

## **Courts as Empathic Spaces:**

### **Reflections on the Neighbourhood Justice Centre**

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#### **Abstract**

This article draws from and reflects on some of the key results of the three-year evaluation of Australia's first and only Neighbourhood Justice Centre (NJC) based in Collingwood, Victoria. It explores how the relationship between the court and other dimensions of the NJC set the tone for client-centered but fully accountable approaches to dealing with criminal matters. While the physical design and layout of the NJC properly lends itself to therapeutic outcomes, it is argued that the commitment to particular principles—in particular an empathic and respectful approach to NJC client engagement—are of key importance for doing 'real' justice.

#### **Introduction**

There are now 'more than 30 community court programs' throughout the world and each has its own combination of in-house and externally connected services.<sup>1</sup> Some, like the trail-blazing Midtown Community Court launched in 1993 in Manhattan, the Red Hook Community Justice Centre in Brooklyn commencing in 2000, and the Hartford Community Court opening in 1998 in Connecticut, have expanded and continued to gather public and political support. Others, such as the North Liverpool Community Justice Centre that commenced operation in 2005 and closed in 2014,

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<sup>1</sup> Ross (2015), p 1.

have come and gone. Still other jurisdictions—such as South Australia—have toyed with the idea of establishing a community justice centre for well over a decade. In spite of their variation, all of these courts, as Karp and Clear put it, have a ‘particular concern for the way crime and justice affect community life’,<sup>2</sup> and are based on the idea that a well-functioning court that sits within (and not ‘above’) the community it serves, is integral for making in-roads into crime. Arguably, one of the standout successes in the echelon of community justice centres is Melbourne’s NJC—now in its twelfth year of operation and secure, at least for the foreseeable future, in its recurrent funding. In this article, we draw from and reflect on some of the key results of the three-year evaluation of the NJC—Australia’s first and only community justice centre. We explore how the relationship between the court and other dimensions of the NJC sets the tone for respectful, client-centered but fully accountable approaches to dealing with criminal matters. While the physical design and layout of the NJC properly lends itself to therapeutic practice, we argue that staff skill-sets and commitment to particular principles are equally if not more important for doing ‘real’ justice, for preventing crime, and for creating community cohesion.

The article is structured as follows. First we offer a brief overview of the NJC and its inception. We then summarise national and international work on the impact of community justice centres relative to mainstream courts. The third section examines the concept of spatial justice and dovetails into a discussion of the role of empathy in the community justice setting—specifically as evidenced at the NJC. We then, as a way of contextualizing NJC user perspectives, briefly recount court user views from other community justice settings. We conclude with some implications for

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<sup>2</sup> Karp and Clear (2000), p 324.

courts generally and the strengthening of processes for helping defendants desist from crime.

### **Background**

Located at the corner of Wellington and Johnston Streets in Collingwood, the NJC commenced operation in early 2007. It remains, as mentioned, Australia's only community justice centre and was vehemently championed by then Victorian Attorney General Rob Hulls who was roundly impressed by what he had seen at Red Hook and like locations. In the lead up to opening, around \$9 million was spent converting a disused TAFE and technical school in inner city Melbourne into a three story building housing a spacious public reception area, a small light-filled courtroom, a sally port, a registry, a large client services and clinical work space, multiple meeting rooms, various child-friendly areas and activities, a food and drink kiosk, as well as outdoor waiting areas. With an initial operating budget of almost \$15 million over its first four years, NJC's key objective was to meaningfully involve the community in justice-related issues in order to reduce crime within the City of Yarra—the collection of suburbs totaling around 70,000 residents who, at that time, were eligible to have matters heard at the NJC. There was, more specifically, the expectation that the NJC increase 'community participation in the justice system; offender accountability and justice outcomes; the confidence of the community and participants in the justice system; the capacity of the community to respond to local justice and safety issues; [and] improve the experience of the justice system for participants'.<sup>3</sup>

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<sup>3</sup> Ross et al (2009), p 5.

As with similar places (eg Midtown Community Court, Vancouver Community Justice Centre, Hartford Community Court), the NJC sought to ensure appropriate involvement and outreach into the community it was designed to serve. It aimed, in effect, to offer a more effective and responsive means for dealing with criminal and civil matters through engagement of a problem-solving approach to offences as well as issues impacting the amenity and safety of citizens in the City of Yarra ‘with a particular focus on burglary and motor vehicle theft’.<sup>4</sup> The court was (and remains) a multi-jurisdictional court presiding over all criminal matters (excepting sex crimes), Victorian and Administrative Appeals Tribunal matters, Victims of Crime Assistance Tribunal matters, and also sits as an arm of the Children’s Court.

A key part of the early years of the NJC was the initiation and completion of a multi-faceted evaluation (including a cost-benefit analysis) of its first two and half years of operation. Led by Stuart Ross (Melbourne University), Mark Halsey, and David Bamford (Flinders University), and working in close partnership with the Brotherhood of St Laurence (a not-for-profit organisation involved in assisting socially marginalised and vulnerable groups), the evaluation commenced in March 2007, concluded data collection in June 2009, and submitted its Final Report to the Victorian government in December 2009. Multiple data collection techniques were used throughout the evaluation including surveys, interviews (spanning such categories of Attorney General, NJC Magistrate, NJC Director, clinicians, social workers, police, lawyers, Salvation Army support persons, and others), focus groups, and observations, and these were supplemented by analysis of court flow data and compliance and recidivism rates (with comparisons drawn against Sunshine and

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<sup>4</sup> Ross (2015), p 3.

Broadmeadows Courts). Case studies of NJC community engagement and impact also formed an important component of the evaluation work, and the various moving parts of the NJC (eg client services, Neighbourhood Justice Officer, and the court) were examined in their own right and as an overall system. A cost-benefit analysis examining economic inputs and actual and projected savings stemming from NJC results was completed by PricewaterhouseCoopers. For our purposes, it is court user data (primarily the experience of NJC defendants) that will form the main basis of discussion below.

