EXPLORING THE CULTURE AND CONCERNS OF THE PROBLEM-SOLVING COURT’S WORKGROUP IN A FEDERAL, RE-ENTRY DRUG COURT AND ITS IMPACT ON PUBLIC POLICY: A PHENOMENOLOGICAL STUDY

A dissertation presented

By

Kurt Ward

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ABSTRACT OF DISSERTATION

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ABSTRACT

This dissertation is a phenomenological study of the problem-solving court’s workgroup in a re-entry drug court operating at the federal level. Specifically, this dissertation explores the culture, roles, and operating rules of this drug court’s workgroup using seminal concepts derived from studies of traditional courtroom workgroups; the focal concerns of the members of that workgroup; and the way in which this drug court implements public policy regarding the re-entry and re-integration of offenders under supervised release for drug-and-drug-related crimes.

As a phenomenological study, it captures the essence of what this drug court’s workgroup is, as expressed through the experiences of the drug court team members. Qualitative data was collected using semi-structured interviews and non-participant observations, then analyzed to look for themes running through the data and for any emerging concepts associated with this re-entry drug court.

This study found that this federal re-entry drug court’s workgroup has a culture mainly built upon two of the concepts associated with a traditional court’s workgroup, solidarity and cohesion. Also, socialization was found to be an important concept associated with the drug court’s workgroup in the formation and continuation of the team’s culture. The drug court team member’s sponsoring organizations were less invested that those associated with a traditional courtroom workgroup, but instead served as home bases for the drug court team members.

This study also found that the focal concerns of the drug court workgroup are similar to those of the traditional court workgroup, although manifested differently in the post-conviction, re-entry environment. Also, relapse prevention emerged as a focal concern unique to the drug court team.
Last, this study found that the implementation and impact of this re-entry drug court has not been as positive as it could have been. One reason is the lack of resources available to the program and the absence of any formal investment by drug court team members’ sponsoring organizations. However, the absence of a stronger impact also may be due to the team members’ fear of having the participants’ success and the program’s value measured quantitatively, thus demonstrating a lack of success with participants’ long-term sobriety, employment, and recidivism. The team members’ fear – that the participants’ and the program may not be as successful as the team wants to believe – may be unconsciously driving the team to remain content with the program as it is so as not to disturb the court community at-large and risk examination of those policies, practices, and outcomes and that have had some marginal measure of success.

The results of this study have practical implications for improving the performance of the problem-solving court’s workgroup in developing ways to better socialize new members into the team’s culture and the importance of sponsoring organizations investing human and financial resources into these programs. The sponsoring organizations’ investment should not only facilitate the program’s individual success, but should be measured as an integrated part of the court community at-large. However, it is important to note that the current findings relate to only one program operating in a re-entry context in the federal system. Not all findings may be representative of drug court practices nationally, and the findings may not generalize to state, pre-adjudicative contexts.
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questions was essential to this endeavor. To allow me to closely observe the work they do, feel their passion for it, and watch how they do that work was a privilege.

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CHAPTER ONE: INTRODUCTION

Problem-solving courts have grown in number and addressed various concerns since the initial drug court was established in 1989 in Miami, Florida. We have some evidence that these courts work, but because of all the different types of problem-solving courts in existence, we do not fully understand how they work, what makes them successful, or what challenges, obstacles, and struggles they face that will make them more successful. Some attempts have been made to “get inside” (Goldkamp et al., 2001), take a “look inside” (Bouffard and Taxman, 2004), and “crack” (Crunkilton & Robinson, 2008) the “black box” of problem-solving courts – their internal components and mechanisms – but these studies have focused on outcome and process evaluations in relation to the courts’ impact on participant success and the effect of treatment received by these participants. These studies have neither explored nor examined the culture and community of the problem-solving courtroom workgroup in-depth and how that culture and community helps participants in these programs move through this alternative path in the criminal justice system. This study helps to fill that gap.

Problem-solving courts are a significant part of current public policy in treating drug addiction. When the first drug court was implemented it was in response to a surge in the number of cases involving crack cocaine. Rather than being launched as the result of a larger policy formulation process, drug courts began as a grass-roots movement to unclog the courts’ backlogs of these cases. The result was substantial variations in the implementation of the basic concept throughout different jurisdictions (Armstrong, 2003), including differences in participant eligibility criteria, the point-of-entry within the criminal justice system for participants admitted to drug court, and the various agencies used by the courts to provide treatment (Armstrong, 2003). While drug courts have grown in number and acceptance, the need remains to see how
problem-solving courts are implemented. For my study, it is important to explore how
traditional courtroom workgroup roles, norms, and focal concerns associated with an adversarial
court might constrain the implementation of the problem-solving approach. My work is guided
by Lipksy’s (1980) research about the role of “street-level bureaucrats” and Pressman and
Wildavsky’s (1984) study of the implementation of Economic Development Authority (EDA)
projects in Oakland, California that were funded by the federal government.

How Problem-Solving Courts Implement Public Policy

Program implementation by “street-level bureaucrats” is the foundational public policy
literature for this study (Lipsky, 1980). Street-level bureaucrats are those individuals who work
at the lowest level of an agency, engaging with the individuals who have sought out the
particular agency for its services. Because these individuals are responsible for carrying out the
tasks associated with various laws and public policies, Lipsky argues that “policy
implementation in the end comes down to the people who actually implement it” (Lipsky, 1980,
p. 8). Research concerning “street-level bureaucrats” and the role they play in implementing
public policy clarifies the roles that drug court team members play. Street-level bureaucrats,
generally, work in roles that either help individuals directly or make decisions concerning them.
At times, the decisions may not benefit their intended recipients, but benefit the decision-makers
to better manage their workflow.

Maynard-Moody and Musheno (2003) develop this premise by asserting that street-level
bureaucrats’ decisions are significantly affected by the contention between the rules under which
they must operate and the moral judgments they make about the individuals with whom they
interact. That is, street-level bureaucrats and their beliefs about the people they serve
“continually rub against policies and rules” (Maynard-Moody and Musheno, 2003; Musheno et
al., 1989). Since problem-solving courts do not detach from participants’ lives, most decisions made by these courts directly impact participants’ lives. The decisions made about these individuals then implement a given policy that becomes, in fact, the policy itself. Thus, how drug court team members perceive and manage drug court participants and their treatment may result in behavior that is contrary to drug court policies and procedures and to the very policy they are attempting to implement.

Pressman and Wildavsky’s (1984) study of the implementation of the Economic Development Authority (EDA) projects in Oakland, California led them to conclude that one of the most critical and vital components of public policy development is the implementation phase. They believed that policy design and implementation must be integrated and that leaving implementation tasks and activities as afterthoughts were most likely to result in failed public policy implementations. This public policy implementation research is important to the study of these problem-solving courts for two reasons. First, the traditional courtroom workgroup members who were responsible for processing cases in those courts are also responsible for creating and implementing problem-solving courts and second, those traditional courtroom workgroup members were coming from one case processing paradigm (adversarial) into a different case processing paradigm (collaborative). Because these courtroom workgroup members are responsible for processing cases in two different cultures and with two different paradigms, we need to explore how the culture, operating rules, and member roles are created in the problem-solving courts and how participants are processed as a result.
Research Question and the Philosophical Assumptions of the Phenomenological Strategy

Research Question

This study attempts to answer the question, “What are the culture, rules, roles, and concerns of a re-entry, problem-solving court workgroup?” To do so, it describes those topics and how its members work individually and collectively with individuals using drugs to implement public policy. To do this, I conducted a phenomenological study of a federal re-entry court located in a major city within the United States that is operating as a problem-solving court (“drug court”). The result of this study is an exploration and impression of the culture, rules, roles, and concerns of this problem-solving court’s workgroup (“the drug court team,” “team members,” or “the team”) and how it manages these individuals.

At the outset, I emphasize that this study was not about measuring outcomes of a drug court or evaluating a particular drug court. It is important to note that the current findings relate to only one program operating in a re-entry context in the federal system. Not all of this study’s findings may be representative of drug court practices nationally, and the findings may not generalize to state, pre-adjudicative contexts. My study simply describes the drug court team’s individual and collective experiences in working with individuals who use drugs. This descriptive, phenomenological study captures the culture, rules, roles, and concerns of this drug court as lived and experienced by the drug court team members. The value of this study is that it addresses the concern that the goal of a problem-solving court – that is, its acting in the best interests of the participant – may not always be achieved in practice. In describing the experiences of the drug court team, I wanted to see the culture that is created by the drug court team members, how the drug court team members struggled to overcome the expectations
associated with their traditional, criminal court roles,¹ and how the team worked toward their common objectives.

Individual members of the drug court team are referred to by their role – that is, “judge,” “prosecutor,” “defense attorney,” “probation officer,” “session clerk,” “treatment counselor,” or “treatment provider.” The organizations that the team members represent are referred to as “the court,” “the prosecutor’s office,” “the public defender’s office,” and “the probation department.” Individuals who are currently participating in the program are “participants.” Individuals who have successfully participated in and completed the program associated with this problem-solving court are referred to as “graduates.”

**Philosophical Assumptions of the Phenomenological Strategy**

A quantitative study of this problem-solving court done in 2009 evaluated the success of the first three cohorts of participants, as compared to a group of individuals under traditional supervision (Farrell, 2009). The study found that, overall, participants in this program were more successful during and after their supervision than the comparison group’s members. Because of the small number of participants in both treatment and comparison groups, it was “difficult to draw strong conclusions” about the program’s effectiveness (Farrell, 2009, p. ii). However, the study showed modest gains in participants’ success while under supervision and in the program over that of traditional supervision alone (Farrell, 2009).

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¹ I had planned to interview graduates of the drug court, so that I would capture their perceptions as to whether drug court team members are seen as working more in their traditional roles of judge, prosecutor, defense attorney, and probation officer, or as a collaborative team working toward participants’ recoveries. This would have allowed me to try to understand what the re-entry, problem-solving court is in practice, and to understand the culture of the problem-solving court participants and how they work through the problem-solving court process. I will explain later why graduates of this drug court were not interviewed.
In 2015, the Federal Judicial Center (“FJC”) studied eight sites in five districts to “assess the operational aspects, outcomes, and cost-effectiveness” of federal re-entry programs (Rauma, 2016, p. 1). In its report that focused on five of those sites, the FJC detailed nine major findings. It concluded after comparing supervision revocation rates and recidivism rates between re-entry program participants and those individuals assigned to standard supervision that there was no statistically significant different between the two groups (Rauma, 2016). Additionally, the FJC found that probation officers assigned to these programs “spent far more time on program operations than any other re-entry program team members” and that the model used at these sites for this study was not cost-effective (Rauma, 2016, pp. 2-3).

What was and is needed is an understanding of a re-entry drug court team’s culture, rules, roles, and concerns and how it operates. This understanding may help explain why such a team achieves only marginally positive gains, if any gains are achieved at all. The prompt for this research is that the previous study of this specific program concluded that while participants in the program were “marginally more successful” than members of the comparison group, “we do not know why” (Farrell, 2009, p. 13). Also, the FJC study indicates that a drug court team’s poor adherence to best practices for drug courts may help explain its lackluster outcomes. This begs the question, “Why do drug court team members not adhere to best practices for drug courts?” The answer may lie within this understanding of its culture, rules, roles, and concerns and how it operates.

Using a phenomenological approach let me explore the drug court team’s culture, rules, roles, and concerns for any deeper meaning behind the quantified experiences of the program’s participants. It was not my intention to validate, repudiate, or complement the 2009 study’s findings or replace its quantitative design (Sanders, 1982). The phenomenological approach
allowed me to explore and examine the qualitative meaning behind this program’s positive, albeit modest, gains for its participants by exploring how the drug court team may have helped in achieving those results.

Phenomenology is both a process and a method. Generally, the phenomenological process involves studying a small number of subjects through extensive and prolonged engagement to develop patterns and relationships of meaning. In the phenomenological process, the researcher sets aside his own experiences in order to understand the study participants’ experiences (Creswell, 2007). As a method, phenomenology is an analytical method that views the way in which things or experiences present themselves (Sanders, 1982). I explored the individual lived experiences of drug court team members through semi-structured interviews and observations of team meetings and court sessions. The team members were important to this study because of their experiences and knowledge of the problem-solving court process. This approach revealed the structure and meaning infused in human experiences and gets “straight to the pure and unencumbered vision of what an experience essentially is” (Sanders, 1982, p. 354). Therefore, my findings aggregate to an understanding of the problem-solving court process as seen through the perspectives of the team members experiencing it (Patton, 2002).

Similar to Eisenstein and Jacob (1977), I explored the drug court team members’ interactions and processes in making decisions about participants’ progress through to the completion of the drug court program. Since problem-solving courts in general disrupt the courtroom workgroup’s processing of cases in traditional courts, I wanted to learn about the drug court team’s problem-solving process using similar methods of non-participant observations (Eisenstein and Jacob, 1977). However, interviews of drug court team members gave me richer
data in which to explore how arriving at decisions and their effects on drug court team members and graduates were experienced.
CHAPTER TWO: LITERATURE REVIEW

Courts are organizations (Eisenstein and Jacob, 1977; Eisenstein et al., 1988; Nardulli et al., 1988; Flemming et al., 1992). Within these courts, individuals are organized into workgroups consisting of individuals in various roles working together to achieve some common goal. Typically, these workgroups consist of a judge, a prosecutor, a defense attorney, probation officers, a session clerk, and court officers or bailiffs. These individuals bring to these workgroups different concerns regarding the outcomes they are producing, and so develop methods by which they can make decisions to minimize the risk and uncertainty associated with those outcomes. Studies have shown that these concerns are related to the blameworthiness of the offender, community safety, and sentencing costs and consequences (Steffensmeier et al., 1993). To alleviate these concerns, workgroup members develop a perceptual shorthand that helps them typify offenders when information is lacking from offenders’ cases (Hawkins, 1981; Steffensmeier et al., 1998). These individuals, their concerns, and their decision-making shorthand come together to help the traditional courtroom workgroups achieve its goal of processing cases more efficiently, with minimal disruption to the caseload flowing through the workgroup.

The drug court model presents a different courtroom workgroup, a drug court team, that is arguably based on collaboration and works to treat its participants’ drug addiction, rather than punish them for it (Nolan, 2001). The drug court team consists of the same individuals as in the traditional courtroom workgroup, with the addition of a treatment counselor who either becomes a member of the drug court team or works closely with it. The drug court team members may have focal concerns as the members of a traditional courtroom workgroup do, however, no
studies have looked at the existence of any emergent or different focal concerns that are associated with the drug court team members.

This chapter examines the literature around the traditional courtroom workgroup and discusses how problem-solving courts differ from traditional courts. It then compares traditional courts and problem-solving courts, identifying the gaps in understanding problem-solving court workgroups, using the concept of therapeutic jurisprudence as the basis for all problem-solving courts. The chapter concludes with a discussion of focal concerns as a framework for understanding the norms and values of the problem-solving court’s workgroup. Appendix A provides a conceptual framework for the concepts used in this study.

**Workgroups in Traditional Courts**

United States criminal courts operate under an adversarial model. Prosecutors and defense attorneys represent opposing interests and judges serve as legal referees, ruling on issues of procedural and substantive law to assure the application of due process (Stinchcomb, 2010). Together, these individuals – a judge, a prosecuting attorney, a defense attorney, usually along with a probation officer, a clerk, and a court officer – deliberately employ strategic case management and plea bargaining to process the large number of cases typically assigned to a courtroom workgroup (Eisenstein and Jacob, 1977; Nardulli, 1978; Nardulli et al., 1988). When a courtroom workgroup has a large number of cases to process, case throughput and the tasks associated with processing those cases may take on greater importance than anything the defendant may need to help them avoid recidivating, such as mental health treatment, substance abuse treatment, or assistance in obtaining employment or housing. This may lead to defendants’ needs being set aside, as well as notions of due process and justice (Haynes et al., 2010). The workgroup essentially ignores anything introduced to the workgroup that adversely
impacts its throughput (Feeley and Kamin, 1996). For example, a defendant who wants to go to trial disrupts the courtroom workgroup’s case processing by avoiding a plea bargain. Police and prosecutors may create a case where the number of charges or the number of counts for a particular charge is overwhelming and puts pressure on the defendant to plead guilty. In exchange for doing so, only a few of the charges are actually prosecuted and the remaining charges are dropped.

Because of the courtroom workgroup’s common objective to maximize case throughput, courtrooms are rarely the combative arenas depicted in television and film, where attorneys skewer defendants and witnesses through heated examinations, while clashing with one another over miniscule and technical points of law as judges become frustrated with attorney theatrics. Instead, real courtrooms are environments where judges, attorneys, and other individuals work together, ideally, to perform a series of tasks designed to manage caseloads, process offenders, and dispose of cases. Therefore, in order to get their work done efficiently and effectively, courtroom workgroup members develop routines that minimize uncertainty and reduce the risk that their routines will be disrupted and their throughput blocked (Eisenstein and Jacob, 1977; Lipetz, 1980). Researchers have studied courtroom workgroups and their cultures as to charging decisions, plea bargaining, and sentencing (Church et al., 1978; Eisenstein and Jacob, 1977; Lipetz, 1980). These workgroups have been found to be a complex network of ongoing relationships that determines what the courtroom workgroup members do, how they do their work, and to whom (Flemming et al., 1992; Eisenstein and Jacob, 1977).

There have been qualitative studies of workgroups in traditional courts, but these generally focus on some type of outcome, such as sentencing. For example, Ulmer and Kramer (1996) investigated the use of sentencing guidelines in three Pennsylvania courts by examining
those court communities using a focal concerns framework. They interviewed courtroom workgroup members who were central to processing cases, such as judges, prosecutors and defense attorneys. Court observations were done in conjunction with these interviews to explore the relationship between workgroup members’ focal concerns and sentencing outcomes. They found that the court communities that defendants received “plea rewards and trial penalties” to encourage guilty pleas and discourage trials (Ulmer and Kramer, 1996, p. 392). In addition, these court communities interpreted guilty pleas as indicators of remorse (Ulmer and Kramer, 1996). Trials were seen as cultural violations in each court community, in that they “introduced the potential for conflict, which participants found disruptive and distasteful” (Ulmer and Kramer, 1996, p. 396). While this study may be useful in looking at how sentencing processes are structured within a given court community, it lacks an in-depth exploration of the workgroup members’ perspectives on why plea agreements are rewarded and going to trial is punished.

Researchers have concluded that courts and courtroom workgroups have cultures resulting from shared values and methods that help the workgroup process cases and manage offenders (Church et al., 1978; Flemming et al., 1992). Courtroom cultural differences have been suggested to account for the differences in how quickly cases are disposed of and thus how quickly backlogs are cleared, as well as how open-minded courts are to accepting reformation and modernization (Church et al., 1978). Where the courtroom workgroup members are interdependent in how they manage and process cases, these “community” members coalesce into a unit bent on achieving operational efficiency in case processing and management (Flemming et al., 1992). Cultural and organizational differences were also found to play an important role in how plea bargaining was conducted in three large cities (Eisenstein and Jacob, 1977).
From these studies of courtroom workgroups, several underlying and related concepts have been developed: (1) **solidarity**; (2) **cohesion**; (3) **similarity**; (4) **proximity** and (5) **stability** (Eisenstein and Jacob, 1977; Haynes et al., 2010; Jacob, 1978; Olson et al. 2001). **Solidarity** reflects the single-mindedness of the court workgroup. **Cohesion** shows that a particular courtroom workgroup is able to work well together. **Similarity** suggests that the members of the courtroom workgroup will have similar values, beliefs, backgrounds and demographics. **Proximity** concerns geographic closeness. **Stability** refers to the number of years that individuals have worked together within the same jurisdiction. Taking these constructs together showed that the closer courtroom workgroup team members are in attitudes, backgrounds, beliefs, and values, and the closer and more frequently they work together, the more the workgroup members will become of one mind and work well together in managing the workgroup’s expectations in how cases should be processed in terms of outcomes and efficiency (Eisenstein et al., 1988; Eisenstein and Jacob, 1977; Haynes et al., 2010). Therefore, the formal and informal interdependent relationships that develop and the ability to compromise and cooperate in managing and disposing of cases have become central to the functioning of the courtroom workgroup (Ward et al., 2008; Knepper and Barton, 1997).

