upon the figures in the article entitled Rejuvenating probation by Dr. Tony Fabelo published in the May-June 2006 edition of The Texas Prosecutor, each felony probationer who is revoked incurs housing costs of \$14,621.00 per year. In 2005 there were 25,639 revocations costing Texas \$1.124 billion.

Based upon these figures, the corresponding annual savings in housing costs for reducing recidivism are substantial – hundreds of millions of dollars:

10%	=	\$112,000,000.00
20%	=	224,000,000.00
30%	=	336,000,000.00
40%	=	448,000,000.00
50%	=	560,000,000.00

Dr. Fabelo is working with the Travis County CSCD on a state program to determine how to rejuvenate probation departments so they can reduce recidivism and increase public safety. In this connection he has studied both Travis County and Dallas County CSCD operations.

Meanwhile, as early as 1997 the 6th District CSCD in Lamar County accepted mandates to

- 1). Protect the public;
- 2). Secure full restitution to the victims and to the public;
- 3). Reduce recidivism.

Dr. Fabelo's article indicates that the future in probation embraces more intensive efforts towards rehabilitation and more training for probation officers to accomplish that objective. Following the above mandates the 6th District CSCD, under the leadership of Director Bill Hale and his predecessor, Gary Marlowe, on its own initiative,

studied and implemented an innovative horticultural therapy program that has since proven to reduce recidivism. Since we are all looking for better ways to utilize our budgets and cut the costs of crime, you may find the experiences in the 6th District CSCD of interest to your probation office operations.

The first statistical study in the 6th District CSCD office was of its horticultural therapy program conducted by Kansas State University. The program protocol was designed by Dr. Richard H. Mattson, Director of the Horticultural Therapy Program at KSU, a leading authority both nationally and internationally. Pursuant to Dr. Mattson's protocol, eight comparative classes of horticultural therapy were conducted between 2001 and 2003. The study and tabulation of the thousands of tests generated by the protocol was completed with results reported by the 6th District CSCD at the American Horticultural Therapeutic Association's annual conference in East New Brunswick, New Jersey in 2005. This report was enthusiastically received by therapists from many areas of the world and the report was later reprinted in the American Horticultural Association Therapy's Journal of Therapeutic Horticulture, XVI, 2005, pg 38. The study proves 23% reductions in recidivism. Even greater numbers are anticipated as the program is honed toward optimal efficacy. These results translate to a potential savings projected statewide of more than \$250,000,000.00 per year for Texas.

The horticultural therapy program

has been supplemented with a butterfly cultivation program in which several probationers are currently being trained. Of considerable side interest to the probationers in the program, graduates can enjoy a part-time occupation that produces substantial personal income. Monarch butterflies are currently selling in the range of \$10.00 each and are popular for release at weddings, birthdays, anniversaries and other special occasions. The butterflies produced by the 6th District CSCS program will be released in public areas of Lamar County where appropriate butterfly plants are growing – making a unique contribution to community beautification.

Currently the office has completed its first comparative classes in cognition designed by Dr. Randy McBroom, Special Assistant to the President of Texas A&M University, Commerce. In this study three classes were constituted with one studying Moral Reconciliation Therapy (MRT), one studying Thinking For Change (TFC), and one class with no study (control group). Tests have been administered to all three groups according to the protocol and the early results show improvement in the range of 12% – 15%. These were experimental programs in which the instructors were also learning. It is expected that future results will show increased percentages of rehabilitation. It is also the consensus of professionals that cognitive changes hold the secret to reducing recidivism.

In 2004 a special version of the Ambassador Program was designed for the 6th District CSCD by Paris Junior College President, Dr.

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Pam Anglin. The program enrolls probationers in courses at PJC and provides opportunities for Associate Degrees. For those who did not finish public schools, GED certificates are required by the 6th District CSCD and can be earned at PJC. Additionally, two years toward an academic education is available. Funding for the probationers to attend PJC is arranged by the college with no direct expense to the probation office. Currently there are probationers enrolled in classes studying Heating/Air Conditioning, Cosmetology, Welding and academic courses. Anecdotal evidence indicates markedly positive changes in cognitive behavior among this group that should substantially reduce recidivism among that group. Follow-up recidivism studies are planned on these groups for several years.

