Therapeutic jurisprudence

A practical guide to developing therapeutic intervention skills for judicial officers in specialist courts

Judicial Commission of New South Wales

The Judicial Commission e-resource series

Published in Sydney by —

Judicial Commission of New South Wales
Level 5, 60 Carrington Street
Sydney NSW 2000

GPO Box 3634
Sydney NSW 2001
www.judcom.nsw.gov.au

ISSN 2653-6994

Acknowledgements

Cover design: Madeleine Prince

Production editor: Philippa Breaden, Senior Legal Editor, Judicial Commission of NSW

Technical editor: Dominique Cornelia, Solutions Architect, Judicial Commission of NSW

We gratefully acknowledge the contribution of the expert judicial reviewers who provided valuable feedback on an earlier draft of this resource.

The author gratefully acknowledges Joanne Selfe, Ngara Yura Project Officer, Judicial Commission; and Barbara O'Neill, Elder, Walama List, District Court NSW; Elder, Youth Koori Court NSW; Director YERIN Aboriginal Support, Burdekin Association, for their careful review and input into Chapter 10 "The importance of being culturally competent".

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A practical guide to developing therapeutic intervention skills for judicial officers in specialist courts

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About the author

Dr Rhondda Waterworth is a psychologist and Australian lawyer with over 20 year's experience working with psychology clients in Australia and overseas, including former roles with the Office of the Chief Psychiatrist and as the Continuity of Care Coordinator with the Forensic Service Liaison Service for Queensland Health. She has also worked as Senior Psychologist at Evolve Therapeutic Services, a service involved in the care of adolescents and children with complex mental health needs, in private practice with offenders, and also with immigrants and expatriates in Australia, France and the United Kingdom. She has experience in supervising and training other psychologists in systemic intervention and in running special interest development and training in systemic family therapy. She is experienced in using multiple different types of therapies to achieve effective therapeutic aims in a wide variety of contexts.

Since relocating to France, Dr Waterworth has taught law, psychology and counterterrorism subjects at the University of Lyon and the Lyon Catholic University, alongside private practice psychology work with private clients.

Her Ph D thesis by publication, entitled "Improving therapeutic outcomes for defendants: measuring the therapeutic contributions of legal actors" (University of Tasmania, Hobart, conferred 29/10/2021) won the Royal Society of Tasmania Doctoral Award for excellence in research.

At time of writing, Dr Waterworth has published seven articles on the interface between health services and legal systems and how best they can be leveraged (after systemic analysis) to create better systems of care for individuals who are struggling with changing offending behaviour.

Dr Waterworth is committed to advocating for legal and systemic reform, court training programs, and all other possible and relevant mechanisms to improve the psychological and physical wellbeing of disadvantaged communities, via all means possible, so as to build a more inclusive and more humane society for those who are not able to advocate for themselves.

Therapeutic jurisprudence

[1] Therapeutic jurisprudence in action

Purpose of this guide

This guide is designed to support consistent, easily available and professionally-supported therapeutic skills training for judicial officers who wish to develop their court craft skill set. It also provides information and interventions designed to assist judicial officers address the risk factors for vicarious traumatisation.

This guide is designed to be a practical reference for judicial officers working in specialist courts in criminal proceedings without a jury.

The guide provides expert psychological guidance based on theory and research for those judicial officers wishing to develop or broaden their therapeutic intervention skill set, so as to have a therapeutic impact on the people who attend their courtroom as well as their networks of social and family involvement.

The term "offender" will be used to designate the party appearing before the court during the hearing.

As outlined in the subheadings, this guide will include judicially-relevant aspects of therapeutic interaction which are considered fundamental for therapeutic interventions. These interventions are part of most other types of therapeutic skills training and are based on psychological research and widely-accepted therapeutic intervention approaches. Using these techniques will assist you to have a more therapeutic impact in your court.

[1.1] Context and relevance

This guide is written from the perspective of a psychologist, lawyer and expert in therapeutic intervention with the types of people who regularly go through the lower level and mid-tier courts. The guidance in this resource stems from three sources:

- thesis-level review of the literature regarding which therapeutic interventions could work well within a courtroom and realistically be utilised by judicial officers
- consultation with the judiciary
- a comprehensive review of the science of court craft.

This perspective means that there is a breadth of different therapeutic approaches, a range of adapted intervention techniques from each of these and practical guidance on how to integrate the different therapeutic approaches into the one practice. This guide integrates research-based therapeutic theory and practice into a practical resource, so as to extend current understandings of the possibilities of a judicial officer's role and provide you with additional tools to use in the courtroom. This guide will enable you to have the best chance of facilitating a therapeutic outcome without risking psychological harm to self or others.

Specialist judicial officers naturally make use of therapeutic skills in their practice in highly effective ways and there is a wealth of resources to draw on to support their practice, but they do not usually include many aspects to therapeutic intervention that (from a psychologist's perspective) are, or should be, fundamental to successful and safe therapeutic intervention.

The available guidance usually tends to focus on principles and judicial awareness rather than specific guidance on how to say what, when and why. There is also often a lack of focus on supportive steps for a judicial officer such as reflective practice and judicial positioning and supporting peer mentoring; these steps are considered necessary for any other professional when learning and integrating new therapeutic skills.

This guide is focused on the "process" aspects of court hearings, how things are done and what is said. The guide explains and gives examples of courtroom adaptations of a range of practical intervention techniques taken from a variety of therapeutic orientations and validated by empirical psychological research within the therapeutic setting.

The scope of these techniques is curtailed however, with respect to the context, in that they avoid techniques designed to facilitate intense self-disclosure and

they also avoid any attempt to process trauma during a court hearing. This is necessary given the public nature of a hearing and the potential for psychological harm to an offender (see "A note about trauma" below).

In addition, from a systemic intervention perspective, it is wise for judicial officers to have the therapeutic vocabulary to identify and express their systemic intervention skills and, if they are not already doing so, to consciously situate their professional practice within the context of the communities that they work within and the systems within which their court participants circulate. Stepping back from the individual intervention level, this guide discusses how to do this and gives concrete advice on how to plan and then evaluate the usefulness of various systemic therapeutic inputs and to modify and adapt these systemic interventions based on the relevant feedback available.

Professional experience (and the thesis review) has also shown several additional factors that argue strongly for the existence of this guide:

- The difficulty level of developing therapeutic intervention skills is often underestimated and difficult to do alone or in isolation.
- It is useful for judicial officers who wish to develop their skills to have easy access to a coherent, behaviourally-anchored description of what constitutes effective court craft for judicial officers wishing to implement therapeutic intervention skills in their courtrooms, as well as a guide to developing these specific therapeutic skills and reflective thinking on therapeutic intervention, alongside a way to objectively measure these.

A note about trauma

With regards to trauma, disclosures and therapeutic intervention, there is a common misconception that therapeutic intervention necessarily involves trauma disclosure and processing.

This is not the case when dealing with an appearance in open court. This level of personal disclosure could be highly inappropriate and potentially further damaging were it to occur in a courtroom. Trauma processing is something that requires privacy, confidentiality, emotional security and a non-judgmental therapeutic stance with a highly trained psychologist, most likely with appointments over an extended period of time within a stable and non traumatising life context.

It is not necessary nor useful to attempt to process trauma in the initial stages of therapeutic intervention; in fact to do so would be highly inappropriate and not something an experienced psychologist would do. Additionally, any therapeutic intervention in a psychological therapy setting which is aimed at trauma always

occurs in a sequence. This means that intervention starts with stabilisation and developing hope, harm minimisation strategies, risk management, learning better emotional regulation skills, strengthening social connections, taking care of physical health, and stabilising life circumstances. Direct trauma processing itself is only possible once the individual has a stable and safe living situation. In a therapy context, trauma processing would not usually start until much later on in the therapeutic intervention — after several months (best case) or sometimes even years of working on the initial stages of stabilisation and developing safety.

However, it is possible to "address" trauma using specialist courts, as many of the earlier therapeutic targets mentioned above are a legitimate target of court intervention. Additionally, aspects of these goals are sometimes not achievable for a specific individual without court-directed intervention, highlighting the essential role of specialist courts in "addressing" trauma. This is one of the reasons that specialist courts can be so effective in intervening in an individual's life course.

The goal of therapeutic intervention in a courtroom setting is to instil hope, to enhance a sense of self efficacy, and to give a different lived experience that contradicts existing schemas. These are also the initial goals of the trauma-focused therapeutic approach, as well as most psychology therapy modalities discussed in this resource.

With regards specifically to how to "treat" trauma as it relates to individuals passing through court, note that disclosure of trauma in open court is not at all encouraged. The techniques discussed in this guide are designed to focus on current and future actions, not past trauma, and fundamentally it is also not necessary to disclose trauma to process it in some form. The most effective approach in the first instance to help traumatised individuals is to create life circumstances that facilitate stability and provide a different life experience which contradicts prior traumatic experiences. Trauma processing itself needs to be limited to the context of an extended and stable therapeutic relationship with an experienced psychologist.

It is also useful to note that there are many aspects to therapeutic intervention, and many types of effective therapeutic interventions which can help traumatised individuals but which do not involve trauma processing at all (for example brief therapy, solution focused therapy, acceptance and commitment therapy).

Significance of culture in the application of therapeutic justice

The importance of culture to healing and strength-based evidence when dealing with proceedings in a therapeutic environment, particularly when dealing with

Aboriginal or Torres Strait Islander offenders or participants, is a significant topic and is discussed separately in Ch 10 "The importance of being culturally competent".

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Usefulness to judicial officers

Judicial officers perform a uniquely difficult task that in many cases will have an ongoing emotional impact. It also may impact their own personal understanding of how people within society function, both in wider society and also within the legal contexts in which they encounter them.

Vicarious traumatisation of judicial officers is an under-recognised phenomenon. Vicarious traumatisation is when a professional (or other helper) is exposed to the effects or narratives of others' trauma, and over time develops their own trauma response to this material. It can result in a multitude of different pervasive impacts (refer to the list below) which parallel those of burnout and post-traumatic stress disorder. It is vital for judicial officers to have the necessary training and skills to recognise these symptoms, and also to have access to the right interventions and training to protect their professional efficacy in the face of the constant risk of vicarious traumatisation.

Impact of exposure to trauma

- intrusive thoughts or images related to clients' trauma
- emotional numbness or detachment
- increased anxiety or fearfulness
- depression or feelings of hopelessness
- irritability or anger
- difficulty concentrating or making decisions
- physical symptoms such as headaches, fatigue, or gastrointestinal problems
- changes in sleep patterns, such as insomnia or nightmares
- hypervigilance or an exaggerated startle response
- decreased sense of personal accomplishment or self-efficacy
- loss of empathy or compassion fatigue
- social withdrawal or isolation
- disruption in personal relationships
- increased use of alcohol or substances as a coping mechanism.

Given the material judicial officers are routinely exposed to in the course of their working day, there is a strong risk that vicarious trauma could significantly impact judicial officers' personal and professional wellbeing, as well as decreasing their efficiency and contributing to their risk of burnout over the longer term. While specific statistical data on burnout rates among Australian judicial officers is limited, research underscores the importance of recognising and addressing burnout within the legal profession.[1]

A 2023 survey of judicial officer wellbeing showed that over 30% of judicial officers surveyed showed sufficient signs of vicarious traumatisation to warrant further clinical evaluation for post-traumatic stress disorder.[2] Magistrates are particularly exposed to these stressor effects, most likely due to the unique

1 See J Hunter et al, "A fragile bastion: UNSW judicial traumatic stress study"; C Schrever, "Australia's first research measuring judicial stress"; and C Schrever, "The psychological impact of judicial work" in *Handbook for Judicial Officers*, Judicial Commission of NSW, 2021. See also, Judicial Commission of NSW, "Judicial wellbeing" portal on JIRS (available to judicial officers only).

2 C Schrever et al, "Preliminary findings from a large-scale national study measuring judicial officers' psychological reactions to their work and workplace" (2024) 36 *JOB* 53.

features of their role.[3] Training in therapeutic stance for judicial officers is likely to directly address some of the risk factors for vicarious traumatisation, notably the sense of personal responsibility and helplessness when exposed to trauma.

The same study found the lack of availability or adequacy of rehabilitation programs or referral pathways for offenders was one of the major sources of stress indicated by judicial officers. This observation indicates that empowering judicial officers via learning appropriate therapeutic stance and therapeutic intervention skills is likely to directly address a vital aspect of one of the major stressors that they routinely encounter.

In the context of the present guide, having a sense of purpose and self-efficacy, as well as ongoing professional development and skills acquisition, are all demonstrated as protective against the factors that can lead to cynicism or overwhelm, health complaints, and eventually, the risk of burnout.

Further protective factors against workplace burnout include satisfaction in the work role. The 2023 survey[4] found that judicial officers nominated their two most important sources of professional satisfaction as the ability to make a positive contribution to society through their work, and the impact of their decisions on others' lives.[5] It is clear that the research backs up the observation that training in therapeutic skills may well enhance judicial officer's satisfaction in their professional roles, as well as being protective for them against burnout.

In this case, having practical therapeutic intervention skills and feeling empowered to implement these in the most public arena of a courtroom, while maintaining a detached position as an effective judicial officer, is expected to be protective for judicial officers against the risk of burnout so long as the judicial officer has the appropriate professional development support and an effective therapeutic stance. These aspects are dealt with in further detail in the next chapter.

It is also worth noting, as other authors have done, there is a strong possibility that correctly implementing therapeutic skills may over time reduce judicial officer workloads, as the offenders come back less often (or, hopefully) not at all.

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3 C Schrever, C Hulbert and T Sourdin, "The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and wellbeing" (2019) 28 *JJA* 141; Judicial Commission of NSW, *Handbook for Judicial Officers*, 2021.

4 Schrever et al, above n 2.

5 Schrever et al, above n 2.

Schrever C et al, "Preliminary findings from a large-scale national study measuring judicial officers' psychological reactions to their work and workplace" (2024) 36 *JOB* 53.

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Applications of this guide for offenders

The author's professional experience of over a decade working in mental health and forensic services leaves the impression that it is essential for society to create a pathway to usefully intervene for those passing through the criminal courts, for those who are most in need of intervention but oftentimes also most resistant to, or seemingly unable to, change. This guide is designed to provide the practical means for those who are interested in learning how to do this. It is also designed to be a resource for offenders who find themselves in a courtroom in similar circumstances that they feel are beyond their control, or not in their interest to change, and where no-one seems to be able to intervene in, despite everyone's best intentions and funding.

Ultimately, the aim of this approach is to maximise the therapeutic engagement of the court parties and the scope for intervention for positive effect via the legal system by capitalising on the interaction between legal actors and offenders. An analysis and sensitivity to context constraints and appropriate role is integral to realistic expectations of judicial officers, and effective interventions for court parties.

These techniques are designed to facilitate a different outcome for offenders, similar to a therapeutic engagement in any other setting, but with certain necessary limitations. A positive impact from a court experience would be defined as encouraging an offender's rehabilitation, their adherence with court rulings, and their resistance to re-offending or further antisocial behaviour. It would also include, ideally, a shift in sense of self and future potential, and ultimately, a change in future choices and behaviours. This has historically been quite difficult to operationalise and measure for researchers of court outcomes, hence the research focus on recidivism. The underlying assumption of this guide is that people make better choices when they are doing better themselves and feel respected and integrated into society as well as a sense of hope for the future. The techniques in this guide are taken from therapeutic modalities which encourage these outcomes, providing concrete descriptions of easily learnt skills that judicial officers can choose to use when they deem appropriate during their hearings.

As already noted, this guide is written with specialist courts in mind, however there is an argument to be made that it would be useful to mainstream therapeutic interventions where appropriate outside of the criminal justice system, including potentially family courts, civil courts, etc. The use of therapeutic skills in these venues would be expected to increase emotional engagement and perceptions of the legitimacy of justice, as well as hopefully contributing to the most useful possible sentencing outcome.

The techniques in this guide are not designed for use in more serious criminal matters, and are not designed to excuse offender behaviour nor argue for judicial leniency. Therapeutic jurisprudence and solution-focused judging do not promote leniency; indeed offenders being held to account and receiving a just outcome — including imprisonment when warranted — is therapeutic in itself because it tells offenders that actions have consequences. Also, engaging in a drug court or other specialist court program may be more onerous for participants than sitting back in a prison cell without having to address often painful underlying issues and being accountable to a judge or magistrate in regular court appearances.

It is useful for offenders to have salient consequences from their court experiences, which these techniques are designed to facilitate.

These techniques are also not designed for court hearings regarding matters that likely indicate, by their nature, that the defendant is likely to have a serious psychotic disorder or serious psychopathology or personality disorder that renders them particularly dangerous to others.

[1.2] Topics covered in this guide

From a psychologist's perspective, there is enormous scope to expand the range of techniques that could be effective and appropriate to use within a courtroom beyond what has currently already been adapted and integrated into thoughtful practice by highly-skilled judicial officers working in specialist courts.

This guide aims to develop these practical therapeutic intervention skills that can be used in a specialist courtroom.

- *Chapter 2* provides the theoretical foundations underpinning therapeutic outcomes
- *Chapter 3* examines judicial positioning and therapeutic stance, as well as providing exercises designed to facilitate reflection on the judicial officer's own perspectives and how these inform professional processes as well as a section on providing self-care and preventing burnout

- *Chapter 4* gives guidance as to how to evaluate the potential therapeutic and adapted communication needs of parties to court procedures as well as an evaluation of the opportunities for therapeutic intervention that are present within the court process and experience and how best to make use of them
- *Chapter 5* provides practical guidance as to what a judicial officer in a courtroom at a specific point in time can do, and why, so as to have the best chance of having a therapeutic impact, firstly taking a micro skills approach
- *Chapter 6* explores adaptations of cognitive therapy, behavioural therapy, a trauma-informed approach, strengths based and motivational interviewing approaches
- *Chapter 7* examines the intervention skills necessary to engage non-neurotypical people and how to notice that these adaptations might be needed
- *Chapter 8* gives detailed and practical explanation of how to apply systemic intervention skills
- *Chapter 9* examines narrative intervention skills in a courtroom
- *Chapter 10* explores the use of culture as a source of strength and resilience building within the courtroom
- *Chapter 11* gives guidance on how to integrate therapeutic court craft into professional practice, what supports might be useful, and how to evaluate and obtain valuable feedback on the effects of this practice
- *The appendices* contain instruction on the use of many different psychological techniques designed to help regulate emotion, self-regulate using sensory means, supports for cognitive behavioural therapy practices, systemic intervention tools and measures to protect against burnout such as a screening tool for burnout, self-care strategies and the steps to developing a personalised burnout prevention plan.

[1.3] How to use this guide

This guide is deliberately written in direct language and designed to be easy to read with the assumption that the reader will have to fit in between other commitments and (most likely) a very heavy workload. It is designed to be a reference guide to provoke professional reflection, explain therapeutic techniques which could be of use in a courtroom, to enhance reflection on professional positioning, and to inform on possibilities for therapeutic technique.

The specific objectives for this guide, in the order in which they are addressed, are as follows:

- to develop a greater awareness of the reader's own positioning with regards to defendant intervention and therapeutic change processes, and to encourage the practice of self-reflection to further develop this awareness and skill set throughout their professional career
- to develop a therapeutic-oriented understanding of how personal change occurs and the forms that this can take
- to understand the different ways to intervene in a courtroom that could possibly be within the scope of a judicial officer's role and appropriate to the context
- to have on hand a range of practical techniques that are reasonably congruent with presiding over a court hearing, derived from various theoretical models of change, with the intention of creating a different court experience with therapeutic intent.

Topics in this guide are dealt with brevity. Please refer to the authors in the reference list for greater depth and detail about the ideas and fields of knowledge touched on in this guide.

[1.4] Some useful starting questions

It is useful, from a professional development perspective, to consciously set personalised objectives for engagement with this guide, at a level that works for the level of energy, time and motivation currently available.

To start this process of self-reflection, it might be useful to think about the following questions:

1. Why are you reading this guide?
2. What are your hopes and expected outcomes from this investment of your time and effort?
3. If you are a judicial officer, the question can be even more specific:

   If you had a magic wand, and three wishes for each of the offenders you see in a court setting, what would you wish for them? (You can do this exercise for the offenders and parties as a general group of people, and it may also help to try this exercise with one or two specific people who have stayed in your mind.)

It may be useful to write these questions down so you can revisit them, as these will likely be the focus for your usage of this guide. It will also be interesting to see how the guide measures up when you revisit these goals and hopes in the future.

[1.5] Review of the theory

Within the context of therapeutic jurisprudence and research into improving court outcomes, the court is viewed as a *facilitator* of personal change. Rehabilitation for an offender is not just the absence of offending or other future, similar issues; it also includes many other various changes that are necessary to enable that person to lead a healthy and fulfilling life in the future. There has been increasing recognition at a research, policy and professional level that judicial intervention should also include evidence-based strategies to improve outcomes for offenders.

Many authors have expressed guidance on how to improve court outcomes, but defining "what works" has been particularly difficult in the therapeutic jurisprudence literature. This topic is dealt with extensively in the works referenced at the end of this section. Therapeutic jurisprudence (TJ), procedural justice (PJ), and legitimacy of justice (LJ) also inform what needs to occur in a courtroom in order for the hearing to have maximum psychological and future behavioural impact. Inclusion of these techniques in professional practice is designed to positively impact offenders' lives, enhance the perception that the court has been just, and to reduce recidivism. There are common elements used in solution-focused judging as well as the psychological literature on therapeutic intervention which are accessible to both specialist and mainstream judicial officers.

In addition to specialist therapeutic courts, the last decade has also seen the development of the mainstreaming TJ movement which has the aim of increasing the use of therapeutic court craft in mainstream courts. Richardson, Spencer and Wexler have articulated a model for measuring TJ court processes that included a description of TJ judging in the criteria for court excellence. This author has developed a way of measuring these interactions across different court contexts, as have several other researchers. An example of the author's measurement scale (Legal Actor Contribution Scale) is included in Appendix C, and is made available for use and adaptation depending on court context. Specialist judicial officers and researchers are invited to build upon the existing tools available as needed so as to include specific aspects of the intervention skills appropriate to each court context.

TJ emphasises processes that encourage self-determination for offenders, to avoid increasing resistance and potential resentment of the judicial process. TJ also encourages responsible use of the power that judicial officers wield, to practice with an ethic of care and act as role models for other legal actors, as well as setting the tone for other court staff in their interactions with the

parties to the case. Judicial officers are expected to have a positive impact on the people appearing before them and their communities, with the court as a possible facilitator of healing.

Note that the purpose of TJ and the existence of specialist courts is not aimed at turning judicial officers into therapists, or encouraging them towards leniency, as this would diminish the role and unique contributions that judicial officers bring to the psychological and practical experience of court for a defendant. As noted above, TJ and solution-focused judging do not promote leniency; offenders being held to account and receiving a just outcome — including imprisonment when warranted — is therapeutic in itself because it tells offenders that actions have consequences.

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[1.6] The role of judicial officers

It is widely accepted that legal actors, particularly judicial officers, can play a significant role in the therapeutic judicial process, both via their in-court interactions, and also via the legally enforceable outcomes of the court process.

Legislative reform has shown strong recognition of the therapeutic potential of sentencing and using the court as a systemic entry point for referral to other care and support services. The therapeutic justice movement has described a more profound potential for judicial officers' roles, to intervene in the lives of the defendants in their courtrooms, via court craft skills, as well as other techniques taken from therapeutic modalities, and adapted for courtroom use. This use of self and role, alongside therapeutic skill and the other requisite skills and experience present in the judiciary, presents an intriguing possibility for professional development and judicial role development.

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Weitekamp Elmar GM and Kerner H (eds), *Restorative justice: theoretical foundations*, Routledge, 2003.

[1.7] Judicial therapeutic potential

The therapeutic element to the role of a judicial officer is built on the principles of TJ. This can take many forms, from utilising brief intervention therapy techniques during a court appearance, to systematically using adapted communication practices, building in emotional regulation within the court interaction, and using court microskills to enhance the court experience so as to encourage the offender to be more psychologically and emotionally present and to contribute to the hearing, in order to make the proceedings more emotionally and personally salient to them.

Effective therapeutic intervention also takes place during the much longer interaction facilitated via therapeutic courts and the legislative provisions that govern specialist and solution-focused courts, for example a drug court where the offender appears before the judicial officer on multiple occasions to monitor their progress towards goals that have been defined and implemented in collaboration with a specialised multidisciplinary team.

These specialist courts are particularly necessary, as those going through the court system are the most difficult group to intervene with therapeutically. This is due to multiple obstacles for health professionals such as a lack of access, a lack of authority, and a lack of follow through due to multiple barriers to engagement and resistance and hostility on the part of the parties involved, as well as practical issues such as lack of ability to organise, lack of transport, chronic chaos and life instability.

Judicial officers in these specialist courts are ideally positioned to intervene with this group and are given direct access via a court appearance. Their therapeutic interactions meet a need that is otherwise usually not met within health systems, despite their best intentions, due to the severe nature of the problems being faced by this group of the population as well as the circumstances of their lives and mistrust, reluctance to engage, or experience of frequent negative

therapeutic intervention experiences via other services. Therapeutic judges in specialist courts are able to engage and intervene with authority in the lives of defendants who have quite often given up, are disempowered and often objectively powerless to change their situation. This then has a knock-on effect on the communities in which they operate.

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[1.8] The judicial officer utilising new skills

The practice of a judicial officer intervening from a therapeutic perspective in court is derived from recognition of "legal actor contributions" which describes the impact of legal professionals within a legal setting on the defendant's experience of the court process. This encompasses the influence of both judicial officers and lawyers on the defendant's engagement with the legal proceedings, particularly within a systemic therapeutic framework. In this context, the court serves as a potential point of intervention, facilitating therapeutic engagement for individuals who may otherwise lack access to such interventions.

The development of a professional idea of a specialist court judicial officer making use of court craft is to view judicial officers more as "scientist-practitioners", whereby they apply scientifically-researched principles and techniques in their professional exercise, with the expectation of more effective long-term outcomes (based on the research).

> The judicial scientist-practitioner model of judging can be summarised as:
>
> Professional training + **scientific knowledge about therapeutic outcomes informing in-court processes**+ professional experience + wisdom = effective judging
>
> The text in bold (above) is where this guide is designed to be useful.

[1.9] Judicial officers' scope for action

In-court interactions and therapeutic goals

The potential therapeutic input of legal actors in both specialist and mainstream courts has been discussed in depth in therapeutic jurisprudence literature. A court appearance and legal sanctions are likely to be a crisis point in the life of an offender to a case. Crisis points are often conceptualised in therapy settings as moments in time which are extremely psychologically difficult, but which contain enormous potential for personal change. The court, beyond its traditional roles, can also serve as a point of entry for public health intervention in the lives of offenders, their families, and communities. This intervention can take place via referral, tailored sentencing, specialised courts, and also via interactions with judicial officers. Observing that judicial officers can have significant therapeutic impact through in-court exchanges has prompted efforts to further develop and measure this potential.

The unique forum of open court holds great therapeutic potential, which could usefully be exploited for therapeutic aims. It could well be that the most important intervention point in their life narrative is what and how a judicial officer speaks to them in open court, as well as the follow-through via sentencing with rehabilitative goals (alongside the other purposes of sentencing). For court experiences to be a vehicle for change, it is crucial to realise the significant impact that legal actors, particularly judicial officers, can have on an offender by what they say (content), and how they say it (the interaction process).

Guidelines for what to include in the content of statements will clearly be governed by legal and judicial considerations but can in theory also include elements that will likely increase the engagement of the defendant or respondent, the victim or the litigant, and other parties. It is wise to define some specific, measurable goals to measure, with the understanding that many intangible effects are not immediately obvious, which may necessitate longer term, more indirect measurement options.

The overarching goals for a therapeutic intervention via an in-court appearance could consist of the following:

- increasing psychological engagement and presence of the defendant in the courtroom so that the proceedings have lasting meaning for them
- disrupting the thought processes, identity congruent beliefs
- increasing awareness of the individual's capacity to engage in other reasonable, more prosocial alternate options for future behaviour (instead of reoffending)

- increasing a sense of responsibility for action, effective levels of guilt over past actions (as opposed to incapacitating levels of shame), as well as increasing self efficacy
- providing a feeling of the possibility of being included in a greater society and being invited to contribute positively to this society
- instilling the possibility of hope for something realistically different and better
- creating the possibility of feeling respected.

This is a lot to ask of a court hearing. Time constraints and the difficulty of enormous caseloads, as well as the solid nature of the psychological defence mechanisms employed by defendants against shame, are all formidable barriers to contemplating these objectives as achievable. However, there is a wealth of psychological techniques that can be applied to this end. Most offenders are open to the idea of feeling better and doing better; they just usually don't believe it is possible or believe that it is not in their interests. A court hearing provides a psychologically disruptive, forced opportunity to reshape this vision of reality. Techniques relating to judicial control and use of process and content, and systemic intervention, will be discussed further in Ch 2, 4 and 7.

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Sentencing and therapeutic goals

Sentencing is an opportunity to use judicial means to prolong the defendant's engagement with the justice, rehabilitation, health, educational (or other) systems. It provides a legally enforceable means to create a valuable window of opportunity for therapeutic intervention follow through. Depending on the jurisdiction and the defendant base, the nature of how sentencing can be used therapeutically will take different legal forms. Differing content depending on the evidence as to what works, for whom, and in what form, will necessarily keep evolving with new evidence-based treatments.

A community-based order with therapeutic conditions to meet with health practitioners, access social support, housing etc (depending on availability and resources) can be used effectively to change living circumstances and bolster motivation to go to therapy, despite a defendant believing change is impossible. This is sometimes the only effective way to compel an individual to engage in therapy for problems related to offending (eg for abstaining from drug or alcohol use, abstaining from domestic violence and making reparations) when it goes against their beliefs about how life works, what is possible, and their sense of self.

A sentence for incarceration can be used to stabilise a person's life, their mental state, to give a period of space and time to reorganise their entourage, and to give the defendant time to obtain support in a stable environment. The usefulness of this is largely contingent on the defendant's level of motivation, a sense of hope and awareness that something different could be possible, and the availability of adequate therapeutic and practical services within the prison system (which can be difficult to obtain).

One might wonder why a publication on therapeutic justice might advocate a position that a sentence of incarceration could be used to stabilise a person's life. Therapeutic change, particularly in instances where the offending and the offender's life situation are out of control, sometimes involves imprisonment.

Avoiding imprisonment at any cost is unhelpful in some contexts. It may mean that the offender learns there are no limits to their behaviour, or that their actions weren't that serious. In other cases, the offender may be unable (or unwilling) on their own to create living conditions that enable them to live without reoffending (this is particularly striking in cases of offences linked to addiction, or those

with highly complex living situations or complex mental health needs). In highly complex situations, the offender may need the court to put measures in place to stabilise their behaviour as well as their life circumstances.

An offender's experience of incarceration might stabilise many aspects of their lives sufficiently, as well as allowing access to health care and other services in a sufficiently regular manner so as to enable them to change their situation. Incarceration on its own, without access to these necessary services, is likely to be much less useful however.

This guide is certainly not an advocate for incarceration, but advocates for whatever factors are necessary for an offender to stabilise their circumstances enough for them to be able to facilitate change. This discussion regarding potential stabilisation via incarceration must be read in parallel to the Ch 10 recommendations with regards to culture, avoiding replicating historical wrongs via the court system and maintaining ties to country and community.

Professional level interactions and therapeutic goals

Judicial officers and other legal actors who have seen the demonstrated usefulness of therapeutic techniques and goals can act to increase the acceptance of these techniques in professional forums, via advocacy, introducing specialist professional development designed to increase awareness, but crucially also to increase skills and awareness of techniques. They can also act individually via mentoring of colleagues who are developing their skills, or more formalised mentoring processes with fixed development goals.

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Community level interventions and therapeutic goals

The effectiveness of community programs and specialist and solution-focused courts has been seen in many locations, although the studies on efficacy

are sometimes controversial, mostly due to the difficulty, sometimes political nature, and large scope of possible definitions of what is considered "successful outcomes". Evaluating whether a community program or a specialist court could be useful to a specific community needs to happen at the community level, and sitting judicial officers within that community are the experts on the legal needs and types of defendants processing through their courts.

Intervening therapeutically at a community level involves analysing the needs of specific populations of defendants within a geographic area and designing a court process and support system to meet that specific need. This is a specialist and larger scale therapeutic intervention that originated within the therapeutic justice community and given the scope of what is involved it will not be dealt with in this guide. There are excellent published works available, however, which can give more information about this possibility.

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A case example to illustrate

The idea that therapeutic skills used in a courtroom could change a defendant's future life trajectory may seem a somewhat idealistic proposal for those who have not witnessed it occurring. The evidence, when taken as a whole, tends to support the observation that there is great latent therapeutic capacity within the justice system and its administration, with the goal of reintegrating the individual within society as a contributing and functioning member. Clinical experience would suggest that interpersonal exchanges which have a high emotional and identity impact, particularly when there is an audience to those exchanges, can have a profound psychological impact, in a useful way.

The following anonymised case example illustrates the extreme end of the many contexts to the development of offending behaviour and how society could intervene via various different mechanisms. This example is taken from the experience of a psychologist working with young defendants with mental health problems, in the care of social services. In this case, the individual has been diagnosed with an attachment disorder and is on their way to developing an antisocial personality disorder. This case illustrates the driving forces of disrupted attachment, complex trauma, and identity.

The client, Tim,[6] was 13 and had been removed from his parents as a young child. He had subsequently "broken down" at least five[7] foster placements, and was now living in a residential group home but that didn't look like it was going to last either, based on the latest critical incident.[8] He may or may not have Indigenous heritage; there was some dispute about this between different factions in his extended family which further clouded his identity narratives and what might be available to him in terms of organisational help.

Tim suffered from what is often called by the more cynical or experienced helping professionals as "crap life syndrome". The team leader in that workplace preferred to refer to it more politely as "thick file syndrome", referring to the fact that clients with this type of presentation and symptoms usually had at least one thick manila file, and often many volumes to that file, given the amount of difficulties and interventions tried by the services involved.

This meant that Tim had many negative occurrences in his short life from in utero to the present moment which had then imprinted themselves onto his brain and nervous system, so that his ability to process language, to reason from a cause, to an effect, to a consequence, and above all, to regulate emotion and develop a coherent sense of self, did not function well. He relied on substances, projection, destruction, aggression, denial and dissociation to deal with aspects of his current life and symptoms of past traumas, as well as a sense of hopelessness and intermittent suicidality that otherwise would most likely have been unbearable.