**Problem-Solving Courts and How They Differ from Traditional Courts**

Problem-solving courts began with the creation of the Miami Drug Court in 1989. There are over 2,000 drug courts nationally (Huddleston et al., 2008). This model spawned various problem-solving courts targeting underlying issues associated with domestic violence and mental health, as well as other courts for homelessness, sex offenses, teens, truants, and veterans (Center for Court Innovation, 2009; Huddleston et al., 2008; Karafin, 2008). However, common elements to all problem-solving courts have been identified, including collaborative decision-
making; customized approaches to justice; participant-defendant accountability; community engagement through creative partnerships; enhanced staff training; and outcome-focused results, typically measured in reduced recidivism, increased public safety, or strong communities (Porter et al., 2010; Wolf, 2007; Berman and Feinblatt, 2005; Berman and Feinblatt, 2001).

Various organizations, such as the Drug Courts Program Office (1997), the Center for Court Innovation (2001, 2005, 2007), the RAND Corporation (2001), the National Research Advisory Council (2006), and the National Center for State Courts (2003, 2008), have developed components, dimensions, elements, or indicators which they have determined are key for problem solving courts (as cited in Porter et al., 2010). These include individualized accountability, customized sentencing, necessity of participant behavioral changes, and close court monitoring of offenders. Additionally, culture and training play critical roles in managing participants through these problem-solving courts. The thread running through all of these components is that of collaboration among the court team members, the participants, and the community (Porter et al., 2010). The problem-solving court, then, may share focal concerns among its team members, but these concerns might be different from traditional courts.

Evaluations have been done for single locations and have demonstrated that there has been a positive impact on sobriety and recidivism when legal leverage is applied (Rempel and DeStefano, 2001; Young and Belenko, 2002); when judicial hearings are held for “high risk” offenders\(^2\) (Marlowe et al., 2003); when judicial sanctions are applied for violations (Harrell and Roman, 2001); and when strictly supervised probation is enforced for domestic violence.

\(^2\) High risk offenders “have relatively more severe criminal dispositions and drug-use histories” and are “more likely to require intensive structure and monitoring to alter their entrenched negative behavioral patterns” (Marlowe, 2003, pp. 9-10).
offenders (Klein and Crowe, 2008). These evaluations are, however, limited to the individual sites.

In 2011, the Urban Institute published its six-year national evaluation of the impact of adult drug courts. The Multi-Site Adult Drug Court Evaluation (MADCE) had four primary goals: 1) test whether drug courts work for participants by reducing their drug use, crime, and multiple other problems associated with drug abuse, 2) examine for whom drug courts work best, 3) explain how drug courts work, and 4) examine whether drug courts generate cost savings (Rossman et al., 2011). The MADCE demonstrated that drug courts can operate nationally by applying similar, underlying principles, even when there are differences in participant eligibility, program intensity, the number and type of courtroom hearings, and the use of rewards and sanctions. The study showed that drug courts work equally well for most participants (Rossman et al., 2011). While the MADCE did support the positive outcomes achieved by drug courts across the country, it did not explore the depth and breadth of the courtroom workgroup members’ individual experiences within these drug courts at deeper level.

Subsequent studies, particularly of drug courts, have confirmed that participants are less likely to be arrested than non-participants. For example, Wilson et al.’s (2006) review of drug court studies found that approximately 87% of the conducted studies showed lower recidivism among participants than comparison groups. Although recidivism has had varied definitions, its consistent examination has been the hallmark of most studies. Recidivism has been measured by “the number of arrests during program participation and detailed by the type of offense committed” (Porter et al., 2010, p. 11); it has included re-arrest beyond program participation, and it has included both re-arrest and re-conviction. Although other outcomes have been measured – for example, treatment retention rates, drug use, access to treatment, offender
compliance with court mandates, and enforcement of non-compliance through sanctions – aspects of problem-solving courts, such as collaboration, have lacked in-depth examination (Porter et al., 2010).

Collaboration in a problem-solving courtroom workgroup comes from the expectation that the members of the workgroup will work together to address the underlying issues associated with participants (Wolf, 2007). For example, in a drug court, the drug court team will collaborate to treat and monitor participants’ substance abuse and related issues. Domestic violence treatment courts collaborate to provide treatment to the participant, but also to provide protection and services to the participants’ families. This collaboration also exists in mental health treatment courts, juvenile drug treatment courts, and in specialized gang courts (Wolf, 2007; Berman and Feinblatt, 2005). Specifically, collaboration has been show to increase where the judges in problem-solving courts works more closely with attorneys, probation officers, and treatment providers to monitor participants more closely. This increases communication between these courtroom workgroup members and has been found to be indicative of greater collaboration (Wolf, 2007).

Problem-solving courts also seek to customize and tailor treatment for each participant. The courts themselves form around specific types of offenses and issues. For example, participants in drug courts participated in drug-and-drug-related offenses. These individuals are grouped together so that they receive appropriate treatment (Berman and Feinblatt, 2005) and are subject to close monitoring (Wolf, 2007). Related to this customized treatment is the court’s ability to monitor participants more closely than in a traditional court through team meetings and the individual interaction each participant has during the drug court session (Berman and
Feinblatt, 2005). Participants are held accountable for any non-compliance with the customized treatment plan (Wolf, 2007).

Information has been found to flow more freely between members of the problem-solving court workgroup and information for each participant tends to be more detailed (Wolf, 2007). These members tend to share more with each other about participants’ medical and psychological information, participants’ family, work, and community information, and how good participants are complying with the terms of their treatment plans (Wolf, 2007; Berman and Feinblatt, 2005). Monitoring participants’ compliance with their treatment plans and with the requirements of the program generates data then helps problem-solving courts evaluate how effective they are in achieving program goals, such as reducing recidivism (Wolf, 2007; Berman and Feinblatt, 2005).

The drug court team’s culture differs from that of the traditional courtroom workgroup, as each team member’s role undergoes a significant change from the corresponding role in a traditional courtroom (Nolan, 2003). As formal rules of criminal procedural and the adversarial nature of traditional criminal court are not present (Stinchcomb, 2010; Goldkamp, 2000), all team members can be expected to come together and work in the best interests of the participant. Judges must shed their neutrality and don paternalistic mantles. Prosecutors and defense attorneys are no longer the prominent players before the judge, but may slip into advisory roles for the drug court team. Prosecutors and defense attorneys may play significant roles in getting participants to enter drug court, but it is expected that their roles will change, particularly in terms of participants’ outcomes, when those attorneys work as members of the drug court team (Farole & Cissner, 2005). As a result, these drug court team members’ focal concerns, too, may change, given the change in team goals.
Comparing Traditional and Problem-Solving Courts

When offenders are involved in substance abuse, domestic violence, or suffer from mental illness, they frequently engage the criminal justice system (Winick and Stefan, 2005). Courts intervene to enforce criminal laws associated with such behavior, however, the traditional punishments meted out by the courts generally do not fit the behaviors they are designed to change or deter (Winick and Stefan, 2005). For example, the chronic alcoholic who continually drives while drunk may not stop drinking after a period of incarceration for that offense unless he or she receives treatment for alcoholism. As a result, offenders underlying social and psychological issues are not addressed and they reoffend (King et al., 2009).

Therapeutic jurisprudence is “an interdisciplinary approach [that] calls for researchers, mental health workers, lawyers, attorneys, and judges to apply techniques drawn from psychology and social work to motivate offenders … to accept rehabilitation and treatment and to pursue it successfully” (Wiener et al., 2010, p. 424). Its central premise is that an individual’s interaction with the criminal justice system affects his or her psychological and emotional state. Therapeutic jurisprudence also integrates the concepts of case processing, judicial intervention, monitoring and responsiveness to participant behavior, along with treatment collaboration (Wiener et al., 2010). In the context of problem-solving courts, it supports a coordinated, remedial approach to participants’ underlying needs, while protecting their due process rights (Porter et al., 2010). Additionally, therapeutic jurisprudence mandates participants’ accountability, holding them response for their behavior through increased and focused judicial monitoring (Porter et al., 2010). For example, participants may be required to attend all drug court sessions, have regular meetings with their probation officers that are reported to the team, or participate in other programs related to anger management, parenting skills, or employment
skills. Therefore, therapeutic jurisprudence purports that the system should be used to minimize harm and maximize benefits to the individual’s well-being by using concepts drawn from psychology and law to treat and rehabilitate offenders (Wexler and Winick, 1996).

The two critical, underlying concepts of voluntariness and procedural justice (that is, an appreciation for what is required by the program) are necessary for participants’ successful completion of program such as drug courts (Redlich and Han, 2013). Voluntariness concerns whether offenders chose to participate in this drug court, but also seeks out their reasons for doing so. It is so that “individuals who make their own choices perceive them as noncoerced [and] will function more effectively and with greater satisfaction” (Winick, 2003, p. 1072). Wiener et al.’s (2010) problem-solving court model purports that participants’ perceptions of procedural justice influences the ability to succeed in completing the program and in returning to their communities. Procedural justice concerns whether the drug court team members and participants believe that participants have a voice in drug court sessions, and whether participants were treated with respect and fairly both inside and outside of the formal drug court sessions.

Therapeutic jurisprudence is the foundation for creating problem-solving courts, modifying the traditional roles of judges and attorneys and merging them with individuals from probation, social work, and treatment to form a collaborative team working to provide treatment opportunities for offenders (Wiener et al., 2010). Judicial authority holds offenders accountable and responsible for their own treatment, and offenders become active in their own rehabilitative plan (Berman and Feinblatt, 2005; King et al., 2009; Winick, 2003; Winick and Stefan, 2005; Winick and Wexler, 2003). Other team members work under the judge’s leadership to arrive at a consensus as to the best manner in which to facilitate the offender’s rehabilitation. The court’s goal then is to reduce recidivism and eliminate the “revolving door” that repeat offenders pass
through to the criminal justice system by addressing the underlying issues associated with each offender (Wiener et al., 2010).

Problem-solving courts differ from traditional courts in that they focus on an individual or societal problem as motivating and driving criminal behavior, whereas traditional courts process cases in an adversarial forum presided over by an impartial judge to whom the parties present their arguments (Bureau of Justice Statistics, 2008). While ensuring that the “punishment fits the crime,” problem-solving courts also seek to develop processes that solve the underlying problem (Berman and Feinblatt, 2005, p. 5). Combining a therapeutic model with traditional jurisprudence, a problem-solving court channels treatment to individuals participating in the court in a collaborative, rather than adversarial, manner (Bureau of Justice Statistics, 2008). The following table highlights the characteristics of traditional courts and problem-solving courts.

Table 1: Characteristics of traditional courts and problem-solving courts

<table>
<thead>
<tr>
<th>Traditional Courts</th>
<th>Problem-Solving Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Problem-solving dispute avoidance</td>
<td>- Dispute resolution</td>
</tr>
<tr>
<td>- Legal outcome</td>
<td>- Therapeutic outcome</td>
</tr>
<tr>
<td>- Adversarial process</td>
<td>- Collaborative process</td>
</tr>
<tr>
<td>- Claim-oriented</td>
<td>- People-oriented</td>
</tr>
<tr>
<td>- Rights-based</td>
<td>- Needs-based</td>
</tr>
<tr>
<td>- Adjudicative resolution</td>
<td>- Post-adjudication emphasis and alternative dispute resolution</td>
</tr>
<tr>
<td>- Judge as arbiter</td>
<td>- Judge as coach</td>
</tr>
<tr>
<td>- Backward looking</td>
<td>- Forward looking</td>
</tr>
<tr>
<td>- Many participants &amp; stakeholders</td>
<td>- Few participants &amp; stakeholders</td>
</tr>
<tr>
<td>- Legalistic</td>
<td>- Interdependent</td>
</tr>
<tr>
<td>- Formal</td>
<td>- Informal</td>
</tr>
<tr>
<td>- Efficient</td>
<td>- Effective</td>
</tr>
</tbody>
</table>

In traditional courts, judges take on an impartial and independent role, where they are the managers of the adversarial process, making factual determinations while interpreting and applying the law. Judges ensure a sense of “fair play,” with each side provided an equal opportunity to elicit facts through witnesses and other evidence and present legal arguments designed to win their case. Judges in problem-solving courts, however, devote their time to evaluating and assessing the progress of each court participant, “assessing the person’s commitment to and capacity for transformation” (Holland 2010, p. 12). This engagement with a participant then reorients judicial authority from that of punishment to collaboration (Wiener et al., 2010). Offenders are held accountable for their actions and taught to be responsible for their own rehabilitation, but judges do so by acting as team leaders who form community and therapeutic partnerships whose goals are to address the broader issues these offenders face (Wiener et al., 2010).

Generally, traditional courts measure efficiency – that is, counting the number of cases they process daily, weekly or monthly; monitoring that turnaround time between arrest and arraignment; the rate in which cases are cleared; and reporting on the case backlog (Wolf, 2007). Problem-solving courts are concerned with these measures, too, but also with measures associated with program and participant success (Wolf, 2007). For example, problem-solving courts are interested in participant demographics and whether those are associated with some level of the program’s success. Also, some problem-solving courts are interested in the program’s community impact. For example, re-entry courts may monitor participants’ employment and housing; juvenile drug courts may monitor participants’ school attendance and performance (Wolf, 2007).
Both traditional courts and problem-solving courts have procedures and rules through which offenders are processed. However, in traditional courts these procedures and rules exist to promote fairness and ensure efficient processing of cases. For example, under the American Bar Association’s Model Rules of Professional Responsibility, a prosecutor is required to disclose exculpatory evidence to the defense (Model Rule 3.8(d)); his or her failure to do so is a violation of a defendant’s due process rights (*Brady v. Maryland*, 1963). Problem-solving courts do not necessarily discard these procedures or rules; their use is designed to promote the participant’s success in complying with and completing the program rather than to ensure substantive or procedural rights. However, the question remains for many whether the team goals of treatment and rehabilitation can be effectively maintained with the individual legal protections that comprise the concept of due process (Lane, 2002).

The focus on outcomes is a significant difference between problem-solving courts and traditional courts (Porter et al., 2010). Although both types of courts uphold participants’ rights and seek to be effective and efficient in their operation, problem-solving courts orient their outcomes past the immediate concerns associated with processing participants to the long-term resolution of the underlying issues that brought their participants into their programs in the first place (Porter et al., 2010). Whereas traditional courts center on case processing efficiency, problem-solving courts center on recidivism, sobriety, education, employment, family relationships, health, and housing (Porter et al., 2010).

It has been suggested that, “[p]erhaps more than any other element of problem-solving,” culture differs most noticeably between problem-solving courts and traditional courts (Porter et al., 2010, p. 22). In traditional courts, courtroom workgroup members may take on more “impersonal” or “objective” roles towards other offenders, victims, and other workgroup
members (Porter et al., 2010). However, in the problem-solving court, culture emerges from the
circumstances surrounding and contributing to the offense, as well as other contextual
considerations in which the participant offended (Porter et al., 2010). Therefore, the team
members seek to achieve a consensus regarding treatment options available to a participant and
craft solutions to the underlying issues associated with each offender.

Adhering to Drug Court Best Practice Standards

In 1997, the National Association of Drug Court Professionals (“NADCP”) identified the
ten key components for successful drug courts (NADCP, 1997). These ten key components are
as follows:

- **Key Component #1**: Drug courts integrate alcohol and other drug treatment services with
  justice system case processing
- **Key Component #2**: Using a nonadversarial approach, prosecution and defense counsel
  promote public safety while protecting participants’ due process rights
- **Key Component #3**: Eligible participants are identified early and promptly placed in the
  drug court program
- **Key Component #4**: Drug courts provide access to a continuum of alcohol, drug, and
  other related treatment and rehabilitation services
- **Key Component #5**: Abstinence is monitored by frequent alcohol and other drug testing
- **Key Component #6**: A coordinated strategy governs drug court responses to participants’
  compliance
- **Key Component #7**: Ongoing judicial interaction with each drug court participant is
  essential
- **Key Component #8**: Monitoring and evaluation measure the achievement of program
  goals and gauge effectiveness
- **Key Component #9**: Continuing interdisciplinary education promotes effective drug court
  planning, implementation, and operations
- **Key Component #10**: Forging partnerships among drug courts, public agencies, and
  community-based organizations generates local support and enhances drug court program
  effectiveness

Studies have shown that drug court programs that incorporated these components were more
likely to accomplish their goals, whereas programs that “watered down or dropped core
ingredients of the model paid dearly for their actions in terms of lower graduation rates, higher criminal recidivism, and lower cost savings” (NADCP, 2013, p. 1). Program outcome effectiveness and cost effectiveness has been shown to drop as much as 50% where drug courts failed to apply these components (NADCP, 2013).

In 2011, the NADCP developed the Adult Drug Court Best Practice Standards using “reliable and convincing evidence” from research to create these “concrete and measurable” practice standards (NADCP, 2013, p. 2). These standards are grouped around the following topics:

- Target population
- Historically disadvantaged groups
- Roles and responsibilities of the judge
- Incentives, sanctions, and therapeutic adjustments
- Substance abuse treatment
- Complementary treatment and social services
- Drug and alcohol testing
- Multidisciplinary team
- Census and caseloads
- Monitoring and evaluation

Each of these standards includes a commentary that reviews the respective research on best practices. Relevant to this dissertation, studies have examined certain aspects of the drug court team and related these to outcomes such as graduation rates, recidivism, and substance use. Overall, participant outcomes were found to be better when team members attended annual trainings on these practices, when formal orientations were provided for team members, when team members were taught effective communication strategies for team meetings, and then the team reviewed data on its adherence to best practices (NADCP, 2013). Also, participant outcomes are better when programs develop formal policies and procedures for administering
incentives and sanctions, rather than administering them based on the team’s and team members’
experiences (NADCP, 2013).

Gaps in Our Understanding of About Problem-Solving Courts

What is missing from our understanding about problem-solving courtroom workgroups is
a deeper, richer description of how their culture is created and how they operate as a unit, along
with an exploration of whether the group members working together achieves the same
operational goals of case processing efficiency observed with more traditional court workgroups.
Also missing is an exploration of the focal concerns of the problem-solving courtroom
workgroup, specifically whether they are the same as the traditional courtroom workgroup, or
whether new concerns emerge that replace or supplement the traditional focal concerns.
Qualitative studies of traditional criminal courts have focused on the court’s structure and its
relationship to criminal case processing from the time of arrest to disposition, or for purposes of
comparing outcomes of different courts in different jurisdictions (Eisenstein et al., 1988; Ulmer
& Kramer, 1996). Qualitative studies of problem-solving courts have focused on the individual
roles of the judge, the prosecutor, the defense attorney, the probation officer, and the treatment
provider in terms of how they perform in the problem-solving courtroom workgroup (Portillo et
al., 2013). Other studies have looked at these roles in relation to the power each individual role
may or may not have in the problem-solving courtroom workgroup (Rudes and Portillo, 2012).
This study advances these lines of research by looking at the problem-solving court’s workgroup
as a unit, exploring the formation of its culture, and how the individual roles, the group’s
operating rules, and its focal concerns work towards fulfilling the common objectives of
supporting participants in remaining clean and sober, employed, and law-abiding.
There is a general assumption that problem-solving courtroom workgroups are, in fact, collaborative. However, if the adversarial model of a traditional courtroom is set aside by the court workgroup members for a collaborative model, then one might expect that the norms and expectations of the problem-solving court will be different from that of the traditional court workgroup. While problem-solving courts’ collaborative philosophy is well-articulated, “specific models of how the courts influence offenders remain poorly specified” (Wiener et al., 2010, p. 419). This study will describe the experiences of a drug court team in an attempt to articulate if and how drug court team members influence and manage these offenders. Key in determining how team members do influence and manage offenders will be capturing the focal concerns that develop for the team and how the members then collaborate in the best interests of the participants.