Currently the 6th District CSCD program is being augmented to educate selected probationers as dog trainers. Dogs are selected from the City of Paris Dog Pound and thereby saved from euthanization. This program will provide a steady supply of trained dogs for the public and personal income for graduates, while reducing the number of dogs that must be euthanized. The trained dogs from the program will be donated to infirm citizens who need a proper companion or returned to the City Dog pound to be sold for their own financial benefit. It is believed that this program will also provide reductions in recidivism. Texas A&M University, Commerce, is designing the research protocols for evaluation of this group.

And how does the office encourage positive participation in these programs? Credits are given against the probationer's required

community service hours, sometimes twofers, sometimes bonus hours for outstanding work, and in special cases even early termination and removal of the probationer's criminal records for achieving appropriate goals. Incentives work! And the ordinary programs such as cleaning up highways and helping in local construction projects continue. Indeed, all probationers start in menial programs with the promise of better things to come with improved conduct and attitude.

The 6th District CSCD has been encouraged by studies from the National Institute of Corrections, U. S. Department of Justice proving that

*"...the corresponding annual savings in housing costs for reducing recidivism are substantial – hundreds of millions of dollars."*

- Punishment increases criminal behavior by (-)0.07%
- Treatment decreases criminal behavior by (+)15%
- Cognitive corrections decrease criminal behavior by (+)29%

Judge Dennis A. Challeen said it well: "A criminal's faulty belief system must be changed from within. Punishment from without may serve society's need for retribution and temporary security, but does nothing to change a criminal's erroneous view of the world."

In support and furtherance of these programs, the 6th District CSCD utilizes intake studies to classify each probationer and match programs with individuals. The three classification categories are essentially identical with those suggested by Dr. Fabelo. One surprise in the intake tests was an unexpectedly high threat of imminent

violence in a significant number of the probationers.

In further support of the 6th District CSCD programs, the office has utilized its own Administrative Hearing program on technical violations since 1997, resulting in fewer filings of Motions as well as revocations. Under this program the supervising probation officer has discretion to forgive one technical violation. Commission of the second technical violation requires the probationer to attend an Administrative Hearing conducted by the Director or Assistant Director and explain the violation. The hearing officer determines whether or not there was a violation, whether it should be excused, once again explains the terms and conditions of probation, and warns the probationer of the possible consequences of future violations. The second Administrative Hearing with a proven violation requires that sanctions be imposed

by adding hours to community service. A third hearing with a proven violation requires jail time. As many as 30 days up-front jail time may be assessed by the hearing officer and approved when there is just cause, the punishment is accepted by the probationer and approved by the Court. The probationer is given the right to reject the administrative punishment, in which event the probation officer is required to file a Motion to Revoke/ Adjudicate. Anecdotal evidence shows that the sooner after the violation the hearing is ordered, the more effective the procedure. Privately engaged attorneys are encouraged to attend. If the sanctions ordered by the hearing officer are accepted by the probationer an Agreed Order of Modification of Probation is presented to the Judge for approval. The records show that about 200 hearings were held between 9-1-05 and 9-1-06

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# Editorial: Judicial Activism

by Chief Justice Brian Quinn, 7th Court of Appeals

I stumbled upon another editorial about judicial activism the other day, this one by Thomas Sowell. The thought it sparked involved not so much ire as wonder about who activists really are. One of those “let’s define our terms” kind of thing.

I guess the stereotypical definition involves a judge who supposedly ignores the clear letter of the law and instead does what he wants.

This leaves me scratching my head, though. From my 12 years as a judge and 25 years as a licensed attorney, I’ve found little

clear about the letter of the law when it comes to applying it to the never ending and always different fact situations that arise. Gray is the prevalent color, not black and white, and anyone need only pick up a law book or read a statute to realize this. So, is a judge working in that gray area an activist because his decisions may vary depending on different fact patterns? I hope not.

What about our own Texas Supreme Court? Is it an activist body? Every so often its decisions deviate from past ones. It also has to write in areas where there is little to no law. Changing

and making law ... sounds a bit activist maybe? But, where’s the general public outcry? Could it be non-existent since its actions comport with prevalent business and political thought? If so, then maybe a “judicial activist” is just a synonym for a judge who’s perceived as straying from currently accepted views. Could be.

Instead, maybe an activist is

*Who and what is  
a "Judicial Activist"?*

nothing more than a judge who wrote something someone just disliked. For instance, I’ve been described as rather conservative and have written in many opinions how on precedent and statutes must be followed regardless of my personal views. That’s hardly activist. Yet, there was once a guy (the losing party) who described a particular decision of mine with an expletive and as an example of my “changing a 100 years of law.” That may be activism all right. The funny thing, though, was that I relied on existing law to reach my decision. If following established law can

be described as activism, maybe an activist really is just a judge who doesn’t do what a losing party wants.