After the most recent aggressive behavioural explosion at his high school, which had resulted in extensive property damage and traumatised several classes of students after the school was put into lockdown, Tim was currently in the watch house and would be going before the Children's Court magistrate in the morning to see if he would be remanded to juvenile detention, or released on bail (yet again).

It was clear that Tim needed authoritative, effective and firm therapeutic intervention both for himself, the current victims of his aggressive behaviour and for all his potential future victims. In Tim's case, and for many of the clients with a similar profile, they often kept "escalating" (a polite term for increasingly dangerous behaviour to express emotions and a sense of powerlessness) until they spent time in juvenile detention. It had almost become a rite of passage for the clients of this service. This had the unfortunate effect of consolidating a criminal record, and identity as "the other", and also making more friends in the detention setting. From a criminology perspective, going to "juvey"

6 The individual's real name, age and characteristics have been anonymised to preserve anonymity and privacy.

7 Anywhere between three and 15 foster placements is the average for this group of clients.

8 Usually an objectively traumatic incident resulting in physical and emotional injury to those involved, substantial property damage, self-harm and or threats of or actual attempts to suicide or inflict grievous bodily harm on others.

set the context for the next 15–20 years of involvement with the justice system, and the perpetuation of the next generation of clients with "crap life" syndrome, are readily recognisable.

At this time in Tim's life, psychological support services were already in place, calling on the many different types of interventions that could possibly help him. The therapeutic team were already intervening using the following modalities: multisystemic therapy, systemic intervention, attachment and trauma-informed therapy, play therapy, risk management.

These approaches would likely take some time to show an effect, and in the short term, on their own, would be unlikely to change behaviour prior to incarceration. These approaches when used by a therapeutic service, even one with a multisystemic approach, would often be ineffective if the client did recognise their potential usefulness enough to engage psychologically with these processes.

Therapeutic goals included: managing suicidality, co-ordinated care from the different services involved with him, educating his teachers to help him to deescalate the outbursts while keeping themselves and other students safe, teaching him emotional regulation strategies, life story work to create a coherent life narrative and make sense of his disrupted life circumstances, family therapy to make sense of the intergenerational patterns of trauma, abuse and neglect, alongside supervised visits with his family.

Alongside these, Tim also desperately needed an invitation to personal responsibility as a central figure in his life, and the expectation that this might be a useful investment of his scarce emotional and mental energy. Fundamentally, he also needed an invitation and path back into society from someone with the authority to make it so, and the hope that this might be worth his while to accept that the world might hold a different future for him. After a life story punctuated by multiple experiences that others will let him down and usually lie to him for their own personal comfort, the sitting judicial officer was probably one of the few people in his circle of experiences who was ideally placed to extend this invitation, and with the authority to make words retain their meaning.

The hope for this hearing was that the judicial officer could demonstrate in a public forum the hope and expectation that Tim was capable of finding his own power to positively impact his own life, as well as developing his awareness of choice and the possibility of a different path forward for him.

This may seem like quite a big ask for a judicial officer. But facilitating this shift in perspective is the goal of the techniques described in this guide.

Specialised therapeutic services, such as are mentioned in the excerpt above, are part of the solution for those already developing an offender trajectory who are

known to authorities. There are many others who are not picked up by social or health services and who do not come into contact with the criminal courts, but rather the family courts or courts hearing civil matters.[9]

Therapeutic jurisprudence is a parallel and important modality that is also vitally important, particularly as enacted via specialist and solution-focused courts. Specialist courts, for which the techniques in this guide are designed to be implemented, play a fundamental role in intervening and changing life courses for offenders who are willing to participate in this experience. Within mainstream courts, where the bulk of offenders will be found, a therapeutically-oriented court experience can also have strong, necessary therapeutic impact.

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9 Adult prisoners in Australia with prior imprisonment increased by 5% from 2022–2023 to 25,608. Adult prisoners without prior imprisonment increased by 1% to 16,318. This means that 61% of the currently incarcerated adult prison population in Australia is made of people who have reoffended, and this proportion is increasing over time. See Australian Bureau of Statistics, "Prisoners in Australia", 2023, accessed 24/7/2024.

[2] From theoretical foundations to generating therapeutic outcomes

[2.1] Examining preconceived ideas

Our ideas and theories about the world around us are obviously a product of reflection, based on our life experiences, as well as family beliefs, influential friends and colleagues and the reified knowledge of our societies.

When developing a therapeutic stance, it is essential to first become aware of these theories and ideas and their influence on our own perspectives, otherwise they run the risk of strongly influencing and limiting behaviour while remaining in the "background". Making unconscious assumptions and beliefs conscious and stated reduces their pervasive and possibly limiting influence.

Once these underpinning ideas are consciously available it's important to hold them lightly. These consciously held ideas, intuitions and "knowledge" are based on experience and limited to the contexts in which these experiences have been formed. They may be generalisable to other contexts, but alternatively, they may not be generalisable at all. Realising that our assumptions are not a reified fact can free up therapeutic intervention potential enormously, as putting these beliefs into words allows a therapist to then test these ideas and to consciously choose to make use of them rather than unconsciously including them in assumptions to their intervention.

As a systemic family therapist would likely suggest, its useful to flirt with a theory, but try not to be married to a particular point of view or hypothesis. As a step towards adopting this stance, it can be useful to first articulate in a deliberate way the judicial officer's personal theory of offending behaviour.

[2.2] Theories of offending

Many and various theorists have attempted to explain and develop models of criminal-offending behaviour. The theories described here are not inclusive of all

relevant theories; that is beyond the scope of this guide. They are part of a much wider field of criminology and individual psychology. They are introduced here as a starting point for reflection on externalising a personal theory of offending and are not designed to be exhaustive.

The **behavioural model of criminal offending** proposes that criminal behaviour is influenced by learned patterns of conditioning, reinforcement and punishment. Individuals engage in criminal acts when the perceived benefits outweigh the potential costs. Offending behaviour is shaped by operant conditioning, where behaviours are modified through the association of environmental stimuli with reinforcement or punishment. This model emphasises the role of environmental factors, such as social interactions and situational contexts, in shaping behaviour. It suggests that interventions should focus on modifying the conditions that reinforce criminal behaviour while promoting positive alternatives and skills development to reduce the likelihood of engaging in unlawful acts. This model ignores the role of identity and narrative in shaping choices for future actions.

The sociological theory of offending, **strain theory**, proposed by Robert Merton in the 1930s, suggests that individuals engage in criminal behaviour when they are unable to achieve common societal goals through legal means, due to lack of access to education, employment or income, leading to feelings of frustration and resorting to illegal avenues. The theory further developed by Agnew focuses on the negative emotions resulting from the discrepancy between aspirations and achievements, which can lead to criminal coping mechanisms. This theory has applications in disadvantaged and marginalised groups and also in other stressful situations specific to the individual.

Social control theory, developed by Ivan Nye from **functionalist theories** of criminal activity, theorises that social learning builds self control and that three types of control act to prevent criminal activity. These are: direct control through threat of punishment for "bad" behaviour and rewards for "good" behaviour; indirect control through identification with those whom "bad" behaviour would cause hurt to; and internal control, where the individual has an internalised sense of right and wrong and their conscience prevents them from acting badly.

Social learning theory, developed by Bandura as a generalised theory of human learning, is the theory that an individual learns new behaviours via observation of others' behaviour, a process whereby behaviour is modelled. This approach has been reworked by Ronald Akers and Robert Burgess to include behavioural learning principles from psychology, which led to the creation by Akers of "social structure-social learning theory (SSSL)". This is a theory designed to explain offending behaviour variations between societies and different groups of

people within societies and integrated into differential association theory (plus or minus social control theory) to create life course perspectives for offending behaviour, by Thornberry (who developed the former theory) and Warr (who developed the latter theory).

Differential association theory posits that experiences that help define what is criminal, what is fair and what is honest, definitions of "right" and "wrong" and the interpretations of events that relate to criminal activity occur throughout any person's lifetime and form the basis for an individual's understanding of where they position themselves with regards to criminal behaviour. However, not all messages and experiences have equal impact. Those that occur when young are more influential than experiences that happen when older and those experiences or messages regarding criminal activity that come from people who are held in respect or who have a strong emotional link have more impact than those that come from those without salient emotional or respect connections. Essentially, people learn about the law and criminal activity and their positioning with regards to these elements of life from those around them, particularly those they hold closest. This process, called "differential association", developed by Edwin Sutherland and then successively refined by various theorists, emphasises that criminal behaviour is learned through modelling of criminal behaviour by others (social learning), which occurs in interactions with others, particularly in environments where attitudes and behaviours conducive to crime are reinforced.

Routine activities theory, formulated by Cohen and Felson, asserts that criminal acts occur when a motivated offender and a suitable target converge in a setting lacking capable guardianship (Cohen & Felson, 1979).

Self-control theory, proposed by Gottredson and Hirschi, posits that individuals with low self-control are more likely to engage in criminal behaviour due to their inability to delay gratification and consider long-term consequences.

A **trauma-informed model** of understanding criminal behaviour recognises the impact of past trauma on an individual's future behaviour. It seeks to understand how experiences of trauma, such as abuse, neglect, or violence, can lead to profound changes and disturbances in reasoning, emotions and emotional regulation, relationships, a coherent sense of self, and maladaptive coping mechanisms. A trauma-informed approach is increasingly being adopted by researchers from multiple disciplines studying the interaction of offenders and the justice system, including in specialist and problem-solving courts as well as mainstream courts.

Self-reflection

1. In order to understand the perhaps unconscious assumptions implicit for any therapeutic practitioner, assumptions that will form the background to professional practice as a judicial officer, it is helpful to consider your own theory of criminal behaviour. It could be useful to spend five minutes reflecting on the following:
   - your personal theory or theories on why people commit crimes and where these are situated with regards to the theories discussed here
   - how you have developed your own perspective, in light of your life and professional experiences.

Some aspects that you might want to consider when reflecting on your own theory may include: the type of crime, the "type" of person, economics, social status, family situation, addiction, modelled behaviour, relationship status, people's coping mechanisms to deal with strong, unpleasant emotional states, personality traits such as callousness, entitlement, manipulativeness and deceptiveness.

Some further questions designed to facilitate self-reflection are as follows:

2. How does offender behavioural change occur according to your theory of offending?
3. Does your theory of offending suggest possibilities for external intervention to prevent recidivism?
4. If so, what types of intervention do you theorise as being most useful for offenders?
5. Who, or which services, would be most effective and best placed to intervene, according to your theory of offender behavioural change?

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[2.3] Defining "the problem"

From a judicial and societal point of view, "the problem" that has led an offender to a court appearance will primarily be defined as the offence they have been charged with. Secondarily, "the problem" is viewed as the offender themself, their subjective characteristics and circumstances, which may include certain social affiliations or sub groups the offender is perceived as belonging to, for example gang membership.

In order to intervene therapeutically, it can be useful to consider and expand the definition of "the problem" in the hope that it will generate more scope and ideas for intervention. For example, an individual psychological model would define "the problem" in variously different ways, most likely as being related to the offender's thoughts, perceptions, beliefs, behaviours, emotional systems and problems with emotional regulation, trauma, addiction, identity, group belonging or exclusion, personal schemas, and so on.

Lack of understanding of social interactions, impaired social or occupational functioning, impulsiveness, problems with understanding cause and

effect, sensory integration problems and communication issues linked to non-neurotypical development could also be usefully included in this perspective when defining "the problem".

A social model of "the problem" would include forces acting upon the individual generated by society, such as access to education, finances, prejudice, housing, experiences of racism or exclusion.

From a systems perspective "the problem" could be defined even more widely; this will be explored further in Ch 8 "Systemic intervention".

It is also therapeutically useful to have more than one definition of "the problem". It is helpful to collaboratively define the problem during a court proceeding using the defendant's own theories and words. This collaborative definition encourages the offender to "own" the problem as their responsibility, while having the experience of being heard as the expert on what the problem is, its history, the history of failed attempts at trying to resolve it. This experience is likely to increase the sense of being heard and being able to psychologically participate in important societal processes such as a court hearing. This approach is predicted to increase self efficacy, the sense that a person is capable of acting on their own problems, and also intrinsic motivation. Within the talking therapies, increasing self efficacy and intrinsic motivation are foundational to changing future behaviour.

It is often a useful therapeutic intervention to reframe the problem, that is, to change the definition of what "the problem" is, so as to encourage action in relation to it. As a basic way to create space for intervention with offenders, framing "the problem" in such a way that it is external to the offender's sense of self and their identity, albeit within their responsibility, is usually the most useful approach to start with.

These are the steps to framing "the problem" differently:

1. Conceptualise "the problem" as a serious issue that you and the offender are both noticing now.
2. Describe the problem as something that they may have tried to prevent (or not) in the past, but have so far failed to overcome.
3. Describe yourself as a resource available to help them work to solve this difficult problem they are facing.

This reframing can improve motivation and indicate a self-congruent way to accept support to reinforce an offender's determination to act against "the problem".

There are many other possible ways to reframe "the problem"; these will be discussed in further detail in Ch 9 "Narrative intervention skills".

Self-reflection

Take a moment and reflect on your personal definition of "the problem" when a person appears in court. Choose a specific offender whose context and habits you are familiar with, or if this is not possible, a generalised type of offence that you commonly see.

1. How comfortable are you with this definition of "the problem"?
2. What has informed it?
3. Has your definition changed over time?
4. What does this definition suggest as therapeutic intervention?
5. Is this within your control and scope of practice?
6. Has it been tried; if so how did that go?

What do you, personally, think about the idea of having several different definitions of "the problem"?

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[2.4] Theories of individual change

The field of psychology, which includes empirical research studies as well as the talking therapies and their theorists, contributes to this discussion of many different theories of how therapeutic change occurs, and what it looks like for an individual and those around them.

Psychoanalytic theory, originally developed by Freud, suggests that change happens through making the unconscious material and conflicts conscious, leading to insight and catharsis (Freud, 1917).

Cognitive-behavioral theory states that change is achieved by identifying and altering maladaptive thought patterns and behaviours, often utilising techniques like cognitive restructuring and exposure therapy (Beck, 1976; Ellis, 1957).

Humanistic-existential theory, developed originally by Rogers and Frankl, emphasises self-actualisation and meaning-making, suggesting that change occurs when individuals develop congruence between their self-concept and experiences or find purpose in life (Rogers, 1951; Frankl, 1946).

Attachment theory, proposed by Bowlby, underscores the significance of secure relationships in promoting change, positing that a strong therapeutic alliance can facilitate emotional healing and personal growth (Bowlby, 1988).

Coaching theory views personal change as a process guided by goal-setting, self-awareness and skill development. Drawing from **self-determination theory**, Deci and Ryan (1985) emphasise the importance of individuals' intrinsic motivation and autonomy in driving sustainable change. The **GROW model**, introduced by Whitmore (1992), structures coaching around Goals, Reality, Options, and Will, facilitating the exploration of personal aspirations, current realities, potential strategies and commitment to action.

An **integrative or eclectic approach** contends that change is multifaceted and draws from various therapeutic modalities, tailoring interventions to individual needs and circumstances. These theories collectively reflect the dynamic interplay of factors like self-awareness, cognitive restructuring, emotional processing, relational dynamics, and existential exploration and creation of meaning and purpose that can all contribute to therapeutic change.

Many of society's theories regarding change for offenders seem to be most influenced by coaching theory.

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[2.5] Theories of how change occurs within systems

As will be discussed in greater detail in Ch 7 "Intervention skills for non-neurotypical offenders", a judicial officer utilising therapeutic skills within a courtroom context could be described as an intervention occurring within a system. Various theories have described how change occurs through a combination of processes within a systemic context. **Systems theory**, notably discussed by Bateson, highlights how alterations in one component of a system can create ripple effects throughout the system that trigger adjustments in other parts of the system, leading to systemic change. **Feedback loops**, as described by **cybernetics theory**, play a crucial role in this process by providing information about the system's state, guiding adjustments to reach desired outcomes. The **diffusion of innovation theory**, presented by Rogers (1962), demonstrates how new ideas or practices spread within a system through communication channels, influencing change as individuals adopt novel behaviours. These theories collectively highlight the interconnectedness, feedback dynamics, and information dissemination that contribute to change within complex systems.

When a change is fed into a system, the system's homeostatic mechanisms will usually act to down-regulate this influence, so as to maintain the usual system **homeostatic set-point**. This means that systems tend to act to reduce the effects of changes within their individual parts, to maintain the norm for that system.

If a change is continually fed into a system, over time the down-regulation is no longer sufficient to prevent change from occurring, but due to the homeostatic processes involved, the change is often quite sudden. Where the system will suddenly change from one state to another is known as a **state change** and is well illustrated by the effects of heating water until it boils, or alternatively, the observation of climate-tipping points.

Systemic change is often not visible until it precedes a **sudden change of state.** This is useful to keep in mind when dealing with the complex systems that inform the context of offenders' lives and their court hearings.

Systemic changes are often already happening long before they become conscious, obvious, or externally visible, and manifested in observable changes of behaviour. This observation can be useful to bear in mind when intervening

therapeutically, so as to avoid giving up when trying to introduce change into a system if there are no immediate results. Systemic change can take time and may not appear externally until long after the intervention has occurred.

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[2.6] What therapeutic processes look like and how they work

Therapeutic change in the individual therapy setting is often not linear, may not be proportionate to effort, time, or intervention, can often backtrack and can sometimes make massive steps forward with very little warning or apparent input. Therapeutic change for an individual most closely resembles that of a system changing set point.

When therapeutic change happens, it is crucial to facilitate reinforcing and maintaining that change, as well as preparing to take "three steps forwards and then two steps back". This experience is a common part of the change process and is not an indication to give up, but rather to review, continue, reinforce and to be patient.

Self-reflection

It can be useful to think about how your personal experiences of change inform your own theories of how change occurs for others.

If this topic interests you, take a moment to think about when you have instigated a change in yourself, or your surroundings.

- What was the catalyst or inspiration to make this happen?
- What techniques, mindset, or resources worked for you?
- Did you have help of some sort?
- Were there setbacks?
- Was the effect of your efforts linear, proportionate and predictable?
- Was the nature of your change process different between different types of changes?

[2.7] Theoretical therapeutic orientations

These therapeutic orientations include (but aren't limited to):

- person-centred therapy
- systemic therapy
- multi-systemic approach
- strengths-based intervention
- narrative therapy
- social discourse and construction approaches
- trauma-informed approach

These approaches will be explored further in the following chapters, starting with the person-centre approach. The person-centred therapeutic approach assumes that an individual has the right to self determination and, that given the right environment of unconditional positive regard, will find what they need to make the necessary changes in their lives. In this approach, the therapist is aligned next to the client, rather than being an expert. The techniques for change rely on the attention to process and telling the client to develop their understanding of problem areas using questioning.

The basic techniques developed within this therapeutic approach will be covered in Ch 4 "Preparation", using counselling microskills in a courtroom, however it is useful to revisit this to emphasise the usefulness and limitations of this approach in a courtroom.

Unconditional positive regard can be related to the right of an individual to exist, within their context, and an assumption that they are how they are up until now, as a product of their life experience, interpretations, relationships, social and economic context, and so on. Clearly this does not mean unconditional positive regard towards an offender's actions that are harmful to themselves or to others.

The non-directive assumption that underpins the **person-centred approach** is that individuals will find what they need to heal themselves if they are given the right environment to facilitate this, and that they are the expert on themselves, their life experience, and what might work for them. This positioning can be used effectively in a courtroom and will usually have the effect of helping an offender to feel heard, to some degree understood and, most importantly, to realise that their presence and responsibility is fundamental to the court process being effective and useful for them. These are essential ingredients to developing lasting motivation for change, which will persist beyond court-mediated sanctions and legitimate externally-based coercive measures.

Within the courtroom setting, the non-directive stance needs to be mediated however with the wisdom of experience that shows that some offenders will not find what they need due to lack of a facilitative environment for self-development and making better choices. They will need someone wiser, more educated and with better access to thinking and other resources to signpost them to what they might need in order to facilitate change (for example a judicial officer referring them to an alcohol and drug program).

References

Rogers CR, *A way of being*, Houghton Mifflin, 1980.

Rogers CR, *Carl Rogers on encounter groups*, Harper & Row, 1970.

Rogers CR, *Client-centered therapy: its current practice, implications and theory*, Constable & Company, 1951.

Rogers CR, *On becoming a person: a therapist's view of psychotherapy*, Houghton Mifflin, 1961.

Rogers CR, "The necessary and sufficient conditions of therapeutic personality change" (1957) 21(2) *Journal of Consulting Psychology* 95.

[3] Judicial positioning for therapeutic impact

In this section we will examine some of the foundational aspects that facilitate adopting an effective therapeutic stance which is durable over time. These foundational aspects are taken from various schools of therapy and research into therapist characteristics and therapeutic outcomes.

[3.1] Responsibility for process, not results

It is important for any person attempting to facilitate a therapeutic change in another individual to adopt the psychological stance of being responsible only for the process parameters under their control, rather than the results (which are not under their control outside of legal sanctions). The importance of this psychological positioning cannot be overemphasised. This stance is a foundational principle in therapist and psychological training. Attempting to control another's behaviour is stressful for both parties involved, can be experienced as intrusive, or abusive, and is usually ineffective for therapeutic change. It can also rapidly lead to therapist burnout.

A judicial officer wishing to adopt a therapeutic stance needs to consciously differentiate between their control and responsibility for the process (ie the exchanges and experience of being in a courtroom, legal sanctions and sentencing) and not being responsible for the outcome (ie what the offender does next and whether any observable change occurs). In effect, the judicial officer can consciously highlight what they are responsible for, and what the individual participating in the hearing is responsible for. This distinction is important. Although the criminal legal system is by nature coercive, and necessarily so, it is counterproductive from a behavioural-change perspective to try to control

a person's psychological growth and future actions, outside of the appropriate legal means available such as sentencing. The individual has responsibility for their own actions. This is a clear principle of TJ.

Attempts to control psychological outcome are often a counter-therapeutic experience for the individual in question — it negates their own free will, their own reasonability of choice, ignores their own knowledge of the problem and what they have already tried or could try, and undermines their own development of the necessary intrinsic motivation needed to change their own life.

Judicial officers can provide guidance, support and ideally a "constructive" experience of judicial process; that is all within their professional scope and control. Offenders are the experts on their own experiences and ultimately the only ones able to make different future choices for their lives. Generally, meaningful change arises when the offender acknowledges their responsibility, finds their intrinsic motivation and power, and takes responsibility for participating in their own transformation. In order for this to occur, it is crucial to separate out responsibility for process and for results. A judicial officer is not responsible for the future choices and behaviours of offenders, but is responsible for the process in the courtroom and through taking responsibility for controlling process, can influence the offender's psychological growth.

References

Maslow AH, *Motivation and personality*, Harper & Row, 1954.

Rogers CR, "The necessary and sufficient conditions of therapeutic personality change" (1957) 21(2) *Journal of Consulting Psychology* 95.

Winick B, "Therapeutic jurisprudence and problem solving courts" (2003) 30 *Fordham Urban Law Journal* 1055 at 1067.

[3.2] Neutrality

Therapeutic neutrality refers to the impartial and non-judgmental stance that therapists adopt when working with clients, accepting the client's perspective as valid, without attempting to impose the therapist's own personal values or opinions. This concept is integral to person-centered therapy, as articulated by Carl Rogers (1951), where the therapist creates an environment of acceptance and understanding, promoting the client's self-exploration and self-acceptance. Neutrality is also essential for systemic therapists and allows the therapist to avoid aligning with any particular member or faction within a family or organisational system and thereby narrowing the scope of their intervention to that faction's self-interested goals.

Judicial neutrality is a professional requirement and it could be demonstrated by assertively and deliberately maintaining a perspective that is informed by both the prosecution and defence, as well as societal norms, discourse, and political perspectives, but is not dependent on these perspectives and so remains neutral.

Neutrality could also be shown by unbiased, curiosity-driven questioning which does not include presuppositions about the expected answers. More detail about asking neutral questions is included in the section on questioning skills.

Self-reflection

1. What does neutrality mean to you?
2. Is neutrality difficult or easy to maintain professionally?
3. What types of professional situations evoke strong emotional reactions for you, and how do you maintain neutrality at these times?
4. Can you think of some other ways in which neutrality could be demonstrated within a courtroom exchange? As a starting point for reflection, this could consider the processes observed, turn taking, body language, physical layout and seating of the parties, language used.

References

Freud S, "Recommendations to physicians practicing psycho-analysis" in *Standard edition of the complete psychological works of Sigmund Freud*, 1912, Vol 12, Hogarth Press, pp 109–120 (original work published 1912).

Rogers CR, "The necessary and sufficient conditions of therapeutic personality change" (1957) 21(2) *Journal of Consulting Psychology* 95.

Winnicott DW, *The maturational processes and the facilitating environment*, International Universities Press, 1965.

[3.3] Reflective capacity

Reflective capacity refers to an individual's ability to notice, understand and process their own thoughts, emotions and experiences. This includes recognising and interpreting one's motivations, beliefs and the impact of past experiences on present behaviours.

Reflective capacity is strongly linked to therapist effectiveness. It enhances self-awareness, empathy, and informed decision-making, enabling individuals to navigate complex situations, manage emotions, and engage more effectively in personal growth and meaningful interactions with others.

Reflective capacity also includes the capacity to reflect on the effectiveness of actions and our theories for other's behaviour. It is a fundamental part of therapeutic intervention training to regularly reflect on an intervention afterwards, to assess how it felt, how it may have been received, if there were any impacts, and what the impacts were or might be in the future, and why. This develops therapeutic skill and allows practitioners to refine their understand of the theories underpinning their therapeutic interventions.

Self-reflection

Given the usefulness of developing reflective capacity, it seems potentially helpful to deliberately include time for this in your professional practice, if you have not already done so.

For effective professional functioning, it is useful to also set aside deliberate periods of time to reflect on your own internal processes and how these might interact with your role and your professional interactions. Reflection can occur individually, with a peer, with another professional (ie a psychologist) or with a group of peers.

Some ideas for starting this process are as follows:

1. Take a moment to tune into your own physical state, breathing, senses, emotions, thoughts. Without trying to change any of this, nor attributing a right or wrong to it, just try to maintain awareness of your state for a period of time. An example technique for this ("Body scan") is included in Appendix D.
2. Consider setting a timer or creating a regular routine to tune into yourself in this way, throughout the day.
3. It can also be useful to set aside regular times each week or month to deliberately reflect on your practice, either on your own or with a trusted and skilled colleague, preferably using a specific structured format that encourages reflection on the different aspects of judicial therapeutic intervention skills.

References

Schore AN, *The science of the art of psychotherapy*, Norton, 2012.

[3.4] Holding hope

This may seem an obvious point to make, but it is extremely useful when attempting to intervene therapeutically to actually hold a hope that the offender is capable of change, in some form. Thankfully, it is not completely necessary to have hope for therapeutic change to actually occur in spite of this, however improvement in some form is much more likely to occur when it is hoped for and deliberately highlighted as a possibility.

Holding hope for an offender does not mean blind optimism that they will suddenly achieve complete personal healing and transform their lives, including never offending again. This would be ideal but experience suggests it may not be a realistic expectation in the short term. At the other end of the scale is the perspective that all offenders are incapable of change and will continue with the same level of offending, distress, and impact on themselves and their communities without any possibility of improvement. It can be therapeutically pragmatic to hold a degree of hope, with a non-specific expected outcome, for all offenders. If you genuinely hold hope this will be communicated to the offender in the tone and content of your communication with them.

It could be useful to define for yourself where you position yourself with regards to the concept of hope for offenders, in general, and in your courtroom. The exercise below could help with this process.

Self-reflection

For a moment, imagine drawing a straight line on a page. At one end of this line is the definition of complete personal transformation for an offender (as mentioned above) and at the other end of the line is the perspective that offenders are completely incapable of change. Mentally mark the line at the level of hope that you currently feel towards a typical offender in your courtroom and towards specific offenders who have stayed with you in some way.

1. What do you notice about the degree of hope that you hold in a courtroom?
2. What level of hope is most comfortable within a courtroom when dealing with an offender?
3. Would it be reasonable, feasible and not too exhausting for you to slightly increase the conscious level of hope you hold for offenders in general, or specific offenders?
4. What level of hope do you hold about the world in general and the future of the world?
5. Was this an easy exercise for you to do? Why?

References

Bandura A, *Self-efficacy: the exercise of control*, WH Freeman & Co, 1997.

Bandura A, *Social foundations of thought and action: a social cognitive theory*, Prentice-Hall, 1986.

Frankl VE, *Man's search for meaning*, Beacon Press, 1959 (original work published 1946).

Rogers CR, "A theory of therapy, personality, and interpersonal relationships, as developed in the client-centered framework" in S Koch (ed), *Psychology: a study of a science*, Vol 3: Formulations of the person and the social context, McGraw-Hill, 1959, pp 184–256.

White, M and Epston D, *Narrative means to therapeutic ends*, WW Norton & Co, 1990.

[3.5] Techniques to increase cognitive flexibility

The above exercise makes use of a technique taken from dialectical behaviour therapy (DBT). This technique is designed to open up conscious cognitive, emotional and behavioural flexibility in the interpretation and expression of two opposing states, and the possibility of conscious adaptation between those two states in response to different contexts. It increases thinking and behavioural flexibility.

This technique was originally developed to help individuals overwhelmed by extreme emotional states and rigid thinking, but can be applied to just about any concept, thought, choice or behaviour. This technique is useful to increase cognitive flexibility and when learning and trialling new behaviours. The technique is something that could also be used with offenders, who often have great difficulty modulating their behaviour to different circumstances, issues in social and emotional adaptation, and rigid black and white thinking styles.

The basic process is as follows:

1. Name a problematic behaviour, emotion, or perception.
2. Put the two opposing extremes of this problem at each end of the line.
3. Ask the person to position themselves on the line, at different points in time, and in different circumstances.

Application within a court hearing

An example of this technique used with an offender during a hearing could be as follows:

1. Ask the offender where they position themselves on the line between completely avoiding contexts and associates who facilitate offending and completely immersing themself in contexts that facilitate offending.
2. Then ask them whether they are where they would like to be on that line.
3. If they indicate that they are not where they would like to be positioned on that continuum, then ask what concrete steps or supports might help them move closer towards completely avoiding detrimental contexts.

Used in this way, this technique can open up opportunities for more flexibility in behaviour, and future change.

Naming and expressing dialectics

A second exercise is also taken from taken from dialectical behaviour therapy. This involves the identification of two opposing states which are true at the same time, it can help to integrate perspectives of a specific situation.

The basic process is as follows:

1. Name a problematic behaviour, emotion, or perception.
2. Find the opposing or contradictory state to the observation in step 1, which is also present in the situation.
3. Put the two descriptions together into a sentence or phrase.

Application within a court hearing

Examples of this technique used with an offender during a hearing could be as follows:

Example 1

The courtroom participant is a criminal.

The courtroom participant is capable of kindness towards others.

The courtroom participant has committed criminal acts and is also capable of kindness towards others.

Example 2

The court's judgment of the facts is final.

The experience of being heard during judgment can facilitate future change.

The court's judgment of the facts is final and the experience of being heard during judgment can facilitate future change for the offender.

References

Linehan MM, *Cognitive-behavioral treatment of borderline personality disorder*, Guilford Press, 1993.

Linehan MM, *DBT skills training manual*, 2nd edn, Guilford Press, 2018.

[3.6] Unconditional positive regard

Unconditional positive regard is another concept taken from person-centred therapy. It refers to an attitude or stance of genuine acceptance, respect, and non-judgmental understanding that a therapist or individual offers to another person. Rogers believed that this is a crucial factor in fostering psychological growth and facilitating therapeutic change. It creates a space where individuals can openly explore their thoughts, feelings, and experiences.

In the context of therapy, it involves providing a safe and supportive environment in which individuals feel valued and accepted for who they are.

It is important to note that while the concept of unconditional positive regard originated within the context of the theoretical foundations for person-centred therapy, the concept has broader applications in various fields, including education, parenting and interpersonal relationships.

In a courtroom, unconditional positive regard could be expressed by asking questions about the offender, their circumstances, the reasoning and the effects of their offending, by demonstrating an interest in the offender and their situation, by separating the individual from their actions and opening up the concept of behaving differently in the future. It does not mean accepting criminal behaviour, excusing criminal acts, or downplaying the effects of these actions; it puts the offending behaviour into the wider context.

Self-reflection

1. Can you think of some other ways in which unconditional positive regard could be demonstrated towards an offender within a courtroom exchange? Again, as a starting point for reflection, this could consider the processes observed, turn taking, eye contact, statements, body language, physical layout, seating of the parties and language used.
2. How have you seen other judicial officers or other professionals show neutrality in their dealings with others?

References

Rogers CR, "The necessary and sufficient conditions of therapeutic personality change" (1957) 21(2) *Journal of Consulting Psychology* 95.

[3.7] Congruence

Congruence, within the context of therapy, refers to the alignment or harmony between a therapist's genuine thoughts, feelings and behaviours and what they choose to show in their outward interactions with clients. This is the third aspect of judicial positioning that is drawn from person-centred therapy. Congruence involves the therapist being authentic and transparent, openly sharing their own experiences and emotions without pretence or defensiveness.

Clearly there are limits to appropriate judicial transparency in a courtroom setting. However, some degree of authenticity and transparency is likely to foster a more genuine interaction and is also likely to help the offender be more psychologically present during the hearing. Additionally, if the judicial officer is

seen as being genuine and congruent, what the judicial officer says is also likely to have more impact for the offender. Both mechanisms should in turn mean that the experience has more emotional salience for the offender in the future.

Congruence can be experimented with, tried out in different forms, allowing for "degrees of transparency" towards the offender, as is appropriate to the context.

An example of this could be expressing emotions related to the context, the situation, the past history of the offender.

Self-reflection

1. How comfortable do you feel with the idea of showing some of your own emotions during a hearing?
2. Is there a way to make sure that this remains therapeutically useful and within your professional limits and personal comfort levels?
3. Are there any steps or mechanisms you can put in place to facilitate effective and appropriate congruence? What would this look like for you?

References

Rogers CR, *Client-centered therapy: its current practice, implications, and theory*, Houghton Mifflin, 1951.

Rogers CR, "A theory of therapy, personality, and interpersonal relationships as developed in the client-centered framework" in S Koch (ed), *Psychology: a study of a science*, Vol 3: Formulations of the person and the social context, McGraw-Hill, 1959, pp 184–256.

[3.8] Professional development

It is important for anyone engaging in work designed to be therapeutic to recognise this can have a professional and personal impact. This may include the positioning of wanting a difference, holding hope for an offender and using their skills and energy to control process in the courtroom so as to facilitate a therapeutic change. In general, this impact should be a positive one, but it will also inevitably, at times be disappointing, exhausting and sometimes frustrating.