Studies have looked at the focal concerns of various members of the court workgroup. There is no study that has identified whether these focal concerns are shared by problem-solving court workgroups or whether new focal concerns are created that may complement or compete with traditional focal concerns. Focal concerns are important to the individual team members and to the team as a whole, because these are the goals that they are trying to attain in order to make accurate decisions regarding participants and to minimize the risk associated with any of the participants who might reoffend. To determine whether the goals of the problem-solving approach are implemented or instead bump up against the traditional courtroom workgroup norms, this study will describe the experiences of drug court team members in making decisions regarding participants’ progress and compliance with the drug court and explicate the specific areas on which they focus in arriving at their individual and collective decisions.
In this specific federal drug court team, a treatment counselor, assigned by the treatment provider, participates as a team member during the team meetings that are held prior to the actual court sessions and are present during the actual drug court sessions. Most of the research, if not all, does not include situations where treatment counselors and other individuals outside the drug court team sit as part of the drug court team and participate in its processes. While drug courts generally integrate treatment principles as part of their strategy for recovery from drug addiction (see, e.g., Taxman and Bouffard, 2002), there is little research on treatment counselors as actual members of the drug court team in the post-conviction, re-entry environment. One study that examined the outcomes of a family treatment drug court (FTDC) looked at a highly specialized FTDC team that had two layers of treatment providers folded into its multidisciplinary team. Although this was an evaluative study, it noted that the multidisciplinary composition of such a team most likely contributed to the program’s successful outcomes (Bruns et al., 2012). A second study examined a pre-trial diversion drug court team where a case manager – a certified clinician with diagnostic training – assesses and evaluates a potential program participant prior to admitting the individual as a participant in the program (Colyer, 2007). The study noted that the inclusion of the case manager throughout that program carried great weight and brought balance to the team’s decision-making. These two studies do not apply to this drug court program. There are no layers of treatment providers folding into a multidisciplinary team; there is a single treatment counselor who offers counsel to the team as to general treatment issues with all of the participants and who sees some of the participants on an individual basis. The presence of the treatment counselor on this drug court team requires exploration to determine what effect, if any, it has in its somewhat limited role and with this limited exposure to all of the program’s participants.
Therapeutic jurisprudence is an interdisciplinary approach that draws on various professionals – attorneys, judges, probation officers, treatment providers – to apply various psychological methods to motivate and rehabilitate offenders through treatment (Wiener et al., 2010). Integration of treatment with traditional offender processing is the essence of therapeutic treatment. By describing the experiences of drug court team members, this study attempts to explicate whether the drug court team, either collectively or through its individual members, influenced, motivated, or aided in the rehabilitation of these offenders.

**A Focal Concerns Framework for Understanding Problem-Solving Court Workgroup Norms and Values**

According to the National Drug Court Institute, there were 2,968 drug courts in operation in the United States and its territories as of June 30, 2014. Additionally, there were 1,272 other types of problem-solving courts in the United States and its territories as of June 30, 2014. These other types of problem-solving courts addressed participants underlying issues such as domestic violence, homelessness, juvenile offenses, mental health, prostitution, sex offenses, and truancy (National Drug Court Institute, National Drug Court Resource Center, [http://www.ndcrc.org/category/faq-categories/number-courts](http://www.ndcrc.org/category/faq-categories/number-courts), n.d.). Although there is a great deal of research demonstrating that these problem-solving courts work, there is virtually no understanding as to why they work. Focal concerns is a perspective that fosters a better understanding of whether the problem-solving court workgroup members share the same goals and if those goals would operate differently from those of the traditional, adversarial court.

Focal concerns theory asserts that courtroom workgroup members typify offenders and make decisions about those offenders based on various concerns that the workgroup members have. Judges, for example, have three major concerns: (1) the offender’s blameworthiness or
culpability; (2) the protection of the community by incarcerating dangerous offenders or deterring future offenders; and (3) the practical and social costs and consequences of their sentencing decisions (Steffensmeier, 1998). Offender blameworthiness involves features of the defendant and the offense; it has been measured by variables such as the offender’s criminal history, the seriousness of the offense, and the type of offense (Hartley et al., 2007). Community protection is “conceptually distinct” from blameworthiness; this focal concern keys on the need to incapacitate and/or deter offenders. This concept involves the judge’s ability to predict the future dangerousness of the offender; as such variables used to measure the protection of the community include criminal history, use of weapons in the offense, education, employment, and family history. (Hartley et al., 2007). The costs and consequences of sentencing decisions, and their practical constraints and consequences (in actuality a concept for measures of system efficiency) include organizational concerns; this includes the relationship among courtroom actors, case flow, and an awareness of state and federal correctional resources (overcrowding). (Hartley et al., 2007). Insufficient information about an offender’s blameworthiness, culpability, or dangerousness leads a judge to develop a perceptual shorthand constructed from offender characteristics of age, race, and sex the judge will use in lieu of available information (Hawkins, 1981; Steffensmeier, 1998). These characteristics, woven together into a judge’s perceptual shorthand, result in sentencing discrimination and disparities (Steffensmeier et al., 1998).

Prosecutors express similar focal concerns in their charging decisions (Spohn et al., 2001). Like judges, the seriousness of the offense, the degree of harm to the victim, and the culpability of the suspect are considered. Prosecutors are more likely to charge an offender where a serious offense is present, when the victim has been actually harmed, and where there is strong evidence against the offender (Spohn et al., 2001). However, where judges are more
likely to focus on sentencing costs and consequences, prosecutors focus on the likelihood of conviction. Taking a “downstream orientation” (Frohmann, 1997, p. 535), prosecutors try to predict how defendants, witnesses, and victims will be evaluated by judges and jurors. Like judges, prosecutors also develop a perceptual shorthand using past crimes and assessments of victim and witness credibility (Spohn et al., 2001). Therefore, prosecutors ultimately consider victims’ backgrounds, character and behaviors, their relationships with offenders, and victims’ willingness to prosecute the offenders (Spohn et al., 2001).

At the individual level, prosecutors use their discretion in making decisions about whether to charge offenders by considering how likely they will obtain a conviction (Spohn et al., 2001). Studies of prosecutors’ determinations of convictability suggest that their “downward orientation” (Frohmann, 1977) guides them in predicting how the incident, the offender, and the victim will be evaluated by the judge and the jury. Prosecutors consider “legally relevant indicators of case seriousness and offender culpability, but also the background, character, and behavior of the victim, the relationship between the suspect and the victim, and the willingness of the victim to cooperate as the case moves forward” (Spohn et al., 2001 p. 208).

Mellon et al. (1981) argue that prosecutorial discretion in charging decisions is influenced by departmental policy rather than individualized concerns. Jacoby suggests that there are four distinct types of prosecutorial policies: legal sufficiency, system efficiency, defendant rehabilitation, and trial sufficiency. Legal sufficiency policy dictates that prosecutors accept all cases where the elements of the crime are present. This policy results in high levels of cases accepted for prosecution, as well has high dismissal rates. System efficiency policy requires prosecutors to screen cases so as to decrease workload. This policy is characterized primarily by referrals to diversionary programs or by overcharging offenders to obtain a stronger
plea bargaining position. *Defendant rehabilitation* policy focuses on offender diversion to alternative paths outside the traditional criminal justice system, such as drug courts. *Trial sufficiency* policy focuses on convictability, accepting few cases for prosecution to obtain a higher conviction rate. Concepts associated with prosecutors’ focal concerns are *downward orientation* and *prosecutorial policy*. The concept of downward orientation is concerned with prosecutors’ attempt to predict how the background, behavior, and motivation of the suspect (and any victim) will be interpreted by decisions makers (fact-finders) (Spohn et al., 2001). Prosecutorial policy is a prosecutor’s office structured approach for making charging decisions and which reflects the focal concerns of that office. (Mellon et al., 1981; Spohn et al., 2001).

The chief criticism of focal concerns theory is that it is not a theory at all (Hartley, 2014). The concepts associated with focal concerns have not been operationalized so that they can be adequately measured; operationalization may not be possible, since focal concerns “vary across courts due to local contexts and cultures” (Hartley, 2014, p. 3). Other than Hartley et al.’s (2007) attempt to test the relationship between blameworthiness and risk and an offender’s criminality, no other studies have explored any of the focal concerns concepts to better understand their relationship to judicial sentencing decisions. Instead, they are merely indicators of the presence of focal concerns (Bond and Jeffries, 2011) rather than fully developed measurements of how courtroom workgroup members think (Johnson and Dipietro, 2012; Kramer and Ulmer, 2002).

No study has sought to explain each variable as part of the underlying perspective within a courtroom workgroup member’s focal concerns. The argument, generally, has been that there is a “complex interplay” between the perceived, but unexplained, focal concerns and the variables actually observed (Hartley et al., 2007, p. 63). Again, focal concerns theory has been used primarily for interpreting findings (Bonds and Jeffries, 2011; Ulmer and Kramer, 1996).
Therefore, little is known about how judges’ focal concerns work together in their sentencing decisions (Bonds and Jeffries, 2011) or any of the attributes the courtroom workgroup uses in its collective decision-making.

There have been qualitative studies of traditional courtroom workgroups that attempt to explore focal concerns more broadly, but they still leave unanswered questions of whether focal concerns hold in the problem-solving court process. Ulmer and Kramer (1996) conclude that, after their study of three traditional courts in Pennsylvania, courtroom workgroup members make decisions concerning defendants’ outcomes based on whether defendants enter pleas or go to trial, their race and gender, and “other status and resource factors” (Ulmer and Kramer, 1996, p. 402). However, they simply conclude that “[c]ourt actors’ discretionary use of substantively rational sentencing criteria involves the interpretation of cases and defendants in terms of these criteria and raises the potential for disparity” (Ulmer and Kramer, 1996, p. 403). Again, left unexplored are the underlying perspectives behind courtroom workgroup members’ focal concerns.

I made no attempt to operationalize the three primary focal concerns in this study. I explored these three concepts and how they are expressed by drug court team members in this team’s culture. My study is one of a “qualitative nature to increase the number of variables and the precision with which these variables are measured in order to more fully operationalize key focal concerns concepts” (Hartley, 2014, p. 3). Understanding the expression of these focal concerns helps us to understand how they drive the problem-solving court’s workgroup members to shift their motivation from working in their adversarial roles into working in their collaborative roles. It also helps provide a foundation for extracting additional variables that may be used to better operationalize focal concerns’ concepts. Thus, in addition to having a
different motivation that modifies the three primary focal concerns within the context of the problem-solving court workgroup, additional focal concerns might emerge that complement or supplement the three primary concerns. For example, instead of looking at the degree with which an offender should be blamed, the problem-solving workgroup might look at degree of an offender’s addiction (type of drug, amount used, and frequency of use). Also, the workgroup might look at an offender’s ability to reenter and reintegrate into his or her community, and the resulting effect on long-term recovery. Overall, then, the expectation was that the problem-solving court workgroup’s focal concerns will be different from those of the traditional court workgroup.

Summary

Based on this literature review, the comparison between traditional courts and problem-solving courts, and having identified the gaps in the current research, this study attempts to answer the question of whether this problem-solving court’s workgroup, working in a re-entry environment, has the same culture, operations, rules, and roles of a traditional courtroom workgroup. To do so, this study describes how its members work individually and collectively with each other in processing participants who are addicted to drugs and were convicted of drug-related crimes resulting in a period of supervised probation. The study also examines the application of the NADCP’s Adult Drug Court Best Practice Standards in relation to the team’s functioning. The study also uses the focal concerns framework to identify those areas in which the problem-solving court workgroup seeks to minimize risk and uncertainty regarding its outcomes and any decision-making methods it uses to fill in missing or insufficient information.

This study also focuses on the focal concerns of this problem-solving court’s workgroup to see whether the traditional focal concerns of judges, prosecutors, and probation officers apply.
It is important to understand the focal concerns of this problem-solving court’s workgroup because these are the goals the members’ seek to attain in processing program participants. Understanding their focal concerns helps us understand what the team considers in arriving at decisions regarding treatment, rewards, and sanctions. Locating emerging focal concerns helps us understand what other considerations complement, supplement, or replace traditional focal concerns in the team’s decision-making progress, particularly in relation to participants being successful in working through the program.

This study also explores the implementation and impact of a re-entry, problem-solving court in relation to public policy. Reducing recidivism by addressing the underlying causes of crime, such as alcohol and drug abuse, is of great concern. Although only one program operating in a re-entry context in the federal system was researched, exploring how this drug court team implemented its program, how its decisions created or changed public policy for drug offenders, and how the impact of such a team is impacted by internal and external pressures is an important step in determining whether this program is an effective public policy tool.
CHAPTER THREE: RESEARCH METHOD AND DESIGN

There have been numerous drug court studies. Some are evaluations of individual drug court programs (Spohn et al., 2001). Some focus on participant outcomes (Taxman and Bouffard, 2005). Some focus on individual roles within the drug court, such as the judge or probation officer (Portillo et al., 2012; Bergman and Feinblatt, 2002). Some focus on the treatment modalities employed (Banks and Gottfredson, 2003). This study is different in that it seeks to examine a drug court team’s culture, how it works, what its concerns are, and its relationship to public policy implementation through the experiences of the drug court team members.

I used the phenomenological research method for my study. This approach uses the qualitative analysis of narrative data that describe how participants live the experience of a phenomenon. My data collection methods were non-participant observations of drug court team meetings and of drug court sessions, and semi-structured interviews of the individual drug court team members. My analysis uses an emergent strategy, where codes, concepts, patterns and themes naturally flow out of the data. The research site was a re-entry drug court at the federal level, located in a major city in the United States. This study will describe the following: (1) the culture, operations, rules, and roles of a drug court team in a re-entry, problem-solving court; (2) the emergent focal concerns of the drug court team; and (3) the implementation of the drug court and the drug court team’s impact on public policy.

Phenomenological Research Design & Procedure

Program

The drug court program that I studied follows the post-adjudication model (Huddleston and Marlowe, 2011). In this model, participants’ records of conviction stand, but they can avoid
incarceration or reduce their terms of probation. Specifically, this program operates as a federal re-entry drug court located in a major city in the United States. Individuals who successfully graduate from this drug court earn one year off of the term of their supervised release.

The program began in 2006 as a cooperative effort of the local agencies within the federal district court: prosecution, defense, and probation. It provides treatment and sanctions to participants as they re-enter and re-integrate in their communities. Participants generally have been released from the United States Bureau of Prisons to a period of supervised probation. Participation by these individuals is voluntary. The program informally follows the Key Components of Drug Courts (Drug Courts Program Office, 1997) and participants follow a program of supervision and drug testing for a period of 12-to-18 months. In order to successfully complete the program, participants must achieve the stated program goals of being sober, law-abiding, and employed.

Participants

The goal of a phenomenological study is to develop “a deep understanding of a phenomenon as experienced by several individuals” (Creswell, 2007, p. 62). Study participants, then, must be chosen carefully to ensure that they have experienced the phenomenon (Creswell, 2007). Therefore, to describe the drug court team’s culture and operations as they relate to managing these offenders, study participants are the members of a drug court team.

There were to be two groups of participants in this study: (1) the members of the problem-solving court workgroup (“the drug court team”) and (2) graduates of this court’s program who are no longer under the jurisdiction of the court (“graduates”). The current members of the drug court team were observed in team meetings and individually interviewed, and some of the past members of the drug court team were interviewed. The individuals studied
who are currently members of the drug court team were the judge, a prosecutor, a private defense attorney who was contracted for the team by the public defender’s office, three probation officers, the session clerk, and a treatment counselor assigned by the third-party treatment provider who contracts with the probation department to provide treatment services and consulting.

The current drug court team was observed in its team meetings and in the drug court sessions. I observed twenty-one team meetings and twenty-one drug court sessions beginning in August 2015 and concluding at the end of December 2015. The point of team meeting observations was to observe how the team members interacted with each other during the team meeting so that I could capture how the team monitored and processed the program’s participants and to get a sense of the team’s culture, roles and operating rules. The point of the drug court session observations was to see if the team’s characteristics and culture carried into the actual court session during which the participants engaged with the judge as their weekly progress. It was important to see if the team members individually and collectively presented the same in a public court session as they did during their private team meetings.

I personally interviewed all of the past and current team members who were available to be interviewed. For the past team members, I interviewed the program’s founding judge and two defense attorneys. For the current team members, I interviewed the judge, the prosecutor, the defense attorney, three probation officers, the treatment counselor, and the session clerk. These interviews ran for approximately 45-60 minutes.

At the time of this study, there were fifty-nine graduates of this drug court. These individuals completed the program’s requirements and are no longer under any probationary supervision. All of them had been discharged from the federal criminal justice system.
Interviewing these graduates would provide information about how they perceived the problem-solving court’s team approach and have them contrast that with the traditional criminal justice system and its approach – a process which all of the graduates had experienced previously. Unfortunately, due to the unresponsiveness of these graduates after repeated attempts to contact them, I was unable to interview any of the drug court graduates.3

Data Collection Procedures

I collected data from team members through interviews and observations who actually experienced the phenomenon (Creswell, 2007).

Existing and Emerging Concepts

During data collection, I looked for concepts that were guided by the existing literature. Because of the nature of a phenomenological study, other concepts emerged during the course of the qualitative analysis. Bracketing my preconceptions regarding the existing literature, as well as my personal experience with courtroom workgroups, was important so that I did not taint any data collected through interviews and observations. The process of bracketing – *epoché* – is described below in the Data Analysis section.

Interviews

I used in-depth, semi-structured interviews with the drug court team members (Sanders, 1982). Interviewing the drug court team members gave me data that was analyzed to see if

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3 Two mailings were conducted. For the first mailing, fifty-nine letters were sent out to the graduates. Eighteen of those letters were returned to the probation department as undeliverable. Two graduates responded to this mailing and indicated that they were interested in being interviewed for the study. For the second mailing, forty-one letters were sent out to the graduates. Ten of the forty-one letters were returned to the probation department as undeliverable. I received one additional response from a graduate indicating that she wanted to be interviewed as part of the study. I attempted to contact all three individuals by telephone and through e-mail for two of the individuals who also provided e-mail addresses. (The third individual provided only a telephone number.) After three repeated attempts to contact each graduate, none responded and interviews were never scheduled. Therefore, this part of the original research design could not be completed.
concepts associated with the traditional courtroom workgroup and the focal concerns of its workgroup members were present in a similar or different way in the problem-solving courtroom workgroup, if they were present at all. Interview questions were associated with courtroom workgroup concepts, as illustrated in the table below.

Table 2: Interview questions associated with courtroom workgroup concepts

<table>
<thead>
<tr>
<th>Concept</th>
<th>Description</th>
<th>Queries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solidarity</td>
<td>The single-mindedness of the group</td>
<td>Did you volunteer for the drug court team? (If yes: Why?) (If no: How did you feel about the assignment?) How do other drug court team members complement your work? How do you support other members of the team when they need help or guidance? How open and honest are you in your discussions with other drug court team members?</td>
</tr>
<tr>
<td>Cohesion</td>
<td>How well individuals work together</td>
<td>What philosophy do you think guides the drug court team in its decision-making? How long have you been part of the drug court team? Have you ever wanted to leave the drug court team? Why? Are there times when you miss meetings? Why? Would you like to continue as part of the drug court team? Why? How often do you exchange information with other drug court team members?</td>
</tr>
<tr>
<td>Similarities</td>
<td>The similarities and differences among drug court team members</td>
<td>Do the drug court team members generally agree in how to approach decisions? How do you resolve disagreements with other drug court team members?</td>
</tr>
<tr>
<td>Proximity</td>
<td>The geographic location of the drug court team members</td>
<td>Where are your offices located? Where are the other drug court team members’ offices located? How does the distance between your offices effect your working together?</td>
</tr>
<tr>
<td>Stability</td>
<td>The turnover of the drug court team members</td>
<td>How long have you been with the drug court? Have you ever been reassigned? Have you ever wanted to be reassigned?</td>
</tr>
</tbody>
</table>
Please refer to Appendix C for the interview schedule that was used for drug court team members. Interviews with the team members were audio recorded and ran for approximately 45-60 minutes. The interviews were transcribed from the audio recordings. The transcripts then were analyzed for codes and themes, as described below.