Talking with one of these activists could help define who they are. I just don’t know where they hang out lately. But, before we start attaching names on anyone, let’s review a reasonable sampling of all the judge’s decisions not just one or

two culled from the pack. That way, we can accurately determine his true political bent and avoid labeling him the way some label soccer referees.

He’s great when the crowd likes the call and a bum when it doesn’t. Often, those adversely affected don’t care about actual track records.

I guess everyone has to be labeled and it’s easy to assign those labels. It just has me thinking about the accuracy of the label called “judicial activist.”



# NOMINATIONS COMMITTEE TO MEET IN MAY



The FY 2007 Nominations Committee will meet on **June 1, 2007** to slate officers and new members for the 2008 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors.

If you are interested in serving on either of these boards or recommending a name for nomination, please notify Judge Cynthia Kent, Chair of the Nominations Committee, in writing no later than **May 25, 2007**.

Letters of intent should be sent to the following address:

**Honorable Cynthia Kent  
114th District Court  
100 N. Broadway, Room 212  
Tyler, TX 75702**

The fax number is (903) 590-1626. In addition, please provide the Texas Center with a copy of your interest letter (Attention: Mari Kay Bickett).

The chair-elect position is open and must be filled by a District Judge for 2008. The chair-elect nominee for the Judicial Section will also serve as the chair-elect for the Texas Center. This position is a one year term.

In addition to the chair-elect position, three positions are open on the Judicial Section Board of Directors. They are:

- Two district judges
- A county court at law judge

Terms are for three years. The secretary/treasurer position on the Judicial Section Board is an appointed position.

Three positions are open on the Texas Center Board of Directors. They are:

- An appellate judge
- A district judge
- A county court at law judge

Terms are for three years. The secretary/treasurer position on the Texas Center Board of Directors is an appointed position.

## 2007 NOMINATIONS COMMITTEE MEMBERS

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1st Court of Appeals  
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Austin

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4th Court of Appeals  
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**Hon. Roger Towery**  
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**Hon. Laura A. Weiser (Ex-Officio)**  
County Court at Law #1  
Victoria

**Hon. Brian Quinn (Ex-Officio)**  
7th Court of Appeals  
Amarillo

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and only 2 probationers rejected the administrative punishment and went to court.

These types of programs and studies cannot be undertaken lightly nor achieved quickly. Recidivism study protocols must be properly constructed, fastidiously observed, and continued for periods of years. The 6th District CSCD has been engaged for nine years in developing these programs -- with positive scientific test results just beginning to be celebrated.

While it costs Texas taxpayers \$14,621.00 per year to house recidivists in prison, there is surprising and refreshing news from probation. The facts developed by the 6th District CSCD prove that

- For every \$1.00 the state invests in probation programs, CSCD collects \$1.13 in offender fees for supervision, victim restitution, court costs and fines.

- For each offender who remains in the community -- most of whom work productively, pay taxes, and support their family -- it costs taxpayers \$1.09 while the offender pays \$1.18 in fees for a total cost per day of \$2.27. This compares very favorably with \$40.06 per day for incarceration costs.

- Community Service workers in the State of Texas work for non-profit or governmental agencies 10.2 million hours per year with their services valued at \$52.5 million (calculated at minimum wage.)

- The 6th District CSCD provided a total of 40,886 hours of free labor to non-profit and governmental agencies in Lamar County, Texas valued at \$210,563.00 during fiscal year 2004.

Does Texas need more prisons? Perhaps, but if we can reduce recidivism it makes more fiscal and social sense to consider refurbishing our existing Community Service and Corrections Departments statewide. With sufficient state funds to

re-educate probation officers, to establish proper CSCD programs, and to establish local punishment facilities for errant probationers, a staggering amount of tax money can be saved. Should we not give proper consideration to these possibilities? Forthcoming results from the 6th District CSCD and Travis County CSCD studies will provide important

evidence. Our Governor and Legislature need these studies and test results to infuse economic sanity into the criminal management puzzle.

Until the State has adopted similar programs, the 6th District CSCD and the 6th District Judge will be happy to consult with anyone who wishes to consider them.