To work through and process these experiences and to draw useful learning from them, it can be useful to have a formalised forum with regular mentorship with a trusted peer or expert in therapeutic change (as mentioned above). Regular supervision is a statutory requirement for most helping professionals and for

good reasons. This can provide a safe space to discuss professional experiences and personal reactions, make sense of these and to further develop skills and confidence in the professional context. It is one of the most effective ways to develop therapeutic skills that are adapted to the context, as well as maintaining professional energy and effectiveness during difficult times.

Further strategies for developing therapeutic skills include sourcing training in any of the following modalities, as they seem to apply to offenders in a specific court. Further training in the therapeutic approaches discussed in this guide, including training in multisystemic therapy, acceptance and commitment therapy and dialectical behaviour therapy, could also be helpful.

Professional development is protective against burnout for helping professionals.

[3.9] Self-care and preventing burnout

Preventing burnout

Burnout is a state of emotional, physical, and mental exhaustion caused by prolonged periods of stress and overwhelm, particularly in the workplace. It occurs when individuals feel overwhelmed, emotionally drained, and unable to meet the demands placed upon them. Burnout often arises from a combination of factors, including excessive workload, lack of control over tasks, lack of professional recognition, unclear role expectations, and/or a lack of support from colleagues or supervisors, particularly when these factors combine with difficult life events or health issues. Additionally, factors such as poor work-life balance, unresolved conflicts, and a mismatch between personal values and job responsibilities can contribute to burnout.

It is important to note that individual strategies alone are not sufficient to deal with burnout if the organisational factors present are sufficiently difficult. While it is very important for individuals to monitor and address signs of burnout themselves and actively manage and protectively develop their careers, it is also fundamentally important for workplaces to seriously address workplace factors that may be contributing to burnout via specialised human resources initiatives, rather than shifting the entire responsibility for burnout onto the individual experiencing it.

Continuous exposure to high levels of stress without protective organisational and personal practices is not conducive to effective professional functioning over the long term. Recognising the signs of burnout early and implementing strategies (both at a personal and organisational level) to address the underlying causes are essential for promoting judicial officers' well-being and preventing long-term negative consequences.

Note that burnout is never due to a lack of strength nor a lack of work ethic. If you or those in your life are dealing with symptoms of burnout, it is important to recognise this quickly and obtain professional help to rapidly improve the situation and preserve professional functioning, as well as mental and social wellbeing.

Potential signs of burnout

Early recognition of the signs of burnout is fundamental to taking proactive steps to address burnout and prevent its negative impacts on both personal well-being and professional performance. It is easier to intervene when symptoms are less developed and have had less time to become entrenched.

Emotional signs:

- feelings of detachment or cynicism towards work or colleagues
- increased irritability or frustration, especially over minor issues
- loss of motivation and enthusiasm for work tasks
- feeling emotionally drained or depleted, even after minor tasks
- a sense of hopelessness or helplessness regarding work-related issues
- feelings of incompetence for tasks that were previously simple.

Physical signs:

- persistent fatigue or exhaustion, even after getting adequate rest
- frequent headaches, muscle tension, or other physical complaints or pain symptoms
- changes in sleep patterns, such as insomnia or oversleeping
- increased susceptibility to illness or weakened immune system; autoimmune disorders, increase in allergies
- digestive problems or irritable bowel syndrome
- changes in appetite (greatly increased, or greatly decreased)
- craving sugar, caffeine, or carbohydrates.

Behavioural signs:

- procrastination or avoidance of work tasks
- decreased productivity and efficiency in completing tasks
- increased absenteeism or arriving late
- withdrawal from social interactions or avoidance of colleagues, cancelling social or recreational events
- engaging in unhealthy coping mechanisms such as substance abuse or overeating.

Cognitive signs:

- difficulty concentrating or staying focused on tasks
- memory problems or forgetfulness related to work responsibilities
- decreased creativity or innovation in problem-solving
- negative self-talk or self-doubt regarding job performance
- increased pessimism or a sense of cynicism about the future.

It's important to note that each individual responds to chronic overwork with their own pattern of symptoms, some of which may not be included here. Self-reflection on any past experiences of high workload intensity will show what symptoms are likely for an individual judicial officer.

Self-reflection: self check in

1. Refer to the list of symptoms of burnout above. While being gentle with yourself, take a moment to review your last three weeks at work and at home. Do you have signs of these in your life at the present moment?
2. Would a close friend or colleague recognise some of these signs in yourself if you asked them? Who is the first person to notice when you aren't doing so well in yourself?
3. Would you recognise any of these signs in your colleagues?
4. Take a moment, and try out one of the relaxation and emotional regulation techniques listed in Appendix D "Preventing burnout".
5. Do you need to do anything with the observations that you have made just now? It might be useful to consider the following:
   - reviewing and augmenting your self-care strategies
   - consulting with a psychologist to develop a more comprehensive self-care plan
   - whether any colleagues might also need support, and the most discrete and compassionate way to draw their attention to this
   - whether there are useful observations to be shared at an organisational or management level, and how best to share this in a neutral and effective manner.

Self-care strategies

Self-care is fundamentally important to effectively use the techniques mentioned in this manual.

Self-care can take many forms, but does need to be regular, include a variety of different strategies and be personally meaningful in order to be effective. It is important to recognise that what constitutes self-care may be quite different between people.

By incorporating a variety of self-care strategies from these categories into your routine, you can promote overall well-being to help cope with a challenging workload.

A list of example self-care strategies is grouped by type of intervention:

Physical self-care:

- Prioritise regular exercise or physical activity that you enjoy. This might include both high intensity exercise and low intensity exercise periods.
- Ensure you get enough sleep each night. Sleep disturbance is often the first sign of overwork. If you are dealing with sleep issues, seeing your GP, using herbal remedies that encourage sleep such as valerian or chamomile, trialling low dose melatonin, and putting in place a nightly "wind down routine" can all be useful. Have a plan for dealing with insomnia when it occurs, which avoids time spent in bed worrying. A psychologist can help with this in more detail.
- Maintain a balanced and nutritious diet, focusing on whole foods. Try to encourage regular mealtimes and to allow enough time for meals. Concentrate on eating during meals rather than working through that time or being distracted.
- Practice relaxation techniques such as deep breathing, meditation or yoga. Even small amounts of meditation (guided or unguided) can be useful to increase creativity and problem solving, and decrease emotional reactivity.
- Schedule regular breaks throughout the day to stretch and move around. Break up long periods of sitting with movement of some sort.
- Different physical therapies such as acupuncture, shiatsu, or more general massage can help support physical health during times of intense workload.

Emotional self-care:

- Engage in activities that bring you joy and relaxation, such as hobbies or spending time with loved ones. Do not cut back on these activities during stressful periods; these are the times when you need these experiences the most.
- Practice self-compassion and positive self-talk. There are many different approaches as to how best to do this, including self-help books and listening to podcasts. A psychologist can help with a more personalised approach if negative self talk is a recurrent issue.
- Set healthy boundaries in your personal and professional life to prevent burnout. You may need organisational and therapeutic backup for this during times of high workload demand.
- Seek support from friends, family or a therapist when needed.
- Journaling or expressing your emotions through creative outlets can be helpful.

Social self-care:

- Cultivate and maintain supportive relationships with other professionals, friends and family. Let them know when you are going through periods of high stress.
- Make time for social activities that you enjoy and that help you connect with others.
- Join clubs, groups or communities that share your interests and values.
- Volunteer or engage in acts of kindness to connect with your community. Subscribe to blogs, podcasts and social media news feeds which have uplifting, useful and interesting content so as to increase your daily exposure to positive stories about humanity and the world.
- Schedule regular social outings or gatherings to nurture your social connections. As already mentioned, don't be tempted to cut back on these activities during stressful periods, as these are the times when you need these experience the most.

Intellectual self-care:

- Engage in lifelong learning by pursuing new interests or skills.
- Challenge yourself intellectually through reading, puzzles, games or other means.
- Attend workshops, seminars, or conferences related to your interests or profession.
- Engage with professional mentors and peers who stimulate your professional motivation.

- Stimulate your mind with thought-provoking discussions or debates.
- Set aside time for creative activities such as writing, painting or crafting.

Spiritual self-care:

- Practice mindfulness or meditation regularly to connect with yourself.
- Engage in activities that nurture your sense of larger connection with the world, and/or your spiritual beliefs.
- Spend time in nature to experience a sense of awe and connection.
- Participate in rituals or practices that hold personal meaning for you.
- Seek out spiritual guidance or support from a trusted mentor or community leader of different faiths. Even for those who are not religious or spiritual, many different spiritual communities/religions offer the possibility to make an appointment with someone in the community to ask specific questions about difficult life situations, for example most Buddhist communities will have the opportunity to make an appointment with a practising monk. This possibility can be useful when dealing with larger work and life questions and wanting a second opinion from a very different perspective.

The parallel fields of human resources management and also psychology research suggest many potential interventions and measures that can be put in place to safeguard judicial officers from burnout, at an individual level, at a court organisational level, and also at professional regulation level. A brief discussion here does not do justice to the full scope of these measures and the effective analysis, and then application of organisational level measures (including analysis of role, workflow dynamics, and redesign of roles if necessary) to prevent professional burnout. This field is an entire specialisation in human resources and well worth investigating if a workplace is experiencing frequent and successive burnouts or high staff turnover.

At an individual professional level, however, it is useful to bear in mind the following observations:

- Organisational and work factors will generally outweigh any individual measures that can be taken. Individuals should not be expected to manage workplace burnout issues at an individual level, nor own their own. However, individuals in high stress roles are likely to be very motivated to take all necessary steps in an attempt to "burnout proof" themselves. These steps are important and could be argued to be a necessary and integral part of successful career management and lead to greater professional and personal development over the longer term. There is a strong argument that these skills and measures should be routinely taught as part of judicial training, and reinforced via peer and professional mentoring.

Self-reflection: life routine tune up

1. Take a deep breath and visualise your day. Mentally run through from when you wake up until you get to work, the general work that you do, the lunch break, the afternoon, then the trip home and your evening. How does running through your day in this way make you feel? Are there particular moments that are more difficult than others? It is useful to note these moments, and the thoughts attached to them, for further reflection.
2. On a blank piece of paper, note down a rough planner of the last two weeks of your life and your work commitments, as well as outside of work commitments. Do you notice any patterns, or sticking points in your scheduling? Are there events or commitments that you dread or which provoke a strong negative emotional reaction? Note these down for further reflection.
3. When reviewing your two-week schedule, are there any periods of time when you could usefully add in five minutes of deliberate relaxation, or deliberately evoking positive emotions? These moments can act as buffers against the more difficult elements of your day.
4. Are there moments in your schedule when it would be possible to add in extra incidental or more extended exercise? This can help to decrease the physiological impacts of chronic stress responses.
5. When you run through your day, when are the energy highs and lows? How are you dealing with any period of low energy? Is it possible to consider replacing caffeine, chocolate (or other substances), with 5 minutes of directed meditation, high intensity exercise (such as stair climbing), or a other intervention as directed by a naturopathic intervention such as drinking an alkalinising drink (such as lemon juice or apple cider vinegar in water) or herbal tea. If a naturopathic or other intervention is preferred, you should consult with a naturopath, pharmacist or doctor to rule out interactions with any medication you are currently taking.
6. It would make sense to schedule the more motivating and complex work tasks when you are at your mental and physical high points; is this feasible?
7. It would also make sense to be gentle and protective of yourself when experiencing energy low points. Can you deliberately schedule lower workflow or more pleasant tasks when you are likely to have lower energy levels?

Potential signs of burnout are listed in Appendix D "Preventing burnout", alongside a generated list of suggested self-care strategies as a starting point. It could be useful to also complete the personalised burnout prevention plan. Instruction for this is included in Appendix D.

The following resources may also be helpful:

Australian research into judicial stress and strategies for self-care at Human Ethos, accessed 25/7/24.

Judicial Commission of NSW, "Stress and vicarious trauma", *Handbook for Judicial Officers* 2021–, accessed 25/7/24.

Judicial Commission of NSW, Judicial well-being portal on JIRS (available to judicial officers only).

[4] Preparation

[4.1] Precautions when using talking therapy techniques outside of context

Therapeutic intervention skills can be useful in a professional setting, so long as they are used with discernment in the correct manner and in the correct professional framework. Professional experience and translational research strongly suggests that these intervention techniques can be used across multiple situations and do not have to be constrained to the therapy room. Many aspects of therapeutic intervention and research outcomes on effective interventions have been effectively translated across contexts. A few examples of this include management skills, leadership theories, counter terrorism measures and urban design.

As with any translational strategy, there are also risks associated with applying therapeutic intervention techniques and theories within a different context from the one in which they were designed to function. A courtroom is a qualitatively very different environment to a therapy room. A courtroom includes the presence of an "untrained" audience, a public nature to any statements made, a strong difference in the emotional safety of the participants and the striking power differential between positioning of the judicial officer and the offender. It goes without saying that a judge's role is also quite different, being essentially to judge and apply legal sanctions, alongside offender rehabilitation and (ideally) facilitating therapeutic change.

Given these key differences in judicial officer positioning and context, the techniques designed to enhance self-disclosure of vulnerability or encouragement of discussions of very sensitive material on the part of the offender are not appropriate unless in the context of a specialist court, where the judicial officer and support staff have adequate training to manage this in a therapeutic way. Additionally, self-disclosure in court may well have legal consequences for an offender, which needs to be facilitated skilfully by a judicial officer in such a way as to be legally and therapeutically effective.

Given the accumulating body of evidence on the ways in which psychodynamic theories work therapeutically, these techniques may not be effective within a courtroom context. Additionally, the use of any trauma-processing techniques is not appropriate given the context. The following sections deal with specific risks that are inherent to a therapeutic justice court process, and ways to avoid these.

Risk of retraumatisation caused by self-disclosure in open court

There is a common misconception that healing from trauma requires self-disclosure and direct discussion regarding traumatic material in the first instance. As discussed earlier at [1.1] this is not at all the case, and it is worth repeating this. It is potentially very psychologically harmful to encourage or in any way compel self-disclosure of traumatic material in a court context. This experience replicates the power dynamics of trauma, and carries a very high likelihood that it will result in retraumatisation.

The therapeutic justice context encourages frank and open discussions about various matters, and this may at times include the underlying issues that contribute to the offending behaviour. It is crucial to therapeutic effectiveness that the context and limitations to these discussions are agreed upon with the offender and their legal team prior to the discussion taking place in the courtroom.

It might be useful to run through the agreed way to divert, limit, or otherwise deal with the risk of over self-disclosure, prior to any hearing. This also requires that the offender's legal representation reminds their client of the limits during the discussion if needed.

It could be useful to have an agreed upon phrase to describe a group of issues, rather than the details of those issues or experiences, when discussion occurs in open court.

A simple way of dealing with this that is often used to maintain privacy in a social or other setting is to describe the general term for the effect rather than to describe in detail the events that led to that impact. For example, an offender might explain that they are dealing with trauma reactions, rather than going into the details of the events that led to their traumatisation, or a detailed encryption of their emotions and actions when reacting based on trauma.

Risk of self-disclosure creating legal prejudice

Specifically, discussions where additional offending may be inadvertently disclosed need to be managed extremely carefully (and agreed upon in advance) with the offender and their legal team.

During these discussions, there is a risk that additional offences could be disclosed, which could pose problems for an offender without proper understanding and guidance on how such disclosures might be used. It is crucial that during the induction process, all parties are informed of the potential risks and possible consequences to address them as thoroughly as possible. This is a legal matter and requires a structured framework and context for discussion which is beyond the scope of this guide.

Risk of mental health or other diagnosis by a well-meaning but non-qualified professional

Given the role and training of judicial officers, it is inappropriate to attempt to diagnose an offender with a mental health, personality, or neurodiversity issue based on the court process. However, it is extremely useful to discretely and empathically flag these possibilities with the offender and their legal representative if the evidence suggests it, and to give offenders information and assistance in getting these issues accurately diagnosed and treated outside the court context.

The very fact of a legal officer explaining the possibility of the need for diagnosis, and just how that process could be useful to the offender, may help them as well as those in the audience and their entourage to understand how they can assist the offender to access mental health support. Intervening in this way is extremely powerful and can create life transformation for those for whom these difficulties are implicated in their offending.

[4.2] Planning for courtroom intervention

Before using the intervention techniques described in this guide, it is useful to first analyse the characteristics of your offenders, the types of offences you are seeing, and the goal you have for outcomes for offenders. Given the intensity of the experience of a court hearing, whether it is a closed or open hearing, it might be useful to assume that everything a judicial officer says and does has the potential to create some kind of effect for the offender, whether or not it is apparent at the time. Every word and interaction contributes to that offender's sense of identity, their role in society and their sense of inclusion in society.

References

Waterworth R, "The case for measuring legal actor contributions in court proceedings" (2018) 26(1) *Psychiatry, Psychology and Law* 77.

[4.3] Information gathering and planning — knowing your offenders

In order to plan for a courtroom intervention, it is useful to first reflect on the characteristics of the offenders you deal with. Some questions worth considering if you haven't already:

1. What types of offenders are seen in your court?
2. Are there large variations between offenders?
3. Are there typical age groups, social status, offending patterns?
4. Do you suspect that they have obvious or hidden disabilities, cognitive impairment or specific problems with reasoning outside of cognitive impairment, addictions, are non-neurotypical, or traumatised?
5. Do they seem to be paying attention to the proceedings during hearings, or are they distracted, resentful, zoned out?
6. Are there specific discernible patterns and "types" that you've noticed?
7. Alternatively, is there a wide variety of different types and no pattern?
8. As an exercise, it can be useful to choose a specific individual who is representative of a typical type of crime and analyse their offences, situation and their perceived needs. Alternatively, consider what the litigants in your hearings are motivated by, the circumstances leading to their cases. What are their perceived needs?
9. It could be useful to track the types of litigations or offences that are occurring. Are there any patterns? What do you notice?
10. What is your hypothesis about the reasons for these litigations or crimes?

Analysis of the types of cases, as well as the individual characteristics and in-court behaviours of offenders, can then inform the most useful type of intervention. Useful interventions can occur during the hearing so that the hearing is a catalyst for change; **this is the focus of this guide**. Interventions can also occur subsequent to the hearing and may include individualised legal sanctions imposed during the hearing (such as conditions attached to bail, bonds or community-based orders) and which also require other services to be involved.

Some examples of this in action are as follows:

Interpersonal crimes include relationship-based crimes, domestic violence, abusive crimes, theft and fraud, and sexual crimes. You may want to focus on increasing the person's sense of responsibility for their actions, as well as helping them to identify what type of person they want to be and what type of relationships they want to have, using questions deigned to invite that person

to take responsibility for their actions and preventing further harm. The section of this manual that deals with narrative therapy techniques (see Ch 9) could be useful for this.

Impulsive crimes may indicate that the person has problems with attention, including problems caused by brain injury or addiction problems. If this is the case, and they are not medicated or treated effectively, then they are likely to not take in what is said during a hearing, nor the significance of the interaction due to "zoning out". An effective hearing for an offender with attentional issues may need to use adapted communication and visual and spoken supports to help the offender stay present and track the court interaction. A judicial officer may also be able to craft a sentence in such a way as to have therapeutic influence outside of the courtroom. This could be potentially useful as it is also necessary to address the underlying impulse control issue with adequate treatment, as well as reducing offending opportunities in a structural manner, so that the law abiding, healthy choice is also the easiest choice for potential offenders to make. This could potentially be encouraged via sentencing, mandating of specific service interventions post court, and professional advocacy for supportive structures and processes at a community level.

Addiction-related crimes indicate a need to focus on responsibility, motivation and external support. It might be useful again to focus on invitations to responsibility for the offender to become a central driving force in their own life, within the hearing and outside of court and consider ways to facilitate engagement in effective treatment programs, for example via a Drug Court model, or a facilitated referral to court-ordered treatment.

Poverty-related crimes could indicate that the offender may need facilitative interactions in the courtroom, as a way to enable empowerment to overcome barriers to changing life circumstances. It might also be useful to consider means to ensure support from other services, so as to intervene at an individual and systemic level beyond the courtroom to change conditions for offenders, so that the easy choice is also the legal choice.

[4.4] Hoped-for outcomes

When intervening, it is useful to conceptually distinguish between in-court process outcomes and outside of court outcomes. The judicial officer is responsible for in-court process, as they have a measure of control that they can impose over what sort of interactions take place, and how they are conducted, as well as at least some of the dialogue that will occur.

Outside of imposing a sentence, a judicial officer is not responsible for offender outcomes after the hearing. Letting go of any sense of responsibility for other

people's choices is essential when trying to intervene therapeutically. A judicial officer can only act on the variables that are actually under their control, which are content and court processes, as well as potentially implementing structural and systemic programs or change outside of the courtroom context.

So as to carefully consider your goals for offenders moving through your court, try asking yourself the "**magic wand**" **question**, which is taken from **brief therapy**, described further in Ch 8:

1. If you had three wishes, what would you wish for the offenders you see in your courtroom:
   - during the hearing
   - after the hearing

Useful questions to help develop your response further could include:

2. What emotions are you hoping your offenders will experience during their interaction with you and other members of the court and why?
3. Do you want to inspire hope? How?
4. Do you want them to experience shame? Shame is useful as a signal to change behaviour, but excess shaming can get in the way of personal ownership of actions as it is too personally painful to own them, which can then foster recidivism.
5. Could it be possible to "dose" the amount of shame an offender might experience?
6. Do you want the offender to have a shift in motivation level?
7. Are you trying to make them aware of more degrees of choice that are under their control when deciding future actions?
8. Are you wanting them to experience a shift in their sense of identity?
9. Do you want them to feel more included or excluded with regards to the hearing and with regards to society at large?

[4.5] Points of contact available for creating therapeutic space in court

To intervene therapeutically it is necessary to have space for that to occur. Therapeutic windows of opportunity can occur around the hearing for example, during a time in the watchhouse, in the waiting room, during the hearing and after the hearing at the various points of contact with the court system.

1. Analyse and map the windows of opportunity before, during and after hearings.
2. Is there any way to engineer therapeutic interventions before and after a hearing?

3. During the hearing, what are interactions like from your perspective?
4. Do you have multiple court hearings for the same matter?
5. How well is the format for court hearings working at this time from your perspective?
6. Do you typically see the same individual on multiple occasions due to recidivism?
7. What outcomes are you hoping for? Try to describe both general and also very specific in terms of outcomes that you wish for the offenders you see.

[4.6] Physical courtroom environment

It is useful to analyse how much influence you have, or would like to have, over the physical layout of the courtroom and the interactions and roles of other legal actors and the hearing present for these interactions.

It could be useful to consider the positioning and orientation of the respective roles. Therapy sessions are often conducted with seats at a perpendicular or 45% angle from each other, as this is less likely to trigger a sense of being aggressed or confronted, and therefore the client is less defensive and more open to participating.

For a courtroom, it may also be useful to avoid having the judicial officer and the offender facing each other head on, as this could evoke a similar result. An automatic, subconscious aggressive, confrontational emotional reaction from an offender is not likely to be useful in a court hearing.

It can be useful to consider differences in the height of seating, and how this might be useful or unhelpful.

For example, a large difference in seating height can:

- reinforce authority
- become a barrier to collaboration (if collaboration is a hoped-for outcome)
- potentially create a sense of powerlessness and less sense of ownership or responsibility in the hearing.

Ultimately, courtroom layout needs to be designed to enhance the safety of the participants, to evoke a sense of ritual and to physically convey the message that a court hearing is an important event with likely long-lasting, personally-relevant consequences.

The physical arrangement of participants can facilitate certain therapeutic intervention techniques.

An unusual (but reasonably frequent) occurrence is the offender hearing themselves and their case discussed among the legal officers present. This experience can be deliberately harnessed to enact a therapeutic intervention from systemic family therapy known as a "reflecting team". This will be explained further in Ch 7 in the "Systemic intervention" section.

[5] Adapted therapeutic interventions in a courtroom — basic tools for in-court interactions

[5.1] Court craft

Court craft refers to the collection of techniques that judicial officers use in a courtroom to facilitate therapeutic change for an offender. Many judicial officers and other legal officers have been utilising court craft skilfully for some time, well before the invention of the term to describe it.

Using effective techniques from court craft can encourage alliance with the judicial officer, increase offender responsibility and self determination for future outcomes and increase compliance with sentencing orders.

It may be interesting to try out a few of these techniques and evaluate the impact on yourself and also any perceived impact on the courtroom atmosphere and on offenders. The information in this chapter is based on the author's own research and outlines interventions via the use of court craft within a courtroom setting.

References

Cannon A, "Therapeutic jurisprudence in courts: some issues of practice and principle" (2007) 16 *Journal of Judicial Administration* 258.

King MS, "Therapeutic jurisprudence in Australia: new directions in courts, legal practice, research and legal education" (2006) 15 *Journal of Judicial Administration* 131, citing BJ Winick "The judge's role in encouraging motivation for change" in BJ Winick and DB Wexler, *Judging in a therapeutic key,* Carolina Academic Press, 2003, p 182.

King MS, *Solution-focused Judging Bench Book*, AIJA, 2009, accessed 23/7/2024.

[5.2] Process versus content

When discussing a therapeutic intervention, it is useful to distinguish between process and content.

Process refers to how things occur, for example who talks, and when, and in what tone of voice, as well as body language and emotional tone and energy. Content refers to what is actually said.

Both of these aspects can have a powerful therapeutic impact and these concepts are paramount to how talking therapies are conducted and are useful to make use of when considering ways to intervene during in-court interactions.

Process-oriented skills focus on how to control how things are done and said. Deliberately making use of process-oriented skills can include the judicial officer planning their use of the physical layout of the courtroom, body language, tone of voice, and deliberately regulating their own level of physiological arousal during the interaction. It should also include deliberate turn-taking in the exchange. This is done so as to maintain the optimal level of emotional intensity for the courtroom experience for participants, to maintain their psychological presence as much as possible despite the emotionally painful circumstances, with the goal of creating a more impactful experience and more effective long-term outcomes for the offender.

Content-oriented skills focus on how to make sure that what is said is psychologically engaging and meaningful and more likely to be heard and be effective for the offender, both during the hearing and afterwards. Content-oriented skills could include (for example) a judicial officer using open questions, incorporating the offender's own words into their further questions or summaries, and using verbal techniques taken from talking therapies that are appropriate to the specific hearing context, with specific intervention goals in mind.

References

Egan G, *The skilled helper: a problem management and opportunity development approach to helping*, Brooks/Cole, 2014.

[5.3] An integrated model — common denominators of therapeutic outcomes

What a judicial officer says and does in a courtroom is of fundamental importance.

A review of the relevant psychology research literature leads to the understanding that, by far, the greatest common denominator behind therapeutic change is the therapeutic relationship.

Translational research has identified ways that a therapeutic relationship can be fostered within a courtroom context, alongside procedural insights taken from research into the therapeutic justice movement and research findings from procedural justice and legitimacy of justice.

This research has developed a set of guidelines for judicial officers' conduct, along with aspects of how court hearings take place.

These will be dealt with in turn, in the sections that follow.

Introductions

During the introductions, it is important to maintain good eye contact, use warm to neutral emotional tone, calmly and firmly set boundaries and roles in the courtroom, explain the goals of the hearing and help the participant to feel confident to participate in the hearing. The judicial officer should take the time to explain the court processes and how to address the judicial officer. If at all possible, the judicial officer and the offender should create a collaborative definition of goals and take turns in speaking.

Discussion about the problem

The judicial officer should ask neutral and open questions about the context as to why the offender is in court, and include the offenders' own words in defining "the problem". If possible, the judicial officer should notice and discuss the strengths that are present in the current situation, despite the reasons for being in court. The judicial officer should also notice and discuss the point of view and experiences of other participants to the problem.

Sentencing

The judicial officer should give a summary for sentencing or judgment that includes a collaborative definition of the problem and incorporates the parties involved in the summary remarks. The judicial officer should describe the responsibility for action as internal to the offender and describe the situation and summary to include the participant as having choices over their actions and also highlight context and possible supports available. The summary should include an acknowledgment of the possible experiences of other people who are also involved in the problem situation, for example, the victim of a crime.

Judicial communication skills

The judicial officer should use open questions, with active listening skills and attentive and encouraging body language, and use non-verbal prompts to encourage the offender to express themselves well. The judicial officer should

adapt their language and speed of speaking to the language abilities and comprehension of the offender, and ask questions to check that the offender has understood them. The judicial officer should facilitate other legal actors present in the court to do the same, so as to ensure that the offender understands what is being communicated and the processes behind this. The judicial officer should consider and promote the use of open or closed questions, active or passive listening, invitations to the defendant to participate, turn-taking in discussion and effective body language. Turn-taking and collaborative dialogue should occur during the interaction.

Judicial alliance

The judicial officer should employ a neutral to warm emotional tone and an open but authoritative body language and actively ally themselves with the offender against "the problem". For example, how to stop offending while using drugs, or how to stop behaving in a violent manner towards family members, or how to separate from a partner in the least damaging way for the children and both partners.

A qualitative measurement instrument (Legal Actor Contribution Scale) to capture these therapeutic aspects of judicial interaction is available in Appendix C at "Measurement tool for in court legal actor therapeutic contributions" and can be useful for self-development when watching recordings of prior sittings. It is recommended that judicial officers wishing to develop their therapeutic skills rewatch recordings of their hearings and take note of their own behaviour using this measure as a way of tracking development in practice and identifying potential training opportunities.

References

R Waterworth, "Measuring legal actor contributions in court: judicial officers' roles, therapeutic alliance and therapeutic change" (2019) 28(4) *JJA* 207; *Handbook for judicial officers*, Judicial Commission, 2021.

[5.4] Methods to increase an offender's psychological participation: preventing dissociation

A court appearance is objectively highly likely to constitute an intense experience, with lasting consequences at a material level and also (most likely) at an identity level for offenders. It is an emotionally-charged experience and many people when faced with this kind of experience will have an automatic, subconscious psychological reaction to reduce the intensity of difficult emotions. This can take many forms, ranging from denial to the various forms of dissociation.

Some moments of mild dissociation are normal for most people. A classic example of "normal" dissociation is the common experience of driving to a location and having no memory of the actual drive once you arrive, due to being distracted. Dissociation is basically less psychological presence in the here and now (and in a courtroom). In its more serious forms, such as what can often occur when an individual is under severe stress, dissociation will negate any impact of a therapeutic intervention at any profound level, as well as (very often) compromise the development of a reasonable memory of the events and reasoning behind the judgment. As offenders have often experienced a lot of trauma, they are likely to experience dissociation reasonably frequently as a way of coping with extreme emotions.

It could also be argued that many offenders likely have dissociation present in some form in their lives already, given the life trajectories and the psychological processes behind offending. The degree to which dissociation is occurring for an offender can range from momentary lapses to reactions which ignore and dissociate information about the self that is not ego-syntonic (for example, positive identity preservation in the face of evidence). The other end of the dissociative range can be lapses in memory, massive changes in emotional state and, at the extreme, different personalities or extreme behaviour that is internally or externally contextually cued. It is beyond the scope of this guide to fully explain how this psychological phenomena operates, but it is useful for judicial officers to be aware that many offenders will likely be experiencing some degree of dissociation in a court hearing and to take appropriate steps to counter this.

Signs of mild dissociation can include: spacing out, zoning out, a fixed expression or incongruous expression. Examples of this may include smiling slightly although context is upsetting, not responding to questions, lapses in memory, difficulty accessing information about self and others, difficulty tracking the interaction, roles of people around, and/or the meaning of the interaction.

In a therapeutic context, dealing with dissociation is the first intervention target as it is a therapy-interrupting symptom. In a courtroom, it could be useful to have ways to increase the offender's psychological presence in the courtroom, and to decrease any dissociative reactions.

Basic ways to do this can include:

- introductions
- defining names
- roles
- describing processes occurring
- getting the offender to speak and participate as much as possible.

More targeted ways to do this could include:

- asking the offender to notice things they can see in the courtroom
- asking them to acknowledge they can hear what's being said
- bringing their attention in some way to their physical body and posture.

Questions taken from the therapy context, which may or may not be appropriate for a courtroom context, as per discretion, could include:

- "Can you feel your feet pressing against the floor?"
- "Can you feel the fabric of your clothes against your skin?"
- "Can you take a deep breath into your belly and let it out slowly?"
- "What can you hear, see, smell, taste …?"

For offenders who are showing signs of strong dissociative tendencies, it is useful to make sure you address them by name and take care to notice when they seem to zone out, and then take steps bring them back to the courtroom. These techniques are a powerful therapeutic intervention for someone accustomed to avoiding the emotional and identity impacts of intense situations by automatic dissociative distancing.

References

Van der Hart O, Nijenhuis E and Steele K, *The haunted self: structural dissociation and the treatment of chronic traumatization*, Norton series on interpersonal neurobiology, (illustrated edn), WW Norton & Co, 2006.

[5.5] Counselling microskills in a courtroom context

Foundational process skills for many talking therapies include counselling microskills. It's useful to detail each one in turn. Many of these skills are already second nature to many judicial officers.

Active listening involves asking more questions to clarify and develop the content of what is said. It makes the participants elaborate and participate and often leads to a different understanding than what might be first stated.

Reflective listening means reflecting back to the offender what they have just said. For example, "I'm hearing you correctly, you're stating that you didn't think before you did [X, Y, Z]?"

Open-ended questions are ones that do not include a presupposition regarding the answer within the question. So, for example, asking "Can you describe in detail what you observed on the morning of the incident?" As opposed to asking "Did you see the victim on the street?" (The answer can only be "yes" or "no").

Closed questions are useful for clearly delineating specific facts which is obviously essential within the legal context and judicial officers in general are very competent using these. The quality and personal pertinence of information obtained via closed questions is likely to be greater when preceded by open questions due to getting access to enough information to know which questions to then clarify, and positive experiences with open questions increasing the likelihood that a participant will then volunteer further pertinent information. Additionally, the interactional pattern of leading with open questions, whose answers and wording are then incorporated into further open questions and clarifying questions, will usually increase the participant's psychological participation in the hearing and their emotional interest in making sure that the relevant information to their situation is being taken into account.

Clarifying questions are also important and judicial officers in general are very practised with these already. Some examples are as follows:

- "Could you clarify what you meant when you said [X]?"
- "How does this relate to the matter here today?"
- "What do you think is the main problem?"
- "Can you give me more details about that?"

Demonstrating empathy can be a useful way to increase the offender's emotional participation in the hearing. An example of this could be: "I can see the pain and distress this situation has caused you."

Paraphrasing in the courtroom can be useful to clarify content and also help offenders keep track of the process. It involves rephrasing and slightly condensing what has been said, for example: "If I understand correctly, what you are saying is …."