Eleven current and former team members were interviewed: the drug court’s founding judge; the drug court’s current judge; the current prosecutor; the first, second, and current defense attorneys with the drug court; three probation officers, all three having been with the drug court since its founding; the session clerk for the drug court; and the treatment counselor currently assigned to the drug court. Two of these individuals – the founding judge and the drug court’s first defense attorney – requested that their interviews not be audiotaped. During all twelve interviews, some individuals clearly indicated that certain portions of their interviews were not to be used for this study.

Prior to each interview, I verified that the recording equipment was functioning and that there were spare batteries, tapes, and an alternate means of recording available. The interview site was as free as possible from any background noise of other interruptions. Interviews were conducted in locations of the team members’ choosing so that they felt free to talk. Interviews were transcribed and reviewed for completeness by replaying the interview and comparing it to the transcription. The interview transcriptions were uploaded to NVivo 11 for coding. Each transcribed interview was reviewed at least twice for the initial coding process. Transcripts were reviewed additional times to discern patterns and to identify themes used in this study.

Observations

As a nonparticipant observer, I observed court workgroup members in their team meetings and in their court sessions with program participants (Sanders, 1982). I did not
participate in either the team meetings or the court sessions. Drug court team members knew I was present and knew why I attended the court sessions. Each team meeting ran for approximately one hour, followed by the court session which also ran for approximately one hour.

In keeping with phenomenology’s philosophy, my observations were descriptive (Kawulich, 2005). My observations were targeted as I tested out and validated ideas about the courtroom workgroup and the interactions of its members with participants. I balanced my observing and my taking notes as much as possible. As there is an interpretative aspect to field notes that may be considered “part of the analysis rather than the data collection” (Morgan, 1997, pp. 57-58), I made every effort not to prematurely categorize data or bias it towards being included in my findings (Bentz and Shapiro, 1998; Heron, 1996).

I used various methods for collecting observation data (Taylor and Bodan, 1984; Merriam, 1988; DeWalt and DeWalt, 2002; and Wolcott, 2001). For example, I narrowed my observation to an individual who was speaking at any given moment, such as the judge, a probation officer, or a participant, while I watched for any reactions from other members of the drug court team (Merriam, 1998). I captured words, phrases or other verbal expressions that allowed me to remember a particular conversation, incident, or event (e.g., VOP [violation of probation]) (Merriam, 1998). I observed how the judge interacted with participants and with other drug court team members (prosecutor, defense attorney, probation officers, treatment consultants) (DeWalt and DeWalt, 2002). I noted how individuals might nod in agreement with a speaker’s statement or shake their heads in disagreement (DeWalt and DeWalt, 2002).

My field notes are a combination of observational notes, theoretical notes, and analytical memos (Corbin and Strauss, 2008). Each field note was dated and provided a brief description
of the event (usually a team meeting or drug court session) as a heading. I noted my observations about the setting in which the observations take place; what members of the drug court team were attending the team meetings and court sessions; a physical description of the setting in which the team meetings and court sessions were held; the positions of the drug court team members at both the team meetings and court sessions; and a description of the activities at the team meetings and the court sessions (Schensul et al., 1999).

Along with my observational notes I jotted down any theoretical and methodological ideas when I “can’t help but start thinking about and classifying information” (Corbin and Strauss, 2008, p. 123). My theoretical notes helped me capture my thoughts about the events I observed. For example, there may have been times when an attorney balanced the goal of the drug court against the policy of the prosecutor’s office or the public defender’s office. How the attorney balances those goals may strike me as somehow being tied to the concept of solidarity. Also, I recorded reminders about procedural aspects of my research in my methodological notes. For example, if I noted an attorney’s non-verbal gesture or reaction to something said in the team meeting or in the drug court session, I wrote a reminder to myself to ask them about non-verbal cues during the interviews. Please refer to Appendix D for my guidelines on taking notes of my observations.

I described as much as possible of each event and then wrote memos from those notes. I describe how I wrote these memos in the next section.

Connecting the Interviews and Observations

I used my observations and the interviews to better understand the data I was collecting through each method. For example, if a team member stated during an interview that he or she believed the team worked well together (cohesiveness) and provided an example of it, I would
look for examples where the team did, in fact, work well together. This often occurred in discussing how to handle a participant who was not in compliance with the program’s rules and what sanctions, if any, should be imposed. If the team member’s statement during the interview was consistent with how the team acted during its team meetings or the drug court sessions, this strengthened the validity of that statement. If there was an inconsistency between the statement and the team’s actions, I first looked to see if specific circumstances involving a participant or an issue might be causing that inconsistency; if not, I might follow-up with the team member to see if there was some reason why the statement and the team’s actions did not match.

I also used my observations as the basis for questions in future interviews or to ask follow-up questions of team members who had been interviewed. For example, as mentioned, team members struggled a great deal with developing appropriate sanctions that could be applied consistently to all participants. When I interviewed the current program judge, I asked her why she thought it was so difficult to apply certain sanctions. She told me that, even as a judge, she struggled with the idea of locking someone up and whether it was in the participant’s best interest to be sanctioned in that way. On the other hand, if there was no sanction, or she imposed a minimal sanction, she would question whether that affected the program’s integrity.

Data Analysis & Coding

A phenomenology begins with the researcher setting aside preconceptions as much as possible and using systematic procedures for approaching data collection (Moerer-Urdahl and Creswell, 2004). Moustakas’ (1994) procedure for data analysis was used to help me set aside my views of the phenomenon of drug courts. I developed codes to anchor key points within the collected data. I organized the coded data into concepts to group the data. Similar concepts were placed into broad categories, which I used to explain the culture and operations of the drug
court team (Corbin and Strauss, 2008). Lastly, I constructed a composite description of the meanings and the essences of the experiences from these categories (Corbin and Strauss, 2008; Moerer-Urdahl and Creswell, 2004).

Epoché

Epoché is used to set aside preconceptions, resulting in a transcendental process as the researcher sees the phenomenon “freshly, as for the first time” and it open to its integrity and totality (Moustakas, 1994, p. 34). I took “no position whatsoever” and with no advanced determinations of what I might have expected (Moustakas, 1994, p. 84). Any references to others’ biases, judgments or perceptions were placed aside to reach epoché (Moerer-Urdahl and Creswell, 2004).

I recalled and wrote down my own personal and professional experiences, both positive and negative, as an attorney and as a law clerk within a courtroom workgroup prior to each team meeting and drug court session. As I moved through this process, I tried to recall and write down any preconceptions that come into my mind, recording the impact of those preconceptions and any impact left on me. I repeated this process until I feel that all of my personal and professional experiences as a member of a courtroom workgroup and been captured and bracketed “without coloring my own habits of thinking, feeling, and seeing” (Moerer-Urdahl and Creswell, 2004, p. 8). I repeated this process if I found that my own personal and professional experiences come back into my data analysis.

Analyzing the Text for Concepts, Categories and Themes

I analyzed the text from my field notes and from the interviews. These notes and interviews were transcribed. All interview tapes were transcribed so that I had a copy of the literal statements made by the participants. I noted on the transcripts, as much as possible, any
significant non-verbal communications that I observed during the interview. I bracketed any meanings or interpretations I might have assigned to the interviewee’s statements, allowing me to approach the transcripts with an openness to various meanings. To get a general sense of the interview, I listened to the tapes and read the transcripts several times. This provided a structure and context for identifying specific units of meaning and themes as I moved further into the analysis. These transcriptions were uploaded to Nivo 11 and a coding scheme was developed and applied to each transcription.

I used different coding schemes to extract concepts from the text, going line-by-line through my transcripts. All coding was done using NVivo 11 software. Open coding allowed me to “open up the data” to all potential meanings (Corbin and Straus, 2008, p. 160) and see where the data was related to existing concepts (such as solidarity or proximity), as well as in-vivo coding that identified new concepts that emerged from the actual words of the individuals interviewed. I generated NVivo coding queries for each of the individual concepts and printed those queries as hard-copy reports. I reviewed those reports and related concepts through axial coding by comparing concepts, looking for relationships among the open codes and in-vivo codes.

First, I used starter codes, which were associated with the concepts derived from the literature on courtroom workgroups, focal concerns, and therapeutic jurisprudence. These codes were drawn from the major concepts that I want to understand as I collect data on this drug court team. Please see Appendix B for the actual starter codes I used.

Next, I built on these starter codes with in-vivo codes that emerged. For example, with the coding scheme for the team’s focal concerns, I began coding with my starter codes for offender blameworthiness, community protection, and sentencing decision costs and
consequences. As I analyzed my interview transcripts and my observation notes, I added *in-vivo* codes for program integrity, program value, recovery, relapse, and others, which emerged from my interviews and observations. I did the same with the starter codes for courtroom workgroups and for therapeutic jurisprudence.

Other open codes emerged from the data concerning various aspects of the roles within the traditional courtroom workgroup and the drug court team. This data was coded with labels identifying the data as adversarial or collaborative, along with codes to describe any conflicts that emerged from the data between the various roles.

I used memoing to write-up my ideas about the concepts that emerged from my coding, through subsequent data collection and analysis, and during the memoing process itself. This allowed me to refine and keep track of ideas that developed as I compared data from both interviews and observations. It also helped me to understand the underlying issues in the text, then connect existing and/or emerging concepts that appeared in each memo to develop and understand the relationships between them.

I followed Corbin and Strauss’ (2008) memoing template. Each memo was titled, dated, and labeled with a concept. The body of the memo consists of two parts: first, there was a discussion of my analysis for the selected data, and second, any commentary on my analysis, that may have included follow-up questions, notes about concepts that emerged in later analysis, and any reactions to my analysis of the data. I also included any “mental dialogue occurring between the data and me” (Corbin and Straus, 2008, p. 169) to capture my thought process and suggest further areas for data collection. Any assumptions that emerged that were affirmed or denied through further data collection are documented in my memos, too.
I began coding soon after the first interview and/or observation to begin building a foundation for further data collection and analysis (Corbin and Strauss, 2008). If one of my start codes was appropriate for my memo, I used that first. For example, one drug court team member stated that “we try to come to a consensus on sanctions,” I assigned a start code of solidarity (SO) and a start code of cohesion (CO). When writing memos, if I did not find a starter codes that fit, I created an in-vivo code. An in-vivo code is a concept that uses the actual words of a research participant, rather than a name of my own (Corbin and Strauss, 2008). For example, a drug court team member stated “it’s difficult to be combative when you’re sitting in a meeting,” I coded that as “it’s difficult to be combative in a meeting” for my initial memo. As I wrote more memos, I looked for relationships between previously identified concepts and begin to differentiate between lower-level concepts and the higher-level concepts that unite them and apply to other interviews and observations. I also wrote memos for each individual interviewed, to get a sense of that team member’s contribution to the data.

As my data collection and analysis continued, I compared data across all of the interviews. Where data was conceptually similar, it was coded similarly. However, I also asked new questions about “what else is to be learned about this concept” that would deepen my understanding (Corbin and Strauss 2008, p. 197). I wrote summary memos to aggregate my analysis in the earlier, individual memos, which let me identify categories and themes that provided groupings for the individual concepts. I displayed data in matrices that allowed me to present information in a visual format, from which I could begin to draw conclusions about the data (Miles et al., 2014). These matrices used the concepts I had identified during memoing as row and column headings, and were populated with patterns that emerged from the data.
following table shows the analytic techniques I used, the goals for each technique, and how it advanced answering my research question.

Table 3: Analytic techniques used, technique goals, and contribution to research question

<table>
<thead>
<tr>
<th>Analytic technique</th>
<th>Goals</th>
<th>Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case-level display for partially ordered meta-matrix</td>
<td>To conduct preliminary analysis of interview statements concerning various concepts</td>
<td>Displays patterns and themes in team members’ interview statements as they pertained to various concepts</td>
</tr>
<tr>
<td></td>
<td>To partition data concerning various concepts from my team meeting observations, drug court observations, and team member interviews</td>
<td>Defined commonalities and differences in how team members’ viewed culture, roles, and case processing</td>
</tr>
<tr>
<td></td>
<td>To cluster data for team members to determine behavioral patterns associated with concepts</td>
<td></td>
</tr>
<tr>
<td>Construct table</td>
<td>To focus on individual concepts within team members’ adversarial and collaborative roles</td>
<td>Identified team members’ perceptions of the adversarial and collaborative nature of their roles</td>
</tr>
<tr>
<td>Role-ordered matrix</td>
<td>To identify team members’ perceptions of concepts by individual roles</td>
<td>Identifies team members’ perceptions of the adversarial and collaborative nature of their roles</td>
</tr>
<tr>
<td>Conceptually clustered matrix</td>
<td>To summarize team members’ perceptions and understandings of various concepts by role</td>
<td>Depicted team members’ understanding of program’s three-stated goals</td>
</tr>
</tbody>
</table>

Ethical Procedures & Safeguards

The Northeastern University Institutional Review Board (IRB) reviewed and approved the original protocol for this study on July 22, 2015. On September 28, 2015, a modification was approved, allowing me to listen in on and collect de-identified data from the program’s monthly conference call with another federal agency.
As I observed closed court workgroup team meetings and open drug court sessions\(^4\), I kept my observational notes confidential. I did not electronically record either the team meetings or the drug court sessions. My notes were secured in a locked drawer in my office desk for which I only had the key.

Informed consent obtained from drug court workgroup members for my observations of its team meetings and for the individual interviews were also include these observations.

\(^4\) This drug court is an open court, where any member of the public is permitted to attend the court session. Still, I coded my court observations using my own identifiers for current participants that held meaning only for myself. At no time did I interact with the current participants.
CHAPTER FOUR: THE RE-ENTRY DRUG COURT PROGRAM’S HISTORY & CONTEXT

To fully understand this drug court program and its team, they need to be contextualized so that they are placed in the proper environment in which they were created and in which they now exist. This chapter will describe the structure of re-entry drug courts generally, then discuss how this drug court’s early history and its emergence was part of a public policy response to dealing with recidivism related to offenders with substance abuse issues and/or who were involved in drug-related crimes. Contextualizing in this way will help understand the time in which the drug court team was working, as well as events, circumstances, and policies that were and are in place. This will help identify anything that influenced how the drug court was created, along with any concepts or terms-of-art that came out of its creation, and its current status.

This chapter will also discuss the nature of the roles in both the traditional courtroom workgroup and in the drug court team, along with the operating rules for both. There are similarities and differences in how courtroom workgroup members and drug team members will act in their adversarial roles with the traditional courtroom versus their collaborative roles in a drug court team meeting. Also, the informal rules that guide the substance and procedure of the traditional courtroom versus the drug court team meeting are examined. After reviewing its history, exploring the roles and rules for the drug court team, the chapter concludes with summary of the current state of the drug court program.

Re-Entry Drug Court Structure

Re-entry drug courts are post-plea, post-incarceration problem-solving courts designed to help offenders re-enter and re-integrate with their communities by treating the underlying issues associated with their offenses. These underlying issues may be associated with participants’ mental health, substance abuse, veterans’ status, or incidents of domestic violence. It is believed
that, by addressing the underlying issues, offenders return to their communities better able to deal with assimilating into society.

This federal re-entry drug court began in 2006. It quickly became nationally-recognized for its work with offenders exiting the federal prison system and returning to their communities. As with many drug courts, it began at the grass-roots level. It was led by a judge who wanted to implement a supportive program that helped participants with substance abuse issues re-enter and reintegrate with their communities. The program’s mission was and still is to:

“… help defendants to create and to maintain sober, employed and law abiding lives. Success in the program promotes both public safety and the rehabilitation of the defendant. [The program] involves closer supervision of a defendant and higher expectations than regular supervision, but it also offers a defendant greater assistance, opportunity and reward. The Court, the Probation Office, the United States Attorney and the Federal Defender Office all participate in [the program] in an effort to help each Defendant succeed” (Program website, accessed 8/14/2016).

Offenders who are serving terms of supervised release or probation and who have a significant substance abuse history are eligible for the program. Whether an offender’s substance abuse history is significant is determined by a probation officer using the Federal “Post-Conviction Risk Assessment” (“PCRA”) instrument. Drug and alcohol use and its significance in an offender’s life is measured by “whether there are disruptions at work, school, and home due to drug or alcohol use, whether the offender uses drugs or alcohol when it is physically hazardous, whether legal problems have occurred due to drug or alcohol use, whether the person continues to use drugs or alcohol despite social and interpersonal problems, and whether a current drug or alcohol problem exists” (Overview, 2001, p. 10). The participants also have been assessed as having a moderate or high risk to recidivate.

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5 This program uses the Federal “Post-Conviction Risk Assessment” (“PRCA”) tool, which is an evidence-based actuarial tool developed by the Administrative Office of the United States Courts for United States Probation to predict recidivism. The purpose of the PCRA is to improve the effectiveness and efficiency of post-conviction supervision, thus reducing recidivism.
Participation in the program is voluntary. Eligible participants may be referred prior to being released from the Bureau of Prisons, or while on supervised release. Participants are selected for the program by the drug court team probation officers, subject to the probation department’s approval. As the program is voluntary, participants may withdraw at any time, with no consequence to the conditions of their supervision. Participants who successfully complete the program earn a one-year reduction from the term of their supervised release, again subject to the probation department’s approval and motion for a reduction in term.

Participants are supervised under the program with the goal of promoting public safety and to use more effectively treatment resources that promote rehabilitation. The program is designed to reward participants’ successes and sanction participants’ misconduct or failure to perform to the program’s standards. The program’s objective is to graduate participants who have established sober, employed, and law-abiding lives.

Participation in the program is for one year. The year is divided into four, three-month phases. Participants are strictly supervised during their initial participation in the program (Phase I). They are required to appear in court weekly and they are required to meet with probation at least two additional times during the same week. These additional meetings with probation are for substance abuse treatment, drug testing, and general supervision issues. As participants move through the program, these requirements lessen. Phase II of the program requires participants to appear in court every other week. Phase III requires participants to appear in court every third week. Phase IV requires participants to appear every fourth week. Corresponding reductions in the program requirements, such as less drug testing and possible reductions in treatment, accompany progression through each phase. The requirements of a participant’s general probation supervision remain the same for throughout the individual’s
participation in the drug court program, since they are tied to the conditions ordered by the court at the individual’s original sentencing.

The drug court team meets each week prior to the drug court session. The drug court team consists of the judge, probation officers, the prosecutor, the defense attorney, and the treatment counselor. At this meeting, the team reviews the status of each participant, compliance issues, and changes in treatment. The team determines any rewards for successes or sanctions for misconduct or other non-compliant behavior. The probation department provides status reports to all team members prior to the meeting, so that the team members have common information from which they can participate in each participant’s review.

Team meetings open informally with the judge saying, “Let’s get started” (current program judge). The probation department presents the team members with status reports, one for each program participant. The probation officer responsible for a given participant provides the team with an overview of the participant’s progress or regress since the last time the participant attended the drug court session. The probation officer briefs the team about any issues with the participant, such as missed drug tests, missed appointments with probation, new offenses, or housing and employment issues. If a reward or sanction is indicated for a participant, the probation officer offers his recommendation as to what that reward or sanction should be. The other team members are invited to comment on the participant’s current status and any issues presented, particularly the team’s defense attorney, who often interacts with the participants as often as the probation officers. If participants have any unresolved violations – that is, they have not rectified the violation by accepting the team’s sanction - this may result in probation filing petitions with the court. Also, participants are no longer eligible for the one-year reduction in supervised release and must complete their supervised release as originally ordered.
After the participants are reviewed, the team will discuss any special projects or issues associated with the program as a whole. For example, if the team would like to incorporate a new service for participants, such as housing assistance, the team will discuss options and possible solutions for helping participants with housing assistance as part of the program. The team may also invite to the team meeting representatives of various agencies interested in working with the program to provide these additional services. The representatives brief the team on what services their agencies can offer to participants, and then discuss with the team how the agencies’ services might be incorporated into the program. After the participants are reviewed and any other business is conducted by the team, the meeting is adjourned and the team moves into the courtroom for the drug court session.

The drug court session immediately follows the team meeting. The drug court session is held in open court. The session is called to order by the session clerk with the same formality as a traditional court session. Everyone in the court rises as the judge takes the bench, with the prosecutor and the defense attorney at the same tables they would use during a traditional court session. The probation officers sit at the prosecutor’s table. The participants sit in the jury box and any other individuals present, such as friends and family of the participants, sit in the court’s gallery behind the bar.