## Texas' Newest Administrators of Justice

As of March 12, 2007

**Hon. Fancy H. Jezek**  
Judge, 426th District Court  
Newly Created Court

**Hon. Manny Banales**  
Presiding Judge  
5th Administrative Region  
Succeeding Hon. Darrell Hester

**Hon. Mark J. Silverstone**  
Judge, 425th District Court  
Newly Created Court

**Hon. Orlanda L. Naranjo**  
Judge, 419th District Court  
Newly Created Court

**CORRECTION:** In the Winter 2006 issue of the *In Chambers*, we incorrectly stated that Hon. Michael Schneider of the 315th District Court was succeeding Hon. Graham Quisenberry. Judge Schneider is succeeding Hon. E. Kent Ellis and Judge Quisenberry is still Judge of the 415th District Court. We apologize for this error.



### DOES THE TEXAS CENTER FOR THE JUDICIARY HAVE YOUR CURRENT E-MAIL ADDRESS?

*The Texas Center frequently sends out important information via e-mail. To ensure you receive this information in a timely manner, please keep you e-mail current with us.*

*To submit or update your e-mail address, please contact Michele Mund, Registrar, at (512) 482-8986 or [michelem@yourhonor.com](mailto:michelem@yourhonor.com).*

addict or alcoholic that they have not been thinking normally but in a distorted way. This realization only happened when life brought them a life changing event (jail) that literally knocked them off their feet. If that had not occurred, recovery would not have begun. And until the reality of their addictive thinking was understood after they became sober while in jail, recovery could not have been sustained.



### THE ADDICTED DEFENDANT'S CHARACTER MUST CHANGE

While there are many facets of an addict's character that may need changing, there are four specific character flaws that I see repeatedly, character issues involving manipulation, trust, the fear of living sober and spirituality.



### MANIPULATION

Addicts specialize in manipulation. Their very essence reeks of manipulation. Their primary thought each day, the one that drives them and their motives, is how they can use and avoid the consequences. Their singular drive is how to gain access to their drug of choice and it doesn't matter who they step on in the process. Manipulating others to gain their desired goal is second nature.

As a Judge I am always wary of the addict's manipulations, not only as it affects me but also as it affects the addict's family and loved ones. These significant others usually have no idea that they are being manipulated and that it is happening to them daily. Often these family and friends unknowingly play the same game with me and our staff.

"Who are you, please?" I asked the young lady standing next to a

participant in our Sap Recovery Court who had relapsed on cocaine the week before at his home. I will call him Craig. Craig had invited over a friend who brought the powder that they both snorted off the kitchen table in Craig's house.

"I am his wife," she answered. "I am 5 months pregnant and my 5 year old boy is at home with my sister. We really need Craig home because I can't work and our rent is due."

She had already begun the manipulation. She wanted me to buy into her needs before Craig was ready to accept his needs in recovery. I first had Craig tell in painstaking detail the full story of how he used their kitchen table to snort his drug, and how he and his friend had done this when the wife had taken their little boy shopping.

"Do you love Craig?" I asked the obvious.

"I sure do, and so does his boy at home." She continued the manipulative comments. Would I bite?

"How much do you love him?" I inquired. "Do you love him to death?"

"Yes, I really do. I would do anything for him."

"Anything?" I asked.

"Yes." She cried hard.

"Do you love your child at home and your unborn baby too?" I dug deep. It sounded cruel.

"Yes." She was blubbing now.

"Then why would I let Craig out of jail so he could use cocaine around you and your kids? Why would I let you love him to death when I have the ability to let you love him sober and love him when he is alive? If you love him and you want the best for him and your family, let me keep him where he is safe and where he can find out what is really important to him. I know what is important to you, but I do not know yet what is

important to him."

"But the baby? I know he will change for our new baby." She cried loud now. I could feel her co-dependence in the heat of her pleas.

"His having a new baby is the reason I will not let him out. It is not a reason I would ever release him. I will release Craig when he is ready to change, not when you are ready for him to change and not when you and the family are ready to have him back. His work in jail will let me know when he is ready and able to be the father you want him to be, and the dad you need him to be."

"What will we do?" She was desperate.

"You will do fine, ma'am. In fact you will do better than you have before, because you will be without an addicted husband and father who is actively using."

"I am ready now, Judge," Craig weakly chimed in, knowing that it was only manipulative rhetoric, the kind he had used before, not a true feeling of commitment to his sobriety.

"No you aren't, Craig. You are not even close. But we will get there if you are willing. Deputy, he is yours."