Summarising is frequently used during courtroom interactions and it is generally useful as it pulls together and synthesises the information being presented. This is a skill that may be unexpectedly quite difficult for many offenders, particularly in a courtroom setting so it is important to use summaries in a way that fully exploits their therapeutic potential. There will be many examples of how this can be done in later chapters.

Using silence can be an effective way to encourage further speech on the part of the offender and can also be a way of increasing the intensity of the hearing. A judicial officer may use silence at specific moments to increase the impact of the experience on the offender.

Body language of the judicial officer (and potentially also that of others present) has a strong influence on the offender's psychological presence and evaluation

of the salience and goals of the hearing. To them personally, if the body language is confrontational, the offender will usually react by freezing or fighting ie, becoming defensive and closed to any attempts to influence their current or future behaviour. Techniques such as maintaining eye contact with the offender, nodding while they are speaking and adopting an open posture can all enhance the possibilities of the judicial officer having a useful impact.

Selective self-disclosure can be a useful tool in a courtroom if used judiciously. In legal proceedings, judicial officers may selectively share relevant personal experiences to establish rapport with offenders. For example, a judicial officer could say, "I've also faced challenging situations myself (without disclosing what these might be) and I understand that making life changes (or whatever else needs to be changed) can be very difficult." This can help build a sense of being understood by the judicial officer and a subsequent willingness to take on board the judgment that is given.

Constructive feedback is valuable in court to guide the direction of the interaction and also to notice and build on small gains, or to prevent psychological withdrawal from the interaction. A judicial officer could offer feedback on the quality of the offender's participation, or their willingness to be frank, any steps (or lack of) that they have taken to remain within the legal boundaries of action, or whether what they are saying is convincing. For example: "Despite the discussion here today, I have not heard you express remorse or regret for your actions." Or, "I appreciate that despite the challenging nature of this setting you are doing your best to be as honest and frank as possible about your [role/motivation/difficulties] that are clearly difficult to talk about."

Confrontation is a therapeutic technique which works best after the offender has had the opportunity to explain themselves and the confrontation material is based on logical discrepancies in what they are saying, and when it is done as calmly as possible.

For example:

- "You have told the court that you are experiencing severe financial hardship and can't afford to get your prescription filled for the mood stabiliser, which then led to you shoplifting. However, I notice that you are wearing very expensive shoes here today. How do you explain this in terms of priorities?"

Incorporating counselling microskills into courtroom communication (if they are not already present) can enhance the offender's psychological presence and subsequent ownership for their actions and the court process. It can also improve the quality of the information heard from the offender during the hearing.

References

G Egan, *The skilled helper: a problem management and opportunity development approach to helping*, Brooks/Cole, 2014.

[5.6] Socratic questioning

Socratic questions are basically questions that are designed to develop a fuller perspective on a topic and shift the current understanding of self, motivations and behaviour. Crucially for a court hearing, they are also designed to shift the understanding of the effects of actions and their consequences. This technique comes from cognitive behavioural therapy, which will be looked at in more depth in Ch 6. In order for this technique to be effective, the questions need to be asked in such a way that there is no presupposed answer to the question that is posed.

[6] Going further

[6.1] Cognitive approach — use of cognitive therapy skills in a courtroom (focusing on irrational thoughts)

Cognitive behavioural therapy (CBT) is a widely popular and evidence-based group of therapeutic techniques. CBT is based on the premise that an individual's emotions and actions are a logical reaction to their thoughts. This leads to the therapeutic assumption that negative emotional experiences are due to irrational thoughts, which can be isolated, examined and then essentially "debunked" to create more effective thinking and a more comfortable emotional experience. These "irrational thoughts" come from beliefs about oneself, the world and others. For example, "others are not trustworthy, I am not capable, the world is a scary place."

Logical errors in thinking, or "cognitive distortions", are common to most people, and are particularly likely to occur when someone is under stress, lacks the mental resources to be able to hold more complex mental representations of the world around them, or has experienced childhood trauma. This lack of mental resources can be driven by stress, strong emotions, past trauma, exhaustion, financial preoccupations, time pressure, illness, grief, lower intelligence or cognitive processing issues and is also readily modelled and learnt. When given the choice, most people will tend to engage in "mental shortcuts" to try and decrease their mental energy expenditure. In fact it is usually an automatic, unconscious process. These shortcuts then become automatic thoughts and drive cognitive distortions and these distortions in thinking then filter our perceptions of future experiences, arrange our memories for past events and inform our future choices for action.

The CBT approach can be a useful and easily accessible technique and one which translates readily into a courtroom. The individual usually has ready access to their own thoughts and emotions and can usually identify (to some degree) what they were thinking in specific situations, which were then related to specific acts and emotional effects.

There are limits to a CBT approach, as it does not take into account that emotions are a physical response which can be created via multiple factors; primarily amongst them are health status and prior trauma, as well as thinking. It is also limited by what cognitive content an individual has conscious access to, ignoring assumptions and unconscious processes and it does not take into account the impact of a person's context and the relational and social construction processes that underpin the formation of identity, which then acts as a driver for emotions and behaviour.

The basic process to intervene in the case of irrational thinking using the CBT approach is to be able to identify the problem behaviour or emotion and then to identify, in a sentence or two, the thoughts that create that emotional reaction and/or behaviour.

As an example, when dealing with an offender, it could be useful to ask first:

- "What thoughts were you having at the time of the offence?"

Once the thought has been identified, there are many questions that can then be applied to that thought. Examples of these are:

- "What emotions did this thought create?"
- "What actions did this thought drive?"
- "What is your opinion now of the consequences for [you/others] that come from this thought?"
- "Is this thought useful for you in some way?"
- "Does this thought seem reasonable to you now?"
- "Are there alternative ways of thinking about this issue at the time of the offence that you can see now?" (It is useful to have some alternate responses already developed that apply to common thinking errors you identify in offenders. Examples are included in Appendix B at "List of useful CBT socratic questions").
- "If we asked someone who really cares about you whether that thought is true, or useful to you, what do you think they would answer?"
- "If we asked the victim of your actions whether they agree with your reasoning, what do you think they might say?"
- "How true is this thought, to you, now, between 0–100%?"
- "Can you think of any counter arguments to this thought if it occurs again in the future?"
- "What would you need to tell yourself in order to decide to act differently in the future?

Is this thought an example of any of the typical thinking errors that easily and commonly occur, eg:

- *Black and white thinking*: this is where an individual only thinks in absolutes, either something is completely one way, or it is completely the other way. This type of thinking is also known as "polarisation".
- *Always being right*: this is where an individual believes they always have to be right, about everything, otherwise they have failed or are a bad person.
- *Overgeneralising*: reasoning from a limited set of experiences and applying this in a blanket manner to all other circumstances.
- *Projecting*: projecting one's own thoughts onto someone else and assuming this is an accurate representation of what they were thinking.
- *The illusion of control*: blaming self for a situation or aspects of life which are not actually under their control.
- *Jumping to conclusions*: deciding on the meaning of something without having all the information.
- *Splitting*: where the person sees those around them as either all good or all bad, and finds it difficult to hold a more nuanced and complete picture of people (in all their shades of grey, situational contexts, etc).

More cognitive distortions are listed in the Appendix B under "List of errors in thinking for CBT".

Once the illogical thoughts have been "debunked", this then frees up new ways of interpreting the same situation, resulting in new behavioural opportunities, although implementing this in life will usually take some reminding and support.

A simple way to implement a CBT-based intervention within a court hearing would be to identify and define the problematic behaviour, then ask the offender what thoughts were going through their mind at the time, or what their reasoning was for their choice to engage in their problematic actions. After defining what the problematic behaviour is, it is useful to help the offender to recall as closely as possible what was occurring for them and what their mental processes were, immediately before making the decision to act. It is the context and immediate thinking just before taking the choice to act in a problematic manner that needs to be examined for the purpose of this intervention.

It may be that there are potential legal consequences for the offender to expressing certain aspects of their thought processes. It might be that it is useful, or not useful, to express these thoughts out loud. It is the judicial officer's discretion whether to require the verbal expression of these thoughts as part of

this process. However, once the thoughts leading to the poor behavioural choice are identified, it is then useful to ask the offender some of the questions outlined above, as seems appropriate, and to see where it leads.

The second aspect to this intervention is to ask the offender what they might need to think, or to tell themselves, in order to decide to act differently in the future and how they can remind themselves to do so and avoid future issues for themselves and others.

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[6.2] Behaviourism — focusing on rewards and punishments, how to extinguish behaviours

Behaviour therapy is one component of CBT and can be used independently of the cognitive components of this therapy. The behaviourist approach allows behaviours themselves to be targeted directly, without examining the thoughts or emotions behind them. This can be useful when an individual is not entirely sure of the thoughts behind their actions, or where the thoughts that explain their actions are attributed after the fact, in an ego-syntonic manner, ie in a way that fits positively with the individual's sense of themselves and their identity, but doesn't necessarily correspond to what the individual was actually thinking of hoping to achieve just before their choice to engage in a problematic behaviour. This positive, retrospective explanation style can be a common psychological process occurring for offenders.

Behaviour therapy is based on an observational model of biologically-based, neuronal learning. Within this model, behaviours are driven by associative learning, where neurons which fire at the same time become associated (neurologically linked) and, with repetition, fire at the same time more easily each time.

The setting context of the external environment is believed to evoke this neuronal firing, meaning that behaviour arising in a specific situation is either a reflex derived from the pairing of earlier similar stimuli in the environment, or a product of the individual's history of learned experiences which have been governed by the contingencies of reinforcement (rewards for behaviour), or punishment (negative consequences of actions), and mediated by transient motivational states and external controlling stimuli. Using this model, the environment is seen as being more important than heredity to the behavioural outcomes for an individual.

Associative learning: This is the way in which stimulus from the environment (or self), essentially an environmental cue, is paired with performance of a behaviour. The stimulus immediately precedes the behaviour and becomes associated with the behaviour in the individual's mind. Repeated pairings lead to establishment of behaviour patterns linked to that stimulus, based on past experiences (Pavlov, 1927).

Asking an offender a question about the external circumstances and environmental cues in which the problematic behaviour occurred can be a useful place to start when trying to apply a behavioural modification approach.

Operant conditioning: Operant conditioning is a form of learning in behaviourism where behaviours are strengthened or weakened by the consequences that directly follow them. It involves the modification of voluntary behaviours through the application of reinforcements or punishments (Skinner, 1938).

Essentially, a court hearing is an ideal and socially legitimate place to apply effective and appropriate rewards and punishments both for in-court behaviours (as will be discussed shortly), and also to put in place court-ordered rewarding or punishing mechanisms to shape future behaviours.

Repetition: Repetition involves the frequent presentation of a stimulus or the performance of a behaviour, which can strengthen the association between a stimulus and a response through increased exposure and practice (Skinner, 1938). Unfortunately, the physical, financial, and social context of many offenders' lives provide repeated environmental cues and internally mediated stimuli to "trigger" repeated offending behaviour.

Ideally, a court sanctioned intervention (post court hearing) would remove or in some way modify the stimuli and environmental cues, to prevent further repetitions and further deeply ingraining offending behaviour. How to achieve this may be difficult, however could take the form of a court-ordered residential treatment program; a change in location or court-ordered help with separating from an unwholesome household or neighbourhood; orders with regards to whom the offender is able to associate with; or court-ordered volunteer work, educational or vocational training to change the environments in which the offender spends most of their time.

Reinforcement: In behaviourism, reinforcement refers to the process of increasing the likelihood that a behaviour will be repeated by presenting a stimulus immediately after the behaviour occurs. Positive reinforcement involves adding a rewarding stimulus, while negative reinforcement involves removing an aversive stimulus (Skinner, 1938).

Reinforcement that can be enacted during court processes will depend to some degree on the type of hearing and court involved. An approach that works across court contexts and types could include providing opportunities to produce positive behaviours within the courtroom (such as honesty, showing remorse, finding ways to atone to victims) with a positive reinforcement, such as positive court commentary, referral to further support services, or adding in benefits of some kind that are within the power of the court to enforce.

Reinforcement can also mean the application of less of an expected aversive stimulus, such as reduced incarceration time due to positive behaviours, both during the court hearing and in a defined period of time afterwards. This approach of applying a less aversive stimulus than predicted to shape positive behaviour change is already widely adopted in sentencing practices using parole with conditions, and incarceration management using early release on parole predicated on positive behaviours during imprisonment.

An example of this principle in action is the way in which Drug Court programs make use of the motivational and learning power of providing access to the opportunity for behaviour within the Drug Court program to have a later effect on sentencing outcome.

Punishment: This involves the application of a stimulus, either adding an aversive stimulus (positive punishment) or removing a rewarding stimulus (negative punishment), with the aim of decreasing the likelihood of a behaviour recurring (Skinner, 1938). Incarceration, the most serious sanction, as well as fines, and other sanctions, are designed to act as punishment (amongst other goals such as increasing community safety and preventing reoffending during a set period of time). Theoretically, the concept of prison time is predicated

on the effect of punishment on behaviour. For some people, particularly those who are highly traumatised, who have attachment disorders or personality disorders (including antisocial personality disorder), punishment is much less likely to be effective in modifying behaviour. However, it is important to note that incarceration may be helpful for an offender due to the other effects of incarceration outside of punishment, such as reducing external distractions and providing a crisis point that facilitates reflection on life and life choices, applying a sense of strict boundaries, imposing a highly-ordered routine and a basic level of self-care, providing access to regular meals, imposition of medication review and management and (ideally) facilitating access to health services, facilitating effective diagnosis or any other underlying health or neurodiversity issues, and other necessary services, for example such as housing.

Extinguishing behaviour: This refers to the process of weakening a previously reinforced behaviour by no longer providing the expected reinforcement. This leads to a decrease in the likelihood of that behaviour occurring in the future (Skinner, 1938).

This observation about behavioural learning could be applied in court proceedings by the absolute imperative to ensure that the offender is not able to benefit *in any way* from their negative actions, both during and after the court process. It is important to reflect on the kinds of benefits that offenders might derive from offending behaviours, these could include for example, financial rewards, social status, feeling less in danger from others, having power or authority over others, being held in esteem by others, notoriety and increased self esteem.

Behaviourism does not delve into questions of responsibility, identity and free will, which is a drawback of using this approach. A further major limitation to the behaviourist approach is when using punishment to attempt to extinguish behaviours with offenders who are severely traumatised, have personality disorders, or have attachment disorders. This includes those with antisocial personality disorder who would be predicted to make up a considerable percentage of the offender population. Generally, with this population, identity-related and emotionally meaningful rewards are far more effective at modifying behaviour. Therapeutic techniques that work well to increase emotional engagement and emotionally rewarding interactions is covered in Ch 5. Using multiple systems to intervene (which is particularly necessary for those with antisocial personality disorder (or other personality disorders) is discussed in Ch 7. Court relevant techniques from narrative therapy, which work particularly well via social construction of a more positive sense of identity, are discussed in Ch 9.

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[6.3] Trauma-informed — being the difference, generating hope via new experience

The experience of trauma can occur either as a single discrete event, or as more often occurs, as a series of chronic experiences that stretch throughout a lifetime. Exposure to trauma significantly impacts an individual's biology, psychology, and health outcomes.[10] Individual trauma is defined as experiencing or witnessing an event or circumstance resulting in physical harm, emotional harm and/or life-threatening harm. Trauma may also be acquired intergenerationally when the impact of trauma is passed on from generation to the next. There is an accumulating amount of evidence for an enduring effect of trauma exposure to be passed to offspring transgenerationally via the epigenetic inheritance mechanism of DNA methylation alterations which has the capacity to change the expression of genes and the metabolome.

Chronic traumatisation can result in problems in reasoning, memory, integration of emotions and behaviours and severe difficulties in relationships. It also significantly impacts an individual's ability to effectively manage all other aspects of their life.

For offenders who have experienced chronic traumatisation, it is very important to try to give them a different court experience from what they are expecting and to show them that you hold hope for them that change is possible. Not in a magical thinking kind of way, but in a concrete, pragmatic, positive-identity-reinforcing kind of way. Acknowledging the impact their

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10 See, VJ Felitti et al, "Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: the Adverse Childhood Experiences (ACE) study", (1998) 14(4) *American Journal of Preventative Medicine* 245; Judicial Commission of NSW, "Trauma-informed courts", The Judicial Commission e-resource series, 2022, accessed 25/7/2024; Judicial Commission of NSW, "Intergenerational trauma resources" on JIRS (available to judicial officers only).
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trauma has had on their offending behaviour can assist them in feeling understood, while not excusing the behaviour or dismissing the impact on others.

Different, unexpected positive experiences with those in a position of power or social authority have a good chance of being contradictory to their accepted vision of society, authority and their place in it. This in itself can be a powerful therapeutic intervention.

A different, unexpected positive experience can take many different forms, but fundamentally it is vitally important to do what is possible to encourage emotional engagement in the process and the sense of being heard, recognised and hopefully acknowledged within their specific life context (despite the actions that have brought them to court). Different and unexpected positive experiences, particularly experiences that are designed to convey hope for something different, can create hope.

Hope mobilises motivation and creates energy.

Chronic traumatisation affects many areas of the brain including language ability and higher order language functions such as reasoning and understanding the progression of cause, effect and consequence. When communicating with offenders who are traumatised, actions, body language and perceptions of power are often much more important than words. Trauma tends to sensitise people to power differentials. Additionally, complex sentence structure or specific legal terms are highly likely to be less easily understood (there are of course large differences between individuals regarding this). In this context, actions, gestures and the internal emotional experience of the offender is the most impactful way of communicating meaning.

Adapted communication using shorter words, the participant's own words, simple sentences, speaking slowly, calmly and possibly even visual aids such as a document to take away that has diagrams, can all greatly enhance understanding of the legal process and the judicial reasoning that has occurred, as well as the outcomes. The use of communication aids which are appropriate to traumatised and also non-neurotypical offenders is discussed greater detail in Ch 7.

Chronic traumatisation also greatly increases the chances that a participant will have extreme emotional reactions to being in court or other aspects of the hearing interaction that prevent them from being fully present in the hearing, and/or that they will dissociate.

Signs of an extreme emotional reaction or dissociation may not be obvious if they are not expressed, as there is a wide variation between individuals and their emotional expressivity. These reactions may be automatic and for

dissociation are often unconscious, which means that the person involved is very likely not aware that it is occurring for them. Dissociation results in a decrease in psychological and emotional presence, a decrease in physical tone, often incongruous emotions and a lack of meaningful engagement in the interaction to some degree. It also frequently involves at least some sort of amnesia or diminished recall for all or some elements of the events that took place when dissociated. Dissociating during a court hearing is likely a common experience for those with prior trauma and it undermines the usefulness of participating in the hearing at all. It also means that the individual is left with a court outcome that they do not understand and have not engaged in the construction of, meaning that it feels externally and arbitrarily imposed and therefore much less relevant to them personally. Dissociation is counter-therapeutic, it is a therapy interruptor and so needs to be countered directly whenever present during a court interaction. This is itself a therapeutic intervention for the participant.

As already referred to in Ch 5, signs of dissociation vary widely between people, but if you encounter an offender who seems blank, sleepy, not psychologically present, is inappropriately positive, or has other incongruous emotional reactions or comments, it is probably safe to assume that they could likely benefit from intervention in the moment to help them to ground themselves and then regulate their emotions, as well as requiring adapted communication aids so as to engage effectively in the hearing and prompts afterwards to recall and understand the contents of the proceedings in a way that makes sense to them.

If an offender becomes overwhelmed during a hearing, it is useful to have a protocol that you feel is appropriate and respectful to the context, and the participant, to help them to manage their emotions so they can continue to be emotionally present and have a sense of being included in the court process. This may be captured by the idea of "**judging with, not judging at**". Generally, this increases their likely emotional engagement, as well as the sense of the process being legitimate from the participant's perspective.

This protocol will vary as a function of what you deem appropriate to the context and should include as a base the protocol described in Ch 5 to counteract dissociation, as well as the following:

- pausing for a moment to allow them time to recover
- noting their distress and empathising in some way with this
- suggesting that they take a moment to breath or have a sip of water
- providing them with tissues if they are tearful
- allowing them to sit down for a moment or to step out of the room to compose themselves (only if appropriate).

There are also techniques that could be adapted to a courtroom that are useful for regulating emotion, these include:

- abdominal breathing
- the butterfly hug
- guided grounding techniques
- using sensory means.

These techniques could be instructed by the judicial officer, or instructed by a different legal actor within the courtroom and also potentially provided to the offender in written form for use afterwards if found useful.

Instructions for these are included in Appendix A "Instruction for emotional regulation".

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[6.4] Strengths-based approach — how to create courage and motivation by finding strengths

In talking therapies, a strengths-based approach is the most useful starting point with clients who face multiple individual and systemic difficulties. This approach is part of the "positive psychology" movement, and basically means going on a hunt to find what is working for the client and identifying their (sometimes hidden) strengths and potential future strengths. An example of

this in a therapy setting could be noticing that a chronically suicidal client has managed not to act on their suicidal thoughts for a specific period of time and then finding out how they have managed to do this, what this says about them, as well as identifying what factors, environment, thoughts and people have also been helpful in this resistance to act on self-destructive impulses.

This type of approach would need to operate in parallel and at the same time as the legal judgement process, which legally needs to be in place, but could be a way of using the authority and intensity of a court appearance to highlight potential future strengths for an offender in a way that formalises them and makes them more likely to be integrated into the offender's sense of identity in the future. This could be particularly useful as one of the more effective ways to change behaviour is to create a change in identity.

An example of a strengths-based sentencing remark could be a judicial officer who, in parallel to regular sentencing, also comments on the offender's strengths. This type of commentary can be adapted to nearly every situation. The first step is to identify anything in the circumstances (or background) of the matters included in the hearing that strikes you as out of the ordinary, or that could have required emotional, physical or psychological effort or strength.

Once you have identified an aspect of the offender, their circumstances, or their behaviour that is striking (from your perspective), think about how else that capacity could be used in a legal and more positive way by the offender in the future. This approach does not in any way suggest that you condone the offender's blatant misuse of their strengths within the context of problematic behaviour.

Some examples of this that could be adapted for use in a courtroom are as follows:

- Notice the offender's strength in having survived their life context thus far and question how they could use this strength as a force for change or how it could further serve them in improving their life circumstances/changing their behaviour in the future.
- Notice their creativity (if this is a feature in their offending) and then question how else this creativity could better serve them in the future.
- Notice their perseverance (if this is a feature in their offending) and then question how their determination could better serve them in the future when put to different use.
- Notice their relationships (if they have family or friends present) and how they can leverage these relationships to make positive changes in their lives.

A basic way to put these observations together could be:

"Based on the information I've heard today, it's obvious to me that you are blatantly misusing your strength in … which is a shame and having very negative effects both for yourself and others. I can't help wonder what else your obvious strength in …. could be used for if you chose to honour your talents?"

Another aspect of strengths-based approach is to find and/or build resources for the offender.

This can include building psychological resources or drawing their attention to the possible sources of strength, healing and positive future behaviour that exist and are accessible to the offender, both internally and also externally, as well as facilitating their access to these.

This can mean signposting to other services and (ideally) having some mechanism to ensure follow through from these services.

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[6.5] Dealing with addictions — basic motivational interviewing skills

Addiction-driven offending requires a specific approach that targets the addiction and can be effectively dealt with via specialist courts such as a Drug Court. When discussing addiction, it is important to remember to consider a range of addictive behaviours outside of drugs and alcohol such as gambling, shopping addictions or sex addictions. Motivational interviewing is useful for any situation where a person is ambivalent about change and needs help to increase their motivation for change.

Motivational interviewing is designed to increase a person's motivation to change their behaviour. It is the technique generally used during the first stage

of therapy with a client who is dealing with addiction. This is because one of the frequent defining characteristics of addictions is the level of ambivalence that an individual may experience with regards to the substance or behaviour they are addicted to. For a behaviour to be classed as an addiction, it must be causing the person harm in some way and also be addictive. If a person is appearing in court with addiction as part of their context, the addiction is likely to be causing them measurable and objectively verifiable harm. Most drug offenders have a history of trauma and substance use has been one of their coping mechanisms.

Unfortunately, many of those struggling with addictions, whether they are consciously aware of this and willing to overtly express it or not, will continue using the addictive substance or behaviour to their own detriment. This is often because this substance gives them a sense of safety, pleasurable feelings, the experience of joy, a way of connecting with themselves and others and, most likely, represents their reasonably effective (although ultimately very destructive) way that they have learnt to cope with their internal and external environment. This reality is often completely ignored by those attempting to intervene. The result is that the addicted individual will often not listen to attempts to intervene, or alternatively will immediately agree with warnings, psycho-education about harm, intervention attempts, or advice related to their addiction, but will however internally automatically discount these either in the moment or in a future addiction-related context.

These intervention attempts often seem quite irrelevant as they ignore the fundamental importance of the experienced and repetitively reinforced benefits of the addiction to that person.

The reasoning behind this can be summarised quite simply. Putting aside the physiological components of physical addiction, if an individual has learned that they can only feel a sense of hope, or absence of pain, or emotional connection with another human being when high, then they are very unlikely to stop using whatever it takes to feel that high, regardless of any other negative impacts or external sanctions. The biological effects and processing of addiction (which are strongly described by behaviourist and attachment models) all make problem-solving alternatives to addiction much less likely to spontaneously occur.

Motivational interviewing can be a useful approach to pull all the elements of the experience of addiction together in such a way that the individual is then able to more effectively weigh up the "pros and cons" of continuing with the addiction, from their own perspective, and then to make a realistic decision of what they would like to do differently, going forward. Note that professional experience suggests that addictive behavioural tendencies are easily transferred from one

substance or behaviour onto another, and that ceasing the addictive behaviour may be partial, or complete, or may only be restricted to specific circumstances, or to using but employing a "harm reduction" model.

Motivational interviewing does not imply any agreement that an addiction is positive, nor that criminal acts are in any way justified due to an addiction. For this reason, when using motivational interviewing questions in a courtroom, it would be ethical and professional to preface these questions with a statement of the official position of the judicial officer, the court, and society on the offences committed. Motivational interviewing techniques include open questions, summaries, affirmations, reflective listening and then further summaries to move the conversation forward.

Some basic questions to start discussions related to addiction could start as follows:

- "How can I help you with [X]?" (For example, slowing or stopping drug taking, maintaining a stable life, avoiding further prison time).
- "Can you help me to understand [Y]?" (For example, the actions that the offender has engaged in).
- "When are you more likely to [Y]?"
- "What have you already tried to change [X]?"
- "What would you lose if you decided [Y]?"
- "What are your preferred changes in this situation [X]?"
- "What do you want the next steps to be?"

Some further motivational interviewing questions to develop the offender's understanding of their situation and to uncover the potential benefits to their behaviour, could include:

- "What benefits do you perceive for yourself from using this substance?"
- "What did the substance bring into your life that you would like to keep hold of?"
- "What aspects would you like to remove forever from your life?"
- "Over time, is the substance working more or less well for what you want from it? How are you dealing with this?"
- "Can you predict the longer-term picture for yourself if this addictive behaviour continues?"

Pay careful attention to any statements made by the offender which might indicate a readiness for change. These can include:

- Statements that recognise there is a problem, for example: "There have been instances where [X] has got a bit out of control … "
- Statements that show concern, for example, "I'm worried something bad might happen if I don't stop [X]."
- Statements that demonstrate an intent to change behaviour for example, "I've got to do something about [X], I'm just not sure what yet."
- Statements that show some kind of optimism about the future, for example, "I think I will be able to manage this issue." (Although this statement needs closer examination to make sure it isn't an evasive manoeuvre).

Summaries are particularly useful in a hearing context and judicial officers are generally very adept at summarising the matters before them, as a core competency of their role. To further capitalise on this strength, it would be useful to consider adding in some psychological and motivational elements to the summary, if this is not already your practice.

Some simple statements to begin a summary incorporating psychological elements, as well as the offender's own statements could be as follows:

- "Let me confirm my understanding of the situation thus far … "
- "Here's a recap of what I've gathered. Please let me know if I've overlooked anything important from your point of view."

As with any type of summary within a court context, the usefulness and strength of the summary depends on integrating the relevant information, in this case it is vitally important to integrate information from multiple various sources, including research into addiction, perspectives of family, friends and those impacted by the problematic behaviours, as well as the participant's emotional experiences and reasoning. When faced with ambivalence, or contradictory perspectives or statements, it's beneficial to incorporate both perspectives into the summary statement. For instance: "On the one hand … on the other hand … " Putting contradictory information together for the offender in this way can help them develop a more coherent and complete understanding of their own motivations and actions, as well as the effect of these on themselves and others. This is a therapeutic intervention in itself. It can help the offender then move forward in their thinking and potentially draw conclusions.

It is useful to end a summary with a question or invitation to action of some sort, such as:

- "Is there anything that I have missed in this summary?"
- "Given the summary of the situation, what is [your preferred next action/our next step] here?"
- "Is there anything you'd like to add or correct?"

Based on the offender's response to the summary, the next exchange might naturally progress to effective planning for concrete steps toward the desired change goal.

When discussing options and future plans within the addiction context, it is helpful to make use of scaling questions and also to have more than one scale. These can help add more nuance to the exchange and give concrete scaffolding to discuss ways forward. It is better to use scaling questions after the more gentle questioning and summarising process, as scaling can be more confronting.

For example, it could be useful to ask the participant where they position their goals for the addiction-related behaviour in the future, on a scale between complete abstinence at one extreme, then sporadic use, then controlled regular use, then regular use plus binging and then uncontrolled use without any restraint. This scaling can highlight any discrepancies between their perceptions of their addiction and the existing evidence available, which is a useful starting point for generating intervention ideas.

Scaling use in this way also allows a discussion of what the offender's life might look like, and what might be needed to support them, as well as the difficulty level of achieving stability, health and other life goals at the difference points on that scale. This can help guide the discussion towards what is needed to move their usage further towards abstinence.

Generally, controlled use of any addictive substance or behaviour is the most difficult path for someone who has struggled with an addiction to that substance or behaviour.

It can also be useful to help the offender to define where they position themselves regarding their motivation level between zero motivation and the most motivated they have ever felt in their lives. You can then ask the offender what might help them to strengthen their motivation to change their behaviour. An example question could be a version of:

- "What is telling you to quit?"
- "What information, thoughts, situations, people, lifestyle, help you to feel more motivated to change your addictive behaviour?"

- "When do you feel most like quitting completely?"
- "What situations or thoughts make you more likely to think some form of using is still feasible?"
- "How would you tell if this is a realistic opinion? What is the risk or benefit to controlled usage?"
- "If things go badly wrong and you have misjudged your level of control, how can you fix this? How difficult is it to recover from this?"

Court-agreed future goals, and the agreed steps for future planning for the offender need to be concrete, under their or the court's control, and have a mechanism whereby any problems or derailment will be quickly noticed and result in a new hearing, new planning, new or better support and possibly, new sanctions.

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[7] Intervention skills for non-neurotypical offenders

Many offenders will have some differences in their cognitive processing either due to a developmental disorder, chronic trauma, or both. These differences are usually biologically based and represent differences in the way in which the mind perceives and filters incoming information and directs attention in the short and long term. These differences vary widely between individuals and can create striking differences in the amount of mental energy available to an individual for cognitive tasks, that person's ability to plan, to remember, their ability to analyse, to remember details and create abstract schemas of knowledge, to reason and to perceive and understand other people's emotional states, communication, and their state of mind and intentions.

Visual signs that someone may be non-neurotypical include:

- constantly shifting position, fidgeting, skin picking, other repetitive movements — this can show anxiety, but can also be an unconscious self stimulation tactic to maintain concentration and alertness
- propping themselves up — this can also occur due to a trauma/freeze response, or also due to low muscle tone or lax ligaments
- yawning, zoning out, appearing inappropriately relaxed
- laughing inappropriately or showing unusual or monotonous facial expressions
- speaking inappropriately or too much, using phrases that seem out of context
- not speaking at all despite it being appropriate to do so.

Note that observing these signs is not diagnostic of being non-neurotypical, however it does suggest that an assessment could be really useful for the individual concerned as well as those around them.

[7.1] Impulse control issues

As reviewed by Bartels (2022), a not insignificant proportion of offenders are likely to struggle with impulse control issues, whether they are conscious of the issue and able to articulate this and regardless of whether they have been

diagnosed.[11] A judicial officer might form the suspicion that an offender may have a biologically-based impulse control issue due to their behaviour in court and also perhaps due to the nature of events which have brought them to court as well as what is known of their life context.

Offenders with attentional difficulties are highly likely to have difficulties with paying attention during the hearing. These difficulties are biologically based and are not under their conscious control.

Adapted communication is necessary for a court appearance to have relevant significance and meaning for someone with impulse control issues. Specialised assessment and treatment is also likely highly necessary; treatment would usually be with stimulant medication managed by a psychiatrist.

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[7.2] Sensory integration differences — working with sensory overload

Sensory integration is how the brain processes and makes sense of incoming sensory material; this is also an unconscious and biologically-determined process that differs widely between individuals. Problems with sensory integration can occur as part of a non-neurotypical presentation or independently of this.

Sensory stimulation is a term used to describe the incoming sensory information that an individual receives from their body and environment in real time. Every person has a specific threshold that determines how much sensory stimulation their brain and body need so as to be able to stay in an alert and responsive state of optimal functioning. This level is biologically determined and can fluctuate depending on the physical and emotional state of the individual.

The underlying set point for sensory stimulation that is best for an individual varies widely between individuals and is biologically based. Some people need less sensory stimulation to remain actively alert and engaged in their surroundings. They can become overwhelmed if they receive too much. Others

11 3–5% in Australian general population, around 20% of the prison population depending on the study, also see the review of cases in the Australian Supreme Court: L Bartels, "Paying attention to attention deficit hyperactivity disorder: an examination of cases in an Australian Supreme Court" (2022) 46 *Crim LJ* 245.

need more sensory stimulation and can seek this out so as to feel more alert for example, someone who rocks on their chair continuously during a meeting, or studies better when listening to music. They perform better with more sensory stimulation and find it harder to think as well without this.

Sensory overload can occur from either receiving too much incoming sensory information, or not being able to process and integrate this information at the rate that it is being experienced. This is a recent experience for people whose sensory thresholds are low and also for those who have difficulty in integrating sensory information. Nearly anyone can experience sensory overload if they are already under sufficient physiological stress.

An example of this would be someone who finds it harder to handle loud music when tired or ill, and finds themselves getting more easily irritated by it, but finds it invigorating to listen to when they are less tired and in good health. Some individuals are more sensitive to sensory overload and experience it under what others would consider near normal sensory conditions.