The judge greets all the participants and then calls each participant forward individually to discuss their progress and status. The judge and participant discuss the participant’s activities and progress since the last time the participant appeared in drug court, and any issues, challenges or successes that the participant experienced. Occasionally, other team members may contribute to the exchange, if needed. If a participant is making progress and is compliant with the terms of the program, the judge recognizes that fact and the participant is given credit for the week’s work.
in the program. Rewards are given for participants’ successes, primarily through encouragement and praise in open court. If a participant has been non-compliant in some way, sanctions may be imposed at that time. Sanctions include a participant being taken into custody, community service, and writing assignments. If a violation is resolved in the program, the probation department will not issue a formal violation petition against the participant in the traditional criminal court. After all participants have been called to have similar discussions with the judge, the drug court session is adjourned.

The Emergence and Early History of This Re-Entry Drug Court

In May 2003, the National Drug Intelligence Center within the Department of Justice identified Massachusetts as the primary distribution center for illicit drugs in northern New England (National Drug Intelligence Center, Massachusetts Drug Assessment, May 2003, https://www.justice.gov/archive/ndic/pubs3/3980/3980p.pdf, accessed 8/29/2016). Alcohol was the most reported substance abused, followed by heroin, cocaine, crack cocaine, and marijuana, in that order. Prescription drug abuse was growing, as prescription opiates were being either abused or resold for personal use by others. Probation officers began to see that those offenders on supervised release had increased incidents of alcohol and drug abuse and probation officers began to gather more information in this area as part of their presentence investigations. As a result of the number of offenders under supervision who were also receiving some form of treatment for alcohol and drug abuse, a treatment services committee was formed to look at options for treating offenders.

In April 2005, not long after the formation of a treatment services committee by the probation department, the program’s founding judge was appointed to the bench. Shortly after he received his appointment, he met with another judge who presided over a drug court in a
different jurisdiction. The second judge invited the founding judge to observe the drug court. After watching how the second judge interacted with the different members of the drug court team and the participants in that program, the founding judge thought, “Let’s do that” (program founding judge). He looked at different drug courts in different formats and sought input from other agencies about how he could start a drug court. Working with the probation department, the public defender’s office, and the prosecutor’s office, the treatment services committee within the probation office developed an agreement for the creation of this program. As stated in the agreement, “[t]he importance of developing a program for our district, which, when combined with treatment, can attack the drug epidemic from a new angle, may be a key to increasing offenders’ successful sobriety” (program charter agreement, 2006).

The team member interviews revealed that, in general, some of the other court agencies mentioned above had philosophical issues with the program’s overall concept. For example, the prosecutor’s office had a less-than-favorable view of drug courts, primarily because it believed they had not been studied enough to justify participating in one. Also, since the program participants were considered to be high-risk offenders, given the seriousness of the offenses they committed and the degree to which their drug addiction had progressed, there was a concern that potential participants were too dangerous and a threat to public safety. Moreover, prosecutors were used to charging and convicting these offenders, seeking substantial periods of incarceration for convictions. It was suggested to these prosecutors, however, that by treating them and by providing them with the opportunity to have increased monitoring as to their activities, increased supervision through regular drug testing, and having them follow an extensive treatment model, there was a greater likelihood that the participants would get and stay clean, employed, and law-abiding. Therefore, it made more sense to have these participants
subjected to closer monitoring, increased testing, and appropriate treatment for a longer period of time.

The defense attorneys participating in the program realized that they needed to adjust, too, as they had to see that their duty to provide zealous advocacy was more than just “getting them off” or getting them a “good deal.” (defense attorney # 2; current defense attorney). Their clients were admitting to drug addiction, getting treatment, and receiving sanctions for relapsing. The defense attorneys were being asked to consider how it was in their clients’ best interests to admit violations, get treatment, and accept sanctions so that they would live sober, healthy and responsible lives. Reconciling traditional philosophies with this collaborative, long-term treatment-oriented philosophy took time and presented challenges. Eventually, each agency signed on to helping the judge set up the program. After each agency executed the agreement, the program started in May 2006.

Even with these philosophical challenges, a spirit of cooperation and collaboration began to emerge and there was a determination to implement a successful program, however that would be defined. Still, there were growing pains. The team put together the means by which participants in the program would be evaluated, how they would progress through the program in various phases, how treatment and other resources would be offered, and what rewards and sanctions would be put in to place.

Incarceration was seen as counterproductive in the program’s early days, but the drug team realized that, in the absence of alternatives such as community service, sanctions of some type would be required. Even though the probation department laid the program’s foundation with some of its traditional practices, putting together what would be required of a federal re-entry drug court did not come easy. For example, the probation department had drug testing
procedures in place, but nothing to address what happened when individuals tested positive for drugs, assuming they showed up for testing or treatment at all. If an individual did not show up for testing, or if the individual tested positive for drugs, the probation department wanted the individual taken into custody. Unsurprisingly, the defense attorney would argue that the individual should not be in jail and that treatment was needed. After all, the participant “needs treatment” and “wasn’t that the purpose of having a drug court?” (first defense attorney). As an alternative to having the individual taken into custody, the defense attorney would argue for community service. The probation department responded that it did not provide community service opportunities at the federal level, so that was not available to the team. This led the team to start creating a template for sanctions. For the first positive drug test, the individual would spend one day in jail. For two positives, the participant would spend one overnight in jail. For three positives, the participant would spend three nights in jail.

General probation violations needed to be addressed, in addition to program violations. This sometimes undermined the spirit of collaboration that the team was struggling to embrace. For example, prior to the program’s implementation, if a probationer tested positive for drugs, a probation officer would prepare a revocation motion, go into court, and the defense attorney would be required to defend against the violation of probation. Under the program, however, all the circumstances leading up to the alleged violation, the violation itself, and the probationer’s response to the allegation would be opened up before the team. The probation department’s information would be reviewed by the team as a whole, leaving it up to the team to decide whether to issue a formal violation of probation and revocation motion.

Promoting and sustaining collaboration was a major portion of the founding judge’s responsibility. Initially, the judge wore his robe to team meetings and sat at the head of the table
to show that he was the ultimate decision-maker for the team. People continued to treat him as a judge and, if there was no team consensus or agreement, he would make a more “judicial” decision (program founding judge). But over time, as the team began to work together, he no longer wore his robe and moved away from the head of the table. He wanted to send the message that he was chairing a meeting and not presiding over a court session. He encouraged discussion, negotiation, open-mindedness, and creativity in dealing with participants’ relapses, positive drug tests, and other alleged probation violations. In a traditional courtroom setting, he might jump in and direct the attorneys and the probation in a resolution to the violations. In the drug court team meeting, he would simply sit there and let the team members tussle with each other over a procedure or an outcome, waiting to see if team members would change their views and work toward a common outcome. There were times where he did step in, as he would in traditional court, and try to get each team member to see the other members’ points-of-view, but he would rarely make a decision that the team had not thrashed out during its team meetings.

Soon the team realized that other rules were needed for the program. For example, what should the rule be when an individual was ready to graduate to the next phase of the program? In the program’s early days, the team required that the participant have “four good weeks” prior to moving on to the next phase of the program and, ultimately, to graduation. This raised the question of what was “a good week,” which the team discussed in terms of not only being clean, but also in terms of activities that participants would be required to complete, such as seeking employment.

This definition of a “good week” also impacted graduation criteria for each phase of the program and for the program in its entirety. The team struggled with rules as to when a participant was ready to graduate to the next phase of the program, as well as what constituted
“four good weeks,” which were needed prior to graduating to the next phase. Eventually, a “good week” meant “that the participant attended all required meetings with probation and all treatment session, submitted to all scheduled drug tests (and tested negative), and complied with all other conditions of supervision” (Vance, 2011, p. 67). However, incidents would result where, for example, someone in Week 11 would test positive and graduation would be delayed. Since the program’s philosophy considers relapse a part of recovery, did that mean that graduation should be delayed? The team started crafting and cobbling solutions based on participant profiles, without any real data on which rewards or sanctions actually had an effect on participant recovery. The rules, at that time, were never written down. The discussion about standardized rewards and sanctions still continues, ten years after the program’s founding.

In addition to rules for the participants, the judge believed that there should be simple rewards for completion of various phases of the program that would recognize and reinforce the participants’ success. So, as a participant progressed through the program, he or she would receive a candy bar after successfully completing a phase. The prosecutor’s office did not believe that the participants should be rewarded at all, especially given the dangerousness of the offenders who were being moved through the program. As one of the probation officers noted:

“And [the prosecutor’s office] just felt that we were rewarding people for what they should be doing, and it was kind of a mockery to give people candy bars. It started to be known as ‘the candy bar court’” (current probation officer # 1).

With the label “candy bar court” affixed to the program, rewards were quickly dropped.

In the program’s first year, there was a lot of discussion around similar issues and rules and a great deal of time was required by each agency’s representative to the drug court team. All the representatives were being assigned to the team in addition to their other assignments with their respective agencies. Eventually, the team developed a structure for the program, consisting of phases, assignments within each phase, and rewards and sanctions.
The Re-Entry Drug Court’s Formation as a Public Policy Response

Crime is often drug-related, and serious criminal conduct is much more likely to occur when individuals engage in drug use (Marlowe et al., 2003). When those who are arrested are tested for illicit drugs at the time of their arrest, approximately 60% test positive (National Institute of Justice, 1999). In 2004, the Bureau of Justice Statistics reports noted that “17% of state prisoners and 18% of federal inmates said they committed their current offense to obtain money for drugs” (Bureau of Justice Statistics, http://bjs.ojp.usdoj.gov/content/dcf/duc.cfm#attime). As a result, those crimes that are drug-related often lead to incarceration. It is estimated that 80% of those incarcerated abuse drugs or alcohol (Spohn and Holleran, 2002).

Punishing these individuals with incarceration does little to deter future offending. After being released from prison, 60%-80% of drug abusers and addicts commit new crimes (Spohn and Holleran, 2002). Overall, 95% will most likely return to their drug use and abuse after being released (Hanlon et al., 1998; Martin et al., 1999; Nurco et al., 1991). As the “United States incarcerates more people for drug offenses than any other country,” our prison populations swell as more individuals with substance abuse and dependency issues are incarcerated for their criminal acts, often without opportunities for receiving treatment (Justice Policy Institute, 2008, p. 1). To manage the reintegration of incarcerated offenders into the community, and to work to keep these individuals from reoffending, re-entry drug court programs were started. This type of program was first proposed in 1999 at the state and local level, and were offered federal support to pilot programs (Vance, 2011). During her remarks at John Jay College of Criminal Justice on the Re-entry Court Initiative in 2000, Attorney General Janet Reno described how re-entry courts would use drug court principles to manage reintegration:
“[The re-entry court] would oversee an offender’s return to the community after release from prison or jail. The court will use its authority for positive reinforcement as drug courts do ... This re-entry court is modeled on the same theory of a carrot and stick approach [as drug courts] in using the strength of the court and the wisdom of the court to really push the issue ... The re-entry court would promote positive behavior by the returning offender. It would marshal resources to support the offender’s successful reintegration into society. The court would also use its powers of punishment, using the graduated range of swift, predictable sanctions, to make sure that the individual stays on the right track. Judges working closely with others would approach or could approach a plan for reintegrating the offender into the Community. The court would then monitor and enforce the plan. The partners of court would include institutional and community correctional officers, law enforcement, local businesses, family, clergy, support services, victim advocates and neighborhood organizations (See Attorney General Janet Reno, Remarks at John Jay College of Criminal Justice on the Re-entry Court Initiative (Feb. 10, 2000), http://www.usdoj.gov/archive/ag/speeches/2000/doc2.htm, accessed 8/28/2016).

As part of participants’ re-entry and reintegration into their communities, these re-entry courts seek to get more individuals into treatment and have those individuals engage with treatment providers for their substance abuse and addiction. By treating the underlying addiction, recidivism should decrease as the correlative link between substance abuse and criminal behavior is broken and a new one is forged that connects a clean, sober lifestyle with a non-criminal way-of-life.

Because drug courts began as a grass-roots movement, the result was the development of substantial variations in the implementation of the basic concept throughout different jurisdictions (Armstrong, 2003). This included differences in participant eligibility criteria, the point-of-entry within the criminal justice system for participants admitted to drug court, and the various agencies used by the courts to provide treatment (Armstrong, 2003). As explained above, state re-entry courts were federally supported and encouraged, but no such provisions were made for federal courts, suggesting that federal re-entry courts were more like the original state drug courts in that their impetus came from the “local” level – the federal district court. The re-entry drug court being studied here was at the forefront of the federal re-entry court
movement and it was found that participants in this program “were more likely to have the full combination of positive outcomes, which is a sign that participation in [the program] assists offenders holistically” (Vance, 2011, p. 69; Farrell, 2009).

Over the years, other federal re-entry drug courts have grown in participation and developed new initiatives beyond what this program did initially. These other courts have grown and launched new initiatives that have increased their presence in the re-entry court movement, resulting in fifty-two districts operating or planning this type of court (Sherman et al., Federal Re-entry & Post-Conviction Drug Court Forum, 2011, http://www.ndci.org/conferences/2011/agenda/SB-25.pdf). Also, various types of these re-entry courts have been created to address underlying re-entry issues for populations such as veterans and those with mental health issues. Thus, it is important to try to understand how this re-entry, post-incarceration drug court remains stagnant after ten years of its existence when it began as the model by which similar courts were created. To understand its current status, it is necessary to look at its formation and implementation as part of the overall public policy response to the processing of offenders involved with drugs, in drug-related crimes, or both.

The founding judge’s inspiration for this re-entry drug court was the work of a state drug court he had visited. After his visit, he researched different types of drug courts, seeking input from various agencies about how he might start a federal, re-entry drug court. Concurrently, the probation office had been looking at various ways in which it could apply different types of drug treatment in order to slow the “revolving door” that was in place for addicts who were being processed through the criminal justice system:

“They would come out; we would refer them to a treatment provider; whatever was happening in the name of treatment wasn’t really work, and people would relapse, recidivate, go back to jail, come back out again” (probation officer # 1).
One of the probation officers that was part of the original drug court team joined the Treatment Services Expert Panel in Washington, D.C. The panel consisted of a group of probation officers who were exploring the programs and practices being used nationally that were working with substance abuse treatment, along with identifying current issues, seeking improvements that could be made, and developing a collaborative system where people with various levels of expertise within the federal probation system would get together and brainstorm ideas. The probation officer told me that:

“… I shared that the experience [with the Treatment Services Expert Panel] was really eye-opening and profound in terms of what we could achieve together as a group versus what I’d been trying to do on the front lines as an individual officer. So I talked with my chief … and we decided that we were going to create a treatment services team here – the Treatment Services Unit of officers with various different levels of experience or interest in substance abuse and mental health … One of the things that we looked at is what was happening that was innovative in the country and how drug courts at the state level were so effective at helping people to make good connections. They were different in that they were not post-conviction like our program ultimately became, but nonetheless, there was some success that was coming out of that we thought we’d try here. So around that time [the founding judge] … had seen a lot of these cases and was frustrated by [these cases]” (probation officer # 1)

The founding judge and the probation department worked together and created a proposal for a re-entry drug court program as a pilot project. The proposal was used to gauge the judges’ reactions.

“We came up with the rules and everything and with the understanding that [it] would operate out of [the city where it is located] … we went around and looked at how the state court operated its drug court programs. We pulled some pieces from there and tried to model our program based on what we saw from them. [T]his was the first time anything like this had been done. We were very much aware of how state drug court programs ran, but we were very unfamiliar with whether we could use that model and incorporate it into the federal court system, just because we operate differently with the state … and in terms of statutes as well. There’s enacting legislation in [the state] for drug courts so that helped them because they get their funding and they get resources and things like that, whereas in the federal system we didn’t. It was something that we would just have to pull together ourselves on a volunteer basis, with the approval of the court
and all the participants. In a federal system there is no enacting legislation for drug courts” (probation officer # 2).

In May 2006, this new model for a re-entry drug court was approved by the judges within this court’s jurisdiction. A drug court team was assembled consisting of the founding judge, a prosecutor, a defense attorney, a probation officer, and a treatment provider. The court published an interagency agreement that outlined the program, listed the duties and responsibilities of the team members, described the criteria for selecting participants into the program, and explaining how the program would work and how the team out monitor and process program participants. The team began implementing the program as described in the document.

This was a bottom-up response for implementing policy (Barrett & Fudge, 1981; Lipsky, 1980). This program’s formation and implementation were the result of a “dynamic and interactive process,” where “policy formulation and policy implementation [were] not strictly separated” (Tummers & Bekkers, 2012, p. 6). There was no higher-level public policy directive that started this program. There was no budget allocation for it. Certainly it was an off-shoot of the various drug courts that had been started around the country for the last twenty years, but it had never been done at the federal level and the idea of an individual participating in drug court after incarceration was still a new idea. The founding judge started talking with the prosecutor’s office, the probation department, and the public defender’s office. Each agency signed on to pursue setting up the drug court, although the level of interest and commitment varied across the agencies. Everything was being volunteered to make it happen – money, people, and time. It was, in the words of one team member, “the great experiment” (defense attorney # 2)

At the same time this program was launched, there were two other programs in the federal system that had begun. The concept of a re-entry court was not new, but the concept of a post-incarceration “modified drug court to provide enhanced supervision of offenders while
addressing the problems that accompany addiction” was (Vance, 2011, p. 67). Also, these other two programs were run differently from each other and from the one being proposed.

“There was one in [in one state] … which is a very different model. It’s much more … of a group therapy model in a way. [The judge] sits at the table; she’s not in a robe; all the participants and the team members are at the table. The participants weigh in, as well, on sanctions. So it’s very, very different and nontraditional. And then there was a small program in [another city] in which the judge and the PO [met] with the individual defendant or offender when they were struggling. But there was nothing like that existing at the state level. So we put together the proposal; we submitted it to our judges. They unanimously believed in it, unanimously approved it as a one-year pilot project, and we got it up and running. And it was a lot of work in the year prepping for that, then being an officer doing [the work], and kind of getting people to buy into it” (probation officer # 1).

As one of three federal re-entry drug courts, this court was willing to take on implementation without any top-level mandate to do so. The implementation of this re-entry drug court would be setting the policy for offenders re-entering their communities under supervised release and the policy for working with the offenders to reintegrate into their communities as sober, law-abiding, and employed individuals. It also meant that as a policy response, the drug court’s team would be implementing a potentially unpopular model that it would need to maintain and improve in order to justify its continued existence.

The Growth and Development of the Re-Entry Court Program

Even with the program underway, it did not receive much support from the prosecutor’s office during the period of 2006-2008 due to the Department of Justice’s position that “drug courts are an inappropriate and unnecessary program for the federal criminal system” (DOJ, 2006, p. 1). Then, in 2008, Barack Obama was elected President of the United States. With his investiture, Eric Holder was appointed Attorney General of the United States. When the Attorney General was invited to speak at the program’s ceremonial graduation that year, the message came through to all of the government agencies involved that “Washington wants to do
this” (founding program judge). A new Attorney General and a new U.S. Attorney were now
interested in participating in a re-entry program that had been previously dismissed as an
inappropriate means for re-introducing these high-risk offenders into the community.

“… the U.S. Attorney, appointed by Barak Obama, is generally supportive of
good reform efforts that show promise including drug courts. Under George W.
Bush, the U.S. Attorney … was probably less philosophically supportive of those
kinds of reforms and the vibe was a little bit different” (current prosecutor).

This renewed interest in rehabilitation and treatment became important in sustaining this
program.

“There was a graduation while I was in the program where [the governor] came
and spoke about an uncle of his that died of an overdose. The new U.S. Attorney
General was going to come to one of the graduations. … It just seemed like a
really big endorsement of the program” (second defense attorney).

In the program’s first year, a great deal of time was required by the various agencies.
The prosecutor’s office was willing to participate in the program and assigned prosecutors to the
team, but it was assigning new prosecutors to the court rather than experienced ones. This
presented some challenges because the mindset of the new prosecutors was to prosecute, not
collaborate. Eventually, the prosecutor’s office did start assigning experienced prosecutors to the
program, particularly because many of them wanted to do it and wanted to see if there was value
in a different approach to reducing recidivism.

