

## **SERIALIZATION: NADCP AND THE DRUG COURT MOVEMENT: A FIRST PERSON ACCOUNT, 1990-2001 (Judge Jeff Tauber ret.)**

### **EXCERPT NO. 2: THE UNIVERSALITY OF DRUG COURT; 1992-93**

<http://www.reentrycourtsolutions.com/2015/07/27/serialization-nadcp-and-the-drug-court-movement-a-first-person-account-1990-2001-no-3-the-universality-og-drug-court/>

*Idealism and ambition, two seemingly contradictory traits, are often at the heart of reform. While Miami had started the first treatment-based drug court (1989), it would ultimately lose its leadership of the field, with the formation of NADCP in 1994 and its more “universal” approach to the Drug Court Model*



Founding F.I.R.S.T Drug Court Judge Jeffrey Tauber appeared before the Alameda County Board of Supervisors (along with Judge Joan Cartwright and other supporters), arguing for the retention of the innovative Oakland F.I.R.S.T. Drug Court, in the face of looming budget deficits [photo by Frank Tapia]

### **1992: MEETING MIAMI DRUG COURT JUDGE STANLEY GOLDSTEIN**

IT was kind of like a Circus. A small court, with room for perhaps a hundred persons. Everyone crowded in, talking at the same time, but dominated by the booming voice of the judge. Stanley Goldstein had something of an unusual background for a judge. A former used car salesman and motorcycle cop, he spoke with what sounded like a heavy New York accent and usually over everyone else within the courtroom. Assistant Presiding Judge, Herbert Klein, the architect of Miami's Drug Court, is said to have picked him because he saw in him special traits that would make for an exceptional drug court judge; tough, street wise and irascible but also caring and funny all at the same time. I learned a lot from Stanley Goldstein.

Stanley would take the bench like a police magistrate in a screwball comedy. He exhorted the masses to pay attention and proceed through a long calendar at a prodigious clip. Congratulating those who did well and castigating those with positive drug tests; he spoke to everyone in the same loud and brash way. The people loved it. He had one joke I heard him tell more than once. "Many of you will notice members of your family pass away as you progress through this program; some of you will fail to appear in court, grieving for your loved ones, sometimes, the same loved-one, two or three different times."

He let everyone know that he was in on their scam, he was not to be taken for a fool, nor would he put up with "the crap" that many tried to put over on him. I learned to talk straight and sometimes say the outrageous, from Stanley. As a matter of fact, the outrageous was what made the Miami Drug Court work. Most defendants who come to court are either nodding off from drugs or from sheer boredom. That wasn't going to happen on Stanley's watch. This was rehabilitation and confession as entertainment. Showmanship and education clothed as court proceedings. You could tell he was having a good time and that made all the difference.

[I didn't visit Miami's Drug Court until 1992, while the Oakland Drug Court began its start-up in the summer of 1990. We had no information on the Miami program until the summer of 1991, when a two-page summary of the Miami Drug Court found its way to Oakland.]

## **THE STATE OF DRUG COURT EDUCATION**

I was interested in what made the drug court model tick. Partly because I wanted to distill the essence of the drug court for general consumption, partially to establish "universal principles" we could all agree on, and partially to make my name in the field.

When I spoke to Stanley that first time in chambers, I was somewhat in awe. He dominated the court in a way that I hadn't seen before. But I was also interested in his

understanding of what was going on under the hood of the Miami drug court. Stanley didn't have much to say about that.

[Assistant Presiding Judge Herbert Klein, the architect of the Miami Drug Court, perhaps would have been a better interview; he had been given a year to design the Miami Drug Court, which included visits to existing drug courts and other relevant sites (i.e. the TASC administered Chicago Drug Court, presided over by Judge Michael Getty)]

I saw Stanley often at conferences over the next six to eight years. I learned that what made him a great drug court judge didn't necessarily make for a great educator. His presentations began and ended with what had been accomplished in Miami.

By 1992, there was an emerging cadre of judges claiming credit for whatever success drug courts had achieved. I wanted us to get beyond drug court judges lecturing on how "they" made drug court work. The idea that one needed the charisma of a Stanley Goldstein to do the work was a serious issue for many who were considering starting a drug court (and one the field needed to overcome).

Yet, anyone who had worked in a functional drug court knew that it was the drug court team and the program's structure and community base that was critical to the success of the program. Their effective functioning was not getting the attention on the conference circuit or in training sessions that they deserved. It was up to those of us who understood the drug court, to analyze, describe, and publish documents on the workings of the drug court model and the principles underlying them.