A courtroom appearance is an experience likely to create strong emotional responses and also likely to create sensory overload for those individuals with sensory integration differences that make them more vulnerable to this.

At its most extreme, sensory overload can provoke very strong feelings of being overwhelmed as well as the inability to think clearly, remember events, or interact in a meaningful way. It can also be the setting context for a reaction that borders on a "shut down", where the person ceases to be able to think or interact in a coherent manner. Individuals who are experiencing this can appear rude, may seem or actually behave quite aggressively and will often attempt to leave or in some way block out the proceedings. They are not usually in a mental state which is amenable to reasoned discussion.

If this occurs in your courtroom, it is useful to adjourn or pause proceedings for as long as it takes for the participant to be able to calm themselves down, to take steps to immediately decrease sensory stimuli and to take steps to facilitate emotional regulation. Once proceedings have restarted, it is essential to use as much adapted communication and visual aids and handouts as possible, as well as considering an in-person follow up or opportunity to ask questions some time after the court appearance, so that once the person is again able to process information, they can learn about and understand their judgment.

[7.3] Sensory integration differences — working with lack of physiological arousal

Insufficient physical arousal is where an individual is not receiving enough sensory stimulation to maintain a reasonable level of alertness and responsivity.

Most individuals who experience this are unaware of what causes it. This lack of tone can also be a trauma-conditioned response, an unconscious "freeze" response to being in danger. It can also indicate a dimming of psychological presence due to dissociation (a trauma response). An offender showing this response is likely to show signs of being less present psychologically, may yawn, may try to prop themselves up, may seem to "sag" or otherwise appear inappropriately relaxed, calm, or bored.

If you see these signs, it is important to ask the participant whether there is anything that might help them feel more comfortable. Is it useful for them to stand up, or to sit down? Or otherwise to direct them to a posture that enables them to move slightly so as to maintain their alertness.

As mentioned, there is also a possibility that these signs may indicate dissociation, so a brief grounding exercise could meet the goal of encouraging movement and sensory stimulation, as well as countering dissociation and increasing the level of alertness and psychological presence.

In terms of physical layout, it might also be useful to consider what the offender in this circumstance could naturally fidget with (without being disrespectful to the context).

[7.4] Differences in processing verbal language

It can be difficult during a short, in-court exchange to gauge the level of an individual's ability to understand spoken words. However it could be useful to effective court experiences to be mindful of the possibility that offenders may not process, understand and express language in the same way that you do and to take steps to avoid miscommunication based on this. This is particularly necessary because experience suggests that if a person struggles with verbal communication differences or issues in some form, quite often they will not be aware of this difficulty themselves, nor that they are missing information in exchanges due to their differences in either auditory sensory integration or due to differences in language processing.

Autistic spectrum disorders for example can take many forms and it is important to bear in mind that the only commonalities between individuals dealing with these disorders is that specific types of tendencies for differences in cognitive processing can be categorised. What this looks like and how this impacts functioning for any given individual will usually be unique and unpredictable.

Problems with the integration of auditory sensory material can cause an individual to mishear, or not hear, large amounts of what those around them say. This may also cause an effect where background noise overwhelms a person's

ability to distinguish speech, where words cut out midway, or where the second or first half of sentences are not cognitively "heard". Many non-neurotypical individuals have difficulty with cognitively hearing, processing and accurately interpreting verbal communication.

In general, by the time such an individual reaches adulthood, they will have developed a vast repertoire of automatic reflexes to mask this quite considerable disability. Quite often they themselves are unaware of their difference from others and they are also often unaware that the automatic strategies they are using to deal with verbal communication may well be muddying communication for them.

Those offenders with autistic spectrum disorders (whether they are aware of their neuro-developmental differences or not) will process language differently than what might be expected. This difference can be quite subtle but can cause enormous issues in effective verbal communication if the judicial officer is not alert to the possibility and willing to take adaptive measures so as to ensure effective verbal communication.

These differences in verbal language processing can take many forms, however there are several that are predictable and common.

A defining feature of disorders on the autistic spectrum is a difference in the way that an individual models their theory of other people's minds, their intentions and importantly, what is meant by the other person during spoken communication. This results in a lack of "pragmatic language", whereby the literal meaning of words is the only meaning understood by the individual, rather than the meaning of that phrase, in that social context, which could give the verbal communication exchanged quite a different meaning.

It may be more effective to only use the literal meanings of words rather than their pragmatic message when communicating with offenders who seem to be have unusual differences in their verbal communication.

One common adaptation that develops automatically in those who are non-neurotypical is to use a "cut and paste" method in their communication. This is where they take specific groupings of words, or phrases that they have learnt will get them out of a difficult situation, and "paste" it into the interaction, to achieve a specific, desired result. However, the actual meaning of what they are saying, as conveyed to their audience, is not at all intended (and sometimes not even understood fully by themselves).

If an offender seems to be using specific phrases or terminology out of context, or saying something that seems unusual for their position and your understanding of the facts, it would be extremely useful to explore the actual meaning of their

words with them, with the suspicion that they may be "cutting and pasting" without realising the unfortunate results for them of this automatic behaviour in a legal context.

[7.5] Adapted communication — how to use this in a courtroom

Several strategies could be very useful. In general, these strategies are using visual aids that can be discussed in court, handouts to read through and take away from the court experience, alongside judicial officer-driven adapted communication and comprehension checking.

- Firstly, avoid background noise to try and avoid sensory overload or integration issues.
- When speaking, speak slowly, use simple language and short sentences.
- Explain concepts and terminology and ask questions after each key point that you make, so as to check comprehension. Be aware that asking "do you understand?" is likely to get a "yes" in response, regardless of the actual level of comprehension.
- For important points, ask the offender to explain what you have just said in their own words. Also, beware of the individual who regurgitates word for word what you have just said as this does not indicate comprehension, just verbal memory.
- Consider accessing administrative support to implement standardised visual aids.
- A visual aid (such as a screen) would be helpful to orient the offender to the court, the stages of the court process and where the offender is in that process. This will reduce disorientation, confusion and tuning out of the proceedings.
- A handout to take away with the judgment explained in simple language, with a flowchart if possible, would be useful to most offenders with communication issues. It can be a way of helping the offender realise the links between cause, effect and consequence which may otherwise be less obvious to them. It might be easiest to have several pro forma templates for different types of judgements, developed with administrative support.
- For example, a handout checklist with required further actions could also be much more effective than just verbal communication alone. An electronic copy of this is also useful in parallel, given that many of those with non-neurotypical disorders can have great difficulty in keeping track of their belongings and important documents.

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[8] Systemic intervention

[8.1] What is a systemic intervention?

As discussed briefly in Ch 1, systemic intervention refers to a therapeutic approach aimed at creating positive change for an individual by taking into account and making use of the systems in which they are present. This means intervening in such a way as to address and make use of the underlying structures, relationships, "operating rules", patterns, history and dynamics that develop and maintain the problems faced by the individual. A systemic intervention approach goes beyond addressing concrete actions, symptoms, "offences" or an issue being litigated and focuses on understanding the systemic patterns and feedback loops that contribute to the persistent challenges faced by the individuals involved.

Systemic interventions are useful for situations where the individual feels as if it is impossible for them to behave differently and that the scope of possible actions available to them is very limited or not under their control. They are essential for situations where it is clear that other interventions in the past, that would ordinarily have been helpful, have not worked for any meaningful length of time. As will be demonstrated, interventions making use of a systemic framework could be a useful inclusion in a court hearing.

The basic premise of systemic intervention is that a family, or a system of people, institutions, groups of people, etc, is the target for treatment, rather than the

"identified patient". This may seem a little radical, but is not antithetical to legal practices if the judicial officer adopts a "both/and" approach to their discourse. What this means is that, on the one hand, they are conducting a hearing for a specific offender, and at the same time, they are intervening in a system which might be expected (best case scenario) to create a systemic change for a system of people, resulting in less future offending (not just for the offender).

To understand what action or change is necessary and has a good chance of being useful to the "person with the problem", it is necessary to analyse the system and form an hypothesis of how the system works and why that person is dealing with particular problems. To do so, there are many different types of therapeutic models that can be applied to systems in order to better understand how they work and which point to target in order to effect a change in that system. These help to inform with whom, or between whom to intervene.

Systemic intervention is founded on systems theory, which originally developed from cybernetics. Bateson's ideas on the interrelatedness of components in a system and Meadows' work on identifying leverage points for systemic change have provided foundational principles for systemic intervention (Bateson, 1972; Meadows, 1999). Additionally, the field of sociology has contributed narrative and discourse analysis, founded on Foucault's work as it relates to the social construction of identity. Family therapy has further contributed to the understanding of systemic intervention, emphasising the importance of considering family dynamics, intergenerational patterns and current and past relationships when addressing problems faced by a specific individual (for example Minuchin, 1974).

Experienced systemic therapists often refer to the different theoretical schools as different "lenses" through which they view the family system. The ability to apply more than one "lens" to a problem situation in order to generate suggested intervention points and intervention forms is useful. Systemic intervention is slightly different from most other schools of therapy in that it actively encourages taking more than one perspective and theory into account when trying to intervene for a person. This inclusivity of perspective, as well as providing a deliberate framework for integrating different perspectives or theories is a significant strength of systemic intervention, particularly when dealing with complex situations and the people living within them.

This chapter adapts systemic intervention thinking and techniques for use in a courtroom. After a brief overview of the different systemic schools of thought and how to use these as different therapeutic "lenses" to develop an hypothesis of what is causing the difficulty for an individual within their context, we will briefly discuss the usual process for a systemic intervention. We will then

specifically review the strategic and solution-focused models as they have been articulated within the brief therapy techniques and specifically look at how brief therapy techniques could be applied within a court hearing.

We will then look at some of the more advanced techniques from other fields of family therapy which could have useful application within a hearing context, such as the use of systemic questioning, and the use of a reflective team within a courtroom setting. This last technique makes use of the same heightening of emotional engagement and potentials that were discussed in the idea of outsider witnessing using a narrative therapy technique, however with some specific differences which might give judicial officers more control over the expected outcomes.

[8.2] Community level systemic intervention and therapeutic goals

Some aspects of systemic intervention are likely less possible within the hearing context, and will not be dealt with in detail. Other aspects necessarily need to occur outside of a courtroom. Experience with communities in which problem-solving courts are operating is that very often the court itself partners with local organisations to intervene systemically to change the way in which the community or group of people operate and reduce the risk of litigation or offending.

Practising systemic intervention with the offender while gathering feedback will likely identify areas in which more structured intervention would be highly useful outside of the courtroom for a particular community or group of people. For example, this may highlight a need to change how government services operate, areas for legal reform or changes to legal procedures, different policing initiatives, changes to local services that are needed, or highlight specific community issues that require creative problem solving so as to disrupt offending from occurring. This is where stakeholder partnerships and community initiatives and interventions can be particularly useful at reducing reoffending. If this is an area of interest, it is useful to start by exploring the experiences of other problem-solving court initiatives, their processes and their learnings.

The effectiveness of community programs and specialised courts has been demonstrated in various locations, although studies on efficacy are sometimes controversial due to challenges in defining "successful outcomes". Evaluating the potential usefulness of such programs or courts for a specific community requires local assessment, with judicial officers being experts on legal needs and defendant profiles within their jurisdiction. Therapeutic intervention at a community level involves analysing the needs of specific defendant populations and tailoring court processes and support systems accordingly. While this

specialised therapeutic approach originated within the therapeutic justice community, its comprehensive nature is beyond the scope of this guide. However, there are numerous published works available for further exploration of this possibility.

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[8.3] Systemic schools of thought

As already mentioned, there are a variety of schools of systemic thought that can be used to inform what systemic intervention could and should be used for any specific individual. A brief overview of these is presented here.

Solution-focused therapy, developed by Steve de Shazer and Insoo Kim Berg in the 1980s, is a goal-oriented and brief therapy approach. Conversations focus on creating solutions rather than analysing problems; this therapy finds and emphasises clients' strengths, resources, and past successes as a foundation for future change. The focus of most conversations is on future behaviour, without delving too much into character and identity. Techniques such as the "miracle question" and "scaling" questions are employed to facilitate the client's exploration of their preferred future (Watzlawick, Weakland and Fisch, 1982).

Brief therapy is a specific type of solution-focused therapy that is deliberately **very time limited**. Therapeutic goals are achievable right from the first session and engagement usually lasts up to five sessions (Jay Haley, Steve de Shazer and Insoo Kim Berg, Salvador Minuchin).

Systemic family therapy, also known as family systems therapy, focuses on the interconnectedness and dynamics of family relationships. Treating the family as a complex living system, this therapeutic approach aims to identify and address communication patterns, power dynamics and relational rules and dynamics within the family system to promote healthier interactions and overall

well-being. Recognising the systemic nature of family functioning, changes in one part of the system can have ripple effects throughout the entire family (Bowen, 1978; Minuchin, 1974).

Strategic family therapy, developed by Jay Haley, targets specific behavior patterns within a family system to bring about positive change. The therapist takes an active and directive role, using techniques such as reframing and assigning tasks to **disrupt problematic patterns**. The therapy is goal-oriented, where the therapist seeks to create shifts in family interactions and hierarchies using strategy to achieve desired outcomes (Haley, 1976; Madanes, 1981; Minuchin and Fishman, 1981).

Structural family therapy, developed by Salvador Minuchin, addresses dysfunctional family patterns arising from poor boundary-setting and enmeshment. This approach seeks to identify and modify boundary patterns and problems in family structure by helping establish clearer boundaries, roles, and rules.

Bowen family therapy, a type of structural family therapy, developed by Murray Bowen. It focuses on increasing self-differentiation within a family to break harmful cycles and achieve healthier relationships (Bowen, 1978).

Milan family therapy, developed in the 1970s by therapists in Milan, Italy, including Mara Selvini Palazzoli, Luigi Boscolo, Gianfranco Cecchin, and Giuliana Prata, resolves family problems by examining communication patterns and disrupting hierarchical power dynamics. Techniques such as circular questioning and paradoxical interventions are used to create new perspectives within the family system (Boscolo and Bertrando, 1987; Selvini Palazzoli, Boscolo, Cecchin and Prata, 1989; Cecchin, Lane and Ray, 1994).

Narrative therapy, developed by Michael White and David Epston, is a collaborative and empowering approach that focuses on understanding and reshaping individuals' life narratives. Emphasising the social and cultural context, this therapy uses techniques like externalisation and reauthoring to explore alternative perspectives and create new meanings (White and Epston, 1990). Founded on social constructionism, this modality relies on social context to achieve therapeutic aims. Some systemic therapists do not include narrative therapy as a systemic approach, quite a few narrative therapists do however. Narrative therapy techniques adapted to a courtroom will be discussed in the next chapter in greater detail.

[8.4] The basic processes of systemic intervention

Many of the steps to a systemic intervention may not be possible or appropriate within a hearing.

The basic steps of a systemic intervention are discussed briefly here for completeness, and to highlight what steps would be useful for any judicial officer wanting to implement specific types of systemic interventions in their courtroom aimed at specific types of offending or particular contributing factors to that offending.

We will then look at techniques that are specifically useful to a courtroom hearing.

[8.5] Identifying the problem

Usually, the person identified as "being the problem" is the offender. However this is not always the case, particularly if the offender justifies their behaviour as being on behalf of, or caused by another person with whom they have relationship ties with, or another group of people.

[8.6] Mapping the system

This involves identifying the systems within which this person lives and has lived. Then, identifying the systemic "rules" and "forces" or dynamics that are operating on that person within these systems.

Generally speaking, the more access a systemic intervener has to the people within these systems, as participants and as audience, the easier it is to map the system and also the more likely that a systemic change will occur. Many family therapists for example will deliberately invite whole families or other relevant groups to attend at least some of the therapy sessions.

The usefulness of this practice means that deliberately requiring as many people as possible who are part of the offender's social, work group and family systems to also attend court as an audience is a powerful therapeutic intervention in itself, particularly if elements of a reflecting team are then implemented during the hearing.

[8.7] Creating a genogram of family and other systems acting on the individual

This is an important step to understanding the context and family systems within which an individual lives and the unconscious processes acting on them; it is also a powerful intervention tool in itself. Creating a genogram means drawing a detailed family tree of at least three generations and drawing in the patterns of behaviour between the family members across the generations. This mapping will then show if there is an intergenerational problem with incest and violence, for example, or multiple emigrations, or multiple cut offs. For offenders who

have grown up in care, or who have multiple familial and cultural dislocations, this is then a target for systemic intervention in itself — to encourage integration of the lessons learnt from this, and the development of a coherent sense of self as having existed within multiple systems with multiple different rules and different values, reconnection with culture, deliberate choice in creating of own personal customs and cultural values.

Creating a genogram may well be beyond the scope of a court hearing, however it could be carried out prior to a hearing via a court intake questionnaire completed with a trained family therapist (with the necessary confidentiality agreement that the information will be available to the court), with specific theories and relevant information or interventions then included in the court hearing.

Exploring the problem using various specific questioning techniques: the questioning techniques most useful for exploring the problem which can be implemented in a courtroom will be dealt with below.

[8.8] Brief solution-focused therapy skills

Brief therapy uses a number of interesting questions which could work well when asked at the right moment in the hearing, if it seems appropriate and useful to do so.

A useful starting point that will clarify the problem from the offender's perspective is to ask the "**magic wand question**"**.** The magic wand question is highly effective at identifying therapeutic strengths and preferred outcomes, freeing up imagination and creating hope and is routinely used in brief therapy and narrative therapy, in highly complex situations. It is not intended to suggest that a magic wand is all that is needed, nor to undermine the seriousness of the proceedings.

For example, you might ask:

- "If I had a magic wand, and you had three wishes, what would those wishes be?"

What the offender answers will give a precise understanding of how they see their life and their problems, which can then inform the discussion.

Depending on their answers, you will likely need to ask further questions to really clarify what could be achievable, and how that might affect their future offending behaviour.

The next types of questions which are useful in a court exchange are **usefulness questions**, which aim to focus the conversation's effectiveness by probing for ways to make it valuable for the offender. For example:

- "How can we make this time in court today as useful as possible?"
- "How can we make this exchange more useful for you?"
- "What do you want to achieve from this conversation?"

An alternative to the magic wand question is to utilise the **miracle scenario** technique, which is also taken from brief therapy. This is a discussion that could appropriately occur towards the beginning of a hearing. This technique invites the offender to envision that a miracle has occurred, where the problems they have been dealing with have been miraculously solved, without anyone else knowing. Note that this miracle scenario does not in any way excuse the need to take responsibility for actions. It is designed to help the offender free up their perspective about what they might need to do to deal with their problems differently; as such it is designed to generate hope and creative problem solving.

For example, you might ask:

- "If a miracle happened today to make the problem as you see it completely disappear on all aspects from your life, and only you knew about it, how would you recognise the change?"
- "What would you see, hear, or feel, and what would you do next?"

This question can go into great depth, including adding in details such as:

- "What would you do differently?"
- "Would you walk down the street differently? Would you drive differently?"
- "How would it affect your interactions with [X/people you are close to/those in authority, etc]?"
- "How would you hold your body when standing? Can you take a moment to try holding your body that way now?"
- "Would you breathe differently? Try taking a few deep breaths now, and then breathing for a moment as you imagine you might if that miracle had occurred and your problems had miraculously disappeared."
- "How would you participate differently in these court proceedings if the problem that you are dealing with miraculously disappeared?"
- "How would it change how you are speaking to me now?"

These discussions can be as elaborate as possible, and will usually naturally lead on to the next question regarding actions:

- "What can we do here today to help you move towards solving the problems that you are dealing with?"
- "What do you see as the next steps in this?"

This should lead to a case management meeting involving offender actions, including taking responsibility for past and future actions; this can then be incorporated into sentencing. This discussion may also highlight the need to involve other services.

Further brief solution-focused questions are then designed to focus the courtroom exchange, clarify what the offender is motivated by, and to hook their motivation in the discussion so as to make the exchange as useful as possible.

For example, a judicial officer could summarise the current situation that has brought the offender to court, and then ask:

- "What does your **preferred situation** look like? How would you like things to be?"

It is recommended to repeat this question until the offender eventually runs out of things they would prefer to be in place in their life. This contribution can then easily lead on to a discussion about how to improve things from a legal and practical perspective.

Asking questions about **past success** is designed to extract resources from instances where the recipient successfully navigated a similar situation, contributing to increased confidence and hope. Examples include prompts like "When have things been better?" and "Have you previously solved a similar problem? How did you do this? What helped?"

Paraphrasing using the offender's own words demonstrates attentiveness, and using the offender's own language, whether visual, kinaesthetic, or auditory, creates an alignment that can greatly increase the offender's emotional involvement in the problem-solving discussion.

Scaling questions can help prompt the offender to define more precisely where they stand on a particular subject on a scale of 0 to10, with 10 representing the desired outcome. This then provides a tool for discussing and generating future actions and preferred outcomes.

For example, if an offender identifies that they are at a 4/10 with regards to their confidence in being able to "manage their finances", the judicial officer can then ask:

- "What would an 8 feel like?" "What would you need to get to an 8?"

Or, for example:

- "On a scale from 0 to 10, with 0 being the worst your problem has ever been and 10 being your ideal life without the problem, where would you rate your current situation?"

This then leads easily on to further exchange about what is needed from the offender's perspective and what is possible within the context of the court proceeding/hearing in order to move towards a "10".

A similar line of questioning could work with those who express a feeling of social exclusion, or that policing is unfair or laws are unequally applied, or that the laws don't apply to them. The example question would be something like:

- "What would it take for you to get to an 8/10 confidence that you can trust the laws, police and courts to be fair to you and for you to feel included in this society?"

This discussion will then generate practical suggestions and highlight further resources and support required and the responsibility taking that the offender needs to engage in for the problems they are dealing with to be resolved.

Exception-seeking questions are questions designed to find moments when problems are less powerful or pervasive, then look at how this was achieved and how to reactivate this. These types of questions can show up as unexpected resources and past strengths which can then be included in future recommendations. For example:

- "Has there been a time when this problem was less intense? What was different?"

Coping questions are beneficial when the recipient is struggling and finding it challenging to summon the energy to participate in the court exchange and attempt to find solutions. These questions are designed to find past and current sources of strengths and resilience to help with future behaviour change.

For example:

- "What keeps you going under these difficult circumstances?"

If the offender has given up on something that should have been continued:

- "How were you managing to cope before you gave up?"

Solution-focused directing involves using solution-focused techniques to guide someone toward achieving a goal, for example:

- "How can you … (necessary offender actions) … so that … (the desired outcome is achieved)?"

Scaling the solution involves using scaling questions to ask the offender to envision what steps they have taken or could take to move closer to their preferred future. Offenders are encouraged to rate their confidence in taking these steps. For example:

- "On a scale from 0 to 10, how confident are you that going to a treatment program for problematic gambling will improve your relationships and quality of life?"
- "What could we do to make you more sure that this is achievable? What would you need to see included in your next steps for you to be more sure that it would be helpful?"

"What's better since we last saw each other?" is a question that only applies if more than one hearing occurs, and the offender has been assigned homework tasks in between their hearings. It can be a useful conversational opener and search for progress and strengths in those situations, with the assertion that there will have been positive change that has occurred.

[8.9] Beyond brief solution-focused therapy — techniques from other schools of structural, strategic and systemic family therapy

Circular questioning: Judicial officers can use circular questions to explore relationships, patterns of communication, and perceptions within the system. These questions help uncover different viewpoints and encourage members to reflect on each other's experiences. These questions are designed to help people in the system make new connections about certain actions or events; these questions shift the perspective from first person to observer.

For example, for an offender who has their partner present, family members or friends in the public gallery, the judicial officer could ask the offender what they think each of these specific people are thinking, hoping for, or potentially afraid of, when the judicial officer asks the offender specific questions. This perspective taking can then be enlarged to include important people from the person's past, or future, or the victims or bystanders to offending.

For example:

- "When I ask you a question about what steps you are willing to take to deal with your [offending], what do you think [your father/mother/sibling] would think you might reply? What about your future children? Your neighbour?"

It can be helpful to also clarify who are the significant people to the offender and draw them in as hypothetical witnesses to exchange. For example:

- "When you were younger, was there a person who you really respected or you were absolutely sure wanted the absolute best for you?" (If they are unable

to identify anyone, which is the case for some very traumatised people, then get them to imagine that such a person exists, but they just haven't yet met them.) "What do you think (that person) is hoping for as a response when I ask you the question …?"

Effective **circular feedback** from other relevant parties to offending and litigation hearings could be challenging to implement in a courtroom. If this is attempted, it would need to be prepared in advance by a trained systemic therapist, using a structured response format to ensure that the feedback is constructive and non-blaming.

[8.10] Developing a hypothesis

Based on the observations and information gathered, the judicial officer formulates a hypothesis about the group or family's dynamics and the factors contributing to their presenting issues. This hypothesis is often presented tentatively and is subject to revision as the hearing progresses.

A hypothesis is a theory of why the offender is behaving in the problematic way and can include individual features, family and social context features, socioeconomic context, intergenerational patterns, social discourse, ideas about identity, gender, class, culture and ethnicity, patterns in past and future relationships, the meaning of behaviours, as well as the function of other aspects or effects related to offending. It is important to be aware of your own positioning on these aspects when developing a hypothesis, as what an observer notices often says as much about the observer as it does about what is being observed.

A judicial officer developing a hypothesis cannot extract their own perspective from their hypothesising. This is a fundamental tenet of systemic intervention and therapy.

[8.11] Using different lenses

As mentioned in Ch 2, it is useful to have a strong degree of cognitive flexibility when thinking about theories behind behaviours and how to change behaviour. The idea, as mentioned earlier, is to "flirt" with a theory of what is causing the "problem", but to try not to be married to any particular point of view or hypothesis.

When thinking about an offender's problems, it is likely to be much more effective to come up with more than one theory of what might be driving their issues and to use a "both/and" approach when linking these two (or more) theories together.

The idea of using different "lenses" through which the judicial officer can view a particular situation is a deliberate strategy employed by systemic therapists to

encourage flexible thinking and problem solving. The idea is to approach these models of the problem as being equally valid and true at the same time. This approach can also be helpful when trying to integrate an offender's perspective into a court hearing, so long as the offender is taking responsibility for their actions in what they are saying. It encourages emotional engagement of the offender in the court process and can help them to integrate an outside, more objective perspective into their experience and understanding of their own actions.

The simplest way to integrate statements using a "both/and" approach is as follows.

The offender's perspective may often be something along the lines of: "I was forced to behave in that way due to circumstances."

The legal perspective could well be: "the action you took was illegal and caused harm to others, it cannot reoccur and must also be sanctioned to prevent others from doing similar."

The integrated statement would be: "You felt as if you did not have any other choice regarding behaviour, and the action you took was illegal and caused harm to others …." This statement then leads easily on to the next question, inviting thought about what other actions might be effective in the situation, externalising the offender's feeling for having no other choice, positioning the judicial officer as an ally in the fight against this lack of other behavioural options, etc.

This approach works equally well when considering a problem situation from more than one viewpoint. The idea of wearing more than one hat is already quite well ingrained within western society. This approach involves a judicial officer deliberately imagining themself in one role, then in another, different role. Or, when using systemic therapy, imagining what the different schools of systemic therapy would say in turn, about a situation.

Given the time constraints that are likely present in a court hearing, a simplified version of this approach could be the judicial officer putting on their judicial officer's hat, expressing an opinion, then putting on their therapeutic judicial officer's hat, expressing an opinion, then imagining what a respected therapeutic intervener might say, about the same situation. These perspectives can literally be expressed directly, or (if there is time) integrated into the one hypothesis which is expressed, or kept private, to the judicial officer but will inform their thinking. The idea of considering (and expressing) the problem from different perspectives is taken to more dramatic lengths using the technique of a reflecting team in a courtroom, which will be discussed at the end of this chapter. This

technique is a useful way of creating a different perspective for the offender which can then free up potential for future, different sense of self and different behaviours.

[8.12] Feedback and testing

Some schools of family therapy share the hypothesis of what the therapist thinks might be driving the problem. Other schools of systemic intervention don't, for example the strategic and brief therapeutic orientations are not transparent about the therapist's hypothesis of what is driving the problem.

If the hypothesis has been shared with the offender, family or group, then the group can engage in testing this hypothesis to see if it holds true and evaluate whether it generates solutions, and shifts dynamics and behaviour. This may involve experimenting with new behaviours or communication strategies to see how they impact the group dynamics.

[8.13] Use of a reflecting team in a courtroom

A reflecting team is a key technique used in systemic family therapy that could work well in a hearing context, with the right preparation and training. The reflecting team is a method employed within systemic therapy to gain multiple perspectives on a family's concerns, allowing for a more comprehensive and collaborative therapeutic process and, once again, to create a shift in perspective for the offender, so as to introduce new perspectives and directions for thinking and future behaviour into the problem discussion. It aligns with the systemic therapy principle that problems are not solely located within individuals but are influenced by the larger family and social context.

A reflecting team usually involves a team of people who can reflect on the offender, their situation, their systemic contexts, etc. These people could be legal officers, judicial officers, or other professionals present. In order to be effective with their reflections that they offer, these people will need to have some understanding of how to generate a systemically relevant reflective comment. This training is beyond the scope of this guide, however is accessible via further professional development in family therapy and reflective team training. There are also several manuals available online at time of writing (see reference list at the end of this section).

The basic process is as follows:

The **first order conversation** involves the judicial officer exchanging with the offender about the problem.

The judicial officer then defers to the "reflecting team" who are physically present (or available via video link and able to hear the proceedings) to provide fresh perspectives and insights into the family's dynamics. For example, by saying something like:

- "Now that I have a better understanding of your concerns, I'd like to introduce you to our reflecting team. They are here to provide additional perspectives and insights."

The judicial officer **introduces the reflecting team members.** The offender (and whoever is also present at the hearing from their family and other systems) are then invited to **step back and observe** while the reflecting team engages in a conversation about the presented issues, as well the offender and their context. The reflecting team discusses their observations and reflections on the situation. Their discussion should usually address what are referred to as "**second-order questions**" (Anderson and Goolishian, 1992) — these are questions about the meaning, patterns, and context of "the problem" rather than simply focusing on "problem solving". Note that "the problem" might be conceptualised as offending behaviour, or it might be conceptualised differently.

Each reflecting team member reflects in turn on what they have heard and understood and then finishes with a question about what they would like to know more about. It is useful to include reflections on the offender, of significant people in their life and also the victim and their family in these reflections and questions. The refections can focus on the present experience of these individuals, of the themes and possible histories or patterns for those people, of past hopes, future dreams, about who is most affected/least affected, who has the power to make things happen, what various members of the system might notice first if things were to improve, and what that might be like for them.

It is important to note that when using a reflecting team, neither the offender nor any other person discussed is given any chance to respond to the reflecting team's reflections and questions. This is deliberate and can be uncomfortable and frustrating for those involved. However, it is considered a necessary part of the process as a strategic technique designed to provoke the offender and those involved in the situation to respond outside of the courtroom (or therapy session), harnessing their frustration so that it carries through into meaningful action. This is meant to cause a sense of frustration and greater thought regarding the perspectives presented by the reflecting team.

If the idea of implementing this in a courtroom is something that seems interesting, there are many external resources available on how to establish this and make sure it functions efficiently and effectively.

Fundamentally, the reflections offered need to be specific to each individual involved in the offender's life and offence, and the questions that each person poses need to be phrased as open questions so as to open up thinking.

A useful format for a reflection is: "I noticed that … and I wonder if/what/who, etc …. "

For example:

Team member 1: "I noticed that when the offender mentioned his children, there was a lot of emotion in his voice." "I'm wondering about the effect of this hearing on [the victim]?"

Team member 2: "Yes, I [noticed/wondered] that too. Are they present here today?"

Team member 3: "I wonder what it's like for them, if they are at this court [hearing/witness to the offending behaviour/watching the offender] being present here today, what it means to them right now?"

Team member 2: "But equally, what would it be like for them [at home/in care/hospital/elsewhere] knowing that this hearing is happening today and the importance of the outcome for them? How well will they sleep tonight?" "What do they want to happen next for [the offender]?"

Or as a second example:

Team member 1: "I can't help wondering what the court isn't being told today. There just seems to be so much missing information in our understanding of what's actually occurring."

Team member 2: "Yes, I [noticed/wondered] that too. I was also struck by how [thin/depressed/worried/unworried] [the offender] looks today. What is going on for him?"

Team member 3: "I see what you mean. It is striking, I hope he gets some help for that. You know, as I was listening to the exchange with the judicial officer I couldn't help thinking about [the arresting officer/ambulance crew/clients of the offender/offender/family/accomplices who got away without being named]. I'm stuck wondering what it's like for them, if they are at this court [hearing/witness to the offending behaviour/watching the offender being present here today] and what it means to them right now?"

Team member 2: "I hear what you mean. Nobody dreams as a young kid that they want to grow up and [go to court/go to prison/get arrested]. What happened to that young [kid/boy/girl] and their dreams? How did they get to this point? Is it inevitable that this is how things stay for them?"

A simplified version of a reflecting team is the judicial officer discussing the offending within their earshot, and expressing their concern for, hopes for, and curiosity about aspects of the offender's life and future behaviour. An even more cut down version of this is the judicial officer musing out loud to themselves about what they are curious about with regards to the offender. The material that the judicial officer invites the offender to be more curious about needs to be carefully chosen so as to be therapeutically useful.

As can be seen, there are quite a few different perspectives that can be incorporated into reflections. Structured training for judicial officers and reflecting tea members via participation in a systemic therapy training and/or an actual therapeutic reflective team will make the reflections offered more targeted and more useful to generating different future actions for offender and the systems within which they live.

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[9] Narrative intervention skills

[9.1] Bringing the offender and their story into the courtroom

Everyone has a story to tell. Most therapists would agree to some extent that we are strongly influenced by the stories we tell about ourselves, and the stories that others have told about us. Narrative therapy is a technique which is particularly suited to a courtroom setting. The techniques seem deceptively simple but need to be worded with great care if they are to be effective. When discussing therapeutic reauthoring of life stories, we will look at:

- the background and theoretical basis to narrative therapy
- the common tendencies that offenders have when discussing "bad behaviour"
- general narrative therapy techniques and how these work during a hearing, and
- specific narrative therapy techniques designed to increase offender responsibility and sense of autonomy regarding their future behaviours.

[9.2] Background and theory

The basic premise to narrative intervention is that an individual's sense of identity and their future interpretations of situations, as well as their decisions regarding future actions, is based on a sense of them having their "own story". This is basically a narrative about who they are and who that makes them in relation to others. Interestingly, recent research data on the experience of consciousness supports the idea that an individual's sense of identity and interpretation of reality is in fact just an internal narrative construct created by the left side of the brain (generally speaking), which continually narrates a coherent sense of self, motivations, an ongoing recreation of personal history, as well as an interpretation of own motivations that is ego-syntonic. This process occurs even in the face of contradicting sensorial or objective evidence, or lack

of information to back up any of the assertions of the self-narrative. Given this observation, a judicial officer using narrative therapy to directly intervene in the process of self-formation and future decisions is probably an efficient use of a judicial officer's time during a hearing.