In the early years, the defense attorney for the team was provided by the public
defender’s office, which also had trouble adjusting to this new direction. The defense attorneys
had to get used to the idea that their clients were admitting to drug addiction, wanted to receive
treatment, and that participants who relapsed would be sanctioned. The defense attorneys had
been used to defending their clients and working to “get the best deal,” whereas now they were
being asked to really consider how it was in their clients’ best interests to admit to violations, get
treatment, and take the sanctions so that over the long term they would be “clean, employed, and law-abiding.”

Similar to the prosecutor’s office, the public defender’s office was interested in participating in the program, but it was difficult at first to get anyone in the office to take on working with the participants. Not only was the mindset of most public defenders to dig in and perform as zealous advocates, but the work itself carried the perception of being more like social work than lawyer’s work.

“It was really considered in the office kind of soft work. A lot of the hard core trial attorneys did not want anything to do with the re-entry court because it just seemed kind of like social work or babysitting. There’s also the slight perception, I think, on the defense part that the court is kind of screwing the clients and you’re a part of it. … It was considered a big time commitment” (second defense attorney).

Then, in 2012, the public defender’s office stopped participating in the program. A budgetary crisis in the agency resulted in no replacements when anyone left the agency. The public defender’s office “decided that somehow we weren’t really getting credit in Washington for participating in these programs.”

“They were so focused on the number of cases that we were taking, and [the assistant public defender assigned to the program] did get a slight reduction in her caseload for doing [the program]. [The public defender’s office] did away with that and just told the court we weren’t going to be involved anymore” (second defense attorney).

The only agency that never had an issue with sponsoring the program was the probation department, since the work its probation officers would do in the program was simply a variation on the work they were currently doing with other probationers on supervised released. But it is also a very supportive agency for this program: “The other agency heads and supervisors don’t come to team meetings – I know that I’m the only one that sits at the table” (current supervising probation officer).
Early on, the probation department did notice the challenges coming from the prosecutor’s office and the public defender’s office and the effect on the program and the team.

“The personality changes – when there were personnel changes in both [the prosecutor’s office] and [the public defender’s office] – brought dramatic philosophical changes. These changes affected their approach, in the way they looked at how somebody would be rewarded or sanctioned …” (current supervising probation officer).

As mentioned above, the only issue that did come up with the probation department was that community service opportunities were not supplied at the federal level. This would be problematic for some time since program participants would not have the opportunity to use community service to satisfy a sanction or as means by which to begin satisfying the requirement that they be employed.

As the program became more successful, it needed to develop a framework that would define participants’ successes and provide criteria that would allow them to progress from one stage to the next and ultimately to graduation. First, before starting the program, every potential participant who was referred to the program was screened to determine eligibility. The goal was to ensure that the prospective participant was sufficiently stable to engage in outpatient recovery prior to beginning the program. This was determined using the PCRA instrument discussed previously. Greater intervention or the support necessary to develop stability before entering the program would be required for those still actively using drugs, those refusing to participate in treatment, or those who refused testing or tested positive. The team developed a list of factors against which potential participants would be pre-screened prior to beginning the program. This included an assessment by a probation officer, including a home visit and score on probation’s PCRA; the completion of a substance abuse evaluation; attendance at program court sessions as an observer; a meeting with the program’s defense attorney to sign a participant agreement; and attendance at a program orientation.
The program was designed to be completed in a minimum of twelve months over four phases. Each phase was designed with a specified purpose with distinct, achievable goals. The intent of the phases was to encourage participants to develop an understanding of addiction and recognize patterns associated with their use, triggers that potentially would lead to relapse, factors that influenced their drug use, and the impact of their drug use on self, family, and community. Participants were expected to develop sober support networks during their time in the program. At the conclusion of each phase, participants prepared written and oral presentations on their progression in the program. At graduation, participants prepared a relapse prevention plan.

The team also developed a better framework for rewards and sanctions. Rewards consisting of additional weeks’ credit were given for a number of accomplishments, including gaining initial employment, sustaining employment, obtaining a General Education Degree (“GED”); participating in medication-assisted treatment, and successfully completing program phases. Sanctions were given that resulted in losing week’s credit for conduct such as missing home or work visits, missing drug tests, missing drug court without an excuse, and other repeated acts of non-compliance. If a participant performed extraordinarily well, or if there were incidents of serious non-compliance, such as new criminal charges, the team imposes rewards or sanctions that address the individual participant’s performance and the participant’s performance history over the time in which he has enrolled in the program.

Sanctions were not deemed appropriate response for positive drug tests, as “treatment should not be a punishment.” Instead, when a participant tested positive for drugs, responses ranged from increasing the frequency or modality of treatment, to custodial sanctions of a day, a night, or several nights, or sending the participant back to an earlier phase of the program.
The Re-Entry Drug Court Team’s Demographics and Tenure

Similarity in age, education, gender, politics and race are all characteristics that would affect how similar courtroom workgroup team members are and how these similarities might affect the way in which the courtroom workgroup processes cases (Haynes et al., 2010). Haynes et al. (2010) first determined the characteristics that the courtroom workgroup members shared, then determined how the similarities were related to sentencing. Where sentencing decisions involved discretion, Haynes et al. expected similarities to be greater. For “straightforward or automatic” sentencing decisions, they expected that similarities would not be very important. For example, the drug court team has always been white and has a mix of men and women in various drug team member roles, with the exception of probation that has had all men. Applying Haynes’ reasoning, the team members’ characteristics and the degree of similarity should not be important; decisions regarding the application of rewards and sanctions should be “straightforward or automatic.” Where these decisions involved using discretion in regard to a given participant’s circumstances, similarities should make a difference.

Although there have been several changes in the composition of the drug court team, there are still some team members who have a long history with the team. This is illustrated in the following table:
Table 4: Team member demographics and tenure

<table>
<thead>
<tr>
<th>Team Member</th>
<th>Race</th>
<th>Gender</th>
<th>Years in Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge 1</td>
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<td>Male</td>
<td>8</td>
</tr>
<tr>
<td>Judge 2</td>
<td>White</td>
<td>Female</td>
<td>2</td>
</tr>
<tr>
<td>Prosecutor 1</td>
<td>White</td>
<td>Female</td>
<td>Unknown</td>
</tr>
<tr>
<td>Prosecutor 2</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td>Prosecutor 3</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td>Prosecutor 4</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td>Prosecutor 5</td>
<td>White</td>
<td>Male</td>
<td>2</td>
</tr>
<tr>
<td>Defense Attorney 1</td>
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</tr>
<tr>
<td>Defense Attorney 2</td>
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<td>Female</td>
<td>2</td>
</tr>
<tr>
<td>Defense Attorney 3</td>
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<td>Female</td>
<td>2</td>
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<tr>
<td>Probation Officer 3</td>
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</tr>
<tr>
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</tr>
<tr>
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<td>Female</td>
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<tr>
<td>Treatment Counselor 2</td>
<td>White</td>
<td>Female</td>
<td>1</td>
</tr>
</tbody>
</table>

What is interesting in terms of similarity for the current drug court team is that they are all volunteers; they all want this program to work; they all believe it is effective; they all want to see it change the traditional criminal justice system; and they all believe in the collaborative model they are required to use in this program. This was not always true, as with the founding defense attorney who held on to the adversarial approach, believing it could be used successfully in a collaborative environment, and for the earlier prosecutors, who may not have had the full support of their sponsoring organization given its dubious belief in these types of programs.

With this drug court team, similarity is also expressed in how members joined the team and how they worked together prior to their joining the drug court. For example, the current judge was the defense attorney when the founding judge was still presiding over the program. When the current judge became the current judge, the founding judge approached the current defense attorney about joining the drug court team. Even without any direct recruitment of one
drug court team member by another, it was still likely that they had worked together or were adversaries at some time in the traditional criminal court system.

As a result, the drug court team is more homogenous than heterogeneous. This has both advantages and disadvantages, as Haynes et al. (2010) explain:

“The fact that workgroups generally had high levels of similarity probably means that the groups tended to function better, as heterogeneity generally leads to less communication, more formal communication, and more miscommunications. Members of homogeneous workgroups are more likely to communicate with each other and to have informal communications with each other because they are more likely to have shared interests. Furthermore, because they are more likely to share the same values, attitudes, beliefs, and ideologies, they are less likely to misunderstand each other. These findings explain Eisenstein and his colleagues’ observation that homogeneous workgroups are more likely to dispose of cases through consensus. However, there is a downside to high levels of homogeneity, in that a lack of diversity can lead to inflexibility and less innovation” (Haynes et al., 2010, p. 153).

The current drug court is homogeneous in several ways. Over the ten-year existence of this drug court, the team has comprised white men and women who have worked exclusively in the criminal justice system. These individuals have known each other outside of the drug court and, in some cases, have been asked to join the team by other members who worked with them in the traditional system. For example, the second defense attorney was asked to join the drug court team by the founding judge when the first defense attorney left the team. Within the confines of this court community and as part of the drug court team, their communications are not confined to traditional court proceedings, the drug court team meetings, or the drug court sessions; instead, they informally communicate on a regular basis. The drug court team members are interested in the goals, operations, and success of this program specifically, but they also believe in alternatives to the traditional criminal justice system for processing participants who use drugs or participants who have committed drug-related crimes and in carrying the program’s practices into the traditional criminal justice system. As will be seen, they tend to work consensually in
processing participants through the program. However, the absence of heterogeneity makes crafting resolutions for participants’ issues and accepting new and different ideas more difficult.

The Re-Entry Drug Court Team Members’ Roles

The re-entry drug court team has roles similar to, but different from, the roles in a traditional, adversarial court. Both courts have workgroups consisting of a judge, a prosecutor, a defense attorney, probation officers, and session clerks. While some re-entry courts add a treatment counselor to the drug court team as a member, others continue the more traditional practice of referring out program participants to treatment counselors.

The judge in a typical adversarial court has four roles: negotiator, referee, teacher, and administrator. The judge as negotiator emerges during pre-trial activities, such as plea bargaining, where the prosecutor and defense attorney attempt to “make a deal” about a case outcome. As referee, primarily during trial, the judge makes sure that the prosecutor and defense attorney operate within established legal and ethical boundaries. The judge also is expected to be neutral with an objective view of the procedure and substance of a case. As a teacher, the judge instructs the jury as to the law that they must apply in making a decision about a particular case. In the case of a bench trial, held solely before the judge, the judge “teaches” herself about the law to make sure that she applies the law appropriately. Lastly, the judge as administrator is responsible for the operational tasks associated with running her court, including maintaining the case docket and ensuring that the paperwork generated by each case is tracked and processed.

The judge in the collaborative court has similar, yet different, roles. Rather than a negotiator between the attorneys, the judge facilitates discussions with the entire team about participants’ statuses and how the team can help resolve any issues for participants, particularly in getting participants into treatment. The judge’s goal in this role is to come up with a plan that
helps the participant, but also to promote and develop the team’s ability to collaborate. For example, the founding judge stated that he “had to allow for a lot of negotiation and keep from stepping in and making decisions prematurely” (program founding judge). He reserved his right to a final decision, but he wanted to “set a tone that … the team was expected to collaborate on how to work with participants” (program founding judge).

The judge will try not to make up her mind before other team members have the opportunity to contributed to the discussion. As one judge noted, “That’s a little tricky, because you do tend to make a little snap judgment in your head and then just take sides … it’s a real exercise of will not to let yourself make up your mind before you’ve heard everyone out” (current program judge). When the team disagrees about how to proceed with a participant, the judge may step in and set boundaries regarding a final decision for a participant. The current program judge described it this way:

“Ultimately I have to make the decision as to what happens to somebody. If there’s a plain disagreement, I may propose something, and just see how the side that I’m not siding with reacts. Or I’ll propose some type of in-between sanction, some compromise between the two positions, and just see if everyone live with that. Generally, a consensus is reached. If not, I decide” (current program judge).

The judge presides over the drug court session, as she would over the traditional court. However, rather than making procedural or substantive legal rulings that lead to a decision of guilty or not guilty, the judge applies rewards and sanctions concerning participants designed to hold them accountable for their actions and enhance the likelihood of success in their recovery. Also, judges have regular interactions with participants during drug court and a relationship is developed between the judge and the participant. The judge calls each participant forward and talks with them directly, unlike a traditional court where a defendant is typically addressed by the judge through his attorney. The judge asks the participants about the progress they have made in treatment, in obtaining employment or in their education, and any issues or concerns that may be
detrimental to their success in the program. Ultimately, the judge decides whether participants have successfully completed program and are qualified to graduate.

The prosecutor in an adversarial court is responsible for representing the government in bringing its case against a defendant. The prosecutor initiates and conducts the case against a defendant, determines what crimes a defendant will be charged with and to what degree, and whether a prosecution should stop or continue. Ideally, the prosecutor is responsible for not only securing a conviction against a defendant, but to ensure that an individual is not improperly prosecuted or wrongly convicted. Still, the bottom-line in the traditional prosecutor’s role is to be adversarial, secure a conviction, and advocate for punishment.

The prosecutor in the collaborative court is expected to work with the team and the participants towards the participants’ successful completion of the program. The prosecutor, as do other team members, reviews participants’ progress and makes recommendations regarding any rewards or sanctions that may help participants successfully complete the program. The collaborative prosecutor is still concerned about public safety, but public safety is less of a concern unless a participant reoffends. Where the prosecutor in the adversarial court is expected to be relentless in prosecuting a defendant, the prosecutor can step out of that role in the collaborative court and be freed from his responsibility to convict and punish a defendant. As the current prosecutor noted:

“The people have already been prosecuted. They’ve already served their sentence … we’re not giving up anything” (current prosecutor).

With prosecution and conviction no longer concerns, and although the prosecutor may be “institutionally, the least important” member of the drug court team, he still can “reach out and try to figure out what’s best for a participant” (current prosecutor), giving a different perspective to the team from the government’s point of view.
The defense attorney in an adversarial court is the defendant’s zealous advocate, representing the defendant at each stage of the criminal justice process, ensuring that the government proceeds against the defendant within the boundaries of procedural and substantive due process. The defense attorney’s role is to protect the defendant’s interests at every stage of the criminal proceeding. As a zealous advocate, the defense attorney must consider whether to hold on to any information that she perceives to be detrimental to her client’s position, even if releasing some of that information was in the client’s best interests for purposes of his or her recovery.

The defense attorney in the collaborative court is still the participants’ advocate for their legal rights, but her advocacy is also about helping to create the best plan for their success in the program. So, the challenge for the defense attorney in the collaborative court is to protect and promote the participant’s legal rights, but also to work with other team members in facilitating a plan that promotes the participant’s treatment and employment goals. Participants and team members also struggle with this challenge. Participants mostly see defense attorneys as their advocates in fighting against a conviction, not in helping them take program sanctions in exchange for therapeutic gains. Participants struggle with the idea that the defense attorney is promoting a response that may result in a custodial sanction, when their perception of the defense attorney is the person who is going to help them avoid going into custody. Team members see defense attorneys as their collaborators in coming up with therapeutic solutions for participants and, therefore, freely exchanging information with them. Team members struggle with the idea that the participants still have legal rights that may require the defense attorney to advocate non-disclosure of information, or that participants may still instruct the defense attorney in how to proceed with their case. For example, participants may dispute positive drug
tests, admitting to the defense attorney that they did use but wanting the defense attorney to go to
the team and argue that the test results were not valid. The defense attorney, taking a longer-
term view, tells the participants that it does not make sense for her to argue against positive test
results, when the team is trying to help participants with treatment, employment, education, or
family relationships. In other words, she would try to persuade the participant that it was better
for him to admit to using and get the necessary treatment and other help from probation.

The probation officer in the adversarial court has two roles, investigatory and
supervisory. As an investigator, the probation officer gathers information about the defendant
into a presentence investigative (“PSI”) report that the judge will use in determining an
appropriate sentence. The PSI contains information about the crime with which the defendant
was charged, the impact on any victims, the defendant’s prior offenses, and the defendant’s
personal information on family, employment, education, and other activities. In his supervisory
role, the probation officer is responsible for making sure the probation completes the period of
probation successfully. Also, probation officers offer referrals to other programs or resources
that are ostensibly designed to help rehabilitate and reintegrate the probationer into his or her
community. At the same time, the probation officer is responsible for protecting the community
from any actions the probation might take while under supervision. Making sure the probation
completes the period of supervision and making sure the community is safe from the probation is
a balancing act for which the probation officer is held responsible.

The probation officer in the collaborative court retains both his investigatory and
supervisory roles, but these roles are enlarged in the collaborative court. Probation officers
spend more time working through treatment, employment, and relational issues with participants
than they would with probationers in an adversarial court. Probation officers in a collaborative
court spend more time visiting with probationers, their families and their employers in a quasi-investigatory role. Probation officers take more time looking into the people and circumstances of participants’ lives and how those people and circumstances help or hinder participants’ progress in the program.

Probation officers’ supervisory work is much the same, too, although as one probation officer pointed out, “the treatment and therapeutic approach is much more intense in the program” (probation officer #1). Probation officers spend more time working with participants in the collaborative court work to ensure that they are compliant with the program’s rules, to provide participants with connections and referrals to various agencies, and to monitor more closely participants’ daily activities.

In the adversarial court, probation officers tend to make decisions on their own. Probation officers in the collaborative court must work with the collaborative court workgroup, even where some probation officers may have expertise in resolving specific issues. As one probation officer stated, in the collaborative court, he is “working with the team approach; it’s a team model with more input from the [other team members].” This may mean a loss of efficiency and delays in implementation, since the probation officer cannot operate autonomously, but to preserve the collaborative spirit of the team, he must work with other team members.

The collaborative probation department is forthcoming with distributing information about program participants. Probation “shared with [the team] our paperwork, our progress reports, the process we went through” (probation officer #1). As a result, trust developed between the team members as they worked together more and talked openly about issues in sharing information about participants. Over time, as participants successfully completed the
program, the team found that sharing information with one another helped the participants. When team members began to see that the information was being used to help resolve issues rather than to find reasons to punish participants, the tenor of the team meetings and the team members’ approaches began to change. Team members exchanged information informally outside of the regularly schedule team meetings and drug court sessions and in doing so had a better handle on participants’ status throughout the week.

Treatment providers are not part of the adversarial court’s workgroup. Treatment provider’s services are court-ordered, but administered and supervised outside of the court itself. They are private providers in the community eligible to receive referrals from the court, but they are not court employees. Referrals to these providers are usually made through the probation department. Treatment providers may be required to report to the probation officer or, in some cases, to the court itself on the progress a defendant is making in treatment, however, these status reports are not part of an ongoing process. For example, a court may order a defendant to undergo substance abuse treatment. The treatment provider will provide counseling for the defendant and the probation department will administer drug testing. If the defendant is compliant with counseling and drug testing, nothing will be reported to the court. However, exceptions will be reported to the court; for example, if a defendant misses counseling sessions or tests positive for drugs.

The treatment provider in the collaborative court still performs the same tasks as in the adversarial court – providing counseling and administering drug testing, for example – but the collaborative court’s treatment provider is more likely to be in continuous communication with the team and, as with this re-entry drug court team, is actually a team member. In the collaborative court, the treatment provider will participate in weekly status meetings, make
treatment recommendations for participants to the team, advocate for participants concerning their treatment, and craft participants’ treatment plans. Ideally, the treatment provider would see all of the participants or none of the participants in a program, but the treatment provider would always provide an expert opinion to the team from a treatment prospective on how to proceed with any given participant.

When a treatment provider does not see all of the program participants, but only some of them, this presents a challenge to the treatment provider. When a participant was not her client, her role was to provide some level of advocacy for the participant, even though she did not have a counselor-client relationship with that individual, and provide expert services to the team, usually with an opinion that was more in the best interests of the program rather than the best interests of the non-represented participant. When a participant was her client, then her role was to act in the best interests of the participant was her client, which may conflict with the best interests of the program and the remaining participants. So, in some ways, her role was very similar to that of the defense attorney in striking a balance between the spirit and intent of the program and its effect on participants and the individual participant’s treatment needs. In the end, she gave her represented participants “more of my advocacy than I give other members, and I almost feel like I’m giving more to those people, which I don’t think is fair” (treatment provider).