To date, only a fraction of the data contained in that report has been publicly released. So as to better reflect on the early years of the NJC, permission has been obtained to draw in this article from select aspects of the Final Report as well as from the evaluation dataset more generally.<sup>5</sup> Of specific import here is data that inform discussion of the relationship between space, (court) user experience of that space, and the overlay of a therapeutic approach to the ‘doing’ of justice at NJC.

### **Impact of Community Justice Centres**

A key question often posed with regard to community justice centres or community justice centres is: Do they work? And if, ostensibly, they ‘work’, then what impact do such places have over and above the approach of mainstream courts? Generally speaking, there has not been a great deal of statistically rigorous work that can point definitively to the success of community justice centres. One important exception to this is a study that built on the 2009 NJC evaluation with the view to measuring and attributing the impact of a community justice centre. With regard to impact on crime rates, attributing the NJC (or indeed any other sole factor) as the

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<sup>5</sup> Sincere thanks to Louise Bassett, Manager, Strategy and Innovation, Neighbourhood Justice Centre.

primary change agent has proved a hazardous exercise. On the one hand, Ross showed that after the opening of the NJC crime rates in the City of Yarra fell at a substantially higher rate than ‘comparable inner urban LGAs [local government areas]’ and that the NJC’s catchment area came off a particularly high base. For example, prior to the opening of the NJC in 2007, crimes such as drug and property offences were three times more prevalent in the City of Yarra than throughout the state of Victoria.<sup>6</sup> Ross nonetheless strongly cautions that such a result cannot reliably be sheeted home to the NJC—it is almost impossible to know whether and to what extent changes in drug markets, policing priorities and practices, the pace of gentrification in particular areas, levels of unemployment, school retention rates, and more, played into this scenario.

Relying on datasets that post-dated the original evaluation period (2007 to 2009), Ross therefore examined how the NJC performed in relation to two key measures: community order completion rates and recidivism. Against suitable controls, his analysis—for the financial years 2008 to 2011—showed significant positive effects of the NJC, especially in terms of the proportion of *high risk* and *medium risk* offenders under supervision by order of the NJC and their subsequent compliance (although, as Halsey<sup>7</sup> argues, compliance does not necessarily equate to successful or sustained reintegration). Impressively, high risk and medium risk NJC clients were more than twice as likely to successfully complete their order than control groups across four other urban locations where community correctional services operated, as well as on a statewide basis.<sup>8</sup> Across all risk categories, NJC clients on average showed higher compliance levels than all control sites and the state average (77 versus 66 per cent order completion rate).

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<sup>6</sup> Ross (2015), p 3.

<sup>7</sup> Halsey (2016).

<sup>8</sup> Ross (2015), p 4.

On the recidivism front, 187 NJC clients receiving a therapeutic intervention were compared against 187 defendants (similar in age, gender, and offence seriousness) from an appropriate comparison Victorian magistrates' court. The NJC sample, though, had a slightly higher incidence of prior offences as well as proven offences for their current order ('the index episode'). All participants were tracked for two years with recidivism defined as 'a new proven offence'. On this measure, one third (33 per cent) of the NJC sample recidivated during the follow up period as against 44 per cent of the control group (this difference was statistically significant). Ross also determined that the long-term risk of recidivism among members of the two groups—when factoring in offence history and seriousness of the index offence—was lower for the NJC sample. This held true out to 900 days post-sentence or post-release from custody.<sup>9</sup>

There are a number of community justice centres operating internationally, to which one can turn for additional evidence regarding the model's effectiveness. As already mentioned, rigorous studies are lacking—in particular, there are no 'gold standard' evaluation designs (ie randomised controlled trials) in this space. While there are many types of community justice centre models in operation, we review only those that have a high level of integration and collaboration with services and other agencies in their communities (comparable in that sense to the NJC). Services and programs themselves may not always be run onsite, but the fundamental principle is that agencies and organisations are connected directly to the court. Eligible evaluations of recidivism were accessible for Red Hook Justice Center, North Liverpool Community Justice Centre, Midtown Community Court, Vancouver Downtown Community Court, and the Indianapolis Community Court.

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<sup>9</sup> Ross (2015).

Overall, there is mixed evidence on the effect of community justice centres on recidivism, though three of the five studies identified found effects in a positive direction (ie community justice centres reduce recidivism). A quasi-experimental design using propensity score matching to control for selection bias found defendants whose cases were processed at Red Hook Justice Center were significantly less likely to be re-arrested in a two-year follow up period, relative to those whose cases were processed at a comparison court (36 per cent vs 40 per cent). They also had significantly fewer re-arrests in that period, on average (0.95 vs 1.16). Differences in re-arrest rates between the groups were maintained more than four years out.<sup>10</sup>

Using a comparable statistical approach (ie propensity score matching), an analysis of the Vancouver Downtown Community Court also found positive effects of the court on reconvictions for a group of court participants (the sample was limited to relatively high-risk cases) for the year following their court participation relative to the year prior, compared to those sent to a comparison court. Though both groups reduced their offending, the community court participants had 2.27 fewer reconvictions per year (compared with 1.34 for the comparison group)—essentially saving 0.93 convictions in that year by going through the court.<sup>11</sup>

The Midtown Community Court also found that among individuals arrested for prostitution offences, the community court led to a significant reduction in re-arrest rate at both one- and two-year follow-up. However, the difference between the groups in time to re-arrest was not statistically significant. The results of this evaluation, however, should be interpreted with caution as the two groups (community court vs. comparison group) were not matched on any characteristics, and the groups were sampled at different times (one year apart). The report also

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<sup>10</sup> Lee et al (2013).