Narrative therapy was developed by Michael White and David Epston in the 1980s. Narrative therapy techniques are designed to help individuals uncover, reframe and reconstruct the stories they tell about their experiences and themselves.

The techniques discussed here are framed to address offending behaviour, and as will be discussed further, to address interpersonal offences. However, the techniques can be used equally well for legal matters that are not criminal in nature, as they function based on the individual's sense of identity and what they believe is the right way for them to act, based on that sense of identity.

The techniques discussed in the second half of the chapter, looking at "invitations to responsibility", can be used for any type of unwanted or potentially harmful action on the part of an individual, and are not specifically limited to offences that cause harm to others, for example via fraud, violence (physical or otherwise), or harassment. For example, in the case of a drink driving offence , the judge could ask:

- "What type of driver do you want to be?"; "What types of experiences do you want to contribute to your community?"; "If this case continues as it has so far, how do you see your ability to get around and run your life using your car developing over the next month, six months, two years?"
- "What stories are informing your ideas about what is reasonable behaviour for a car driver, and whether it's actually possible to drive while drunk?"
- "Over time, are these stories influencing you more, or less?"
- "This is your life. How much do you want to let (whatever social narrative applies) dictate to you whether you will be able to legally drive in the future?"
- "Are you going to let these stories (and they are just stories) completely wreck your legal ability to conduct your life as you see fit and be mobile using a car?"
- "What type of driving do you want your kids to see?"; "When your [elderly relative/friends/child] is on the road as a [passenger/pedestrian/bike rider], what do you want them to understand about their right to safety and respectful behaviour from other drivers?"
- "How are you planning to explain to your [children/spouse/friends/those close to the deceased or injured] (if this is the case) what your reasoning was when you decided to drive drunk?"
- "Do you really want to be that person who loses their licence and eventually gets banned from driving just because they [preferred not to call a taxi/hadn't

problem solved in advance how to get home after a night out/decided to keep on driving when drunk]?"; "How are you planning on explaining that to your [workmates/boss]?"

- "How do you want to be viewed by others: responsible, smart, and in control of your life? Or out of control and doing stupid things with serious negative impacts for yourself and others?"

[9.3] The process of narrative intervention

Narrative intervention usually requires a dialogue between two people to occur. However, it is not necessary for an exchange to occur in order to effectively alter someone's sense of identity and their likely future actions and positioning within society using narrative. A negative example of this occurring without dialogue can be seen in the frequent pairing of the terms "Islamic" and "terrorist"in the press over the last 20 years. This association is now ingrained in the cultural references associated for members of the Muslim community worldwide. Another negative example of this could be the association of the terms "dole" and "bludger". This pairing can create a stigma in the minds of anyone encountering someone on income support, which is then integrated into that person's identity to some degree, even if they reject the association themselves. This is an example of the way on which the "stories" that circulate in society can pose significant barriers to positive self esteem and a sense of self efficacy and belonging to the wider society, particularly for marginalised groups. This is also where narrative therapy can be most helpful.

[9.4] Reauthoring and co-authoring new stories

Collaboratively creating alternative, more positive, or more empowering narratives involves rewriting and reshaping the stories of a person's life with a focus on strengths, resilience, internal resources, and positive experiences. The entirety of this process may be beyond the scope of what is realistically possible to discuss here, and beyond the scope of what is achievable in a courtroom.

However, the first few steps, such as naming the problem, externalising problem-saturated narratives, finding unique outcomes and then internalising the resources involved in creating the unique outcomes, as well as delivering irresistible invitations to take personal responsibility, are feasible and can be extremely powerful interventions, appropriate to the context and directly under the control of the judicial officer.

Also note that the therapeutic steps discussed below are are not necessarily linear, and several different techniques can be used in parallel and out of order, during the course of a hearing.

As a general opener to the conversation, it is useful to start with the question,

- "Can you tell me in your own words why you are here today in court?"

The basic steps are as follows.

Naming the problem

It is extremely useful to ask the offender to name the problem themselves.

An example question for this is quite straightforward, but very useful to ask:

- "What would you like to call the problem that has brought you in here today? What name fits for you?"

Then use the name they have given when discussing "the problem" further.

Externalising the problem

Rather than the person being the problem, the problem is the problem. These questions are designed to remove the problem from the identity of the person, so that it is easier for them to position themselves (ideally with the court or other allies) in working against the problem.

This makes it easier to accept help from others and uncover ways to better fight against the problem.

An example of this in a courtroom could be a statement such as:

- "It sounds as if you need help dealing against your drug addiction, let's deal with this together." Rather than "you are an addict".
- "You sound as if you need help to address a tendency to blame others for your own actions." Rather than "you need to take responsibility for your own actions" which is a valid statement, but one which is often not successful in engaging an offender in accepting their responsibility for their actions.

Engage in conversations that are designed to **externalise the problem further**; this might involve discussing the problem as if it were a separate entity in such a way that it gives the person more control over it. For example, when asked what "the problem" is from their perspective, an offender might commonly say that no one respects them or understands them, helps them, or that they are depressed, anxious, or "broke."

Externalising questions for each of these problem-saturated statements could be as follows:

- "What can the court do, within the limits of the matters here today, to help you feel more respected?"
- "Have there been times when the need for being respected has had too much power over your actions?"

- "What have been the effects of this for you?"
- "How can we help you in your struggle with feeling misunderstood?"
- "Have there been other times when feeling misunderstood has hijacked your decision making?"; "How can we limit the influence and power of feeling misunderstood before it wrecks your life further?"
- "What can we do here to become an ally in your fight against letting depression or anxiety run your life?"
- "How can the court be an ally with you in your struggle to recover financially from being broke?"; "In what ways is being broke dominating your life? How long has this been going on for?"; "What are the effects on your future important decisions of always being broke?"

Identifying dominant narratives

It is useful to explore the dominant stories that shape the person's identity and perception of their issues. These are the stories that have become the central shaping focus for identity and decision, but are usually mostly hidden in the background of their lives.

Some example ways of uncovering these narratives could be questions such as:

- "What did the people who were important to you say about you when you were younger?"
- "What does [society/the media/your neighbours/your family/your friends/your doctors] say about 'people like you'?" (Make it clear that the phrase "people like you" is not something you as the judicial officer is necessarily siding with, maybe by miming inverted commas around the statement.)

Deconstructing problem-saturated narratives

Examine the negative or problem-saturated stories and challenge their influence. Encourage the individual to question the assumptions and meanings attached to these narratives.

Example ways of doing this within a courtroom, following on from the questions used above to identify the dominant narratives, could be:

- "Did you agree with what [your parents/teachers/society] said about you when you were younger?"
- "Do you agree with them now?"
- "Are you okay to let those people and their unhealthy story shape your life and who you are as a person?"
- "What are you going to do about it?"

- "Can we look at this together to see how can we disprove or change this story?"
- "Do you want to let these people continue to have power over your life and who you are?"
- "How can you break free from this story that no longer suits you and was written by somebody else?"

Identifying unique outcomes

Identify instances in the person's life where they have resisted or defied the problem.

Some example ways of uncovering these unique outcomes could be questions such as:

- "Has there ever been a time when [X] wasn't 100% true for you? A time when things turned out differently than expected?"

It is then really useful to explore, reinforce and internalise these unique outcomes as evidence that counters the dominant problem narrative.

Exploring questions can be questions such as:

- "Was there anything that helped to make this outcome easier for you? What is your theory about how this occurred?"
- "What would [a significant other or bystander to the person] say about how this occurred?"

Internalising questions

These are questions that are designed to move positive personal resources and statements into the self narrative. Some example questions for internalising the unique outcomes into a sense of self could be:

- "What does this outcome say about you as a person?"
- "What does this outcome say about your [strength/intelligence/resilience/determination] to overcome [X]?"

Alternatively, you could put the two set narratives side by side, for example:

- "You've mentioned that people like you never amount to much. But, we have just discovered that you did [X, Y and Z], despite no support and no one believing you were capable of it. What does this say about you as a person, about 'people like you'?"

[9.5] Narrative techniques specifically suited to a courtroom

There are two aspects of narrative therapy practice which lend themselves particularly well to the specific context of a public court hearing. These are: witnesses to enactments of new ways of being and identity and creation of therapeutic documents.

Outsider witness processes

The way in which a court hearing is conducted allows for the automatic creation of an audience; this can be a powerful therapeutic tool for creating a new social identity via it being witnessed by others. This is one of the features of a court hearing that can make it a powerful therapeutic instrument, in an ideal scenario, for witnessing changes and new identities. This may be difficult in a first hearing, but is used effectively in many specialist therapeutic courts where there are multiple audiences, where the court is a witness to the individual's new behaviour and emergent new sense of self, as well as their personal strength and resourcefulness in arriving at this point in their lives.

Therapeutic documents

A therapeutic document is a document designed to create or help maintain a therapeutic change. These can include such things as letters, certificates, or documents that record the person's new narrative and sense of identity. These documents are tangible reminders of the changes and progress made. An example of this could be a court order that uses the offender's own words about their preferred self; their own narratives regarding unique outcomes, within the court order; or a graduation certificate from a court-ordered process.

[9.6] General offender story tendencies for offences that cause harm to others

It is useful to note that there are specific types of justifications and tactics that are deliberately or unconsciously used by offenders to evade responsibility and taking responsibility for control over their future actions.

These tactics are predictable and to some degree often justified and encouraged by dominant cultural narratives.

Offenders frequently deny responsibility for their actions, or blame the surrounding context. They frequently shift responsibility for their actions onto others and invite others to be responsible for the offender's own actions.

Narrative explanations for abusive behaviour tend to fall within the following categories:

Causes located within the perpetrator

- *Character as a justifier*: "I just have a strong temper"; "I just have a strong character"; "I've always had a [dark/difficult/wild] side"; "I am who I am".
- *Using the container model to justify*: "It builds up until I explode"; "It was the straw that broke the camel's back"; "I just saw red".
- *The theory of impulse control as a reason for bad behaviour*: "I just can't control myself"; "I don't know what came over me".
- *The theory of mental illness as a driver of bad behaviour*: "It's because I'm [depressed/traumatised/anxious/have PTSD/etc]".
- *Disinhibition*: "I don't remember"; "It was the alcohol"; "I didn't know what I was doing".
- *Blockage or lack of psychological skill theories*: "I don't know how to [relate/deal with X/deal with conflict]".

Causes located in their interaction with others

- "It's the only way to make [X see reason/fix their behaviour]"; "No-one takes me seriously unless I…".
- *Getting even*: "I cut them down to size"; "They needed a reality check".
- *Homeostasis in relationship theory*: "It means our marriage can function"; "That's [just the way/the only way] that things work for us".
- *Maintaining dominant/submission power differential*: "Show them [who's boss/that they can't mess with me]".
- *The victim somehow inviting the abuse*: "They wanted me to do it"; "They were asking for it".
- *Provocation*: "She asked for it"; "They wouldn't listen"; "They pushed me too far".

Developmental theories

- "My [mother/father/family/ex-partner/workmates] always did [X] (the same as I am now doing [X])".

Causes located in society

- Gender identity, patriarchy, gender dominance and subservience, normalising exploitation under economic systems, using violence as a way to demonstrating power, status, control, ownership.

Often, the search for a "cause" for antisocial behaviour such as violence, aggression, theft, etc, can dominate the discourse with an offender. This tendency serves to decrease a sense of guilt and is limiting both for offenders and their victims in that it is likely in some way to help the perpetrator avoid responsibility for their actions, while shifting the responsibility onto victims or

others and does nothing to prevent further callous behaviour. A classic example of this is the instrumentalisation of therapy engagement by an offender as a way to persuade others to continue to accept their relationship with them, or to avoid legal charges.

What this means is that the offender makes a therapy appointment, or even attends several appointments or has a longer-term engagement, without the intention of any actual therapeutic engagement or real or lasting behavioural change.

There are various signs of instrumentalisation of therapy by an offender. In this scenario they often limit their participation in sessions as much as possible or prefer to focus on exploration of why they have engaged in their destructive behaviours and all of the possible justifications for these.

The offender will also usually try to get the therapist "onside", with repeated attempts to discredit their victims.

The offender will also limit any actual changes to their behaviour, to only superficial and short-term effects.

The offender uses their engagement in therapy in narratives to others to show how committed they are to change, how much effort they are expending, to bolster their reputation, etc. Some example narratives of this type generally misrepresent what the therapist has said, and the goals of therapy, and justify the behaviour. Some examples of this are:

- "I've even gone to therapy for this." Failing to realise that going to therapy is the beginning of a process of behaving differently, not the end point.
- "My therapist says/or thinks [X]." Where statement [X] backs up the offender's own narrative in some way.
- "My therapist thinks I'm making great progress." Where the offender is not taking any real responsibility for their actions nor avoiding harming others further.
- "I only do [X] because of my [depression/drug use/past trauma]." Where the offender is not taking any real responsibility for their actions nor avoiding harming others further.

As the developer of this branch of narrative therapy has noted, a model of explanation for behaviour is **only useful if it shows what to do to prevent further antisocial behaviour**; further it is never useful to become preoccupied with **limiting causal explanations of antisocial behaviour** as these explanations can then shift responsibility from the perpetrator, and completely disempower them as the central agent in uncovering their own responsibility and power to act, so as to create a different future life story.

Useful explanations are those that make the offender take responsibility for their actions and show what could be done to change future behaviour.

There are also specific types of cognitive errors that offenders tend to make when owning up to their behaviour and discussing it. Note that strong or deep feelings, trying harder, hopes, stronger motivation or better intentions are not enough to change problematic behaviour; concrete plans and personal responsibility are necessary.

[9.7] The restraint theory of abusive behaviour

This theory, as discussed by Jenkins, posits that individuals will naturally relate to others in respectful and non-violent ways unless they are restrained in doing so by traditions, habits, beliefs, etc, and specifically, any factors that prevent individuals from taking responsibility for their own actions. According to this theory, the restraints do not in themselves cause abuse, however they prevent an abusive individual from taking responsibility for their actions and doing something different.

Restraints can take many forms and can include:

- "*lust for status*": individualism encouraging aggressive exploitation of others' weaknesses for personal gain
- "*might is right*": normalisation of sexual violence or exploitation, theories of ownership and control in superior/subordinate relationships, general broader cultural narratives which have difficulty in attributing responsibility to perpetrators for their actions due to them having perceived higher social status or power.

An irresistible invitation to an offender inviting them to consider what is restraining them from developing better relationships with others, so as to include more respect, safety and trust, can be a useful courtroom discussion.

[9.8] Irresistible invitations to responsibility

There is a branch of narrative therapy specifically designed to target this unwholesome externalisation process, which effectively renders offenders as powerless agents within an impossible context. This is known as delivering irresistible invitations to responsibility and these invitations are arguably an essential inclusion in any courtroom exchange.

This type of therapy, developed by Alan Jenkins in the 1990s, uses narrative therapy interventions to invite the perpetrator to take responsibility for their behaviour. An irresistible invitation is one which it is difficult for an offender to ignore or turn down. An invitation to responsibility is an exchange designed

to help the offender uncover their own personal values, connect with these and discover their personal power and resources so as to achieve different behaviours in future in areas of life that are important to them.

If possible, once the offender has started to tell their story, try to avoid directly criticising any explanations the offender may give for their actions. It is more efficient to ask permission to question further and then implement the techniques that follow. This will eliminate automatic psychological resistance on the offender's part and maintain their engagement in the discussion.

In general, the offender will be forced by the circumstances to give their permission to discuss it further. In doing so, the judicial officer can begin an exchange designed to create a new identity for them as someone who discusses these difficult topics openly, in public, with a judicial officer, with a stated goal of changing these behaviours (thereby utilising the narrative technique of outsider witnessing, immediately, in that moment, in the courtroom).

Note that quite often an offender might go silent at some point during this exchange. If they go silent, it is useful to wait a moment, then repeat the question, more slowly. Even if they choose not to answer, they will have heard the question and be thinking about it, which has an impact psychologically speaking.

Useful statements and questions that create a public witnessing of a new identity include:

- "It takes a lot of courage to face up to [X]. Are you sure you can handle talking about [X]?"
- "Many [people/men/(other group membership)] never have the courage to talk openly about [X]."
- "How does it affect you to talk about [X]? It must have taken a lot of strength to walk through the court doors this morning and own up to the consequences of [X]."
- What does it say about you as [a man/person/your strength/your individual courage/some other group membership] to be here today and talking about [X]?

Avoid any invitations on the part of the offender, or any suggestions, either explicit or implicit, that anyone other than the offender is responsible for managing their future emotions, motivations and actions.

The offender will often need considerable help to uncover what is restraining them from accepting responsibility for their actions.

Invite the offender to argue for better relationships with others

When dealing with offences that harm others, it is useful to get the offender to explicitly argue for a better relationship with others, including their victims. This may involve respectful no contact and attempts to support and help the victims to recover via various means, for example financing therapy support and subsidising their housing. This is discussed below.

Ways in which the judicial officer can invite an offender to argue for a better relationship with the victim can include the following questions:

- "What sort of relationship do you want with [X]?"
- "Do you want a relationship with them that is based on [fear/domination/intimidation/force], or do you want one that is based on respect, safety, and trust?"
- "What sort of [partner/father/mother/friend/daughter/member of society/any group, ethnic, religious or other affiliation etc] do you want to be?"

Invite the offender to identify trends in relationships and offending over time

Narrative questions designed to ask the offender to identify time trends in their relationships with others, and identify the likely effect of their offences on their relationships, are as follows:

- "Over time are you becoming more in charge of your life and your actions, or more reliant on others?"
- "Are you becoming more in control of yourself and your life, or less in control?"
- "If things continue as they are, what will your life be like in a month's time, six months' time two years' time?"
- "Who in your life worries most about [X (the behaviour)]?"
- "Over time, are they having to take more responsibility due to you refusing to be responsible for your actions?"
- "What have they had to do to survive this?"
- "What does this look like for your relationship over time?"
- "Do you think they should put up with your (offending/controlling behaviour/dependence on them while behaving badly)?"
- "How close are they to disappearing from your life? What will you do then?"
- "If things continue as they are, do you see your relationship with [X] becoming closer or more distant?"
- "What do you see your life being like in six months, or two years' time?"
- "How close is [X] to cutting off all contact with you completely, do you think?"

Externalise restraints

These questions are designed to make the offender question and remove destructive external narratives that support offending from their own self story.

- "What has stopped you from taking responsibility for your actions up till now?"
- "What stories, descriptions, narratives, ideas, have got in your way? As a judicial officer I hear many stories about [violence/other types of offending]. The world is full of these stories. The question for me as a judicial officer is not why are you doing [the abusive or violent behaviour], the question is what is **stopping you from taking responsibility** [for your actions/for developing better, safer, respectful and more real relationships]? Just what, exactly, is holding you back? This is your life, what are you going to do about it?"
- "How much are you letting outdated social stories about ['what a man is'/'how a relationship should work'/'men's work'/'women's work'/whatever other social or other narrative is being used to justify the offending behaviour] dominate your thinking and wreck your relationships/career?"

Identify trends in this relative influence over time

These questions can help the offender realise that they cannot continue as they have been and to help improve their motivation to discuss active planning for taking responsibility. Some example questions are:

- "Over time, are these outdated ideas about [X (the offending behaviour)] having more influence over your life, or less?"
- "Are you becoming more in control of your own life, or less? More able to make your own decisions, or more controlled by the outdated ideas that have badly affected so many other people's lives up to this point?"

Questions designed to bolster motivation to design active plans and the offender's own sense of responsibility to act differently, are as follows:

- "How ready are you to take a stand for yourself/rethink how you do things? Are you sure? Even though it might feel really uncomfortable for you?"
- "How ready are you to stop being a slave to your old habits and other peoples' ideas?"

Finding unique outcomes with regards to offending behaviour

As already mentioned, many offenders state that they "couldn't control" themselves, or that they "don't remember" their actions, or they get otherwise distracted from taking responsibility for their actions by a search for underlying reasons for their actions.

To limit this, and to focus the discussion and capitalise on the increased emotional intensity of public witnessing to a hearing, it is useful to look for unique examples of the offender actually being able to modulate their behaviour. An easy example of this can be to look for ways in which the offender was able to limit their behaviour just to the events in the offence, rather than escalating even further. This means asking the offender how they managed to restrain themselves from committing even more serious actions than what occurred in the offending behaviour.

A basic formula for this type of question in a courtroom could be:

- "The police report states that you did [X,Y, and Z]. You sound like you were [pretty worked up/very upset/very angry]. But how did you stop yourself from actually doing [A] and [B] as well?"

Some example questions to demonstrate how this formula could work with specific types of offences are:

- "You threatened [X] with a knife. I'm wondering how did you manage not to actually stab [X]? What stopped you? How were you able to control yourself?"
- "The victim statement says that you have threatened the victim via text message 47 times over the last three weeks. You sound very determined to scare the victim. What stopped you from acting on those threats? How were you able to control yourself?"

If the offender is not able to come up with a response to the type of unique outcomes questioning, it can be useful to follow up with looking for unique outcomes in the offender's own past. An example question for finding unique outcomes in the offender's past that are not related to the specific offence under consideration are:

- "Do you remember a time when you took a stand against your own [the abusive behaviour]? When you took responsibility for making sure it didn't happen? How did you do this?"

Invite the offender to address their offending directly

The offender needs to consider active strategies for how they can prevent further offending.

This could be conceptualised as starting a "mission of responsibility". This phrasing highlights the idea that it is not one decision, or statement or action that demonstrates responsibility and affects future action, it is a long line of many actions and decisions, a veritable mission that occurs over time.

Be alert to strategies suggested by the offender that rely on passive strategies such as "just not doing it anymore" (or non-action), or strategies that rely on

motivation and willpower, such as "trying harder". Generally if these strategies were effective for the offender they would already have been effective long before getting to the stage of a court hearing.

Active strategies for the offender to prevent further offending could include various things, depending on the offences involved. It could include taking responsibility for monitoring their own emotional state (perhaps by charting emotional experiences, noting internal triggers), developing active safety plans that the offender themselves is responsible for acting on rather than relying on an external source to monitor and in any way take responsibility. The more detailed aspects of what a safety plan could look like may well be better left to a therapy session, but it is useful to note that any court-ordered treatment needs to incorporate active strategies, not inactive strategies (ie explicitly outline the behaviours and tasks the offender needs to do after the hearing, rather than just stating what they should cease doing).

Active strategies also need to include the actions the offender needs to take to prevent further harm or trauma to victims, usually this means permanent or a well-defined period of no contact, as well as concrete actions to provide practical and material support to facilitate their recovery. An apology from the offender might well be helpful, but can also compound the hurt if there is no actual practical help behind it and the offender is seen as apologising their way out of a difficult situation.

Some useful questions to ask in a courtroom to get the offender thinking along these lines while making use of the intensity of public witnesses helping with the offender's emotional engagement, could be:

- "What signs would you see that [someone in your family/someone close to you/your partner] was feeling scared of you?"
- "How can you demonstrate to yourself that no matter how bad you feel, you will not resort to [the abusive behaviour]?"
- "What are some of the slippery slopes into old ways of behaving? (ie emotions/situations/beliefs about urges driving actions when in fact actions are ultimately based on decisions, not emotions or urges)"
- "How can you show respect for [X's] independence?" (This includes abiding by any no-contact orders in place).
- "How can you show shared responsibility for family tasks?"
- "How can you prove to yourself that you are willing to stand up to (negative emotions believed to be driving abusive behaviour) and not let that emotion run your life and wreck the lives of those around you?"

- "In what ways can you demonstrate understanding of damage caused by your actions? How could you respectfully communicate with your victims without causing them further hurt?" (This includes abiding by any no-contact orders in place).
- "What can you do to demonstrate your remorse and what practical things can you do to help them?"
- "In what ways can you demonstrate to the court and society that you are now taking responsibility for your actions?"
- How can you demonstrate to [the court/your family/your neighbours/any other relevant offender] that you are safe to be in the community and wish to actively contribute to the community?"

Note that these questions will need to be adapted based on the circumstances. If there is a no contact order in place, or other restrictions and limitations on contact, actively considering how best to abide by these orders is the most effective way to build a better, safer, more respectful (but much more distant) relationship with the person in question. It can be useful to highlight that part of a respectful relationship (with anyone) is respectfully maintaining the distance and boundaries put in place by the other person, and actively maintaining these boundaries despite personal wishes or impulses.

Further cementing an identity as someone who takes responsibility

If the offender has managed to participate actively in this exchange, it is useful to finish the discussion with questions designed to solidify their public identity as a person who owns up to responsibility and takes active steps to change their future behaviour.

These statements and questions could be as follows:

- "Most people who come into this courtroom don't want to talk about [X]. That takes a lot of personal courage. What does it say about you that you were able to talk to me about [X] today?"
- "What does it say about you as [a man/person/your strength/your individual courage/(some other group membership)] to be here today and talking about [X]?"
- "Are there other areas in your life where this strength and courage that you've found here today could really serve you well? What else are you going to be doing differently?"
- "How can you use this courage in the future to help you move forward with your active planning and your mission in responsibility?"

Follow up with a therapeutic document which contains the material uncovered during the court experience

It could be useful to follow through with a therapeutic document (see above) that highlights the responsibility that has been owned by the offender, the strengths they have shown during the hearing and the concrete steps they have committed to doing subsequent to this, along with specific court orders for treatment, rehabilitation, prevention or further offending, and sanctions.

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The **Irresistible invitations to responsibility** section of this chapter at [9.8] is heavily indebted to:

Jenkins A, *Invitations to responsibility: the therapeutic engagement of men who are violent and abusive*, Dulwich Centre Publications, 1990.

[10] The importance of being culturally competent

[10.1] The importance of culture

Central to an effective therapeutic jurisprudence approach is that it is culturally competent. In this context, cultural competence in terms of judicial skills, attitudes and knowledge incorporates at least five overlapping strands:

1. The court and presiding judicial officer are trauma-informed. This crucially includes an acknowledgment and understanding of a person's individual and collective circumstances including the broader social, political and historical context.
2. Acknowledging a person's cultural identity and validity, ie the significance of culture and the right of a person to exercise their cultural practices in community with other members of their community.
3. Recognising cultural safety as a source of strength and healing and conversely acknowledging any limitations associated with a lack of cultural safety in court-related processes.
4. Acknowledging the need for culturally-appropriate responses to court-ordered outcomes including rehabilitation programs
5. Elders or other Respected Persons (ERPs) should attend a culturally-specific court. For example, in the Walama List, District Court NSW, the ERPs stay with the court participant for the duration of their participation on the Walama List. ERPs bring cultural insight to the sittings; they can also introduce context to the sitting that they alone are qualified to introduce.

This chapter has a focus on First Nations people and communities followed by brief reference to other émigré cultures to Australia.

[10.2] Being trauma-informed

"Trauma-informed" systems, policies and programs are increasingly being used within the NSW court system, for example, within the Children's Court, the Youth Koori Court, the Specialist Family Violence List that operates in select Local Court locations[12]and in the Walama List operating in the District Court.[13]

Trauma-informed processes:[14]

- acknowledge trauma and its impact on a person, their families and community
- acknowledge a person's individual and collective background
- prioritise cultural sensitivity and ensure cultural competence
- promote safety and safe practices and processes
- recognise the possible role of families and communities to mitigate the impact of social and economic stressors. Many families and communities are severely impacted by trans and intergenerational trauma and are often in a state of survivor exhaustion. Services that exist to support the court participant can be put in place, then services that support the family can be introduced at the court participant's request. This can often support families to take up services where there has previously been distrust within the family or community.
- support a person's choices and relationship building
- enable recovery.

Therapeutic jurisprudence assumes that acknowledging and understanding the impact of trauma on court participants may lead to more successful interactions and outcomes and that courts that do not practice trauma-informed decision making may cause "jurigenic harm" ie inadvertently increase the level of trauma a court participant and their family experience.[15]

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12 Local Court Specialist Family Violence List Pilot Practice Note, commenced 25 September 2023.

13 District Court Practice Note 26, commenced 22 November 2021.

14 ALRC, *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples,* Final Report No 133, 2017 at [2.98], accessed 19/8/2024 citing J Atkinson, *Trauma-informed services and trauma-specific care for Indigenous Australian children*, Resource Sheet No 21, Closing the Gap Clearinghouse, 2013, 4–5; V Edwige and P Gray, *Significance of culture to wellbeing, healing and rehabilitation*, Report, The Public Defenders, 2021, pp16–17, accessed 25/7/2024.

15 P Hora, "The trauma-informed courtroom", International Society for Therapeutic Jurisprudence, referring to M Triggiano, "Childhood trauma: essential information for courts", Wisconsin Association of Treatment Court Professionals, accessed 12/8/2024.

First Nations people: individual and collective circumstances

Many First Nations communities are still dealing with the pervasive intergenerational effects of settler-colonialism as well as the impact of successive generations of externally-imposed government policies and discriminatory legislation which have marginalised, exploited, forced the removal of children and otherwise undermined First Nations communities. First Nations communities also contend with insufficient protections of their tangible and intangible cultural heritage.[16]

Many First Nations people today are dealing with their own lived experience of ongoing structural and interpersonal racism. In submissions to the Australian Human Rights Commission *National anti-racism framework scoping report 2022*, First Nations organisations, government agencies, experts and individuals, documented systemic discrimination that First Nations people experience at all stages in the legal system from initial contact with law enforcement through bail processes, conviction, sentencing, and post prison release.[17]

The legacy of trauma and dispossession is interconnected with other aspects of First Nations' disadvantage such as the disproportionately high incarceration rates for people both sentenced or on remand,[18] substance abuse, social and economic disadvantage, poor mental and physical health and lower life expectancy and exposure to family violence.[19] There is a consequent distrust of police, family and community services, health services and other non-Aboriginal run services due to past and present policies that have caused significant trauma.[20] In terms of interactions with the criminal justice system, First Nations people are also significantly underrepresented on juries in Australian criminal trials.[21]

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16 In NSW currently, the *Heritage Act 1977*, the *National Parks and Wildlife Act 1974* and the *Aboriginal Land Rights Act 1983* are directed to regulating Aboriginal cultural heritage. The *Heritage Act* makes no specific reference to Aboriginal cultural heritage and the focus of the *Aboriginal Land Rights Act* is on securing property rights rather than safeguarding against damage to cultural heritage on land or property over which Aboriginal groups hold no title or proprietary interest. See R Pepper and S Duxson, "Not plants or animals: the protection of Indigenous cultural heritage in NSW" (2014) 26(9) *JOB* 75.

17 AHRC, *National anti-racism framework scoping report 2022*, pp 135–137, accessed 19/8/2024.

18 ALRC, *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*, Final Report No 133 at [5.20]

19 Judicial Commission of NSW, *Equality before the law Bench Book*, 2006– "First Nations people" at [2.1]; J Wood AO QC, *Report of the Special Commission of Inquiry into Child Protection Services in NSW*, 2008, Vol 1, p 109; AIHW, *Aboriginal and Torres Strait Islander Health Performance Framework*, 2.11 Contact with the criminal justice system, 2024, accessed 19/8/2024.

20 Judicial Commission of NSW, *Equality before the law Bench Book* 2006–, "First Nations people" at [2.2]; Edwige and Gray, *Significance of culture*, above n 14, p 35.

Stolen Generations and child protection matters

The Stolen Generations refers to the children of Australian Aboriginal and Torres Strait Islander people who were forcibly taken from their families by government agencies and church missions from around 1905 until the 1970s, under laws and policies of the time. It is estimated that between "one in three and one in ten" Aboriginal children were separated from their families (Human Rights and Equal Opportunity Commission, 1997). These actions created severe suffering and enduring trauma for the children removed as well as their families. The 1991 Royal Commission into Aboriginal Deaths in Custody found that almost half (43 of 99) of the people investigated who had died in custody were removed as children from their families.[22]

Under current legislation and child protection models, patterns of child and adolescent removal from Aboriginal family members carry a risk of being repeated, thereby perpetuating intergenerational trauma. The lasting effects of colonisation and the disruption of Indigenous families and cultural transmission have created a difficult legacy of risk and vulnerability that has been passed from generation to generation despite efforts not to replicate past government-sanctioned policy. Intervention to directly target intergenerational trauma transmission in the context of child protection matters should be taken into account when implementing therapeutic justice practices within courtrooms as part of this intervention. The correlation between incarceration as juveniles and subsequent adult incarceration is important as the court participant can be encouraged by Elders or other Respected Persons (ERPs) to understand the context of their offending.

Intergenerational trauma

Intergenerational trauma refers to the ways in which trauma experienced by one generation in a family and community is transmitted to future generations via biological, cultural, social, and psychological mechanisms. These mechanisms include the inheritance of trauma-related predispositions, epigenetic expression, neurobiological and behavioural changes related to trauma, learning and attachment, impacts of these on future parenting, the impacts of disrupted attachment, changes in cultural practices, cultural and familial narratives, and community "lateral" violence or "internalised colonialism".

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21 J Hunter and S Crittenden, *The Australian jury in black & white: barriers to Indigenous representation on juries*, AIJA Report, 2023, accessed 19/8/2024.

22 Royal Commission into Aboriginal Deaths in Custody, Final Report, 1991, at [2.2.9], accessed 12/8/2024.

The Australian Law Reform Commission's 2017 report, *Pathways to justice*, identified intergenerational trauma as a key driver of the disproportionate incarceration of Aboriginal and Torres Strait Islander people.[23]

Disrupted attachment is one mechanism by which trauma is passed down through generations. Attachment disorders caused by very difficult parenting situations and parental attachment or mental health issues pose a significant risk for young people in developing relationships within the family and their community, as well as to the transmission of cultural identity. Disrupted attachment or an attachment disorder are key risk factors for future offending behaviour. The Stolen Generations impacted centuries of traditional parenting for First Nations people. Those of the Stolen Generations who became parents did not experience positive and cultural parenting from birth parents and extended family. They had no reference points from which to explore positive and cultural parenting.

The possible future impact of legal decisions and future orders on maintaining family connections and connection with community needs to be seriously evaluated in all child protection and other legal matters, particularly those dealing with First Nations people. Additionally, preserving positive connections and relationships with cultural and personal significance should be prioritised when planning orders, in conjunction with any legislative framework.

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23 ALRC, *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples,* Final Report No 133, 2017, pp 79–81, accessed 19/8/2024; Edwige and Gray, above n 14, p 16.