A treatment provider in a collaborative court who only sees some of the participants also has a challenge of working with other team members concerning those participants she does not see. The treatment provider has no first-hand experience with those participants that she does not see, but the team expects her to provide some expert opinion on those participants in the
course of reviewing their status in the program and to advocate for those participants, as well as for the participants she counsels.

The session clerk in an adversarial court has many responsibilities. These include acting as the conduit for any pleadings or paperwork that must be given to the judge. The clerk maintains the records generated for all proceedings, including any physical or documentary evidence. During trials, the session clerk coordinates the jury selection process for that particular courtroom. All materials, scheduling, and requests flow through the session clerk to the judge.

The session clerk in the collaborative court has fewer responsibilities. Although the session clerk is present for every drug court session, the administrative responsibilities are less because the drug court team, typically the probation department, takes responsibility for preparing status reports, motions, and other documents necessary for processing participants through the program. Attorneys are not filing pleadings, evidence, and other documents with the drug court; participants are engaging with the judge directly.

The Re-Entry Drug Court’s Operating Rules

Traditional courtroom workgroups use informal rules to guide and shape their decisions, as well as reward and sanction courtroom workgroup members as they process cases (Ulmer, 1995). These operating rules are both substantive and procedural. Substantively, these rules are used to typify cases by looking at factors such as seriousness, judicial leanings towards particular case outcomes, and the busyness of the court so that a pool of appropriate sentences is formed that the workgroup may draw from to dispose of cases efficiently (Ulmer, 1995). A “going rate” is established and used as a gauge by members for processing cases quickly, thus moving cases through the system (Walker, 2014). This going rate is established and used as the members communicate with each other in processing cases. When the members agree as to the going rate
for a case, it can be disposed of quickly. When the workgroup establishes a going rate, it becomes imbedded in the workgroup and is difficult to change (Eisenstein et al., 1999). Procedurally, operating rules are used to guide how the team meeting and drug court session will be run. These rules include individual team members’ duties during the team meeting and court sessions, how participants will be reviewed in the team meeting, and how participants will be processed during the court session.

As the team meetings focus on reviewing the participants’ progress reports and current status, team members reading progress reports as the probation officers provide a verbal overview of the participants’ status and progress is acceptable. If during the probation officer’s report on a participant he indicates that the participant is doing well, the review moves very quickly. Occasionally other team members will ask questions about certain aspects of the participant’s progress, but questions are usually for clarification and additional comments are simply points of additional information. Team meetings with few exceptions in participants’ progress are relaxed and the team is comfortable moving through the list of participants very quickly.

If the probation officer raises issues or concerns, however, about participants’ progress or status, team members usually become much more inquisitive about what happened and what measures have been taken to intervene or provide remedial action for the participant. Team members are more animated and quickly contribute comments and questions to the discussion. For example, one participant had overdosed and was near death. Some information regarding the circumstances surrounding the overdose and the current condition of the participant was provided by the probation officer, but other team members asked questions such as “What can we do to help him?” or “What do we need to change in his treatment to make sure this doesn’t
happen again?” Any serious incidents, whether or not related to substance use or abuse, were expected to have the individual team members’ full attention to discuss and plan how to proceed with that participant.

During the team meetings, team members are expected to be engaged in some way with the participants’ written reports and the probation officers’ narratives about the participants. Team members read the written reports. The judge makes notations on each report about the team’s discussion and the decision it has reached in responding to a participant’s issue, if necessary. If a probation officer is providing a narrative about a participant that includes non-compliance with program rules, or particularly difficult or challenging circumstances regarding a participants’ sobriety, work, or family, team members stop reading or note-taking and give full focus to the probation officer as he continues his narrative. It is expected anything other than a routine report on a participant will trigger team members’ to focus on the narrative and needs of the participant.

When the drug court session begins, it has the air of a typical court being called into session. The judge’s session clerk calls the drug court session to order. The judge wears her robe during these sessions and sits on the bench. The prosecutor and probation officers sit together in front of the session clerk, and the defense attorney sits at her table immediately behind the prosecutor and the probation officers. This is the seating arrangement in a traditional court session. The participants sit in the jury box. Court decorum, the members’ positions, and some of the formality of a traditional court is present in the drug court, too.

The judge calls each participant by name and each participant is expected to approach the judge’s bench. As in a traditional court, the judge remains seated and the participant is expected to stand and address the judge directly. When the judge asks, “How’s it going?” the participant
is expected to engage in a conversation about what happened since the last time the participant was in court, whether there are any issues, successes, or failures that the participant would like to share with the court, and if the participant has any questions. Sometimes the judge will mention that she is aware of a particular circumstance that came out during the meeting; sometimes she will wait to see if the participant raises the issue. Usually the judge talks about what the team talked about with the participant, but occasionally omits or changes her tack depending on how the participant is responding to the discussion. Team members do not contribute to the conversation between the judge and the participant unless the judge invites them to do so. The judge terminates the conversation with the participant when she feels it is time to do so, then continues the drug court session with the next participant.

There is a procedural formality to the drug court session, but the substance of the drug court session is much more informal. Participants and team members are still expected to show the judge respect by standing when she first comes into the courtroom; by not speaking when she speaks; by standing when address her; and by addressing her as “judge” or “your honor.” However, the dialog between the judge and the participant, and occasionally with one of the other team members, is conversational and flows more freely than it would in a traditional court. There is the expectation that a free-flowing dialog will help the drug team help the participants be more successful in dealing with any issues, challenges, or concerns.

The Current State of This Re-Entry Drug Court

When this program began in 2006, there were three federal re-entry drug courts nationally. By 2008, there were eighteen federal re-entry courts or post-conviction drug courts. In 2011, fifty-two districts were operating or planning to operate a re-entry or post-conviction drug court. Although this program was not the first of the federal drug courts, it was the first that
took on the drug court model as defined by the National Association of Drug Court Professionals (supervising probation officer). Some have incorporated various services into the program, providing housing assistance, legal assistance, and access to educational and vocational tools and resources, such as laptops.

Though once a leader, this program is no longer the vanguard of the re-entry drug court movement. It relies heavily on the experience of its team members and its decision-making is more intuitive than empirical. It has little data concerning its operation and little information about any of the participants who moved on from the program. For example, a similar court in another jurisdiction that began a re-entry drug court a year after this program started maintains and reports statistics on whether its program graduates were arrested on new charges or had the remaining term of their supervised released or revoked. The same data is tracked for current participants. Independent evaluations of the court’s statistics are conducted regularly, and the findings reported to the court administration (e.g., Philadelphia Re-entry Court Annual Report, 2015).

This program has done little to reach outside its own walls to partner with or integrate other community programs. Again, the similar court mentioned above as partnered with academic institutions, housing programs, presented in public forums, as well as achieve its objectives of having its participants clean, sober, employed and engaged in other positive aspects of community life, such as mentoring, volunteering, and parenting. This sister court has developed programs that help participants obtain benefits for health care, energy assistance, food stamps, and child care.

While the drug court team being studied team relies mostly on sanctions for misconduct and non-compliance, with little emphasis on rewards, so do other courts. Where this program
has struggled with its application swift and consistent sanctions, other courts using evidence-based practices and uniform sanctions appear to be achieving better results. The experiential nature of the decision-making that this drug court team uses may be hindering its effectiveness.
CHAPTER FIVE: THE TEAM CULTURE & MEMBERS’ ROLES OF A RE-ENTRY PROBLEM-SOLVING COURT’S WORKGROUP

The previous chapter presented the history and context of the drug court and the drug court team being studied. Relating their history and setting the context is necessary for this qualitative study so that the reader better comprehends the results. Understanding the drug court and the drug court team’s history and context contributes to learning about its culture and roles, which is one of the study’s goals. Having discussed the history and context, this chapter presents the results of the drug court team’s culture and the roles played by the drug court team members.

Courts are social institutions. They are comprised of various individuals who play different, defined roles and who have attitudes, beliefs, perceptions and values that shape the way in which they work and the case dispositions they produce. Courtroom workgroups, operating as units within the courts, process offenders. They develop a culture that “consists of the values and perceptions of the principal members of the court community about how they ought to behave and their beliefs about how they actually do behave in performing their duties” (Eisenstein et al., 1998, p. 28). Emerging from that culture, these courtroom workgroups establish goals and expectations about how offenders should be processed and their cases disposed. Different courtroom workgroups develop different cultures, and their members develop different concerns about how offenders should be processed and their cases handled.

The purpose of this chapter is to explore what makes up the culture of the re-entry problem-solving court’s workgroup. Specifically, I will examine how what we know about traditional, adversarial courtroom workgroups emerges in these problem-solving courts. I will utilize a framework from traditional, adversarial courtroom workgroup models and apply it to this re-entry court. Additionally, there are external influences on the drug court team and its
culture. The biggest influence for this particular team came from the sponsoring organizations represented in this program, which I refer to here as “home bases.” Sponsoring organizations are the agencies who provide representatives to the drug court team, such as the prosecutor’s office, the defense bar, or the probation department (Eisenstein and Jacob, 1977). The differences between a true sponsoring organization and the home bases of drug court team members will be discussed below as well.

Culture

Five underlying and related concepts have emerged from studies of courtroom workgroups: (1) solidarity; (2) cohesion; (3) similarity; (4) proximity and (5) stability (Eisenstein and Jacob, 1977; Haynes et al., 2010; Jacob, 1978; Olson et al., 2001). Solidarity reflects the unity and single-mindedness of the court workgroup. Cohesion shows that a particular courtroom workgroup is able to work well together. Similarity suggests that the members of the courtroom workgroup will have similar values, beliefs, backgrounds and demographics. Proximity concerns geographic closeness. Stability refers to the number of years’ individuals have worked together within the same jurisdiction. Taking these constructs together show that the closer courtroom workgroup team members are in attitudes, backgrounds, beliefs, and values, and the closer and more frequently they work together, the more the workgroup members will become of one mind and work well together in managing the workgroup’s expectations in how cases should be processed in terms of outcomes and efficiency (Eisenstein et al., 1988; Eisenstein and Jacob, 1977; Haynes et al., 2010). The formal and informal interdependent relationships that develop and the ability to compromise and cooperate in managing and disposing of cases becomes central to the functioning of the courtroom workgroup (Ward et al., 2008; Knepper and Barton, 1997).
Other concepts are associated with these workgroups as well. *Socialization* is the means by which new team members “are taught not only the formal requirements of the job, but also the informal rules of behavior” (Clynch & Neubauer, 1981, p. 85). All six of these concepts – solidarity, cohesion, stability, proximity, similarity, and socialization – will be addressed below and applied to this drug court team to get a sense of its culture and how it processes program participants.

**Solidarity**

*Solidarity* has to do with the single-mindedness of the group. Generally, a group’s unity is manifest in the closeness that group members develop because of similar attitudes, beliefs, and backgrounds. A group’s strong sense of solidarity should result in members liking and trusting each other as they come together with a common purpose (Wheeless, 1976). With this drug court team, it is the way in which the drug court team members unite to work with offenders who want to end their addictions and addictive behaviors.

Solidarity was expressed by the team members’ verbal statements and non-verbal expressions made during drug court team meetings, drug court sessions, and through the team member interviews. These statements and expressions, whether in the meetings, court sessions, or interviews, came through as an underlying sense that everyone strives for the same common objectives – that participants’ achieve the program’s goals of remaining clean and sober, law-abiding, and employed, as well as the more general goal of bringing change in how offenders are processed upon exit from the corrections system and reintegrated with their communities so that they do not recidivate.

In the drug court team meetings, members expressed their solidarity with the participants by using statements such as “We need to explain to them that we are trying to help them” or “We
need to make them aware they are only hurting themselves” (current program judge). These statements referred to the team trying to help participants understand that the program rules, particularly the reasons for sanctions, were designed to help them in their recoveries. Non-verbal expressions conveyed solidarity with the participants as well: the collective gasp when news was given to the team that a participant had used drugs again or had been arrested; the spontaneous applause when a participant was moving up to another phase in the program or he had some success in obtaining a job or resolving a family issue; or heads dropping in regret when it was decided that a non-compliant participant needed to sanctioned with a period of incarceration or even temporarily suspended from participating in the program.

Participants’ issues or concerns tested the team’s solidarity and its ability to remain unified in supporting participant success. This was often the case where participants were not compliant with the program’s policies and procedures. For example, when team members are not sure that a particular course of action is best for a participant, particularly where it effects the program’s integrity, the team members split between supporting the participant and his or her goals and supporting the integrity of the program for the program’s sake. This lack of unity was evident when the team was considering how to approach a participant regarding prescription drugs that some members of the team believed the participant might be abusing. The team not only struggled to come up with a vehicle by which they could obtain the participant’s release of information regarding the medication she had been taking, but whether they should even pursue such a release. Some of the team felt this was standard procedure and others felt this was overextending into areas that were not part of the drug team’s mandate.

Several weeks of discussion ensued. At one point, the prosecutor suggested that the defense attorney ask the participant to get a letter from the participant’s doctor, addressed to the
probation office, for a limited release of information regarding the medication that she had been taking. There was more discussion of whether the probation office would accept such a letter, or whether the probation officer would accept the defense attorney’s review of the participant’s medical record, assuming the participant consented to that medical record.

The idea of a partial or limited release was introduced. It was suggested that option should be presented to the participant. The team discussed whether this should be brought up in the drug court session in front of the other participants, particularly the issue of a participant allegedly suffering from depression being prescribed benzodiazepines and amphetamines as a course of treatment. The team seemed lost in terms of any direction to take and it was difficult for the team to align itself collectively with any one approach.

The judge admitted that she did not “know enough to about the group’s dynamics” to make the decision about bringing this matter up in front of all of the participants (current program judge). The prosecutor was afraid that (1) bringing this up in front of the group would send the wrong message – that it is acceptable for a participant to have these prescription drugs from doctors outside of the program’s supervision, and (2) privacy concerns for the participant. The prosecutor supported the defense attorney’s idea that there be a partial or limited release that, perhaps, would allow the defense attorney to review the participant’s medical records.

The probation department felt it should be permitted to see the medical records based on the release it obtains from every participant. The treatment counselor had no knowledge of the prescribed benzodiazepines and amphetamines for this participant, even though the participant participated in weekly group sessions with the treatment counselor.

At the conclusion of this meeting, the judge decided that she would inform the participants that there were “ongoing issues with prescription medications” and that all
participants should talk with the defense attorney and the treatment counselor to make sure both of these team members knew about the participants’ prescription medications (current program judge). Also, the defense attorney said that she would talk with the individual about signing a partial or limited release. Eventually, the participant simply signed the release during a session with the treatment counselor.

This example highlights a breakdown in the group’s solidarity. There was virtually no unity in how to proceed in a way that would help the participant. Although they did not abandon working on this issue, team members dug into their positions on the issue of not only obtaining a release, but the scope of that release and whether information obtained within the scope requested by probation was really necessary. The effect on the participant of releasing the information did come up, but was usually overshadowed by discussions about the necessity of participants following what the team required them to do.

The team members also struggled with solidarity in working towards revisiting and revising the program’s rules for its participants, specifically in seeking a solution regarding sanctions. The judge said that the purpose of having a set of rules was “to set rules so as not to shock and disappoint participants when they are sanctioned” (current program judge). The team was not really applying the rules consistently and creating custom solutions for certain participants. If one participant received one sanction and another participant received a different sanction, the team was not seen by the participants as being consistent. For example, participants are required to call the probation department to see if they are required to report for drug testing. There is no set rule for how many calls may be missed before some sanction is imposed on the participant. The judge proposed a rule where, if participants missed three calls, they would lose credit for the week. The prosecutor made a face at that suggestion; he clearly did not like it. He
felt that it gave the participants a “license to miss calls” (current prosecutor). The judge pointed out that docking a participant one week’s credit was good, because it sent the message that participants must call and it was not something that could be left to their discretion. But she also said that maybe missing three calls could be used as an “informal guide” (current program judge). She pointed out that, if there were too many hard-and-fast rules, “no one would join the program” (current program judge). As with the medical release, team members spent a lot of time discussing how the sanctions would work for missed calls rather than the purpose of the calls and their importance in helping participants be successful in the program.

This discussion began in August 2015. In October, it was clearer that the team wanted both to come up with customizable solutions and have categorical rules established for the program. This creates a mixed message for the participants and the team. For example, a participant who was scheduled to graduate to the next phase of the program had missed a number of calls. Based on what the team had done with other similarly-situated individuals in the past, this participant should be sanctioned for missing those calls. However, one team member pointed out that “there’s a lot he’s achieved. He’s not perfect with calls, but he has made a lot of progress” (probation officer # 1). The team discussed the disparity in graduating this individual to the next phase while missing calls versus not graduating other past and current participants who missed calls. Still, the team agreed that this was an exception and that often times each individual participant’s performance has to be evaluated in its entirety, without strict compliance to rules.

There was verbal expression of the team’s solidarity. For example, in drug court sessions, the judge would express the collective thought of the team through statements such as “We talked about how we can help you” or “We all want you to continue to succeed” (current
program judge). In the drug court sessions, as the judge presides over the drug court session, she is the conduit through which the team’s collective work is channeled and expressed to the participants.

The judge often shares with the participants that team members discuss and wrestle with the various issues that come into participants’ lives. For example, during the course of discussing one participant’s housing difficulties and incremental successes in securing housing, the judge told the participants during a drug court session that “the team spent considerable time talking about the difficulties in finding a place to live” (current program judge). Another time, the team seemed willing to force open options for treatment where a participant was regularly relapsing. As a unit, the team expresses its collective desire to help participants with the challenges presented in their lives, its collective joy in participants’ successes, and its collective sense of disappointment and loss when participants relapse.

Individual team members made statements during their interviews that were indicative of solidarity.
Solidarity in groups is the result of “collective action to produce a collective good or goods,” even if those goods are information, companionship, or a sense of common purpose (Heckathorn & Rosenstein, 2002, p.62). The drug court team believes that everyone cooperates and works together to produce treatment plans for participants that help them reenter and reintegrate into their communities. Their collective action is not standardized or uniform; in fact, team members indicate that it is the different approaches, backgrounds, and experiences of the team member that allow each team member to look at an issue or concern from a different perspective. It is the melding of these approaches, backgrounds and experiences that believe helps to produce a unified, collective good that is designed with the intent of helping the participant achieve the participants’ objectives to be clean, law-abiding, and employed.

Whether this drug court team has solidarity is questionable, since solidarity may not be a stable characteristic of any team or workgroup. Instead, it is possible that the team’s solidity was questionable at the time of these observations, but is something that may have been stronger
or weaker at other times. As will be seen, the team seems to work well together, but there is no clear sense that they consistently share the same ideas for achieving their common goals. Also, it is not clear that the team members stand together as one on how participants can achieve the program’s goals. This stands in contrast to traditional courts, where the courtroom workgroup members come together around the goal of efficient case processing. Although one could argue that their traditional roles get in the way of real solidarity, it seems more likely that solidarity is weak in this drug court team because of other issues concerning their roles, the team’s operating rules, and concerns about the drug court’s existence.

_Cohesion_

_Cohesion_ is a concept from the extant literature that is associated with how well the members of the drug court team work together. (Eisenstein and Jacob, 1977; Haynes et al., 2010; Jacob, 1978; Olson et al., 2001). Although _cohesion_ is different from _solidarity_, which shows the unity and single-mindedness of the drug court team (Eisenstein and Jacob, 1977; Haynes et al., 2010; Jacob, 1978; Olson et al., 2001), both are necessary for the team’s success. _Cohesion_ is achieved “[w]hen the group adopts common objectives, becomes aware of one another’s roles and responsibilities, interacts on a continuing basis, and perceives that they are part of a cohesive group” (Olson et al., 2001). Therefore, cohesion does not mean that the team members agree on the best way to achieve a common objective, which is evidenced in their solidarity, but it does mean that they are able to stay together and work through issues that come up with the program’s participants.