## **CONFRONTING THE REALITY OF THE DRUG COURT WORLD**

The first Drug Court Conference that drew a national audience, was held in Miami, in December of 1993. There were perhaps 300 participants from Florida and across the nation. The focus of most of the sessions was the Miami model and the presentations were well received. It marked in a very real sense, the zenith of the Miami Drug Court as the Center of the Drug Court World.

I felt that this conference would be an extraordinary opportunity to make my case for an organized, rational approach to Drug Court education that recognized the importance of structure, and community to the success of the drug court model. While I was just beginning, like everyone else, to understand this new initiative, I believed I had enough experience with drug courts to put a conceptual face on this new phenomenon. I understood that while the judge was an extraordinarily important part

of the Drug Court, Community engagement, involvement, and resources, were the driving force behind the drug court's success. It was a statement I made in December of 1993 and have repeated over the years in various forums (more recently in a paper published on my site, [reentrycourtsolutions.com](http://reentrycourtsolutions.com): [An Introduction to Community-Based Courts](#), 2007)

The paper I wrote in 1993, in anticipation of the Miami Conference was entitled: [A NATIONAL STRATEGY FOR THE CO-FUNDING OF UNIFIED DRUG COURT SYSTEMS: PROPOSAL FOR LEGISLATIVE ACTION](#). It was first published at the Miami Conference (but distributed in many forums since). In it I argued for the development of a rational approach to Drug Courts and Drug Court Education. It may have been the first paper published, that dealt with many significant yet reoccurring drug court issues: The critical need for effective state and federal funding strategies to encourage coordination among conflicting local agencies and organizations, the importance of a unified drug court system under the direction of a single drug court judge, the extreme difficulty of establishing coordinated systems, the promise of technology that would make coordination a reality, an early attempt at national standards for the field, and a plea for Community-Based Courts rather than Judge-centric ones.

Perhaps the part of the paper that caused the biggest stir (and perhaps of most historic significance) was found in the two appendices. The first called for a national drug court resource center (somewhat akin to the Clinton DOJ/OJP Drug Court's Office) that would provide technical assistance, promote design strategies, and disseminate information to the field. The second argued for a national organization called the National Association of Drug Court Associations (NADCP), to provide national leadership to the field, serving the interests of and promoting drug courts on a national level through education, training, organization, and lobbying.

[Somewhat off the point, Kansas City D.A. Claire McCaskill (now Senator McCaskill) and I were standing in the rear of the Miami conference Center. She commented that she was getting complaints from her senior D.A.s, that Drug Court interventions were reducing the number of trials. She found the complaints irritating, yet important confirmation of her drug court's success. It reminded me of what a supervising D.A. had said to me, as I moved to open up Drug Court eligibility to its legal limit; he threatened to stop sending drug offenders to drug court, if the D.A. statistics couldn't justify their budget request to the county. Both comments from D.A.s (with very different perspectives on the same issue), made me consider anew, how economics, were driving the prosecution of drug offenders]

## **COMPETING FOR LEADERSHIP**

There was expected competition for leadership within the drug court field. Tim Murray was the Miami drug court coordinator and the field's leader in 1991/92, when I got to know him. He accompanied Stanley to many if not most of the drug court conferences that I attended.

To my knowledge Tim came out of the military. But he was mostly the smartest person in the room and the best speaker. He told me once, that he never prepared notes or decided what to say until he was at the podium. I on the other hand, would plot out my presentations, and struggle to keep them interesting. We were in many ways the classic tale of the turtle and the hare; I had the hard shell.

The first time I met Tim was in November of 1991 at a Health and Human Services Conference at the Marriot Hotel in Washington. D.C. He shook my hand but it wasn't a particularly warm greeting, and became less so over time. He was running the premier drug court program, if not the premier criminal justice reform program in the nation, and I was a small irritant, espousing a separate model and genesis, a continent away.

Nor could I blame him for his reticence. I wasn't contradicting Miami's narrative that they started the first major treatment oriented drug court, but that they represented the only path to a successful drug court.

Tim, reflecting Miami's dominance of the field, seemed to me to be inflexible about the need for others to follow in Miami's footsteps. My advantage was that I felt no reason for others to follow the Oakland Drug Court, but to create their own path. I was assertive (some would say aggressive); no Floridian sense of flow here. I was from South Brooklyn, and I clearly had ambitions that would conflict with Tim's.