I ended the hearing abruptly to make my point. We had work to do and it wasn't going to happen in court that day. This would take awhile. A few weeks later, after Craig had completed some reading assignments, and after he had written a letter to his wife and another letter to his unborn baby, I released Craig and ordered that the letter to his unborn baby be taped to the kitchen table where he had snorted his drugs. I ordered that it was to remain there until the baby was born, right next to the sonogram picture of his baby that his wife had just brought home.

Prior to his release, Craig finally

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said to me by video conference and to his family in writing what I wanted to hear and what they needed to learn. He stated that he was the addict, not them, and he was the one that made the choices that had damaged their relationships, not them. He admitted that he was the problem. He said he had begun to work on changing his addictive thinking and he fully understood why the month in jail was necessary to begin that process. He did not ask me to be released but left that decision in my hands. He knew and agreed that I would arrest him again if he relapsed again. He had begun the hard process of not rationalizing his abuse of drugs and not manipulating me or his family, but rather facing his addiction head on.



## **TRUST**

I tell all probationers that until they build trust with me and their treatment team "we" will not succeed. And if they are in jail, I tell them in no uncertain terms that until trust exists on every level between them on the one hand and me and our staff on the other hand, they will not be released. There are no statistics but it is well accepted that addicts lie about many facets of their lives and I suspect that close to 100% of addicts who are active in their use also actively lie about their use to everyone they come into contact with. That is how they survive in the world that expects them to be sober and most have engaged in this distrustful conduct for years. To expect an addict to begin to change their distorted character trait of trust over a weekend or even a few days in jail is not realistic.

Trust is a foreign concept to most addicts. Addicts don't even trust themselves much less another person. They only trust the drug or the alcohol that gives them immediate relief from

their pain. Substance abuse is an easy and quick fix for inadequate feelings relating to trust. And the concept of a Judge, probation officer or a counselor actually discussing this concept with them at a time when they have relapsed and are suffering the direct consequences of incarceration is difficult and unnerving to an addict. Defendants may voice that "I understand what you mean about trusting me," but in virtually every case where a defendant has been arrested for substance abuse, they do not understand. Not yet.

We discuss the concept of trust with all probationers who are in jail for violating their probation or the protocol of our Recovery Courts. I know this is done daily in probation offices, but discussing trust with a Judge from the jail by video takes on a whole new meaning. And if the addict believes that the judge will not release him until the defendant finds a new beginning based on trust, the discussions carry a whole new importance. The addict or alcoholic will literally drop the parroting of words that they think I want to hear to real words that reflect what is in their heart.

If an addict will ever believe they are on their last leg, this is the time. If an alcoholic will ever believe that truth will set them free, this is the time. In our court we use video conference daily to talk to these defendants from the jail. The video itself suggests to the defendant that they have not even earned the right to see the Judge in person. Trust becomes something they want to gain badly, if for no other reason than to be released. And wanting trust for this reason is a good thing.

It is as if they realize that nothing else is going to work at this point, especially when it becomes very apparent that they will not be released until the I and the staff believe they are ready. Every now and then one of our

Recovery Court defendants questions our staff or counselors about this "floating jail release" concept:

"Why did I have to stay in jail for 45 days and that other fellow was released in 20 days?" They will whine. Our staff explain, "Time in jail for any one defendant is not related at all to your underlying charge, your prior record or anything other than the Judge's and staff's perception of when we believe you are truly ready to make a change in your life and in your addictive thinking."

And so it becomes quite obvious that they might as well try building trust with the Judge since nothing else is going to work anyway. And since they are in jail and they know that I will be made aware of their attitude and conduct while there, there is little reason to whine, complain or do anything other than constructive work on themselves and their thinking. What a novel concept, this trust thing!

But this "come to honesty" realization does not happen overnight. It may not happen in a week or even a month. Like so many issues of character change with an addict, it takes time for the pain of the incarceration to work its way through the toughened veneer of the addict or alcoholic and it never happens while they are still under the influence of drugs or alcohol. Once the addict is clean and understands that nothing they say will gain their release but rather the hard work of soul searching through reading, writing and discussion assignments is their only ticket out, then they can accept that their fate is based on a character change involving trust.

As important, the addict must believe that they can trust the Judge and staff. This is most difficult especially if there has been a history between the staff and the defendant. And in our Recovery Courts this

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difficulty of earning the defendant's trust is evident every time I see one in jail. Regardless, since trust must start somewhere, I often tell these inmates that they really have no choice but to trust us, "who else is here for you at this moment, other than us?" I frequently remind them that their trust in us should be easy to accept since we had lived up to our promise to them that "we would save them from their addiction by jailing them if they relapsed or had a positive or even a diluted UA." This was a negative consequence to be sure but it was one that we had promised them and it was a promise that we had fulfilled.