<sup>11</sup> Somers et al (2014).



indicated aggregate community service compliance rates were higher at Midtown (75 per cent) than at a comparison court downtown (50 per cent). Again, however, the data were insufficient to control for underlying differences in charge, criminal history and arrest type, which the authors report were factors associated with differences in community service compliance rates at Midtown.<sup>12</sup>

On the other hand, two studies have noted no effect of community justice centres on recidivism. The North Liverpool Community Justice Centre (now closed) examined one-year reconviction rates for those serviced by the community justice centre, compared to those sentenced at mainstream courts in the region (using a matched subjects design). There was no statistically significant difference in reconviction rate, number of reconvictions, or time to reconviction. In addition, community justice centre offenders were more likely to breach conditions of their order.<sup>13</sup> One commentator has placed some blame for these outcomes on the extensive budget cuts to services over the study period (including drug treatment centres referred through the centre), and also noted that media was very active in shaming offenders going before the court, potentially undermining positive impacts of the court.<sup>14</sup> This issue draws attention to the fact that community justice centres are easily affected by external drivers, such as political pressures and community attitudes that can impact on the quality of the therapeutic justice delivered.

An evaluation of the Indianapolis Community Court also failed to find a significant effect of the court on re-arrest rates, at neither one- nor three-year follow-up. However, the statistical procedure used to calculate this difference may not have

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<sup>12</sup> Sviridoff et al (2002).

<sup>13</sup> Booth et al (2012).

<sup>14</sup> Robins (2012).

been appropriate.<sup>15</sup> In any case, evaluators reached the same conclusion using a more robust technique (survival analysis)—the community court had no effect on recidivism.<sup>16</sup> Like the Midtown study, however, the selection of the comparison group is questionable. While the evaluators did attempt to eliminate selection bias using control variables, the comparison group constituted those who had been referred to the community court but *refused the plea offer* required for participation in the community court. It could therefore be argued that the groups differed in ways that may not have been accounted for by the control variables measured.

In terms of value of money, Morgan and Brown examined the cost per finalization of matters at the NJC compared with mainstream magistrates' courts.<sup>17</sup> On that variable, the NJC proved slightly more economical with an average finalization cost of \$124 versus \$136 per case. While the cost of referral to services within the NJC (ie to the client services team) was 24 per cent higher at the NJC than through mainstream courts and the court integrated services program or CISP (\$1848 versus \$1489 per client), the client engagement rate (those with one or more contact with a case management officer) was markedly better at NJC with 64 per cent as opposed 50 per cent of clients.<sup>18</sup> The higher per capita cost is partly a function of the longer engagement periods traditionally associated with client services, the increased diversity of services on offer at/through NJC, and the fact that client services likely become more concretely involved with clients prior to and post sentence.<sup>19</sup> NJC data on cost savings associated with avoidance of future victimization (policing, court, prison, medical and social service support costs) are scant. Modeling completed by

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<sup>15</sup> A dichotomous outcome variable violates the assumptions of the parametric test used (Gravetter et al 2016).

<sup>16</sup> Grommon et al (2017).

<sup>17</sup> Morgan and Brown (2015).

<sup>18</sup> Morgan and Brown (2015), p 10.

<sup>19</sup> Morgan and Brown (2015), pp 9-10.

PricewaterhouseCoopers for the initial evaluation ‘showed that for every \$1 invested in the ... NJC, the expected return would range between \$1.09 and \$2.23’.<sup>20</sup> This return, though, requires ‘a change in re-offending behaviour ... to be maintained for just over 4 years’.<sup>21</sup>

Beyond the NJC, Lee et al<sup>22</sup> determined that the savings associated with the operation of Red Hook Community Justice Centre were substantial. Excluding start up costs, it was estimated that the community justice centre saved the taxpayer 15 million dollars per year, almost double the ratio of benefits to costs relative to a comparison court. The largest benefits came from avoided victimisation costs as a result of reduced recidivism.

Clearly, the NJC—as the first place of its kind in Australia—has produced (and continues to produce) some impressive outcomes. The latest data on recidivism of clients are testimony to the fact that NJC is doing something differently and to good effect when compared to mainstream court options. In the remainder of this article, we want to explore the less tangible factors that might help explain why NJC achieves such notable results. In doing so, we move past the statistics (on such things as number of finalisations, compliance rates, proportion of defendants sentenced to prison, etc.) in order to explore what the space itself means for NJC court users. This is important because the NJC does not shy away from meting out punitive consequences to defendants with around 10 per cent of finalized matters for July 2008 to June 2009 period resulting in imprisonment.<sup>23</sup> Nonetheless, court users (even those sentenced to prison) rated the procedural fairness and ‘feel’/‘tone’ of the NJC as

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<sup>20</sup> NJC (2010), preface.

<sup>21</sup> Ross et al (2009), p 167.

<sup>22</sup> Lee et al (2013).

<sup>23</sup> Ross et al (2009), p 74.

particularly positive compared with other courts. There are good reasons for this, and we explore such below.

### **Spatial Justice**

There is an indisputable connection between the physical design of a place and what occurs or might occur within it. At the very basic level, space impacts staff performance and sense of wellbeing.<sup>24</sup> Within the court context, physical space influences the degree to which participants can participate in the court process and ultimately, the experiences people have of justice.<sup>25</sup> As ‘first timers’, especially, court users are likely to be anxious and somewhat discombobulated by the daunting and anxiety-provoking environment of a traditional courthouse. These emotions tend only to be amplified in spaces that evince poor wayfaring, lack of helpful staff (such as court network personnel), not to mention the often long and stressful waits in various queues (to see, for instance, a legal aid lawyer), or the intimidating process of actually appearing in court proper on particular charges or as a victim of crime (or applicant for an intervention order or such).

Edward Said reminds that geography is omnipresent, ‘Just as none of us are beyond geography, none of us is completely free from the struggle over geography. That struggle is complex and interesting because it is not only about soldiers and cannons but also about ideas, about forms, about images and imaginings’.<sup>26</sup> The point here is that spaces are defined not only by their objects (by the corporeal), but also by the ideas permitted and rules enforced within them. Spaces shape action and thought. The imposing façade of most courts preempts the formality and hierarchical structure of what occurs behind the stone, mortar, and associated regalia. Equally, the modest

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<sup>24</sup> Vischer (2008).

<sup>25</sup> Kennedy and Tait (1999).