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[10.3] Cultural identity and validity

The following is of a general nature only and provided by way of introduction.

Aboriginal and Torres Strait Islander cultures: a brief overview

Aboriginal and Torres Strait Islander cultures are the "the oldest living cultures in the world, which [exemplifies] the dynamic and adaptive nature of these

cultures".[24] Australia's First People are comprised of hundreds of diverse communities and language groups throughout Australia and the Torres Strait. Despite this diversity, some general observations can be made.

- First Nations culture is "more collective than individualistic, held together through a kinship system involving a shared sense of identity, responsibility, care and control".[25]
- First Nations kinship systems are not based on a social hierarchy but are complex systems of social organisation. Kinship extends beyond biological relationships and are described as "a way of being" or how a person identifies with country, nation, family and community.[26] Mutual obligations and responsibilities arise from kinship systems and incorporates family, community, the natural environment and spiritual considerations.[27]
- The deep sense of connection to country is articulated in the 2017 "Uluru Statement from the Heart" which describes First Nations people's enduring sovereignty as a "spiritual notion" based on the ancestral tie between the land or "mother nature" and the First Nations people born there.
- Elders have responsibility to maintain social, spiritual and cultural identity and cohesion.[28]
- Culture and cultural practices are crucial to promoting social and emotional well-being.[29]
- Urban-dwelling First Nations people are no less Aboriginal than "traditional" Aboriginal people and any suggestion otherwise is offensive and unhelpful.
- Cultural identity is based on self-identification and acceptance as an Aboriginal/Torres Strait Islander person within the relevant First Nations community of origin.[30]

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24 Commonwealth Department of Health, *My life my lead: opportunities for strengthening approaches to the social determinants and cultural determinants of Indigenous health*, Report on the national consultations, 2017, p 9, accessed 19/8/2024; Edwige and Gray, above n 14, p 28.

25 H Milroy, P Dudgeon and R Walker, "Community life and development programs: pathways to healing" in P Dudgeon, H Milroy and R Walker (eds) *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, Commonwealth of Australia, 2nd edn, 2014, pp 419, 423, citing W Casey, D Garvey and H Pickett, "Empowering approaches to Aboriginal addictions, Discussion Paper No 8/1997, Curtin Indigenous Research Centre, 1997; Edwige and Gray, above n 14, p 22.

26 Australians Together, "First Nations kinship", accessed 8/8/2024.

27 [12] Edwige and Gray, above n 14, p 7.

28 Judicial Commission of NSW, *Equality before the law Bench Book*, 2006– "First Nations people" at [2.2], accessed 19/8/2024.

29 Edwige and Gray, above n 14, pp 7, 28.

30 Judicial Commission of NSW, *Equality before the law Bench Book*, 2006– "First Nations people" at [2.2.1], accessed 19/8/2024.

It is noted that Recommendation 96 of the Royal Commission into Aboriginal Deaths in Custody was that judicial officers and others who work in the court system "be encouraged to participate in an appropriate training and development program, designed to explain contemporary Aboriginal society, customs and traditions. Such programs should emphasise the historical and social factors which contribute to the disadvantaged position of many Aboriginal people today and to the nature of relations between Aboriginal and non-Aboriginal communities today." To this end, the Judicial Commission of NSW established an Aboriginal cultural awareness program, later called the Ngara Yura Program, which has been offered to NSW judicial officers since 1992.

[10.4] Cultural safety

There are many different definitions of cultural safety, however in the context of this guide, cultural safety is defined as per the work done by Dr Paul Gray and Vanessa Edwige (2021), Directors of the Australian Indigenous Psychologists Association (AIPA) (referenced below).[31]

Cultural safety is defined here as respectful, bias-free practices that require professionals to continuously reflect on their knowledge and behaviours, addressing personal biases, so as to ensure that court services are "culturally safe". It acknowledges the impacts of colonisation, systemic racism, and various socio-economic factors on health and offending, as well as recognising the crucial role of culture and self-determination in Aboriginal and Torres Strait Islander wellbeing.

Aboriginal and Torres Strait Islander peoples define their own cultural safety, highlighting the importance of partnership, collaboration, and empowered decision-making. Systems lacking cultural competence often create further difficulty and negative experiences causing further harm, particularly custody settings. This disproportionately affects vulnerable groups, such as people with social disadvantage, those from migrant backgrounds, those with disabilities, alongside creating significant impacts on children and families. Standard legal and government agency processes can (at their worst) ignore Indigenous perspectives as well as culturally diverse perspectives and create further harm by replication and inadvertent re-enactment of past intergenerational traumas. If cultural safety is ignored, it can undermine safety and rehabilitation goals.

31 Edwige and Gray, above n 14, p 12.

[10.5] "Cultural wounds require cultural medicines" — culturally-appropriate responses in the courtroom

The impacts of historic actions disrupting culture and creating intergenerational trauma are perhaps best conceptualised as "cultural wounds"; these are best treated with "cultural medicines".[32] The individual impacts of intergenerational and systemic problems are best addressed via systemic and community-level interventions, in parallel to individualised approaches, of which therapeutic justice is just one potential avenue. If different cultural norms and life experiences have influenced the matter before the court, it is important to determine if, and to what extent, the law allows those influences to be taken into account in the legal proceedings. The issue should be directly, but respectfully, addressed irrespective of whether those cultural or religious norms are different from the Australian legal context.

First Nations people have long stated that allowing them to build resilient, empowered communities and strong families will be preventative. Resilience building initiatives also work to protect attachment and cultural transmission, and to directly disrupt the transmission of intergenerational trauma. Research has identified that the following aspects were associated with more resilient First Nations communities: a measure of self government; local control over health services; policing services; local control over education and community resources for transmitting and preserving culture. By focusing on addressing systemic factors contributing to adverse outcomes, such as the social determinants of incarceration, these programs have the potential to yield long-term benefits across multiple generations.[33]

International human rights frameworks underscore the right of all peoples, including Indigenous peoples, to determine their own membership or citizenship, and to pursue their social, economic, and cultural development. Similarly, the United Nations Convention on the Rights of the Child particularly emphasises the right of Indigenous children to exercise their cultural rights within their communities. This was a focus of Professor Megan Davis' 2019 report into the State's child protection system. This highlights the dynamic

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32 MJ Chandler and WL Dunlop, "Cultural wounds demand cultural medicines" in M Greenwood et al (eds) *Determinants of Indigenous peoples'* health in Canada: beyond the social, Canadian Scholars' Press Inc, 2015, p 78, cited in V Edwige and P Gray, *Significance of culture to wellbeing, healing and rehabilitation*, Report, The Public Defenders, 2021, at [14], accessed 19/8/2024.

33 V Edwige and P Gray, *Significance of culture to wellbeing, healing and rehabilitation*, Report, The Public Defenders, 2021, pp 24, 40, accessed 19/8/2024; ALRC, *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples*, Final Report No 133, 2017, Ch 4, Justice Reinvestment, accessed 19/8/2024.

nature of culture and its crucial role in individual and community development, identity, and resilience. Guidance on implementing the Convention points out that its specific focus on the rights of First Nations' (and other minority) communities to enjoy their cultural rights is a response to the frequent failure of States to protect, and sometimes actively undermine, the rights of First Nations children. The expert report of Vanessa Edwige and Dr Paul Gray, Directors of the Australian Indigenous Psychologists Association (AIPA), underscores the importance of connecting to culture and culturally appropriate treatments to facilitate healing, including in a criminal justice setting. Their work highlights the importance of the social and emotional wellbeing framework for Aboriginal and Torres Strait Islander people, the need to understand this holistic world view and the need to take into account both individual and social factors in how healing is promoted.[34]

Fundamental priorities to disrupt the transmission of intergenerational trauma, include: facilitating the development of essential individual capabilities, parenting support, facilitating emotional regulation, establishing stable and resilient families and social groups, and helping the individual to think and respond, rather continuing to react "within trauma".

This also includes a shift towards goal-directed activity and longer-term plans, which could be facilitated by court-ordered processes. Other examples of possible interventions to target intergenerational trauma transmission include the use of therapeutic justice techniques discussed in this guide within a courtroom to enhance the psychological participation of the offender and their sense of justice and legitimacy of justice, as well as their sense of inclusion, alongside the deliberate use of a trauma-informed court processes, (as discussed elsewhere in this guide, and as per the Judicial Commission e-resource on trauma-informed courts).

It is important to obtain advice from cultural consultants and the defence regarding culturally appropriate aspects of the hearing, and whether it might be more respectful (and effective) to have, for example, a closed hearing, or a female judicial officer, or to limit access to information based on gender (depending on the hearing context). It is also important to be aware of the impact of possible unconscious racial and cultural biases and racial profiling: judicial officers, like most people, are not immune to holding implicit and unconscious biases despite their best efforts.

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34 V Edwige and P Gray, *Significance of culture to wellbeing, healing and rehabilitation*, Executive summary, The Public Defenders, 2021, p 1, accessed 19/8/2004.

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[10.6] First and second generation immigrant cultures

First and second generation cultural integration refers to the process by which immigrants and their descendants adapt to and become integrated into the culture of their new country while still maintaining aspects of their original cultural identity. Migrant families from culturally diverse backgrounds often take at least one generation to establish themselves at the same professional level as in the country of origin. This is due to a combination of the delays caused by migrating and resettling, systemic barriers to accessing professional recognition and recruitment discrimination, and their varied or lower levels of English proficiency, alongside difficulties in negotiating the ways in which the new culture works.

For migrant communities, the experience of migration often carries with it the after effects of trauma in the country of origin, alongside the experience of

adapting to Australia, which can create further difficulties and disadvantage. Many first generation migrants tend to adhere to their country of origin's cultural practices experienced at the time of their departure from that country. Second generation of culturally diverse origins can often engage in "code switching", whereby they adopt the Australian "western" cultural overlay, but also have a cultural identity and competency within their family culture of origin (as it exists at that present moment in time), which as mentioned is expected to be quite different from the culture in the country of origin in the present moment.

The process of acculturation in Australia frequently means that immigrants move gradually towards integrating in the culture of the host country, while still maintaining strong links and cultural practices within their own community and also with their country of origin. Quite often the culture as experienced by immigrants from the host country remains "frozen" or "fossilised" and doesn't change in the way it does for those people who remain in the country of origin.

In the "first generation", immigrants usually undergo a period of adaptation and learning the necessary language and cultural norms so as to integrate. Individuals sharing similar language, cultural or religious practices, and from similar geographical regions, may form social networks and geographically or socially-linked communities. These communities may be more heterogenous than they appear from the outside. The culturally or country-of-origin linked communities provide support and familiarity for immigrants as they navigate the challenges of settling in a new country. Over time, most people become progressively more culturally integrated, while maintaining links to their cultural community and country of origin.

"Second-generation" refers to the adult children of immigrants who have grown up in the host country and usually develop a hybrid cultural identity due to exposure to both cultures during their formative years. This hybrid cultural identity allows them to be culturally competent in elements of both their parents' culture and the culture of the host country. This process can be influenced by factors such as parental guidance, peer influence, educational opportunities and media exposure.

"Code-switching" refers to a practice frequently adopted by immigrants so as to conform to western norms, which helps reduce potential discrimination, particularly in professional environments. It means behaving in a culturally competent manner in western culture, and also in the culture of origin, which may however mean contradictory behaviour for the one individual. Despite these adjustments, substantial cultural differences may still exist for those of diverse cultural groups, affecting interactions in legal settings, perceptions of justice, and actual judicial outcomes.

The following sections briefly examine potential sensitivities and sources of strength and resilience that could be useful to bear in mind during court proceedings as they relate to specific culturally diverse communities present within Australia. These sections reflect general observations and it is acknowledged there can be significant variations in cultural practices and sensitivities.

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Islamic cultures — potential specific sensitivities, potential sources of strength

The Muslim population in Australia is diverse and drawn from many countries of origin. Between September 2014 and December 2021, the Islamaphobia Register recorded 930 verified recorded incidents. People reported abuse, including physical abuse, and harassment on the basis of their religious affiliation, and some have also experienced aggression, discrimination and stigmatisation linked to media coverage of international geo-political events, and as "retribution" after terrorist attacks.

Potential specific sensitivities for Muslim people appearing in court may include the following:

- Intergenerational trauma for refugees or those whose families have migrated to avoid war, genocide, religious or political persecution, or who are survivors of torture.
- Community vulnerability to issues such as domestic violence and abuse. There are often strong cultural barriers to speaking up about this and a reluctance to openly criticise members of the community who are causing harm to others due to a misunderstanding of the best way to fulfil the religious

duty to maintain a united community.[35] In some instances, Muslim women may be subject to "patriarchal silencing", which combined with "racist" silencing, ie fear of adding to "Islamophobia", is likely to contribute to Muslim women's reluctance to seek support, particularly from the police.

- Mistaking the behaviour of certain community members which is harmful to others as culture, and mistaking culture of country of origin as religious practice. Out of context manipulation of religious views or "culture" to "justify" abusive behaviour towards others in the community or external to the community.
- A fear of personal persecution linked to local news events, terrorist attacks, and world events. This occurs in the context of longstanding political differences between "western" countries and "Muslim" countries, sporadic acts of "terrorism"and increased legal powers directed against those perceived as at risk of perpetrating terrorist acts (which has eroded legal due process and human rights).
- A sense of personal responsibility to react to world events, in the context of religious injunctions to support others of the same faith, in the context of perceived political interference from "western" governments in "Muslim" countries, and the often devastating impact of these actions.
- Sense of having to "choose" between religion and western culture, instead of developing a hybrid cultural identity as part of natural acculturation processes.
- Rejection of religion of origin potentially leaving a moral void or personal sense of ethical confusion.
- Risk of a lack of respect for institutions not associated with religion due to misunderstanding of religious interpretation propagated by specific elements within the global Muslim community, for political means.

Muslim culture provides several elements that can strongly enhance resiliency in young offenders, offering a framework that promotes psychological well-being, moral development, and social support. These include:

Spirituality and faith: Islamic teachings encourage a strong sense of faith and spirituality, which can provide young offenders with a sense of purpose and hope. Studies have shown that spirituality is linked to increased resilience, helping individuals cope with adversity by offering a sense of meaning and inner peace (Koenig, 2012).

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35 Judicial Council on Cultural Diversity & Inclusion, *The path to justice: migrant and refugee women's experience of the courts*, JCCDI Consultation Report, 2016, pp 13–17, accessed 31/7/2024.

Community and social support, community mentoring programs: The concept of Ummah (community) in Islam emphasises the importance of social support and belonging. Local communities are often close knit and can provide social and practical support to intervene to change life course. Being part of a supportive community can reduce feelings of isolation and provide practical assistance, which is crucial for young offenders' rehabilitation and reintegration (Yusuf, 2013).

Moral and ethical guidance: Islamic teachings provide clear moral and ethical guidelines that encourage prosocial behaviour and personal spiritual development, and discourage criminal activities. These principles could help young offenders develop a strong moral compass and make better life choices, promoting rehabilitation (Haneef, 2005).

Restorative justice: Islamic principles of justice include elements of restorative justice, focusing on reconciliation and making amends rather than mere punishment. This approach can facilitate the healing process for both offenders and victims, fostering a sense of accountability and personal growth (El-Awa, 2000).

Prayer and meditation (for those who are Muslim) can reduce stress and reactivity, improve emotional regulation and resilience (Hedayat-Diba, 2000).

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Asian cultures — potential specific sensitivities, potential sources of strength

The gradual abolition of the White Australia Policy between 1949 and 1973, which had restricted non-European immigration, has led to a significant increase in Asian immigration. Today, Australians of Asian origin form a substantial and diverse part of the country's population.

Potential sensitivities

Respect for Elders: Respect for elders is a fundamental aspect of many Asian cultures. It is important to show deference and politeness towards older individuals, addressing them with appropriate titles and gestures of respect.

Face-saving: Maintaining harmony and avoiding embarrassment or loss of face is crucial in Asian cultures. Criticism or confrontation in public should be avoided, as it can cause embarrassment and damage relationships. This may make a court appearance a particularly shaming experience and make it difficult for an offender to participate fully due to becoming emotionally overwhelmed.

Hierarchy and authority: Asian societies often have hierarchical structures where authority figures are highly respected. It is important within these cultures to show deference to individuals in positions of authority and to follow traditional customs and protocols. This may make it difficult to disagree with authority figures or those who are highly respected.

Potential sources of strength

Asian cultures bring a wealth of traditions, beliefs, and practices that could be useful for preventing reoffending. One strength lies in the emphasis on family bonds and community support networks. In many Asian cultures, families play a central role in individuals' lives, providing emotional, financial, and practical support. Leveraging these strong family ties could create a supportive environment for individuals transitioning out of the criminal justice system, offering stability and encouragement to stay on a positive path.

Additionally, Asian cultures often prioritise respect for authority and adherence to social norms. This emphasis on respect can be channeled into programs aimed at reintegrating offenders into society. By providing opportunities for individuals to contribute positively to their communities and encouraging them to take responsibility for their actions, these cultural values can help foster a sense of accountability and reinforce pro-social behaviour.

Many Asian cultures place a strong emphasis on spirituality and ethical values. Religious practices often emphasise principles of forgiveness, compassion, and personal growth. Integrating culturally appropriate moral guidance into rehabilitation programs could provide individuals with a sense of purpose and direction, helping them to navigate challenges and make positive choices for their future.

Asian cultures also tend to value collective well-being over individual success. This communal mindset could be harnessed to create community-based reintegration programs that focus on rebuilding social connections and fostering a sense of belonging. By involving local communities in the rehabilitation process and encouraging collaboration between stakeholders, these programs could create a supportive network that helps individuals stay on track and avoid reoffending.

Asian cultures celebrate diversity and resilience in the face of adversity. Drawing on these cultural strengths can inspire individuals to overcome obstacles and embrace opportunities for personal growth and transformation. By recognising and celebrating the unique strengths and talents of each individual, rehabilitation programs can empower offenders to build a positive future for themselves and their communities, ultimately reducing rates of reoffending.

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African cultures — potential specific sensitivities, potential sources of strength

Migrants of African origin coming to Australia is a more recent phenomena. African cultures are diverse and rich, encompassing a wide range of languages, traditions, and social norms. Given this wealth in diversity, it is not surprising that migrant communities of African origin in Australia are equally heterogenous.

The largest historical migration was from South Africa, although this has slowed since the end of apartheid. Recently, migrants have included more refugees

and humanitarian settlers from sub-Saharan Africa, particularly Ethiopia and Sudan. Another notable recent trend is the influx of highly trained professionals, particularly doctors; this occurs within a context of increased professional global mobility.

It is difficult to make generalisations about "African" cultures in Australia given this heterogeneity. However some general observations could be useful for the court context. One potential sensitivity within many African cultures is the importance of community and collective identity over individualism. In many African societies, decisions are made with the community's welfare in mind, and family ties are strong and deeply valued. This collectivist approach can be sensitive to practices or policies that emphasise individualism, potentially causing friction or misunderstanding when interacting with cultures that prioritise personal autonomy. Moreover, traditional beliefs and practices, such as respect for elders and adherence to ancestral customs, can also be sensitive points. Misunderstanding or disregarding these traditions can lead to perceived disrespect and social discord.

Another potential sensitivity is related to the historical and ongoing impacts of colonisation, systemic racism, and the after effects of the historical slave trade. Many African nations endured extensive periods of colonial rule, which disrupted local cultures, languages, and governance structures. This history can make interactions with "western" entities complex, as there may be underlying tensions or a heightened awareness of power dynamics and exploitation. In addition, internalised colonialism and lateral violence can be unfortunate after effects of these destructive factors.

Sensitivity to these historical contexts is crucial, as is an understanding of the socio-political contexts shaped by colonial legacies. Acknowledging and respecting this history, and working towards equitable and respectful partnerships, can help mitigate potential conflicts and foster better cross-cultural understanding.

Conversely, the sources of strength in African cultures are manifold. One significant strength is the resilience and adaptability shown by African communities in the face of adversity. The communal support systems and deep-rooted traditions provide a robust foundation for navigating challenges. African cultures also boast rich artistic traditions, including music, dance, and storytelling, which serve not only as means of preserving history and identity but also as tools for education and social cohesion. Additionally, the strong emphasis on community and familial bonds can be a source of strength, fostering networks of support and cooperation that enhance social stability and mutual

aid. These cultural assets contribute to the vibrancy and resilience of African societies, offering valuable lessons in sustainability, community building and cultural preservation.

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[10.7] Practical advice

Communication

Judicial officers should clarify, at the beginning of proceedings, the correct pronunciation of any name and the appropriate gender pronoun to be used for counsel, parties, children, witnesses, interpreters, solicitors and others relevant to the case. The correct pronunciation of names and forms of address is an important component of the mutual respect to which all participants in judicial proceedings are entitled.[36]

When required, the use of an interpreter guards against the risk of an ineffective court experience, as well as unjust court outcomes.[37]

It is helpful to provide clear explanations of the court processes, the roles of those present, and the implications of each step of the court process.

Communication needs to be simple, clear, direct, with as little legal jargon as possible. It is useful to make sure that an offender's counsel has time to clarify statements and explain the proceedings to the offender.

Respectful and clear communication is the most effective stance for ensuring the psychological participation of the offender.

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36 Supreme Court Practice Note SC GEN 22 at [2]; *Equality before the Law Bench Book*, 2006–, "Modes of Address" at [9.6.1], accessed 19/8/2004.

37 See Judicial Council on Cultural Diversity & Inclusion, *Recommended national standards for working with interpreters in courts and tribunals*, 2nd edn, 2022, accessed 19/8/2024. Judicial Commission, *Equality before the law Bench Book*, 2006–, "The need for an interpreter or translator" at [3.3.1], accessed 25/7/2024.

It is not helpful to correct a court participant's English or their pronunciation, nor to speak in a condescending manner. It is a legal requirement to intervene in any communication that becomes offensive, misleading, or stereotypical.

Note that vague responses regarding time, quantity, as well as long silences and delayed answers are normal for some cultures and are best interpreted within that cultural context rather than as signs of evasiveness. Questions that are phrased in negative terms, or using an either/or style may be confusing and create unnecessary miscommunication. If questions in court result in prolonged silence on the part of the offender, it is useful to gently clarify what is causing the silence. It may be that the offender is confused by the question, is taking time to think carefully about their answer, does not feel as if they are the best authority to answer the question, or they might be overwhelmed and finding it hard to answer the question within the court context.

Note that people from all cultures may find it difficult to talk about certain specific subjects. Some of these specific sensitivities have been reviewed earlier in this chapter and there are many that have not been included here due to lack of space. Respectful conduct is paramount, and for some topics that are potentially shaming for the individual or relate to personal modesty, it might be useful to consider closing the court or having a culturally appropriate support person present.

Terminology

Ethnic identifying words such as "Aboriginal", "Koori", "Indigenous", "African", "Muslim", "Islamic", "Asian", etc are not necessary unless directly relevant to the matters being discussed. Always capitalise the ethnic identifier and add the word "person" afterwards. Avoid the use of acronyms or slang terms to describe ethnic or cultural identification, nor terms such as "half-caste" or "full-blood" as this can seem reductionist and derogatory and inaccurate when discussing the complex issues of cultural identification and heritage. If ancestry is relevant to the proceedings, describe this in factual and accurate language. It is useful to use descriptors based on age, occupational function, and other distinguishing aspects of the person rather than relying just on their cultural affiliation or presumed ancestry.

Note that different linguistic and cultural groups within Australia use different terms when referring to themselves and others within their social and cultural networks. It is more respectful to avoid using these terms unless you are part of these networks yourself.

Appearance and body language

Cultural differences in body language are important to take into account so as to facilitate effective participation in court proceedings.

Making direct eye contact with an authority figure, a member of the opposite sex, or a person who isn't well known may be perceived as rude in several different cultures.

Clothing worn for a court appearance may not be the same across different cultural groups, and may reflect different norms, different social and financial access, as well as differing ideas of modesty.

Differing cultural groups may use very different gestures to communicate meaning. This may also at times include sign language which is specific to a particular cultural group. It is useful to pay close attention to any gestures used and to gently ask for clarification of their meaning.

Bail considerations

Respecting the legislative framework, bail conditions need to be fair and equal, and not influenced by cultural affiliation or religious identification. In making an assessment of bail concerns under Pt 3, Div 2 of the NSW *Bail Act 2013*, the decision maker is required to consider the person's "background, including criminal history, circumstances and community ties" (s 18(1)(a)) and any "special vulnerability or needs the accused person has including because of … being an Aboriginal or Torres Strait Islander" (s 18(1)(k)).

Assessments regarding bail, where appropriate, should also usefully include the perspective of respected community Elders, relevant cultural consultants, and the perspective of the defence. Community-based support should be considered if family-based support is not possible. Bail conditions that allow for flexibility regarding attendance at culturally, socially, and religious events (for example dealing with a family emergency, attending a funeral, or participating in a specific religious day or ceremony) are more likely to be effective and respected by the offender.

References

Bail Act 2013, s 17, 18.

Evidence Act 1995, s 41.

R v Alchin [2015] NSWSC 2112.

Court diversion

There are court-based and other diversionary programs in place in many jurisdictions that may be suitable for a culturally or linguistically diverse offender, depending on the nature of the offence, the offender's subjective and objective circumstances and eligibility requirements for the program. From a therapeutic change perspective, it is important to ask the question — what needs to occur for this person not to reoffend, including changes that need to be made in themselves, their perspectives, their environment and their relationship with those closest to them?

It is helpful to take steps so as to ensure that "diversion" is not seen as "no consequences for bad behaviour", either by the offender or those aware of the proceedings. What these steps are will be different, depending on the individual, their circumstances, the legal context and what might be most useful for them after careful consideration and consultation. From a behavioural change perspective, repeated court diversions for a recurring offender might indicate the need for a different, culturally appropriate and multidisciplinary approach, that maintains the offender's participation within therapeutic intervention programs.

The Judicial Commission maintains a menu of court-based and other diversionary programs which may be accessed from JIRS for the reference of NSW judicial officers.

Sentencing

In arriving at an appropriate sentence, the sentencer must take into account the purposes of sentencing as outlined in s 3A of the *Crimes (Sentencing Procedure) Act 1999*. Considerations, including the offender's subjective and objective circumstances, are of course relevant, noting that the *Bugmy* Bar Book has been compiled as an evidence-based resource to assist in substantiating the impacts of experiences of trauma, socioeconomic inequality and structural disadvantage.

Rehabilitation methods that are culturally appropriate and community-connected are more effective at enhancing offender outcomes. These programs need to be planned, led and evaluated by the communities themselves. These approaches should address systemic factors such as the social determinants of physical and mental health as well as offending and incarceration, and focus on collective well-being rather than just on individuals. A systemic, community-led approach would be expected to create effects that could extend across generations.

When devising community-led intervention programs, it is important to remember that what works in one location may be unhelpful in a different location. It is crucially important that community interventions and programs

are not externally imposed, but are developed locally and specific to each community. This is also a fundamental principle of therapeutic justice court programs.

Community-led programs that work in with (and outside of) the court context that promote social and emotional wellbeing, and which attempt to address the underlying causes of offending behaviour, are interventions that have the potential to change destructive cycles of intergenerational trauma and to create paths towards healing and rehabilitation.

References and further reading

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[11] Integrating therapeutic court craft into practice

[11.1] Defining success

The questions of how to define success and how to measure outcomes have plagued problem-solving courts and therapeutic jurisprudence programs since their beginning. Defining and measuring court outcomes needs careful, evidence-based consideration. A judicial officer using therapeutic skills of any type within a hearing context is a systemic intervention, as well as an individual therapeutic intervention.

This means that we would expect short-term and potentially longer-term effects for the individual, and also, ideally, in their wider context and communities and also at a larger systemic level.

Since the intervener is also part of the system in which intervention is taking place, we would also expect measurable effects on the judicial officers themselves.

References

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[11.2] Feedback mechanisms

Some feedback mechanisms will be naturally occurring, such as whether court volumes increase or decrease, and whether a specific individual reappears on a court list, and for which offences.

Other feedback mechanisms will need to be deliberately put in place, such as measuring judicial officers' wellbeing and their level of confidence over time, when using therapeutic intervention skills. As will be discussed, some feedback mechanisms will need to be established outside of the court itself and involve partnerships with other organisations. These mechanisms are most likely outside of the current framework for court excellence, but are required to establish a more complete picture of the impact of a systemic intervention within the courtroom and to give feedback as to whether there are aspects that could be designed better, implemented differently, or whether other, parallel interventions are needed.

[11.3] Measuring outcomes

Measuring outcomes for individuals involved in court systems can be an inexact and sometimes confusing process. It is important to consider what aspects could indicate an improvement in an offender's life, and improvement for their family, their social networks, and the community around that offender.

When measuring outcomes, we need to define what success looks like, define who and when to measure this and also decide what other indicators and data could also carry useful information.

It is also necessary to take into account that there are many different forms of success when intervening therapeutically and that implementing a change in professional practice will have a lead-in time. In addition, the effects of a systemic intervention can be multifactorial, be seen in multiple different parties, and can occur at different periods of time and in different ways.

Given the multifactorial and systemic nature of the court intervention context, both qualitative and quantitative aspects should ideally be used. However, it is highly recommended to make sure that quantitative aspects are measured, as this data tends to be more convincing for funding decision makers and can inform future court evaluation programs. How to do this will now be discussed further.

It is also important to consult with court users and the community regarding which aspects they think are essential to measure, how and when to measure them and whether to repeat these measurements over time.

It is also smart to define for yourself from the outset what success looks like from your particular perspective, including an awareness of the potential systemic effects of that definition and the measurement processes utilised.

Self-reflection

1. Quite often judicial officers have to deal with multiple overlapping goals regarding competency, workflow and performance. What is the organisational definition of "effective performance" in your workplace(s)?
2. What is your professional organisation's definition?
3. What is your personal definition of this?
4. How do you reconcile these different imperatives?
5. What feedback mechanisms are used to indicate effective role performance for yourself?
6. Are there aspects of role performance that in your opinion are important to effective functioning but which aren't yet captured by current performance indicators?
7. Can you think of other relevant feedback mechanisms or performance indicators? Are some more useful, or more sensitive to specific aspects of the role than others?

The aspects that seem useful to measure from the outset are:

(1) **The individual (immediate, hoped-for results)**

(2) **The therapeutic behaviours of the judicial officer during the hearing:** this can be done by reviewing recordings of sittings, possibly also while using the Legal Actor Contribution Scale (see Appendix C) or another appropriate measurement tool for therapeutic intervention (see Appendix B).

General psychometric measures of **individual wellbeing for the offender**, such as:

- depression (eg PHQ9 or other)
- anxiety (eg GAD 2 or other)
- PTSD symptoms (eg PCL-5 or other).

These can be measured via publicly available, brief screening tools, such as are routinely used by general practitioners. Brief training may be required to interpret these effectively and processes will need to be in place for referral on to specialist services in the case of screening positive for suicidal or homicidal ideation, for example.

For the purposes of predicting **future behaviour and identity change for offenders**, it would also be useful to measure:

- increased sense of responsibility for own actions
- sense of hope
- increased sense of self-efficacy
- sense of fairness and faith in the judicial process
- attitudinal shifts
- future intentions.

There are existing psychometric measurement tools available for this, or it could be possible to develop a short questionnaire in partnership with another organisation, or social work or psychology faculty.

Longer term individual results:

- Recidivism and type of recidivism: does the individual reoffend and, if so, is it a more serious or less serious crime? Has time to reoffending or frequency of offending changed?
- Are there other significant changes in the individual's life? Do they stabilise their employment over the longer term? Restart education or further training? Are they able to maintain a lease? Manage their finances differently? Does their earning capacity increase?
- Do their relationships change and/or stabilise? Does their parenting change? Are they less or more involved with child safety organisations or other organisations over time? Is this involvement effective for the children involved?

Some of this information may be publicly available, some of it may be routinely collected by courts and government agencies, others may require consent to participate and partnership with universities, government agencies and researchers to collect and analyse the necessary data.

Community level results:

- Does the crime rate, or type of offences and their pattern, change over time?
- Are other community initiatives more likely to be successful over time when backed up by therapeutic interventions in local courtrooms?
- Is the perception or relationship between certain groups within the community and the police and the courts changing or improving over time?

This information is likely to require specific research focus, collaborative forums and community partnership initiatives to collect and analyse.

Integrating and acting on the information received via feedback mechanisms will likely be best achieved via structured collaboration between judicial officers, specialist mental health and social services, and (ideally) a systemically trained therapist.

[11.4] Professional development

Professional development is the most effective way to increase professional skill sets, as well as the best defence against professional burnout which is under the individual's control.

Regular supervision is mandatory for most helping professionals, as it offers a secure space to make sense of professional experiences and personal responses and to enhance skills and confidence for future interventions. It stands out as one of the most efficient methods to develop therapeutic skills that are appropriate to the context, ensuring sustained professional vigour during challenging periods. There are specific guidelines within the helping professions for how this supervision is conducted and it might be useful to translate these guidelines in an appropriate form into judicial practice, so as to minimise risk of harm from well-intentioned but less effective professional supervision.

Judicial officers are independent and not supervised. However, judicial officers wishing to utilise therapeutic intervention techniques in their courtrooms will most likely benefit from the encouragement, support and guidance of judicial colleagues. This includes a safe, professional discussion space to develop and make sense of the impacts they notice from their practice, as well as their own reactions. Professional support for therapeutic intervention could include specialised mentorship from psychologists or other judicial officers who have specific skill sets that appear useful to integrate into the judicial officer's practice. They will also (as is the case with any professional attempting to intervene professionally), most likely require professional support from those more experienced in this field so as to maintain motivation and protect against burnout. This could occur via regular meetings with peers, professional development events and perhaps joining a therapeutic justice organisation to exchange with others who have a similar approach to the profession. While the overall effect for judicial officers is typically positive, there will, at times, be challenging moments. Having realistic expectations and a thoughtful analysis of experiences and outcomes is helpful to avoiding discouragement, getting tangled in organisational difficulties and for maintaining any new professional skill set.

Professional development is usually a safeguard against burnout, enabling helping professionals to weather demanding professional scenarios effectively

and for the long term. Expanding therapeutic skills involves further training in modalities tailored to the court setting and its offenders. These may encompass the following:

- trauma and attachment
- addiction models and treatment
- effective domestic violence treatment modalities and programs
- interventions for non-neurotypical clients
- systemic therapy
- narrative therapy
- dialectical behaviour therapy
- acceptance and commitment therapy
- programs on motivational interviewing.[38]

To maintain effectiveness over time, self-care is essential. Appendix D provides a list of potential burnout indicators, along with a compiled set of suggested self-care strategies as a foundational starting point. It is highly recommended that judicial officers develop a self-care and burnout prevention plan, tailored to their needs, and have a working understanding of the ways in which workload demands affect them personally and what can be done about it in a timely manner so as to maintain their own wellbeing and effectiveness within their challenging workplaces.[39]

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38 The Judicial College of Victoria has run a program on motivational interviewing, see "Courtcraft masterclass: motivating change in short timeframes", accessed 1/8/2024.