From the staff's perspective also, this trust building concept can be hard to understand. Consider the case of one of my Recovery Court staff who was told by a participant while he was in her office that he had relapsed on alcohol. Knowing my standing rule of "immediate" jail sanctions when we learn of a relapse, the probation officer did not tell the defendant that he should turn himself in right then, thinking he would run. When I learned later that day that he had left her office without being told to wait for a deputy to come handcuff him, she explained her predicament.

"I called your office for an Order of Arrest, Judge, but before I could get it back with a warrant he left," she said.

"Did you tell him he was being arrested and that he should turn himself in before the Judge issued an order for his arrest?" I asked.

"No, sir, I thought he would run out the door," she said.

"So?" I asked. "Let him run. Remember, our Recovery Court is based on trust between the participant and us. If he wants to run then let him. When we find him and arrest him he will suffer consequences

more severe than if he simply turned himself in. Leave the choice to him. But be honest with him, especially now. He has been honest in admitting a relapse and we owe him an honest response. Besides, we need to see how he handles your request when you ask him to wait for the deputy."

"I like that." She admitted. "I always feel strange not telling them what is coming. It is like playing that game of hide the ball."

Dr. Twerski explains that addicts must have reason to believe they will not be misled, that their welfare is the prime goal of treatment and that nothing will deter the staff's goals. ("Addictive Thinking," Chapter 19, Addictive Thinkers and Trust.) This is absolutely true with Recovery Court participants, and it includes the reality of immediate jail sanctions when they relapse. They should expect this, both for themselves and for others in the program who relapse. When it does not occur we have failed in earning their trust. When viewed from this honest perspective, jail sanctions become a treatment modality that is part of the recovery process that the addict can believe in. If they can't trust their treatment team to make the hard choices, how can the team expect them to?

Let me give a more vivid example. One addict in our SAP Recovery Court, Jeanine, was a 35 year old female that had struggled for years in her methamphetamine addiction. She had sold herself for drugs and was literally dying a slow death on the streets. After entering our Recovery Court program, and after working months with our staff, she became very invested in her recovery. She had new and better friends and she was working. She appeared before me one day on a status hearing docket and she looked fabulous, well dressed, hair done up, and all smiles. She had a new boyfriend that she

introduced in court. We were elated.

A few days later her probation officer called to report that she had missed an appointment and word on the street was she had relapsed. I immediately issued an order of arrest, but before she could be picked up she was found by others and she was dead. I think of her every day and often mention her story in court. I believe that if we had been able to arrest her before her fatal end we could have kept her safe until she again found sobriety and re-started our program or we entered her in another program. Although it was out of our hands, we failed her because we were unable to act quickly enough. When we have the ability to detain a defendant who has knowingly relapsed, our profession demands and their lives may well depend on our immediate action. Anything less is inexcusable.

The participants who are succeeding in our Recovery Courts fully understand and appreciate the concept of trust, both with its positive and negative consequences. They understand the need for jail when one of them is actively using. While they do not like it nor want it, most of them expect to be immediately arrested if and when they relapse, and in fact have come to "trust" the threat of jail sanctions as an integral part of their recovery. It may well be the life changing event that forces them to change, or begin anew in their recovery process. This form of reciprocal trust is at the heart of the recovery process.



## **THE FEAR OF LIVING SOBER**

One of the most ingrained traits of an addict is what Dr. Twerski calls "morbid expectations." I call this the fear of living sober. When a defendant enters one of our Recovery Courts, I worry that during the latter phases of the Program the addict will succumb

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to their fear of success and as a result will sabotage their recovery. Self destructive behavior allows the addict to avoid the responsibilities that they face when they have earned independence. It is difficult to live life sober when you have habitually used drugs and alcohol in an attempt to feel good about yourself or to ease emotional pain.

The concept that a person would do something to derail their success may sound strange but remember we are dealing with an addict. An addict that has succeeded at any program, and especially one that was in house or institutionalized, will still have the propensity to view the world through the lenses of their addictive thinking. The problem with most addicts is that while many can handle the stress and problems of life while inside a facility or during intensive phases of treatment, once they are removed from the walls of the facility or the supervision of staff and counselors, they come face to face with their inadequacies at living life in the real world. The confinement was safe and the immediate interventions of staff prevented meltdowns. Outside and independent, however, they face day to day issues without the comfort of that support and that is very frightening.