<sup>26</sup> Quoted in Soja (2009), p 2.

and makeshift nature of a small transportable building in an Indigenous community located nearly 1000km from the nearest capital city—can signal a very different set of judicial relations, or at least the tone in which they are conducted.<sup>27</sup>

The term ‘spatial justice’ also gives serious consideration to the macro issue of who gets what type of justice on account of their (geographical) address<sup>28</sup> and demographic details (gender, age, ethnicity, educational attainment, economic situation). It feeds, necessarily, into debates about the ‘two tiers’ of justice and implies that justice is something that doesn't just happen within a discrete building (a courthouse or justice centre) so much as it resonates out to the locations where court users live and work, or, in extreme circumstances, to where they are incarcerated. The sense of justice—and perhaps, more pointedly, *injustice*—lingers far beyond the point where it was originally seen to be ‘done’ (or not done).<sup>29</sup> It is spatially mobile because it is psycho-socially performed and re-performed by actors subject to legal proceedings. Long after having exited the court, the conversations carried on by defendants or victims with friends, family members, lawyers, or the media, is evidence of this.

Edward Soja argues that ‘Combining the terms spatial and justice opens up a range of new possibilities for social and political action, as well as for social theorization and empirical analysis, that would not be as clear if the two terms were not used together’.<sup>30</sup> This is clearly a politically charged statement. We are, though, less concerned here with the broader societal implications of enacting the term ‘spatial justice’, than understanding how it plays out in one very specific scenario: namely, within and through the NJC. It is not that poorly designed places cannot lead

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<sup>27</sup> For example, the court periodically convened in the Yalata Anangu community, South Australia.

<sup>28</sup> See Reiman (1979).

<sup>29</sup> Wacquant (2009).

<sup>30</sup> Soja (2009), p 4.

to socially positive outcomes. But well-designed (fit-for-purpose) sites more easily lend themselves to the kinds of results most citizens want from their institutions. In the case of the NJC, that result has something to do with enhancing community safety and building resilience, compliance, and the capacity for positive lives among those who come before the court or present within the building for other reasons (perhaps because they are or are about to become homeless, bankrupt or unemployed). To be clear, juridical spaces can break or help restore bodies (ie they can harm or enhance people's mental and physical health, sense of future, and like). Central to the process of helping clients/defendants/applicants walk a better path—is, we argue, the use and display of empathy. In the prison space, the use of empathy by officers and other professionals (social workers, psychologists, and like) is associated with better custodial climates and steps toward desistance.<sup>31</sup> In court contexts, it can at least uphold dignity and at most help get to the core of people's problems and connect them to the right kinds of assistance.

### **NJC as empathic space**

In her seminal work, *On the Problem of Empathy*, Edith Stein writes that 'empathy involve[s] objective tuning-in, subjective connection, and conveying subjective feelings and objective cognition back to the client in a way that centralize[s] a common humanity'.<sup>32</sup> The degree of 'self-disclosure' (even of a seemingly trivial kind) in the therapeutic context—not just by the client but by the therapist/counselor—is also central to an empathic encounter and it being interpreted as 'real'.<sup>33</sup> Some make an important distinction between sympathy ('feeling *for* the

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<sup>31</sup> See Liebling (2004), Halsey and Deegan (2017).

<sup>32</sup> Quoted in Gair (2011), p 792.

<sup>33</sup> Gair (2011), p 793.

client’) and empathy (‘feeling *with* the client’)<sup>34</sup>; it has been suggested that sympathy typically ends with pity whereas empathy is the impetus for action.<sup>35</sup> Gair also reminds that ‘empathy is a key component of emotional intelligence’.<sup>36</sup> It is, therefore, an attribute that invites dialogue, *mutual* understanding and a means for moving forward. Understood this way, empathy describes a process and interaction between parties, rather than a simple end state or emotion.<sup>37</sup> To the extent that a court can convey a sense of empathy, it has the capacity to contribute to procedural justice—in particular, to the principles of voice, neutrality, respect, and trust.<sup>38</sup> In the context of therapeutic proceedings, the pressure to finalise matters is seen as anathema to the establishment of empathic relations. In complex cases—especially those involving repeat offenders with a high co-morbidity of problems—the lack of resourcing combined with a ‘smash through the list’ approach (the concern to get through as many matters as possible in the least time) works against socially optimal outcomes.

Courts—in some fundamental way—seek to hear, resolve and/or marginally alleviate the *distress* in people’s lives (whether in civil or criminal jurisdictions). This is important because there is an indelible relationship between distress (as the problem) and empathy (as solution). Hoffman writes that ‘justice-relevant situations in life often involve individuals or groups who are, or potentially are, in physical, emotional, or economic distress’<sup>39</sup>. Genuine judicial empathy is an essential tool for courts in being able to address such distress and to aid in the *meaningful* rehabilitation

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<sup>34</sup> Gair (2011), p 793, emphasis added, see also Duffy (2011).

<sup>35</sup> Hoffman (1989).

<sup>36</sup> Gair (2011), p 794.

<sup>37</sup> Duffy (2011).

<sup>38</sup> Lind and Tyler (1988), Tyler (2007).

<sup>39</sup> Hoffman (1989), p 284.

of court participants.<sup>40</sup> By meaningful, we argue that this signifies not just seeking to reduce distress in the immediate situation but responding empathically to an individual's broader life situation or plight (as per Hoffman's highest order of empathic development, 'empathy for another's life condition'<sup>41</sup>). Indeed, *we believe that the NJC sought consistently in its early years (and in time since) to genuinely improve the life condition of those who presented to the court (as well as those who accessed services of the NJC irrespective of any court proceeding).*

Looking back, the NJC did a number of things that—perhaps unintentionally but most fortuitously—aligned it to the 'life condition' of clients. First, it deliberately decentred the court—not its authority but its position within the building (tucked inconspicuously away on the first floor) and how the court was perceived as one of many moving parts (along with the clinical team, the Neighbourhood Justice officer, social service dimension, community corrections, and so forth) integral to improving the lives of participants. Helping individuals access support services and integrate into their communities was viewed as just as important, if not more important, than some kind of stand-alone punishment or penalty. Second, all staff were comprehensively trained in (or had previous experience of) therapeutic jurisprudence and were, as far as practicable, 'on the same page' concerning the overarching aims and approach of the NJC. It existed to take risks and do things differently. This is not to say there weren't teething problems and some ongoing issues, but the tone and philosophy was predominantly consistent and agreed on. Third, clients were treated as people not as files or cases and the currencies of respect and dignity were in constant circulation (matched with clear and fair consequences for inaction or consistently poor progress).