## **THE MANY PATHS TO DRUG COURT**

*My personal knowledge of the early years of drug court (pre-1993) came from my own experience in initiating and presiding over the Oakland Drug Court, presentations by and discussions with drug court practitioners nationwide (at conferences and other meeting places), frequent contacts with members of the Drug Court Judge's "Coalition" and government officials in D.C., visits to the Oakland Drug Court from new and emerging drug courts (as well as visits to and consultations with many emerging drug courts).*

*To a substantial extent, my pre-'93 "personal history" was "California-centric", since that was where I lived, worked, and did much of my drug court advocacy, before becoming the leader of the Drug Court Judge's "Coalition" in '93 and NADCP President in 1994. So I unfortunately cannot provide a detailed description of what*

*was happening in Miami prior to 1993 (I will provide a description of California's early Drug Court history in an appendix).*

Tim and I would find ourselves as presenters at the same conferences, (sometimes on a monthly basis or more frequently). Tim's presentation laid out the "Miami Drug Court Model". It reflected an informal judge-centric court, with phases reflecting the participant's progress, and an independent treatment agency that was also responsible for supervision and drug testing (with no probation involvement), relying heavily on an acupuncture protocol, and a community-based coalition (an enviable source of funding).

[Miami's acupuncture treatment protocol was borrowed from the Lincoln Hospitals' Acupuncture Treatment Center in the Bronx, run by Dr. Michael Smith. To my knowledge, published peer reviewed studies, have not yet been able to establish a direct causal relationship between the use of the Miami "acupuncture protocol" and a reduction in drug usage.]

## **OAKLAND'S BEGINNINGS**



The Alameda County F.I.R.S.T Drug court Program was awarded the 1992 Public Employee Roundtable's Award for "Outstanding County Program in the Nation". Appearing in Washington D.C. to receive the award were (from left to right): Deputy Public Defender Elizabeth Campos, Drug Court Judge Joan Cartwright, Judge Jeffrey Tauber, Probation Officers Kathleen Callahan and Frank Tapia.

I would tell a different story; of being assigned to a Reagan era DOJ “Drug Court”, as the least senior Oakland judge in 1990, a program that prided itself in being punitive (a number of such DOJ funded programs were set up in the 1980s, in response to the “crack epidemic”).

I remember being cornered by then Oakland Presiding Judge Horace Wheatley in an elevator in early 1990, and being told that I was to take over the drug court calendar in July. My response was that I’d do it, but wouldn't follow current practices, and fast-track drug users to prison. His response was to the effect that he didn’t care how I did it, as long as none of the other judges had an increase in their workload. I gave him my word. It was a promise I kept.

I began immediately to cobble together a common sense treatment protocol that slowed the process down, rather than sped it up. I relied to a large extent on the expertise of my co-designer, probation officer Frank Tapia and the rehabilitation expertise of drug treatment physician, Dr. Alex Stalcup, and my colleague, fellow confidant and co-conspirator, Judge Peggy Hora, (who co-chaired the seminal County-Wide Criminal Justice Substance Abuse Subcommittee with me).

## **THE OAKLAND EXPERIENCE: PRAGMATIC AND FLEXIBLE**

Oakland didn’t have a lot of resources, so we had to be flexible in our approach to the drug problem. We used what we had, and that meant Probation handled a number of treatment functions, with a heavy emphasis on outpatient treatment programs (few residential beds being available). That lack of resources taught us important lessons about what was truly critical to an effective drug court.

Clearly, Oakland did not have the Cadillac of drug courts, but we placed 1164 participants in the F.I.R.S.T Drug Court Program in our first full year, 1991 (Fast, Immediate, Report, Supervision, and Treatment). Compared to the previous year’s court data, (percentage wise), Bench Warrants and new felony arrests dropped by about half, the number of days participants spend in custody were reduced by a third and graduations nearly doubled.

[A full page article written by Jane Gross in June of 1991 on the Oakland Drug Court, and published in the New York Times seemed to stir up a great deal of interest in the

our Drug Court, around the state and nation; [New York Times Article, Jane Gross, June, 21, 1991.](#)]

## **THE “UNIVERSAL DRUG COURT MODEL”**

In implementing our program, I began to note drug court principles that seemed to reflect the universality of drug offender behavior. It was a narrative that had its genesis in my experience with the Oakland Drug Court, but was confirmed by substantial similarities to the Miami Drug Court.

It suggested to me that, informed and aware practitioners concerned with reducing criminality, drug usage, and incarceration, would logically reach similar conclusions and create similar programs. It was an exciting time; Oakland and Miami, without knowledge of each other’s existence, had applied many of the same principles to their programs, and now those principles could be applied to other drug courts and court-based rehabilitation programs across the nation.

Drug Court Principles or “Universal Principles”, (as I understood them), promoted a reliance on immediate, frequent, and direct judge-based hearings (to be phased out with participant progress), appropriate sanctions and incentives in response to offender behaviors, frequent drug testing, a process-based treatment protocol (that would define treatment levels based on drug test results), continuing monitoring through an appropriate (read: available) supervision entity, and a community-based team structure.