In our SAFPF Recovery Court, one alcoholic, call him Phil, had successfully completed 3 phases of our 5 phase program and was on his way to graduation. He had struggled initially after leaving the SAFPF institution, and I previously had kept him in jail for approximately 3 months after one relapse. Thereafter, with the strong support of several of other participants, Phil had successfully obtained a job that also gave him a free place to live. This was a man that previously had lived on the streets. He was exuding confidence

and he was feeling good about his sobriety. He looked happy and he had even begun to smile a lot. He was succeeding for the first time in decades. Phil had even begun to help others in the program and we believed he was truly in a stable place emotionally.

Phil had not yet seen a graduation in our program and it just so happened on a certain court date that we graduated a young woman that had completed all her requirements. As is our custom, all participants in the program were present at the graduation. Immediately following the graduation we began to hear from Phil's employer that he was slacking and there were even hints he had begun drinking on the job, even drinking hot beer in his recently repaired truck that he now used for deliveries. Soon, Phil quit his job and moved out of his place. I jailed Phil as soon as I realized he had relapsed, and before the relapse worsened or he injured himself. When confronted, Phil claimed that "I could not do it anymore. Everything had begun to spiral downwards for me."

To the non-addict, there would have been nothing that had changed, but to Phil he had seen success up close and personal and he could not imagine that he could do that. To graduate meant he would be alone, doing sobriety without the support of our program, without the judicial policing, and without the group and Recovery Court team. His irrational fears created morbid expectations that led him to sabotage his success. Phil was, of course, thinking addictively, and this addictive thinking led him to relapse by drinking. Nothing had actually changed in Phil's life, but his distorted perception of who he was and that he couldn't possibly do what would be expected of him after graduation, led him to jump off the "emotional cliff" so he did not have

to face this "dreamed up" failure

We started Phil over at a phase in the program where he could ground himself again in feelings of worth. From there he will work the program again and our goal is for him to gain more insight and confidence in his recovery so that he can believe that he can succeed at the ultimate task of sobriety. It took Phil 40 years to become the alcoholic that he is, and it may take many relapses and re-starts for Phil to change this character trait of fearing a life of sobriety. His thoughts are instinctively addictive and fearful by nature, not healthy and realistic, and until he changes how he views himself and life in general, he will continue to relapse. In prison, he would never find recovery; in our Recovery Court he has a much better chance.

Non addicts know that normal life is one challenge after another. Addicts, on the other hand, believe that when they have to continually face challenges they must be doing something wrong. Non addicts know that life is never ending in its daily adventures and challenges, and that life has its successes and failures. Addicts think that having to face daily challenges means they are a failure. This fear of living sober is a symptom of addictive thinking. That is why Phil relapsed in his recovery.



## **SPIRITUALITY**

I do not preach religion in court and I do not require a defendant to attend church. While I have a strong faith personally I do not force feed my beliefs in any addict's recovery and I do not require any defendant to believe in God. On the other hand, I believe that an addict or alcoholic is much more likely to succeed in their recovery if they have a spirituality that is based upon a strong faith. Put conversely, an addict without a deep felt faith is most likely to fail in their

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recovery.

Some call spirituality a belief in a Higher Power and some call it a faith in God, both being an acknowledgement in someone or something that has more power than them. Regardless of the name or the approach, it is clear that spirituality plays a large role in the lasting nature of any recovery. Some addicts find peace in a faith, some find strength in others around them and some even claim that they feel a magic in what is transpiring during their recovery. Whatever it is called and whatever it does for an addict, this spirituality clearly solidifies the commitment the addict feels in their recovery.

The separation of church and state prohibits a Judge from infringing on a defendant's religious beliefs. But there is no constitutional impediment to a judge or Recovery Court staff encouraging an addict to accept the conviction that faith in a power greater than them is a strong component of a lasting recovery. AA and NA writings speak of spirituality, as does Dr. Twerski, saying that an addict or alcoholic can maintain spirituality without religion ("Addictive Thinking", Chapter 20). The distinction is a fine one, I must admit, but if that distinction provides an avenue through which a defendant "buys into" a Higher Power or God that they can trust and with whom they can deposit their worries and distorted thinking, then I say more "power" to them.