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<sup>40</sup> Duffy (2011).

<sup>41</sup> Hoffman (1989)



The quality of the therapeutic relationship was therefore central to generating good outcomes.

Fourth, the NJC enabled the slowing down of the (juridical) event in order to get to the nub of clients' issues. It sought to unearth and treat causes not symptoms. Fifth, in engaging with clients' needs in a holistic way (whether in the clinical or court settings), there was an avoidance of pathologising and putting excessive blame on the individual as the sole author of their troubles, which increased participants' willingness to speak the full range of individual and social issues impressing on them and their offending. They could do this without fear of being automatically seen as externalizing blame or lacking in accountability. Sixth, and relatedly, the NJC was willing and able to embrace and deal with the complexity of people's lives. It drew as widely as possible from on-site expertise to bring the complete story to the court or clinical setting. Giving up on clients was not an option. This included following up with those who were sent to prison. Finally, but no less critically, the NJC created and reinforced the feeling of safety within its walls. This was equally so for defendants, victims, support persons, volunteers and staff. The number of 'walk-ins' to the NJC (ie people who came to the building unannounced because they had heard through word of mouth it was safe to do so) is sound testimony to this.

### **NJC User Perspectives**

One way to understand the impact of community justice centres is to elicit the views of various people who use such places. Much of the research on this front—at the NJC and elsewhere—makes use of qualitative data garnered through surveys and/or interviews, providing a rich understanding of the experiences of court users and pointing to the ways in which community justice centres may work to change

offenders' lives. Between May and August 2009, 117 NJC court user surveys (65 per cent male, 35 per cent female) were completed and analysed along with 27 surveys (40 per cent male, 60 per cent female) from two comparison sites. The survey contained 32 items and, in addition to Likert scale responses, gave participants the opportunity to write freely about their experiences. In terms of their court matters, more than half (58 per cent) of NJC survey participants had previous court experience, whereas just under one quarter (24 per cent) of those from comparison courts reported this aspect. The NJC site also returned seven surveys completed by Indigenous court users whereas the comparison sites returned none.<sup>42</sup> Court users dealt with a wide cross-section of NJC personnel including, primarily, the Magistrate, the Neighbourhood Justice Officer, community corrections, counselors, and clinicians (mental health and alcohol and other drug). Further, '[n]early one in two (46 per cent) of NJC respondents reported being 'regular' or 'several times a year' users of the NJC court whereas only one in ten (12 per cent) reported such use at comparison sites'.<sup>43</sup> Importantly, the two comparison sites offered a very restrictive range of services—far less than the NJC (namely a Magistrate, defence lawyer and assistance from court network). The following comments, drawn directly from the NJC Final Report, tell of NJC users' views relative to their experience of mainstream courts:

A lot simpler and straightforward. Easier to follow;

It is more therapeutic, less formal and therefore less anxiety and trauma provoking;

The court appeared much more user friendly, lacking pomp and circumstance and the huge egos often associated with other courts;

The court is more pleasant to appear at than others, with more manageable lists. The court staff are very helpful and have more time to assist;

The NJC is a vast improvement on the Melbourne magistrates court system;

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<sup>42</sup> Ross et al (2009), pp 111-112.

<sup>43</sup> Ross et al (2009), p 113.

This establishment (court) has to be the best place for support [and] attention etc. 10 out of 10 Victoria. We criminals need more places like this because without more places (courts, drop in centres, support) it's just jail jail jail and that is the case.<sup>44</sup>

When pressed for 'any other comment' on how the NJC has impacted their lives, survey respondents' remarks spoke directly to the sense in which the NJC showed empathic concern for improving their *life condition*:

People receive all the help they need including caring support workers and counselling;

[I]f all the other courts were run like NJC a lot of people's lives would be a lot different and a lot would have more help in their life to move on. Thanks to the NJC my life has turn[ed] around;

I was very impressed with the proceedings at NJC. I felt heard and supported in every way and the staff I dealt with were unfailingly polite, friendly and very helpful. I think this kind of court is a fantastic community facility;

The lawyer, corrections officer and psychologist assigned to my case from my point of view have not only been professional but exceptionally honest and well-spirited people;

This place is like home. Very, very safe. Thank you for that and for everything you have done for me;

These [ie NJCs] should be everywhere.<sup>45</sup>

The themes of feeling safe and of receiving respect—both of which underpin processes of procedural fairness and a therapeutic approach—were prominent among NJC users. Comments *not* included in the NJC Evaluation Final Report further reinforce these critical dimensions. Here, when asked to compare the NJC 'with other courts you have attended', survey respondents commented as follows:

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<sup>44</sup> Ross et al (2009), p 116.

<sup>45</sup> Ross et al (2009), p 117.

A place where I feel fully protected to enter into;

Honesty, major respect;

I feel comfortable here and am able to address a lot of needs here. For these aspects resolving issues becomes more manageable;

I find the NJC court a great help and a huge understanding of my problems;

Less formal, friendlier environment, more considered approach to finding solutions for defendant;

Less threatening atmosphere for non-confident people;

Much more pleasant environment, I feel safer. Room to breathe;

Therapeutic rather than punitive.

Additionally—and again from comments mostly omitted from the Final Report—users invoked strong spatial imagery when asked about the best qualities of the NJC (emphases added):

*Close proximity* to my community and home;

It had a *welcoming atmosphere*;

It is a *relaxed environment*;

It's like a *happy home*;

Its *less hierarchical atmosphere* and culture;

*Less chaotic* than Melbourne Magistrates;

Makes the justice system more *casual, open* and *accessible* to those unfamiliar with the system, or [who are] disadvantaged in some way;

*Modern bright* environment;

*Natural light* and the outdoor seating area make the court much more comfortable;

*Nice place* to be in;

Open plan, *pleasant environment*, seating!;

Plenty of *space*;

The *building* is lovely.