## **MY PUBLICATIONS PROMOTING DRUG COURT PRINCIPLES**

[The first writing I did on Drug Courts, was not for publication, but written ostensibly, at the request of the Clinton Administration (see Excerpt No.1) and delivered in early 1993; five short policy papers, several of which spoke of Universal or Reality-Based Drug Court Principles: (["Five Policy Statements On National Criminal Justice Drug Control Issues", Jeffrey Tauber, 1993](#))]

I began to write about drug court principles, for publication, soon after I started the Oakland Drug Court. From 1992 through 1995, I would get up most mornings at 5 AM, and write for the next two to three hours, before court. My first writing project consisted of an evaluation comparing Oakland Drug Court 1991 participant data to a 1990 control group; but even that document had a section introducing the reader to Drug Court Principles in the form of "Reality-Based Designs"( the evaluation was published yearly between 1992 and 1995) [The Oakland Drug Court after Three Years, Jeffrey Tauber, 1995.](#)



The next paper, I wrote for publication, was a “Judicial Drug Court Primer” (distributed in 1993). I wrote how the Oakland drug court had substantially changed court priorities, establishing a court that focused on the needs of the drug user, rather than the convenience of the court or collaborating agencies. In it I described for the first time, the importance of "Structural Accountability" in a Drug Court, describing twelve structural components that were responsible for program effectiveness. [A Judicial Primer on Drug Courts and Court-Based Rehabilitation Programs, 2003, Judge Jeff Tauber](#)

The primer was the forerunner of a major CJER publication, [“Drug Court: A California Judicial Manual” \(California Judicial Education and Research Institute, Summer, Jeffrey Tauber 1994\)](#). The manual was distributed in 1994 to all 1800 California judges, active and retired. It went to great lengths to lay out the Principles of Drug Courts, describing them as “Reality-Based Design Principles”, as well as Components of a Structurally Accountable Drug Court. It went through three printings, with some ten thousand copies distributed nationally. It was probably the second most successful and widely distributed drug court document published through 2001 after the “Ten Key Components”.

In late 1994, I began to notice a number of articles and papers written on drug court topics, many using my concepts, and defining drug court principles in a similar fashion (in many cases using my language and phrasing, without attribution). I shrugged them off as something I should be pleased with, that would popularize the concepts I was defining, and ultimately encourage the development of drug courts that adhered to General or “Universal Principles”. I continued to churn out publications on drug courts throughout the 90’s, and at least in part, because of that, became the spokesperson for the field.

Because Oakland’s “Universal Model”, offered communities (and drug court judges) the opportunity to follow general drug court principles, and create their own “brand” of drug court, (and be innovators and pioneers in their own communities), it would ultimately become the more popular model.

It was an outcome I had been working (and writing) towards; the understanding that one didn’t have to follow in the footsteps of a highly praised drug court to be successful in your program. The general acceptance over time of Universal or General Principles, would ultimately lead to their going viral, as Oakland’s “Universal Model” morphed into the [“Ten Key Components”](#) in 1997 (“Defining Drug Court : The Key Components”, was an NADCP Project that was completed for the DOJ in 1997, and became a Bible for Drug Courts, both in planning and implementing their drug courts; a full description will be found in Chapter 5).

[I've told this story many times, because it to some extent explains the intensity required to successfully initiate reform within the criminal justice system. When the infamous 1991 Oakland fire threatened my home in the Oakland hills, my neighbors were packing their cars with memorabilia and important personal effects, my car was packed with data and court files needed for writing the Oakland Drug Court's first year evaluation.]

## **CONFLICTS RESOLVED**

Conflicts between Tim and myself, were as predictable as bulls butting heads, but also had serious implications for the field. The limitations of the "Miami Model", to my mind, made drug courts less likely to multiply. Many courts lacked the resources, funding, or political will to establish acupuncture protocols, and few courts could claim to have judges with the outsized judicial presence of a Stanley Goldstein. It seemed extraordinarily important at the time for interested jurisdictions to understand that, whomever their drug court judge was, they would have substantially greater success if they created programs structures that followed the general or universal principles of Drug Courts.

Tim was to become the DOJ Director for Drug Courts, within the Office of Justice Programs. After a short stint in that capacity, he was chosen to be Assistant Director of the Bureau of Justice Assistance and continued in that capacity through the Clinton Administration.

[Though we remained competitors throughout the 90's, we remained cordial, never allowing an open conflict to erupt; twenty years later we were to share a cab ride and conversation, and finally, a sense of comradeship and equanimity.]

Judge Jeffrey Tauber (Ret.)