The concept of powerlessness that AA and NA teach is really nothing more than the "giving up the fight" to someone or something more powerful than the addict. It does not mean, however, that the addict is not doing anything in their recovery. On the contrary, the concept of powerlessness in the context of recovery is akin to what the Serenity Prayer teaches:

*God grant me the serenity to accept*

*the things I cannot change; courage to change the things I can; and wisdom to know the difference.*

In truth, convincing an addict to search for a source of power greater than them should be fairly straightforward. When an addict acknowledges that they have lost control over their addiction and that the addiction is in fact controlling them, they will accept this powerlessness concept. This becomes especially evident to the addict who is in jail. There they literally have no control over their tomorrow and taking life one day at a time is not only easier, it is their only choice. Accepting things that they cannot change is not difficult either since they have no control over the most important thing in their lives at that time, freedom from jail. Confinement in jail convinces them that their "imagined" power over their addiction was and is impotent. Jail is a wonderful tool to persuade the addict to let go of their sick need to control, what Dr. Twerski calls their distorted feelings of omnipotence. Giving up the fight in this way liberates them from their irrational belief that they somehow were able to fight the battle alone.

In the end, whether it is an AA/NA group, a counselor, the probation officer, the Judge or God is not as important as the fact that the addicted defendant must accept that alone they have no power over their addiction. They must find that someone or something to whom they can and will look for support in their recovery. In recovery, faith by any name is better than none at all. Encouraging defendants to find a spiritual solace by whatever means possible is critical to a successful and lasting recovery. What that other thing is doesn't matter as much as the fact that it must be found and trusted. I encourage our participants to rely upon their spirituality to help

them find a peaceful relinquishment of the "demons" that stalk them. In the process of finding spirituality the addicted defendant's character changes in a positive and productive way.



## CONCLUSION

My job as a Judge is not to save the world, but to implement justice in a court of law. Helping the addicted defendant find a recovery that changes their character does just that.



## FOOTNOTES

(1) I preside over 3 Recovery Courts (previously called Drug Courts). These are:

- SAP Adult Recovery Court (<http://www.co.montgomery.tx.us/410dc/sap.shtml>) for Defendants that originate from my criminal caseload in the 410th District Court,

-SAPFP Reentry Program/ Recovery Court (<http://www.mcdesc.org/Default.aspx?tabid=70>) for defendants that originate from the caseloads of 4 of Montgomery County's District Courts and who have successfully completed the inpatient portion of the Texas Department of Criminal Justice's Substance Abuse Felony Punishment Facility, and

-MC POWER Juvenile Recovery Court (<http://www.co.montgomery.tx.us/410dc/mcpowercourt.shtml>) for cases that originate from Montgomery County's Juvenile caseload.

(2) In this paper, the term "addict" includes alcoholics and those that abuse prescribed medications.

(3) For example, the SAP Program Requirements provide that a participant may attend "a cognitive based/life skills program approved by the Court or CSO." (<http://www.co.montgomery.tx.us/410dc/SAPREQUIREMENTS.PDF>).

# CONTRIBUTIONS & MEMORIALS

Thank you for your contributions

Includes contributions received as of March 5, 2007

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### ETHICS OPINIONS

#### Question & Answer

No new ethics opinions have been issued since July 2006. To ask an ethics question, contact Judge Stephen B. Ables (830.792.2290) or the State Commission on Judicial Conduct (877.228.5750).

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For Those Who Served Our State Courts  
As of March 19, 2007

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Senior District Judge  
337th District Court, Houston

**Honorable Marvin F. Marshall**  
Senior District Judge  
242nd District Court, Plainview

**Honorable Byron Matthews**  
Senior District Judge  
Criminal District Court #1, Fort Worth

**Honorable John H. Whittington**  
Justice (Retired)  
5th Court of Appeals, Irving

# LOOKING AHEAD

## Judicial Conference Calendar

### 2007

Family Violence Conference  
March 26-28, 2007  
Galveston

Texas College for Judicial Studies  
April 23 - 27, 2007  
Austin

Criminal Justice Conference  
May 21-23, 2007  
Dallas

PDP Professional Development  
Program  
June 18-22, 2007  
Dallas

Associate Judge Conference  
July 18-20, 2007  
Austin

You Asked For It, You Got It  
August 1-3, 2007  
San Antonio

Judicial Section Annual Conference  
September 16-19, 2007  
Galveston

### 2008

PDP Professional Development Program  
June 16-20, 2008  
Austin

Judicial Section Annual Conference  
September 14-17, 2008  
Dallas



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