NJC users therefore reported positively on the use and flow of spaces and how this impacted on their sense of being valued by a justice system geared too often toward outputs rather than the sustained capacity to grapple with people's underlying issues. Equally important is that users reported favorably not only on the space (layout, architecture, design) of the NJC, but also on the quality of the therapeutic relationships established within such. As one survey respondent put it, 'The set out of the building is more user friendly. Natural light and the outdoor seating area make the court much more comfortable. Also the availability of important support services in the same building is extremely helpful'.

Speaking specifically of what mattered most in terms of their NJC experience, survey respondents commented on the interactions and relationships developed with those within the centre:

Corrections officer diligence and professionalism, psychologist time, effort and treatment;

Easy to communicate with staff. Courtesy;

Friendly and helpful staff;

The people;

The personal assistance;

The police treatment was fantastic. They treated me with respect;

There is support as soon as you walk in the door;

There can be no therapeutic justice in the absence of strong client-clinician-court relationships. The capacity of the NJC to put most users (whether walk-ins or those with pre-arranged business) immediately at ease is central to securing high compliance rates with court orders and to getting to the root of people's problems (which more often than not stem from a complex mix of social and individual factors). This is the way, indeed, that the NJC managed to attune itself to the *life*

*condition* of those in need of its services. Arguably, what NJC users report in their qualitative feedback is the satisfaction of having been listened to and taken seriously by a group of professionals who could do other (such as ‘tick and flick’, over-pathologise their troubles, or otherwise fail to grasp that the path to desistance from crime is one likely to involve many setbacks as well as occasional successes).

Additional insight into the nature of NJC user perspectives can be gleaned through the qualitative responses in the Client Services Exit Survey. The survey posed eight questions and recruitment spanned 1 August 2008 to 31 July 2009. It proved incredibly difficult to get significant numbers of respondents. Only 25 clients completed the survey—equivalent to well under 10 per cent of the total referrals to the Client Services team during that period. That said, the survey produced some useful feedback about the best aspects of being referred to NJC Client Services (most of who wanted help with alcohol and/or drug problems and half of whom sought help with more than one issue). Just short of 100 per cent (96 per cent) reported being treated ‘respectfully and fairly’ and 88 per cent indicated that NJC staff listened to them and gave them ‘adequate say over how [their] needs should be met’ (Ross et al 2009: 122). Moreover, ‘[r]espondents reported their experiences within Client Services to be better (87 per cent) than services sought or accessed elsewhere in Victoria’.<sup>46</sup>

Two of the survey items gave respondents the opportunity to provide qualitative feedback. The first asked people to tell of the ‘best things about being a client of Client Services’. Comments here included:

All the services were in the same building. There was no time wasted on finding the right help. Every time I left the NJC I felt more sorted;

They gave you hope and understanding;

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<sup>46</sup> Ross et al (2009), p 122.

The people at this place listen to what you have to say;

Finally finding a ... counselor I like and feel comfortable with[.] [I]t took twenty years [to] try something different by getting me into NMIT [North Melbourne Institute of TAFE] courses and give my life a new direction and something to look forward to;

Without my workers working close by [sic.] me I would [often fall] off the rails a lot more;

Being treated politely, courteously and respectfully by all the staff at the Client Services;

I was absolutely [sic.] wrapt [sic.] with the time [my counselor] spent with me (on a scale of 1 to 10 [this person] gets a 10 plus from me).<sup>47</sup>

A second question asked respondents to report on what they disliked about Client Services. Excepting one client whose comments spoke of problems with the criminal justice system more broadly, none reported anything on that item. In sum, NJC created an environment that put users of the space at ease. People in turmoil—whose turmoil is exacerbated by the design and ethos of particular spaces—cannot give a good account of their predicament, let alone take stock of the information or advice given them during court and/or clinical settings.

### **Court User Perceptions (Beyond NJC)**

Research conducted on community justice centre user views in other jurisdictions can provide additional weight and validity to those expressed at the NJC. On this front, the research is unequivocally positive; if community justice centres' performance were to be measured solely on the views expressed by court users (defined here as defendants' views), they could only be considered a resounding

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<sup>47</sup> Ross et al (2009), p 123.

success. In particular, a consistent theme throughout [jurisdictions](#) was the way the court worked to enhance justice—through defendants’ positive interactions with the judge and the court staff, and the court’s commitment to helping clients by linking them to support services. Narratives suggested that this was critical for individuals in feeling motivated and capable to turn their lives around. The comments reported below come from studies at Red Hook Justice Center, North Liverpool Community Justice Centre, Midtown Community Court, Hatford Community Court, Vancouver Downtown Community Court, and finally, Philadelphia Community Court.

In general, community justice centres are perceived as respectful places delivering fair outcomes and processes.<sup>48</sup> In fact, the word most often used to describe the difference between Red Hook Justice Center and the traditional court was that Red Hook was ‘respectful’.<sup>49</sup> Defendants’ accounts at various community justice centres are dominated by the notion that these courts appeared ‘do better’ than traditional courts at treating them in a respectful, nonjudgmental and empathic way, which enhanced court users’ sense of dignity or humanity:

I truly believe [the Midtown staff] care. I truly believe ... they show a different side to an addict. The [staff’s] support ... the looks and smile [gave me] hope;<sup>50</sup>

The first things the Community Court did was recognize who I was .... That was the first step. Not treating me like I was a statistic or a number .... [Other courts] don’t know me. ... All they do is look at my rap sheet and I’m guilty .... I’m already labeled. ... They don’t do that [at Midtown]. ... That made all the difference in the world ... People showing they care;<sup>51</sup>

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<sup>48</sup> Frazer (2008), Jackson et al (2012), Justice Education Center (2002), Lee et al (2013), Mair and Millings (2011), McKenna (2007), Sviridoff et al (2002).

<sup>49</sup> Lee et al (2013), p 86.

<sup>50</sup> Sviridoff et al (2002), p 5.12.