39 The Judicial Commission has a "Judicial wellbeing" portal on the JIRS home page to assist judicial officers maintain and sustain a healthy judicial life.

Suggested references and resources for development of offender experience measurement tools

Session Rating Scale (SRS):

Duncan BL et al, "The session rating scale: preliminary psychometric properties of a 'working' alliance measure" (2002) 3(1) *Journal of Brief Therapy* 3.

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Outcome Rating Scale (ORS):

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Appendix A: Instructions for emotional regulation

Introduction

These techniques have been collected from various disciplines and therapeutic modalities, and are all designed to regulate strong emotions. Generally, the techniques work best in a therapeutic context when the individual learns to use the technique themselves, and then practices them throughout their every day, or whenever they are feeling overwhelmed with emotion which is distorting their perspective and interactions.

During a court audience, the judge or another person present could guide the offender through the technique. It may (or may not) be appropriate for a judicial officer to be the person guiding the participant through the techniques during a hearing, this will depend on the type of court and the hearing context. If it is not appropriate (or not comfortable) for the judicial officer to guide the emotional regulation, then delegating this role to another court officer, or to a support person who has a script to read when needed, could also work well.

The advantage of the judicial officer performing the function of guiding emotional regulation is that it is likely to increase trust and therapeutic alliance on the part of the offender, and directly demonstrates that the judicial officer cares about the offender's experience of court and their emotional wellbeing (while not condoning their actions). Demonstrating caring in this manner directly contradicts many of the thought patterns and other vectors driving antisocial behaviour, and is an invitation back into society.

Diaphragmatic breathing

Diaphragmatic breathing is a style of breathing which (if done well) can slow down heart rate and rate of breathing. It has been shown to lower overall level of physiological arousal, and to calm thinking, making it easier to think clearly in difficult situations.

This breathing technique is also a simple but effective way to improve overall resiliency to stress. It is useful to learn and practice regularly, so as to be able to calm reactions to stressful situations in a controlled and deliberate manner.

Diaphragmatic breathing could be practiced while waiting to be heard, during the proceedings, and whenever the level of emotional reaction becomes overwhelming.

Instructions for diaphragmatic breathing

Find a calm and quiet place to sit or stand without being interrupted. Place your hand flat over your lower abdomen, over your navel area.

Consciously take a deep breath in, slowly counting to 4 (or 6 if you can). While you do this, make sure that your hand (over your navel region) is being pushed outwards with the downward expansion of your diaphragm. Your chest area should also expand outwards. Be careful that your shoulders are not rising or falling while you breathe in or out.

Once you have finished breathing in slowly, then breathe out in the same slow, controlled manner, counting slowly to 4 (or 6), and making sure that the hand over your navel is drawn in towards your spine again by the movement of your diaphragm as you breath. Once you are more comfortable with this technique, you may wish to pause slightly between each breath in, and out, and count to 2–4.

NB. If you become dizzy make sure to stop the exercise. Your breathing should return to normal quickly if you distract yourself. Dizziness could be a sign that you are hyperventilating, which is not possible to do if you are breathing using your diaphragm. Please reread the instructions, or consult with a professional if you need further help.

Notice the speed of your heart rate and breathing. Has there been a change?

It's best if you practice this exercise regularly, for at least a minute, particularly before situations that are likely to be stressful, or when feeling overwhelmed.

The Butterfly Hug technique

The Butterfly Hug technique was developed by therapist Dr Lucina Artigas. It is employed as a self-soothing method during certain phases of Eye Movement Desensitization and Reprocessing therapy (EMDR) to help individuals anage distressing emotions and facilitate the processing of traumatic memories. EMDR was developed by Francine Shapiro in the late 1980s, as an effective way to process traumatic memories.

Used in the form given here, it helps to lower the physical and emotional intensity of a person's experience in that moment, as a way of regulating emotions. It can create a sense of tiredness after use for some people.

The Butterfly Hug instructions

This works best if you teach the person to use the technique themselves. During a court audience, the judge or another person present could guide the offender through the technique.

It can be used whenever the person is experiencing a strong emotion, a flashback, or the after-effects of a nightmare.

Ask the person to cross their arms across their chest, and lay their hands on the opposite shoulders.

Rapidly tap each hand in rapid alternation like the flapping of a butterfly's wings, for as long as it takes for the emotion to subside.

Using sensory means

Sensory sensations aren't solely reactive, sensory means can be used intentionally to activate the senses and then shape emotional experiences. It can also be used as a tool for individuals to regulate their emotions. Since sensation inherently carries emotional implications, individuals can purposefully utilise sensation to influence their emotions, In this way, using sensory stimuli to trigger emotional responses means that sensation can function as an unconscious tool for offenders to actively manage their emotions within a hearing context.

These techniques could be harnessed within a courtroom to help improve concentration and focus, for example by deliberately associating a specific smell (or essential oil) to help with alertness, or by playing calming music in the waiting room for witnesses, or having a "fiddle toy" available for those speaking.

For those wishing to go into further depth of how to use sensory means within a courtroom to calm and focus participants, a consultation with an occupational therapist specialising in sensory integration would be useful.

Grounding exercises

Grounding is a way to counteract our tendency to dissociate or distract from the current moment and thereby miss parts of our experiences.

It is particularly useful for dealing with extreme stress, anxiety, depression, anger, or symptoms of PTSD.

Some types of dissociation are normal, for example when absorbed in an activity you don't notice other aspects of your surroundings (eg driving home and not remembering the journey), but dissociation can be a problem when it occurs frequently and out of context, or in association with traumatic experiences. There are several easy techniques you can use if you notice that you feel "floaty", "spacy", or as if things around you aren't quite real.

Other symptoms of dissociation are feeling emotionally or physically numb, feeling detached from yourself, a blurred sense of identity, and for more severe dissociation, memory loss for certain time periods, events, people, or personal information. These are signs you need emotional support and potentially could benefit from help from a psychologist.

Short version grounding exercise

Rub the palms of your hands onto a flat surface or your knees, paying close attention to how they feel, then to do the same with the soles of your feet. Take several deep breathes into your belly, notice how your belly feels. Look around the courtroom, name five things that you can see.

Five senses grounding exercise (extended version)

This aims to engage all of your senses and orient you to your current surroundings and experience.

Name five things you can **see**: take a close look at your surroundings, both those things in the foreground and the background.

Hear: Become aware of all of the noises that you can hear, both those close by and those in the distance. What do you notice?

Touch: Focus on the feeling on your skin — can you feel your clothes against your skin, the weight of anything you are carrying? What are your hands touching? Feel the ground and inside of your shoes with your feet, and the temperature of the air as well as any breeze.

Smell: What can you smell?

Taste: Become aware of any taste in your mouth, have a drink of water, or slowly chew a piece of food and swallow, paying attention to it.

Use of support person and other ways judicial officers may assist

Judicial officers may allow a support person to be present in the courtroom to support people involved in court proceedings as needed. A judicial officer may also be sensitive to a witness's and offender's special needs such as by allowing breaks in proceedings, the use of remote witness rooms, controlling cross-examination in accordance with relevant provisions of the *Evidence Act*, victim support and child witness support services.

Appendix B: Therapy intervention tools

List of errors in thinking for CBT

These cognitive distortions were originally described by Aaron T Beck and David D Burns, who are prominent figures in the field of cognitive behavioural therapy (CBT). Their works have been foundational in the development and practice of CBT.

- *all-or-nothing thinking (or dichotomous thinking)*: viewing situations in black or white without considering nuances and a middle ground
- *overgeneralisation*: drawing broad conclusions about oneself, others, or the world based on limited evidence or a single negative experience
- *mental filter (selective abstraction)*: focusing exclusively on negative aspects of a situation while ignoring any positive elements
- *discounting the positive*: minimising or dismissing positive experiences, achievements, or feedback
- *jumping to conclusions*
- *mind reading*: assuming that you know what others are thinking or feeling without sufficient evidence.
- *fortune telling*: making negative predictions about the future without evidence
- *magnification (catastrophising) and minimisation*: exaggerating the importance or severity of negative events (magnification) or minimising the significance of positive events (minimisation)
- *emotional reasoning*: believing that your feelings reflect objective reality, regardless of evidence to the contrary
- *"should" statements*: holding rigid and unrealistic expectations for oneself or others, leading to feelings of guilt, resentment, or frustration
- *labelling (global labelling)*: assigning global, negative labels to oneself or others based on specific behaviours or traits
- *personalisation*: attributing external events to personal shortcomings or assuming responsibility or blame for situations beyond one's control

List of useful CBT socratic questions

Socratic questions are designed to help individuals challenge and reframe their cognitive distortions by encouraging critical thinking, exploring evidence, and considering alternative perspectives. Some examples of useful CBT socratic questions are listed here. These examples are designed to address the types of typical cognitive thinking errors listed above.

All-or-nothing thinking

- "What evidence do you have that supports the idea that this situation is completely one way or the other?"
- "Can you think of any instances where things might not be as extreme as you're imagining?"
- "How might considering shades of gray or middle ground change your perspective on this situation?"

Overgeneralisation

- "Are there any exceptions to this belief or rule?"
- "What evidence do you have that supports this broad conclusion?"
- "How might viewing this situation as unique or specific change your interpretation?"

Mental filter

- "What positive aspects of this situation are you overlooking?"
- "Are there any neutral or positive details that you might be discounting?"
- "How might focusing on the positives or considering a broader perspective affect your interpretation?"

Discounting the positive

- "What evidence do you have that supports the positive experiences or feedback you've received?"
- "Can you think of any reasons why these positive experiences might be significant?"
- "How might acknowledging and appreciating the positives change your outlook?"

Jumping to conclusions

- "What evidence do you have to support your belief that you know what others are thinking or feeling?"
- "What might be some alternative explanations for the situation?"
- "How might suspending judgment or seeking clarification affect your understanding?"

Magnification and minimisation

- "How might you be exaggerating the negative aspects of this situation?"
- "What evidence do you have that supports the severity of your concerns?"
- "How might considering the significance of positive events or aspects change your perspective?"

Emotional reasoning

- "How might your feelings be influencing your interpretation of this situation?"
- "What evidence do you have that supports your feelings as reflecting objective reality?"
- "How might separating your feelings from the facts affect your understanding?"

"Should" statements

- "What evidence do you have that supports the idea that things should be a certain way?"
- "Are there any alternative ways to think about this situation that might be more helpful or realistic?"
- "How might letting go of rigid expectations or adopting a more flexible mindset affect your outlook?"

Labelling

- "How might labelling yourself or others in this way be oversimplifying the situation?"
- "What evidence do you have that supports this global label?"
- "How might focusing on specific behaviours or traits rather than using global labels change your perspective?"

Personalisation

- "How might external factors or circumstances be contributing to this situation?"
- "What evidence do you have that supports your responsibility or blame in this situation?"
- "How might considering factors beyond your control or attributing responsibility more accurately affect your interpretation?"

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List of questions for brief therapy

Brief therapy encompasses various therapeutic approaches, each with its own set of questions tailored to address specific concerns and goals. These questions

are designed to elicit client insights, promote self-reflection, and facilitate goal-setting and problem-solving within the brief therapy framework. They are flexible and can be adapted to suit the individual needs and preferences of each client.

Here's a comprehensive list of questions commonly used in brief therapy:

Miracle question

- "Suppose overnight, a miracle happens, and your problem is solved. How would you know? What would be different?"

(Examine all the different aspects of life that would be different, including his the person would feel in therein body, how they would walk down the street, how they would talk to others, etc, with the problem suddenly miraculously overcome).

Exception questions

- "Can you think of a time when the problem wasn't present or was less intense? What was different about that situation?"
- "Are there any situations where the problem doesn't occur or occurs less frequently?"

Scaling questions

- Example 1: "How confident are you in your ability to overcome this challenge on a scale of 1 to 10?"

  "What would it take to increase your confidence by one point?"
- Example 2: "On a scale of 1 to 10, how would you rate your current level of satisfaction with [specific issue]?"

  "What would it take to move you one point higher on the scale?"
- Example 3: "On a scale of 1 to 10, how much control do you feel you have over this situation?"

  "What would it take to increase your sense of control by one point?"

Coping questions

- "How have you managed similar situations in the past?"
- "What resources or strengths do you have that could help you cope with this challenge?"

Goal-setting questions

- "What would you like to achieve through therapy?"
- "How would you know if therapy is successful for you?"

Solution-focused questions

- "What are your best hopes for our conversation today?"
- "What small steps can you take towards achieving your goals?"

Future-oriented questions

- "How do you envision your life to be different once this issue is resolved?"
- "What steps can you take today to move closer to your desired future?"

Coping strategy questions

- "What strategies have you used in the past that helped you cope with similar situations?"
- "How can you apply those coping strategies to the current challenge?"

Resource identification questions

- "Who in your life provides support or encouragement for you when dealing with his problem?"
- "What hobbies or activities make it difficult for you to engage in this problem?"

Coping mechanism questions

- "What do you do to take care of yourself during difficult times?"
- "How can you integrate self-care practices into your daily routine?"

Externalisation questions

- "How does [the problem] show up in your life? How does it affect you?"
- "What would you say to [the problem] if it were a person or object?"

Goal-setting questions

- "What specific, achievable goals would you like to work towards?"
- "How can we break down those goals into smaller, manageable steps?"

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List of questions for systemic therapy

Circular questions are a hallmark of systemic group therapy. They are designed to explore relationships, interactions, and patterns within the family system. The following is a list of circular questions commonly used in group therapy that could also be useful in a court context, when exploring relationship patterns that relate to the matters being heard.

Relationship mapping questions

- "Who [in the group/friends] tends to initiate this [conflict/behaviour/problem]? How do other the group members respond?
- Can you describe how this person interacts with [another group member] during disagreements?

Role clarification questions

- "How do you see your role within the the group? How do other the group members perceive your role?"
- How does your understanding of [the group member's] role differ from their own perception?

Feedback loop questions

- "How do you think your behaviour affects other the group members? How do they respond to you?"
- "Can you describe the impact of [the group member's] actions on the the group dynamic?"

Perspective-taking questions

- "How do you imagine [the group member/victim/opposing offender] experiences [the situation]? How might their perspective differ from yours?"
- "What do you think [the group member/victim/opposing offender] believes about [issue]? How might this influence their behaviour?"

Pattern identification questions

- "Can you think of a time when a similar issue to the one we are dealing with today arose for [the group/your family/your friends]? How was it resolved?"
- "Are there recurring themes or patterns in your [interactions/ conflicts/offences]?"

Circular feedback questions

- "How does your [a family member/friend/associate's] behaviour change in response to [another the group member's] actions?"
- "Can you describe the reciprocal influence between [the two people] during conflicts?"

Boundary exploration questions

- "In your life/with your friends/associates/family? Are they flexible or rigid?"
- "Can you describe an instance when a boundary was crossed? How was it handled?"

Power dynamics questions

- "How are decisions typically made within your [family/gang/friend group]? Who holds the most influence?"
- "Can you describe any power struggles or conflicts related to decision-making?"

Circular hypothesis questions

- "What do you think [the offender/group member] hopes to achieve by [the behaviour/offence/litigation]? How might this impact others?"
- "How does [the group member's behaviour] serve to maintain the [group/family's] current dynamic?"

Future-oriented questions

- "How do you envision [your social world/associates/family] functioning differently in the future? What steps can you take to move towards that vision?"
- "What changes would you like to see in your interactions or communication patterns?"

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Techniques from strengths-based therapy

Strengths-based therapy focuses on identifying and leveraging a client's strengths, resources, and capacities to promote positive change and resilience.

Here's a list of questions commonly used in strengths-based therapy that could be useful in a court context, when working to increase an offender's sense of strength to overcome obstacles to change.

- "What are some of your proudest achievements or moments in your life?"
- "Can you tell me about a time when you successfully overcame a challenge or obstacle?"
- "What personal qualities or strengths do you admire in yourself?"
- "How have you used your strengths to cope with difficult situations in the past?"
- "Can you describe a time when you felt confident and empowered in your abilities?"
- "What activities or hobbies bring you joy and fulfilment?"
- "How do you think your strengths can help you achieve your goals or aspirations?"
- "Can you recall a time when you felt supported and encouraged by others?"
- "What positive feedback or compliments have you received from friends, the group, or colleagues?"
- "How do you think your strengths can contribute to your relationships or interactions with others?"
- "Can you identify any patterns or themes in your past successes or achievements?"
- "What resources or support systems do you have access to in your life?"
- "How do you envision yourself utilising your strengths in the future to overcome challenges?"
- "Can you think of a time when you demonstrated resilience in the face of adversity?"
- "What values or beliefs guide your decisions and actions in life?"
- "How have you demonstrated creativity or problem-solving skills in the past?"
- "What lessons have you learned from past experiences that can inform your current situation?"
- "Can you identify any areas where you have shown growth or improvement over time?"
- "How do you think your strengths can contribute to your overall well-being and happiness?"
- "Can you envision a future where you are thriving and utilising your strengths to their fullest potential?"

List of questions for narrative therapy

These questions are designed to help individuals externalise their problems, challenge dominant narratives, and identify unique outcomes and strengths within the narrative therapy framework.

Here's the list of questions that could be useful at each stage of using narrative therapy techniques in court hearing.

Naming the problem:

- "What would you like to call the problem that has brought you in here today? What name fits for you?"

Externalising the problem:

- "It sounds as if you need help struggling against your drug addiction, let's struggle together."
- "You sound as if you need help to fight against a tendency to blame others for your own actions."

Engaging in conversations to externalise the problem further:

- "What can the court do to help you feel more respected?"
- "Have there been times when the need for being respected has had too much power over your actions?"
- "What have been the effects of this for you?"
- "How can we help you in your struggle with feeling misunderstood?"
- "Have there been other times when feeling misunderstood has hijacked your decision making?"
- "How can we limit the influence and power of feeling misunderstood before it wrecks your life further?"
- "What can we do here to become an ally in your fight against letting depression or anxiety run your life?"
- "How can the court be an ally with you in your struggle to recover financially from being broke?"
- "In what ways is being broke dominating your life?"
- "How long has this been going on for?"
- "What are the effects on your future important decisions of always being broke?"

Identifying dominant narratives:

- "What did the people who were important to you say about you when you were younger?"
- "What does [society/the media/your neighbours/the group/your friends/your doctors] say about 'people like you'?"

Deconstructing problem-saturated narratives:

- "Did you agree with what [your parents/teachers/society] said about you when you were younger?"
- "Do you agree with them now?"

Are you okay to let those people and their unhealthy story shape your life and who you are as a person?"

- "What are you going to do about it?"
- "Can we look at this together to see how can we disprove or change this story?"
- "Do you want to let these people continue to have power over your life and who you are?"
- "How can you break free from this story that no longer suits you and was written by somebody else?"

Identifying unique outcomes:

- "Has there ever been a time when [X] wasn't a 100% true for you? A time when things turned out differently than expected?"
- "Was there anything that helped to make this outcome easier for you? What is your theory about how this occurred?"
- "What would [a significant other or bystander to the person] say about how this occurred?"

Internalising questions:

- "What does this outcome say about you as a person?"
- "What does this outcome say about [your strength/ intelligence/resilience/determination] to overcome [X]?"
- "You've mentioned that people like you never amount to much. But, we have just discovered that you did [X, Y and Z], despite no support and no-one believing you were capable of it. What does this say about you as a person, about 'people like you'?"

References

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List of questions to invite personal responsibility

These questions are aimed at helping individuals reconsider their behaviours, challenge destructive narratives, and take responsibility for their actions within the narrative of the therapy context provided.

Creating a public witnessing of a new identity:

- It takes a lot of courage to face up to [X]. Are you sure you can handle talking about [X]?
- Many [people/men/other group membership] never have the courage to talk openly about [X].
- How does it affect you to talk about [X]? It must have taken a lot of courage to walk through the court doors this morning and own up to the consequences of [X].
- What does it say about [you as a man/person/your strength/your individual courage/some other group membership] to be here today and talking about [X]?

Avoiding invitations or suggestions for others to manage the offender's future emotions, motivations, and actions:

- "What has stopped you from taking responsibility for your actions up till now?"
- "What stories, descriptions, narratives, ideas, have got in your way?"
- "The question for me as a judicial officer is not why are you doing [the abusive or violent behaviour], the question is what is stopping you from taking responsibility for your actions?"
- "Just what, exactly, is holding you back? This is your life, what are you going to do about it?"
- "How much are you letting outdated social stories about ['what a man is'/'how a relationship should work'/men's work/women's work/whatever other social or other narrative is being used to justify the offending behaviour] dominate your thinking and wreck your relationships/career?"

Identifying trends in relative influence over time:

- "Over time, are these out-dated ideas you've inherited about [the offending behaviour] having more influence over your life, or less?"
- "Are you becoming more in control of your own life, or less? More able to make your own decisions, or more dictated to by the outdated ideas that have badly affected so many other people's lives up to this point?"

Bolstering motivation to design active plans and own responsibility to act differently:

- "How ready are you to take a stand for yourself and rethink how you do things? Are you sure? Even though it might feel uncomfortable for you?"
- "How ready are you to stop being a slave to old habits?"

Finding unique outcomes with regards to offending behaviour:

- "But how did you stop yourself from actually doing [A and B] as well?"
- "How did you manage not to actually stab [X]? What stopped you? How were you able to control yourself?"
- "What stopped you from acting on those threats? How were you able to control yourself?"
- "Do you remember a time when you took a stand against your own abusive behaviour? When you took responsibility for making sure it didn't happen? How did you do this?"

Invite the offender to address their offending directly:

- "What signs would you see that [someone in your group/someone close to you/your partner] was feeling scared of you?"
- "If [X] recontacts you, how can you demonstrate to them that you respect their need for safety and for space or future non-contact?"
- "How can you prove to [X] that you put their safety first?"
- "How can you demonstrate to yourself that no matter how bad you feel, you will not resort to the abusive behaviour?"
- "What are some of the slippery slopes into old ways of behaving?" (Emotions/situations/beliefs about urges driving actions when in fact actions are ultimately based on decisions, not emotions or urges).
- "How could you prove to [X] that they are safe? What can you do to protect them from future harm from you?"
- "How can you show respect for [X's] independence?"
- "How can you show shared responsibility for the group tasks?"
- "How can you prove to yourself that you are willing to stand up to negative emotions believed to be driving abusive behaviour and not let that emotion run your life and wreck the lives of those around you?"
- "In what ways can you demonstrate understanding of damage caused by your actions? How could you respectfully communicate with your victims without causing them further hurt?"
- "What can you do to demonstrate your remorse and what practical things can you do to help them?"

- "In what ways can you demonstrate to the court and society that you are now taking responsibility for your actions?"
- "How can you demonstrate to [the court/the group/your neighbours/any other relevant offender] that you are safe to be in the community and wish to actively contribute to the community?"

Further cementing an identity as someone who takes responsibility:

- "Most people who come into this courtroom don't want to talk about [X]. That takes a lot of personal courage. What does it say about you that you were able to talk to me about [X] today?"
- "What does it say about you as [a man/person/your strength/your individual courage/some other group membership] to be here today and talking about [X]?"
- "How can you use this courage in the future to help you move forward with your active planning and your mission in responsibility?"
- "Are there other areas in your life where this strength and courage that you've found here today could really serve you well? What else are you going to be doing differently?"

References

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Appendix C: Systemic intervention tools for use within the court and surrounding community

Checklist for preparing to implement therapeutic interventions in court

It could be useful to form a working group with other professionals with similar goals to work towards implementing therapeutic interventions within the court context.

The suggested steps to implementing therapeutic interventions at a systemic level (ie judicial officer, also including the court and other legal actors, as well as the larger community and local services) are as follows:

1. **Model the experience of the offenders points of contact throughout the court process**

   For example:
   - notification
   - waiting room
   - in court
   - post court
   - follow-up meetings
   - follow-up letters or other communication

2. **Identify what types of interventions and messages are most useful from a therapeutic perspective at each of these points of contact**

   Identify which staff member is best placed to deliver which therapeutic message or support, at which point of contact — for example, a court officer could supply information on emotional regulation or coach the participant through this when needed; a follow-up letter could be worded therapeutically (this wording may need to be delegated to a specialist, or could be guided by using therapeutic letter and judgment templates).

3. Identify (from the judicial officer's perspective) if there are any gaps in the legal system or court functioning that need to be addressed, and if so, by legal means or what other service.
4. Identify other stakeholders who work in parallel or tandem with the court.
5. Identify other stakeholders who work with offenders and the communities involved.
6. Contact these stakeholders (if appropriate) to obtain feedback on their experiences, suggestions, and to suggest working in partnership via structured feedback mechanisms (if these are not already in place).

Useful questions for stakeholders:

- Who do you work with, what are your goals?
- How long have you been working in this field?
- Are you noticing patterns or trends in the people you see?
- Is there anything that the court needs to be adjusted in some way so as to be more effective:
  - from your perspective
  - From the perspective of the people you work with
- Are there gaps in the legal system or court functioning that need to be addressed, and if so, by legal means or what other service (from the stakeholders perspective)?

7. **Identify training interests and needs for the judicial officers involved**

   Organise regular training and supervision for the development of therapeutic skills.

8. **Identify any systemic barriers to judicial officers utilising therapeutic techniques (eg workload constraints)**

   Advocate regarding these.

9. **Identify ways to collect data about offenders experiences, judicial officers experiences, and longer term indicators of therapeutic outcomes**

10. **Consider forming a larger working group of stakeholders to continue evolving and adapting the court functioning and processes in light of feedback**.

Specialist advice for preparing court precincts

With regards to the physical locations of offenders within the court precincts, are there measures that could be put in place to enhance the therapeutic impact of their court experience?

It may be useful to arrange a site visit from an occupational therapist to discuss ways to increase communication and emotional regulation during court, as well as investigating aids that could be introduced in the waiting period prior to the hearing and also post-court.

Measurement tool for offenders' court experiences

(1=strongly disagree, 5=strongly agree)

- I felt respected by the court

1 2 3 4 5

- I felt present

1 2 3 4 5

- I was able to participate during the court hearing

1 2 3 4 5

- I felt heard and understood

1 2 3 4 5

- I understand the judgment

1 2 3 4 5

- I agree with the outcome

1 2 3 4 5

- I understand what I need to do next

1 2 3 4 5

- I feel hope for my future

1 2 3 4 5

Measurement tool for in court legal actor therapeutic contributions

Legal Actor Contribution Scale (checklist) as per article.

Introductions

- The judicial officer establishes context: explains how the court works and the multiple functions of justice

The judicial officer addresses the defendant:

- personally
- eye contact
- in a "non-intimidating" manner
- by name
- explains to the defendant how to address the judge

Judicial emotional tone

1	2	3	4	5	6	7
warm	positive but firm		neutral		cold	hostile

Judicial body language (circle one)

open / closed

dominant / encouraging

- The judicial officer explains the roles of hearing: for the defendant, for the court and for society
- The judicial officer explains the rules for participating in the court (adaptive communication)

Discussion about problem

- Enquiry about the background by the judicial officer
- Enquiry about the defendant by the judicial officer
- Enquiry about the context to the defendant and the problem by the judicial officer
- Inclusion of defendant's words into statements and questions (creation of a "shared description" of the problem)

Summary or sentencing remarks

- Collaborative definition of the problem used by the judicial officer
- Incorporation of the defendant and context into sentencing by the judicial officer

Location of the problem (please circle one)

The judicial officer describes the defendant as the problem

OR The judicial officer describes the problem as external to the defendant

Location of responsibility to act (agency and accountability) (please circle one)

The judicial officer describes the defendant as responsible for their actions

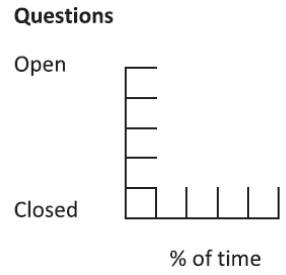
OR The judicial officer describes the defendant as not responsible for their actions

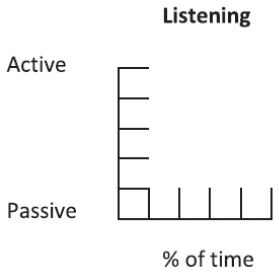
- Explanation of reasons for sentencing by the judicial officer
- The judicial officer includes emotions and wishes of defendant in sentencing remarks
- The judicial officer includes acknowledgment of victim's experience in sentencing remarks
- Guiding conversations for change: the judicial officer makes defendant aware of future choices and the possibilities for change

Resources: discussion of resources available to help support change for the defendant in the future

1	2	3	4	5	6	7
No mention of resources			Mentions resources and support			Multidisciplinary practice and support

Judicial communication skills





Active listening shown by the judicial officer

- Paraphrasing
- Asks clarifying questions
- Validation/minimal encouragers

Participation encouraged by the judicial officer

- Invited defendant to participate
- Turn taking
- Adaption of communication style to suit the defendant's abilities (cognitive ability/ language/ communication disorders)
- Cultural references appropriate to client
- Choices offered

Judicial positioning/ trust/ rapport

Emotional tone of the judicial officer overall

1	2	3	4	5	6	7
warm	positive but firm		neutral	cold		hostile

Body language of the judicial officer overall (please circle one)

1	2	3	4	5	6	7
open						closed
1	2	3	4	5	6	7
encouraging						dominant

Judicial officer's positioning overall

1	2	3	4	5	6	7
Allied						adversarial

- Agreement on goals of the hearing
- Agreement on tasks to be completed before the hearing

Judicial body language

- Attentive and open (looking at the defendant, arms uncrossed, leaning in, head tilting, slow nodding, furrowed brow, interest noises eg, hmmm, hmmm
- Dominant (disapproving expression, body positioning to take up lots of space, interrupting, grooming behaviours, chin stroking, aggressive gestures, rolling eyes)
- Bored or tired (mostly looking away from the defendant, drumming fingers, tapping toes, tapping other objects, yawning, or sagging posture)
- Closed (arms crossed, head tilted down and away)
- Evidence of reciprocity in body language between the judicial officer and the defendant during the interaction (mirroring in body posture, emotional tone, facial expressions)

Appendix D: Personalised burnout prevention plan

Self-reflection

1. Describe the signs and symptoms of overwork or high stress that you have experienced or observed in yourself, while referring to the section on preventing burnout:
   - emotional
   - physical
   - behavioural
   - social
   - cognitive
2. What are the early signs of stress for you? Add these strategies into your plan.
3. What can you do if you notice these early signs? Make sure you choose a range of different types of intervention. You may also need to try out different strategies to see which works for you. Put these strategies into your plan.
4. What are the danger signs of stress for you? Add these in as well.
5. What can you do if you notice these danger signs? Again, you may need to include a mix of different ideas, as well as a safety net measure to take care of yourself if feeling overwhelmed, ideally this would include speaking to a mental health professional if you are experiencing dangerous levels of burnout. Add these strategies into your plan.

   It would be useful to talk to a mental health professional soon if anything has come up for you during this exercise which is distressing and needs an individualised approach and professional sounding board to work through.
6. Identify and name the people in your life who you can talk to if needed regarding personal matters, professional matters, and any health issues.
7. Take a moment to reflect on what you do for self-care currently.

Personalised burnout prevention plan: Table

The table below providing a personalised burnout prevention plan can be printed out and filled in at your convenience.

Personalised burnout prevention plan

	Early signs	**Strategies**	**Late signs**	**Strategies**	**Danger signs**	**Strategies**
Emotional						
Physical						
Behavioural						
Social						
Cognitive						

Helpful people (information to be included with Table for personalised burnout prevention plan above)

Personal:

Professional:

Health matters:

Implementing strengthening and preventative measures

1. Review your work and personal calendar for a typical two week period. What do you notice when reviewing this?
2. Do you have time that could be repurposed for self-care, training, family or health enhancing activities? Take a moment to book these in proactively for the next month.
3. What activities/attitudes/protective mechanisms can you put in place now to strengthen yourself against stress? Take a moment now to book these in as well.
4. Is it possible to put in place some new habits for self-care in your daily routine? Refer to the list of possible suggestions at [3.9]. If you are unsure what light work for you, you may need to try out different types of ideas over a period of time.
5. Are there difficult organisational factors present in your workplace? How do you deal with these generally? Are there strategies you can put in place to try to protect yourself further from this?
6. Is your workplace sensitive to protecting you from burnout? Who can you talk to about this within the organisation if you notice any burnout related issues developing for yourself or for colleagues?

Body scan

A body scan literally means becoming aware of your body in minute detail. It can be useful to do this as many people tend to tune out their bodily signals at least to some degree, and these signals are important in letting us know when we are tired, hungry, full, thirsty, or feeling emotions rather than a need for food or water. It can be useful to purposefully check-in with your body in this way on a regular basis, particularly at times of stress.

Body scan instructions

The basic method is as follows; run your awareness through your body, and if you notice an area of pain or discomfort, focus on that area and breath into it for a moment or two. You may find that the discomfort shifts slightly.

Bring your awareness to your body. Start by taking a deep breath into your abdomen, and letting it go. Notice how you feel.

Next, start by focusing on your feet, and notice the feeling in your feet where they are touching the floor, the weight and pressure, and possibly heat. The feeling of contact with shoes, if you are wearing them.

Next, notice the feeling in your legs, the feeling of your clothes pressing against your legs, how strong (or weak) your legs feel.

Notice your hips, and lower abdomen. Pay attention to how your legs connect to your hips, and your posture and how you are holding your lower back. Move your awareness up through your lower spine and into your ribcage, and then draw your awareness through your lower abdomen and up through your center, noticing any discomfort or tightness, and also your skin, where it touches your clothing. Draw your attention through your chest, and back to your shoulder blades and the tops of your shoulders. Pay attention to how the muscles and bones feel, and the touch of clothing over them. Run your awareness through your hands, up through your wrists, forearms, upper arms, and back to your shoulders, then draw your awareness up your spine through your neck to the base of your skull. Notice any tightness, and how you are holding your head balanced on your neck, take a moment to rebalance this if necessary. Pay attention to your throat, and draw your awareness up through your neck and throat, to your jaw and face. Notice any tension that you are holding in your jaw and facial muscles. Finally, run your awareness through your ears, and the top of your head, paying attention to how your scalp feels, and the weight of your hair.

This is the basic process for a body scan, but feel free to adapt it to suit your individual way of doing things.

It’s best if you practice this exercise regularly, for at least a minute, particularly before situations that are likely to be stressful, or when feeling overwhelmed.

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