<sup>51</sup> Sviridoff et al (2002), p 5.13.



I was treated like a human being’;<sup>52</sup>

I like DCC [Downtown Community Court] better than other court. People here are warmer, more human. I feel more like a person here.<sup>53</sup>

Core in user accounts was also the ways in which the court provided a safe and non-threatening environment to engage in mutual dialogue and communication,<sup>54</sup> for example: ‘[they] actually care what you have to say’.<sup>55</sup> Perhaps as a result of this, community justice centre participants stated that they felt more engaged with court processes compared with their previous experience at other courts.<sup>56</sup> Clients’ interactions with the judge in particular were highlighted across several sites, identifying the intimate connection between the judge and defendant in models such as a community justice centre.<sup>57</sup> For example, satisfaction with the judge (versus other actors such as the ‘court officer’ and ‘defense attorney’) was the strongest predictor of overall perceptions of fairness at Red Hook.<sup>58</sup> Community justice centre judges seen as more compassionate and fair than judges at mainstream courts,<sup>59</sup> rather than ‘looking down’ on defendants,<sup>60</sup> as explained by one participant, ‘he [judge] wasn’t condescending or patronising, he just talked to me like an equal. It made me want to listen to what he was saying’.<sup>61</sup> This comment also points to the way that judicial empathy and respect can shape clients’ experience of justice in the court. Importantly, though some community justice centres were perceived as more lenient than mainstream courts,<sup>62</sup> this didn’t mean that offenders were always let off the

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<sup>52</sup> Justice Education Center (2002), p 52.

<sup>53</sup> Jackson et al (2012), p 116.

<sup>54</sup> Mair and Millings (2011)

<sup>55</sup> Jackson et al (2012), p 117.

<sup>56</sup> McKenna (2007).

<sup>57</sup> Duffy (2011).

<sup>58</sup> Frazer (2008).

<sup>59</sup> Frazer (2008).

<sup>60</sup> Lee et al (2013).

<sup>61</sup> McKenna (2007), p 17.

<sup>62</sup> Lee et al (2013), Mair and Millings (2011).

hook. A respectful but fair judge can be instrumental in fostering a sense of accountability, as described by the following participants:

He's [judge] more one to one, and he remembers you. If you have made an effort and if you've bettered yourself, or if you have gone downhill, he can tell. *It makes you want to try even harder*;<sup>63</sup>

There's nothing for me to complain about, he's set out what I've got to do and why, if I fuck up I'm taking the fall and he's been fair and honest with me in the past and he's increased sanctions on me when I've fucked up before so it's clear what I can and can't do, and I'll be at that review date clean cause I know what's coming if I ain't;<sup>64</sup>

He's one of the best judges I've dealt with in my life. He will give you a break, but when you f- up, *you did it to yourself*.<sup>65</sup>

Though most Red Hook and traditional court participants alike admitted they have continued 'doing the things' that got them to court in the first place, Red Hook participants who reported some change in behaviour often cited a sense 'obligation/respect for the judge' as the reason they stopped offending; this response was seldom reported by participants in the comparison court. It is fair to say, then, that the judge commands an important role in contributing to positive outcomes of the court. On the other hand, Red Hook evaluators concluded that while the judge is clearly 'the face' of the court (and thereby commands primacy in offenders' accounts),

it is impossible to disentangle the impact of the Justice Center as an institution on procedural justice from the impact of the judge himself on procedural fairness. ...

[T]he Justice Center's commitment to procedural justice results partly from an organizational culture that extends from the judge and court management down to the

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<sup>63</sup> McKenna (2007), p 17, emphasis added.

<sup>64</sup> Mair and Millings (2011), p 80.

<sup>65</sup> Lee et al (2013), Appendix E, p 41, emphasis added.

clinic staff, the court officers, the alternative sanctions staff, and every other employee in the courthouse. ... A commitment to procedural justice *in all aspects of court operations* appears to be essential in order for a community court to achieve a reduction in recidivism among misdemeanor offenders.<sup>66</sup>

Experiences at community justice centres can have a profound influence on perceptions and experiences of justice beyond defendants' 'day in court'. In this way, community justice centres offer something that other courts are seen as profoundly deficient in (ie genuine empathy and ongoing interest in improving defendants' lives), and as such, experiences in these settings can change users' feelings about court and the criminal justice system in general. Defendants attending Hatford Community Court saw the court as (unexpectedly) giving them a 'second chance' while 'teaching' them that courts could be respectful, efficient, and fair.<sup>67</sup> In contrast (and tellingly), participants processed at the traditional court were often unable to provide a coherent response—if any—as to what they had learned from their court experience.<sup>68</sup> Similarly, community justice centre clients have been surprised by the support provided to them—a testament to the lack of such previously offered them by the traditional court system: 'That experience was something new to me; they can offer you help if you needed it and I found that to be astounding that they were more into trying to help people than just sending them to jail'.<sup>69</sup> In particular, linking to services to address underlying issues contributed to a sense of fairness, and was seen as important in helping them beyond their court experience.<sup>70</sup> In other words, the extent to which the court's apparent concern for improving clients' lives could be backed up by support services needed to do so was instrumental in how clients experienced

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<sup>66</sup> Lee et al (2013), p 140, emphasis added.

<sup>67</sup> Justice Education Center (2002).

<sup>68</sup> Lee et al (2013).

<sup>69</sup> Lee et al (2013), Appendix E, p 39.

<sup>70</sup> Frazer (2008), Lee et al (2013), Mair and Millings (2011), Sviridoff et al (2002).

justice as a whole. Court staff at Midtown reported that having services on-site meant that there were fewer barriers for clients to access services.<sup>71</sup> This highlights how spatial design in a community justice centre (in this case, co-location of support services) is essential in shaping the pathways defendants follow beyond the courtroom.

Finally, it is worth noting that views of the Philadelphia Community Court users were slightly more tempered than those from other community justice centres reported above. These criticisms are important to keep in mind in thinking about potential barriers to the successful operation of community justice centres. Only about half of court users and community residents sampled believed they or their acquaintances had been treated fairly by the community justice centre. When asked to elaborate, those who felt they were treated unfairly often commented on how the criminal justice system as a whole is stacked against them and they felt powerless to fight their case or meet the conditions of their sentence. Most found the support services provided through the court to be helpful; however, many resentfully characterised the community service sanctions as ‘free work’ for the city.<sup>72</sup> Similarly, some Hartford Community Court users complained that community service sanctions and time in court often meant that they lost income.<sup>73</sup> Evidently there is a challenge in being able to ensure adequate management and support provision to clients while minimising the court’s intrusion on work and other commitments. These criticisms are in stark contrast to individuals at North Liverpool and Hartford, who expressed appreciation of being able to ‘repay’ or give back to their community through community service sanctions.<sup>74</sup> Some in the Philadelphia cohort did not see the value

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<sup>71</sup> Sviridoff et al (2002).

<sup>72</sup> Durkin et al (2009).

<sup>73</sup> Justice Education Center (2002).

<sup>74</sup> Justice Education Center (2002), McKenna (2007).

of their community sanction, which might suggest that the rationale for, and legitimacy of, their sentence was not adequately conveyed to them. In fact, the evaluators recommended that the court review whether its procedures and systems were in line with principles of procedural fairness; they also suggested that there was variation among judges in the ways that they understood the mission and operations of the court.<sup>75</sup> Philadelphia Community Court is also relatively large for a community justice centre, with multiple judges and courts in operation. This may undermine a sense of fairness and the ability to develop empathic relations at times, though this is not inevitable (eg Vancouver is also a larger court).

### **Concluding remarks**

This article has offered a glimpse into the relative effectiveness of community justice centres with a specific focus on the early years of the NJC. Feedback from NJC users (and users of similar places internationally) repeatedly invoke spatial (life is moving forward, services are easy to connect with, building is bright and accessible) and therapeutic dimensions (professionals are caring, supportive, respectful, understanding) in describing how and why these places work for them. They do so in ways distinct to their experiences of mainstream juridical environments. We have suggested that at the core of places like the NJC is the creation and protection of a space that invites and builds upon empathic encounters—reaching, in other words, beyond the accepted image of what it means to ‘do’ justice. It is, in short, the shared philosophy underpinning therapeutic practices that bring the functionality of the NJC and like spaces to the fore.

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<sup>75</sup> Durkin et al (2009).

A key question for any community justice centre concerns their optimum size. At what point—indeed, is there a point—at which the capacity to impart therapeutic justice and engage consistently in empathic work starts to wane on account of the size of the building or its caseload? Certainly, it was very clear from interviews with NJC staff (particularly those in Client Services) that the busier the NJC became, the harder it was for clinicians to devote sufficient time to each client. As one staff member remarked, ‘[A]s soon as we start ticking boxes, we’ve failed’.<sup>76</sup> The issue of how to maintain model integrity in light of expanding court user and client caseloads is of fundamental import to the ongoing success of community justice centres.

Central also to the empathic ethic and upholding therapeutic justice is the presiding magistrate. NJC put a tremendous amount of time and effort into finding the right person for the job. Undeniably, the tone set in court ripples out to all points within the NJC. This became very clear during the evaluation when the presiding magistrate took leave and successive magistrates managed the NJC list for a month or two. That changing of the guard enabled NJC staff to realise that the court was indeed functioning in a manner distinct to mainstream courts with clinicians as well as regular court users noting the stark difference in temperament and tone—not to mention the willingness of the court to work productively with on-site services—between the appointed and relieving magistrates. Empathic encounters need to occur in court and beyond. There was (and remains) high praise for the presiding NJC magistrate and his capacity to enact a therapeutic approach. The single magistrate and integrated (co-located) services model at the NJC appears to be ideally suited to generating empathic encounters and quality of support for court users.

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<sup>76</sup> Interview, NJC, 7 August 2008.

Finally, we would suggest that there is a need to be permanently reflexive about the therapeutic space such that measurement and evaluation—understanding how and why things work or do not work—become key to ongoing success. The robustness of results ultimately plays into political circles and the proclivity to take the risk of establishing either a scaled down version of the NJC, rather than a model with ‘all the trimmings’ (complete with on-site services, fit-for-purpose spaces, and like). There is undoubtedly a substantial cost in getting such places up and running but the evidence clearly points to the positive difference that fully-fledged community justice centres can have for users of the space and for the community generally.

In closing, we relay an excerpt from an interview with a young man who is on the cusp of losing his place on a drug court program. He speaks passionately about the need to find a way to connect at a very human level to the person who would decide his fate:

Interviewer: So if you were ... in front of the Magistrate and the Magistrate said, ‘[James], why should I allow you to stay on the Drug Court program?’, what would you say? ...

James: [T]he best thing for the judge ... to [do to] make the right decision [would] be [to do] exactly what you’re doing now—to sit down face to face and ask me these questions. Ask me why I’m here, what put me here, and actually talk to me. ... I would treasure that chance for him to sit down. I really believe that if I could sit down and explain these things to him ... it might put his mind at ease about letting me have that Drug Court chance again. ... [S]ame with the police, because they’re reading me ... off a piece of paper. ... And if I was that judge reading that piece of paper I’d be very hesitant about me [going] back [on the program] too. ... [S]o I can’t blame that judge. ... [But] unless he wants to sit down [and speak with me], how’s he going to see from a letter that ... I am a changed person? ... There’s just no way. That’s what

I'm scared about. There's no way I can get this across to the, to the judge, you know what I mean?<sup>77</sup>

'Ask me why I'm here, what put me here, and actually talk to me'. That neatly captures the *raison d'être* of the NJC and places akin to it. And it is something, we believe, that institutions of criminal justice should aspire to do.

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<sup>77</sup> Interview, conducted by Mark Halsey, Adelaide Remand Centre, 16 February 2012, ARC Discovery Project [DP0984562] *Generativity in young male (ex)prisoners: Caring for self, other, and future within prison and beyond*. For an in-depth account of James' story, see Halsey and Deegan 2015.



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