Cohesion springs from Eisenstein and Jacob’s (1977) study where they argued that courts consist of workgroups in which workgroup members work in specific roles to process caseloads and “in which each person who acts on his case is reacting to or anticipating the actions of
others” (Eisenstein and Jacob, 1977, p. 10). As a result of working together within the court’s resource constraints and operating rules, workgroup members form relationships and, as a result, tend to cooperate with each other. Additionally, Eisenstein and Jacob (1977) argued that courtroom workgroups processing more specialized caseloads – that is, having the same type of cases – would develop routine procedures that produced less variation in case outcomes and would result in faster processing of cases.

Clynch and Neubauer (1981) expanded on this concept by purporting that these workgroups are more than individuals working with one another, but who also work toward common objectives that require them to “be aware of one another, interact with one another on a continuing basis to accomplish their objectives, and perceive themselves as part of a group” (p. 71). However, even with the development of the these working relationships, resource constraints and operating rules will require individuals to come up with ways to process cases that satisfy their individual objectives as well as the group’s objectives (Clynch & Neubauer, 1981).

Cohesiveness is found in a group where individuals playing different parts work as one towards achieving the group’s goals and objectives for this drug court team. This does not mean that there will not be conflict. In fact, the team may find “as much benefit in conflict as they do in cooperation, depending on the situation” (Flemming et al., 1992, p. 11) and, as a result, learn to work more cohesively in crafting plans that will help participants successfully graduate from the program. However, that is not always true with this drug court team and as a result, their cohesion can appear weak. For example, one participant tested positive for marijuana on eight occasions. On every occasion, she denied use. When a participant denies use, the probation department arranges to have the sample re-analyzed at another laboratory. In every case, the
second analysis confirmed the first analysis, that the participant tested positive for marijuana. In every case, just before the second analysis is received by the probation department, the participant admits to using.

The participant’s eighth positive test for marijuana came at the beginning of the holiday season. When her probation officer reported to the team that another incident occurred, the team members all expressed concern about her history of denying that she is using, only to have her admit that she did, in fact, use after being confronted with positive drug tests. However, the team members all agreed that at some point she should be commended for sticking with the program – but not today. Various team members – the other probation officer, the defense attorney, and the treatment counselor - began discussing whether the participant has a new roommate, a new partner, an existing partner, and other background issues. Each member had different information or no information. There seemed to be a significant disconnect between these three team members as to participant’s current status.

At the drug court session, the conversation between the judge and the participant was terse. The program judge began the conversation by mentioning the participant’s positive drug test. The participant continued to deny using, although she admitted to her history of continued denials until confronted with the test results of the second analysis. The program judge simply told her that we would have to wait for the second analysis’ results.

Two weeks later, the participant called the defense attorney prior to the team meeting and told him she would not be able to attend the drug court session that day.

Defense attorney: “She has to work; she has an issue with her son. Then she says she can’t come in.”
Probation officer: “She wants to drop out of the program.”
Defense attorney: “I am trying to get her to stay.”
Program judge: “It would be much better if she stayed.”
Defense attorney:  
“She continues to deny any voluntary ingestion of marijuana. Even if she did, we should acknowledge all the great things she has done.”

Program judge:  
“In the spirit of the holiday, we will not take her into custody, but the team needs to meet with her.”

Defense attorney:  
“I would advocate for some days in custody.”

Probation officer:  
“In the beginning we had a discussion about this and she had a child care plan. She needs to go into custody to preserve the integrity of the program.”

On its face, there is little to suggest that the team is working cohesively to resolve this issue with this participant. It wants the participant to remain in the program. At the end of this conversation, the probation officer points out that a child care plan had been discussed at the beginning of her time in the program so that the participant would not miss the drug court sessions. The defense attorney reports that there is a work issue and a child care issue. The participant wants to drop out of the program; the defense attorney and the probation officer want her to stay. Even after her eighth positive drug test, the defense attorney wants to acknowledge her accomplishments and the program judge is willing to waive a sanction because of the holiday season, something the probation officer is against. Although the team keeps the communications going about this participant, it is difficult to see how this conversation is developing a plan to help the participant be successful, although the team’s solidarity around this participant is explicitly and implicitly stated.

Another two weeks later, the participant called her probation officer again prior to the team meeting and told him she would not be able to attend the drug court session that day.

Defense attorney:  
“I thought she was coming today.”

Supervising probation officer:  
“She missed her UA. She’s pissed about group situations.”

Treatment counselor:  
“She’s been no call, no show.”

Program judge:  
“If she shows up, she gets no credit. And she needs to talk with her PO.”
Supervising probation officer: “She’s angry about the positive test.”
Program judge: “She needs to take her lumps and do an overnight.”
Defense attorney: “But you said, ‘In the spirit of the holidays, we should give her a break.’”
Program judge: “She also needs to decide if she’s in the program or not.”
Defense attorney: “She should not quit. It will feel like a failure for her.”
Supervising probation officer: “She has to do 26 weeks.”
Defense attorney: “She has worked so hard for so long.”
Program judge: “The message I’m getting is that she’s finished.”

The team members are conveying important information about this participant, as well as their own positions regarding the outcome each member would like to achieve. However, they do not seem to be deliberate in listening to the messages being conveyed by the other team members, possibly because of the reactive nature of the statements each team member is making. Here, the program judge has shifted to a position like that of the probation officer, requiring that the participant experience a custodial sanction. The defense attorney points out that this goes against what the program judge had said in the last team meeting. The supervisory probation officer and the treatment provider seem to suggest that the participant has constructively dropped out of the program. There is no opportunity for the judge to address her concern during the drug court session, because the participant does not attend. While the team’s cohesiveness is not clearly shown by its continuing discussion about this participant, there is a sense of its solidarity around keeping the participant in the program.

Five weeks after the discussion begins about this participant’s marijuana test, the team is still discussing how to handle this situation. Her probation officer begins the discussion, after reporting that the second analysis confirmed the presence of marijuana.

Probation officer: “I had a heart-to-heart talk with [the participant]. I proposed that she stay in the program, but maybe take a
step back to regroup. She wasn’t here last week. She is agitated and confrontational. She’s not really that way with me, which is unusual.”

Defense attorney: “I called her to remind her about today.”

The probation officer goes through the work, home, and housing issues this participant has been facing. The defense attorney nods in agreement with each detail of the probation officers’ report.

Probation officer: “If she stays in [the program], we need to deal with the sanction.”

Defense attorney: “I told her she would need to do the day in custody. But it’s important to acknowledge that she knew that was coming. Her housing issues have been very stressful. She is very destabilized right now, very weepy, and she seems depressed. Should we urge her to have a psychological evaluation?”

Probation officer: “She needs to be assessed in a treatment setting to see what we can do.”

Treatment counselor: “I agree that she is probably depressed.”

Defense attorney: “She feels defeated. She’s giving up.”

Program judge: “What should we do with her? I think she needs to do the day today. A day is enough; she’s hanging on by a thread.”

Probation officer: “Should it be two? Not for her, but for the integrity of the program. When we delay like we have with imposing this sanction, it allows for other issues to come up.”

Program judge: “I thought she was out of the program. She’s failed. She’s not going to succeed at the program. She’s not graduating. She has three months left of supervised release. She’s not going to get the year off. And we still have this tension between maintaining the integrity of the program and imposing sanctions. Do we lock everyone up? One day? Two days? At this point, locking her up is about the program, not her.”

Supervising probation officer: “The immediacy of the sanction is gone. Tell her we’ll help her transition through the last three months of supervision and be her support. That’s all we can do.”

Program judge: “We need to have a longer conversation separately about what to do if someone quits.”
What to do with this participant and future participants in similar situations was moot. The participant did not show up for the day’s drug court session. Finally, three months after this incident began, the participant withdraws from the program because her probation supervision ends before she would graduate from the program. While the team stuck together, kept the conversation going, and identified all the issues with the participant that needed to be addressed, nothing came together in a tangible action plan to help correct the situation and get the participant back on-track. The participant completed her supervision, but she did not achieve the program’s goals.

Cohesion for this drug court team was similar to the experience of the specialized drug treatment courts in Cook County (Chicago) that were studied by Olson et al. (2001). There, researchers found that the drug courts they studied struggled with their cohesiveness as workgroups:

“For example, not all programs or teams met on a regular basis, convening once every couple of weeks, usually before the date scheduled for status and sentencing hearings. In addition, one of the programs experienced a high rate of turnover in prosecutorial and defense staff, primarily due to agency rotation and promotion practices. In another program, however, team members had the necessity to meet more than once per week, and the benefit of experience little staff turnover during the entire period of program implementation. As a result of these differences, one program frequently had to go through the workgroup formation process, including the development of shared roles … either because of turnover or relatively long periods of time between group meetings, while other programs benefitted from more stability” (Olson et al., 2001, p. 183).

All the team members believe that the current team works very well together and that team members “think of all the other players and what their responses are going to be” (supervising probation officer); thus, team members cannot act in isolation. The team is “more of a cooperative venture” (current prosecutor). It has grown to the point where “you … consider the entire team in what your decision is going to be” (supervising probation officer). The team works together in their individual roles to come to a common decision on how to proceed and
each team member shares in the responsibility for that decision. For example, where a sanction is imposed on a participant who is non-compliant with a program rule, “it’s not just the probation officer being the bad guy imposing the sanction. It’s the probation officer, defense counsel, the government, and the judge all saying, ‘This is the end result of his non-compliance’” (supervising probation officer).

Working together in this way does free the team members from their traditional roles and, to a certain extent, from the dictates of their agencies. They are free to interact with one another. The current program judge described it this way:

“The typical judge doesn’t get to relax and talk with [the prosecutor] and [the defense attorney] … there’s something really different and differently supportive and differently cohesive and consistent that none of us would otherwise experience” (current program judge).

They are also free to be vulnerable and brainstorm with each other to craft solutions for participants’ issues and the program’s operation. Team members can say, “We don’t know; we’re trying to figure this out” (current defense attorney). In a traditional court, each member is expected to come into the workgroup, exert his or her position and that of the agency he or she represents, and leave it to the judge to make a final decision. In the traditional courtroom workgroup, there is an expectation of confidence in one’s position and to dig in with that position until the judge rules otherwise. In this program, everyone is expected to come in with ideas and positions, but to remain open-minded and willing to come up with a joint outcome that works to help the participant succeed.

With only these loose perceptions, there is no clear explanation as to what makes the team more or less cohesive. Understanding how the team works together requires answering specific questions about what it means for the team to be cohesive: (1) what are the drug team’s common objectives; (2) what are the roles of the drug team members; and (3) what are the rules
by which the team operates? The answers to these questions provide insight to the teams’ cohesiveness.

**Common Objectives.** The drug court team’s common objectives are the first element that helps determine whether a team is cohesive. Clynech and Neubauer (1981) argue that, in a traditional criminal courtroom workgroup, each workgroup has its own objectives, as does each individual team member. This particular program has articulated that its common objectives are for participants to (1) remain clean and sober, (2) remain law-abiding, and (3) be employed. On their face, these objectives seem straightforward, but further examination of each of these objectives demonstrate that each can have different meanings. For example, is a participant considered clean and sober only if he or she remains *continuously* clean and sober, especially since, for this program, relapse is considered a part of recovery? Is a participant law-abiding if no additional offenses are committed, or if offense are related to the use or abuse of drugs and alcohol? How long must a participant be clean, law-abiding, and employed to demonstrate the participant’s achievement of these objectives? The current team members talked about their belief they were achieving these objectives, but it is difficult to determine whether this drug court team actually achieved these objectives given the absence of any data on participants after they leave the program.

Most of the current team members focused on working with participants to remain clean and sober as the primary objective, either as a team or in some particular way as the individual team member. In talking about the participants remaining law-abiding, team members who did address that objective focused more on community safety than on the individual participant not recidivating in some way. None of them talked about employability, other than in very general terms that it is a requirement of the program. None of the objectives were clearly articulated in
any way to show how they could be measured to indicate the objectives were achieved, even though the team members believe that they were working toward achieving these objectives. The sole dissenting team member was the treatment counselor, who was extremely concerned that the team was too “experiential” – making decisions based only on their previous experience with other participants - and without any empirical data that showed the objectives were being attained.
Table 6: How team members see the team achieving the program’s common objectives and how they see themselves achieving the objectives

<table>
<thead>
<tr>
<th>Objective</th>
<th>Role</th>
<th>How the team achieves the objective</th>
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<tbody>
<tr>
<td>Clean and sober</td>
<td>Judge</td>
<td>“We really want to do what is going to help the person stop using drugs, get a job, stabilize their life.”</td>
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<td></td>
<td>Prosecutor</td>
<td>“I think we’re pretty focused on the goals of the program which are to keep people sober, compliant with their conditions, and live an employment-based lifestyle. I think if there’s something beyond that, we suggest to them that they get help or treatment, and probation is pretty good about getting them into services.”</td>
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<td></td>
<td>Defense attorney</td>
<td>“There’s something really different and differently supportive and differently cohesive and consistent that none of us would otherwise experience … by having a group of people like this from all sides meet, I think it’s good for us, as individuals, and it’s also good for the culture of the place.”</td>
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<td></td>
<td>Probation officers</td>
<td>“I think when the program started the program had a vision of how things were going to go and in the beginning it stuck to the, what I would say, the major tenants of a drug court. As time went on I think that started to trail off a bit and I think we’re starting on an upswing now where we’re starting to build that back up again.”</td>
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<td>“I think we can strengthen the program – or need to – [in] eliciting an internal motivation for change. So, I saw, early on and midway through the program even, that people would get very good at making it to court on time, coming to drug tests, providing negative urines, and making it to treatment. But all because of the external motivator that the court expected them to do that or probation expected them to do that, and they want to get that year off. And then when they get the year off, we’ve had people that I am aware of going out right after the graduation and getting high. So, if we’re not getting at that hook with folks as to why they need to change, then ultimately our outcomes aren’t going to be good.”</td>
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<tr>
<td></td>
<td></td>
<td>“Sometimes [the process] becomes cumbersome because I think in instances like that where things seem very clear as to what we need to do, it becomes complicated. An issue which we view as being maybe straightforward [can become] a very drawn out complicated issue, that necessarily wasn’t benefiting the person … it just turned into this whole thing where everyone had an opinion about it, on how to go about it. Sometimes that will complicate things, especially when probation is charged with the responsibility of supervising folks and we don’t feel like we’re adequately doing that, because an issue has gotten tied up with group dynamic that’s going on.”</td>
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<td></td>
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<td>“There is a team approach and the goal is to provide as much support and resources for folks under supervision that they otherwise would not get. And really get them to succeed. You’re dealing with some of the worst addicts that are out there. They’ve been in and out of prison all their life and for them to buy in to a program, which we put a lot of time and effort in, and see them get the benefit out of that and see them get the support of this team approach.”</td>
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<td></td>
<td>“[We] all sit there and try to put our heads together and try to problem solve around some very challenging people that the rest of society just doesn’t want to deal with. They dump them on our doorstep and say, ‘Here, fix them.’ And then all of a sudden we come up with a program like this to try to help that and get at some of the failures that a lot of those folks’ experience …”</td>
</tr>
<tr>
<td>Objective</td>
<td>Role</td>
<td>How the team achieves the objective</td>
</tr>
<tr>
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<tr>
<td>Law-abiding</td>
<td>Judge</td>
<td>“We have a big public safety obligation which comes first as it should. We should all be concerned about that, but then they really want to do what is going to help the person stop using drugs, get a job, stabilize their life.”</td>
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<tr>
<td></td>
<td>Defense attorney</td>
<td>“I try to get everyone thinking about what is best for public safety.”</td>
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<td></td>
<td>Probation officer</td>
<td>“… our responsibilities are not only to help the person to be successful, but also and equally if not more importantly to diminish community risk. So we have somebody that’s not working collaboratively with us; they’re using drugs; they’re heroin addicts that rob banks with firearms over the counter; the community is at risk. We need to do something about that.”</td>
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<tr>
<td>Employed</td>
<td>Judge</td>
<td>“We really want to do what is going to help the person stop using drugs, get a job, stabilize their life.”</td>
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Assuming that each of these three objectives could be better defined, most of the current team members indicated that they shared them, even where the members means for achieving these objectives may have been disparate. For example, the current defense attorney told me that “everyone seems very committed and very willing to work. But we don’t always agree on the same way to get there.”

**Roles.** Understanding the roles of the drug court team members helps determine whether a team is cohesive. Team member roles is one of more complex concepts in this study. Roles is about each team member’s responsibilities and tasks (Olson et al., 2001). It is about how team member’s responsibilities and tasks are different from those in their roles in a traditional, adversarial court. Although individual labels for each role are easy tags – judge, prosecutor, defense attorney, probation officer, treatment counselor, session clerk – those labels lose much of
their categorical meaning in the drug court team environment as the team strives to work

together as a single unit towards the program’s common objectives, rather than as individuals

performing the traditional duties associated with their roles. For example, in a traditional court,

the defense attorney and the probation officer may withhold information from each other as the

defense attorney seeks to protect the defendant’s due process rights and the probation officer acts

in a quasi-prosecutorial role concerning the probationer’s compliance with conditions. In a drug

court, the defense attorney and the probation officer will bring information from their

perspectives that they will share with the drug court team to understand participants’ current

status of a participant to jointly develop plans that helps participants successfully complete the

program.

Team members also must be aware of the responsibilities and concerns of the other team

members’ roles. For example, team members must realize that the final decision regarding a

participant still rests with the judge, even if there has been much discussion about how to

proceed with processing a particular participant through the program (Flemming et al., 1992). In

the case of the defense attorney, team members must be aware that there is, at times, a conflict

inherent in that role between being a zealous advocate for the participants’ rights and in working

toward the common objectives of remaining clean, law-abiding, and employed for all the

participants. When a defense attorney moves towards a more adversarial position, that

movement may actually be in a participant’s best interest at that time, rather than the more open

disclosure that might be expected in the drug court environment.

The roles and responsibilities for each team member may change depending on a

participant’s circumstances that required some team members to maintain dual roles – a

traditional, adversarial role and a collaborative, drug court team role. The nature of the drug
court, then, may require some team members to wear different hats. For example, the defense attorney may need to act as more of an advocate for a participant than as a collaborative team member, particularly if the defense attorney believes there is a good argument for protecting a participant’s privacy or due process rights. In acting as the participant’s advocate, that will disrupt the team’s cohesiveness and may make it more difficult for the team to come to a collaborative solution. When the team does come to an agreement, resolution of each particular case does not necessarily establish a precedent for future decisions and future contexts, given the changing nature and circumstances that team members and program participants go through as they move in and out of their participation in the program. Unlike traditional courtroom workgroups and traditional member roles within those workgroups, it may be more difficult to “master the relationships and processes of courtroom work” in the drug court team environment (Flemming et al., 1992) as the team comes up with customized plans for each program participant.

The current team members talked about their perceptions of the adversarial and collaborative nature of their roles. In the table below, data from the interviews illustrates the ways drug court team members’ roles embody both traditional, adversarial roles and their newer drug court team roles.
### Table 7: Current team members’ perceptions of the adversarial and collaborative nature of their roles

<table>
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<tr>
<th>Role</th>
<th>Adversarial</th>
<th>Collaborative</th>
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<tr>
<td>Judge</td>
<td>“Ultimately I have to make the decision. What happens to somebody? So if there’s just a plain disagreement I may propose something, and just see the side that I’m not siding with, how do they react. Or I’ll propose some type of in between sanction, some compromise between the two positions, and just see can everyone live with that. If someone is just so vociferously arguing for their side on this team, I think it’s really notable, because people generally reach a consensus pretty easily.”</td>
<td>“One of the things … I’m still trying to do … is let everyone say something before I make up my mind … if someone is advocating for an overnight [in custody], I try not to just make up my mind and then not hear everyone out. And that’s tricky, because you do tend to make a little snap judgment in your head and then just take sides. So I’m deliberately trying to wait, and just telling myself I’m not making up my mind yet what to do. It’s a real exercise of will not to let yourself make up your mind before you’ve heard everyone out.”</td>
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<tr>
<td>Session clerk</td>
<td>“In a traditional hearing … you can tell that the two sides are not getting along or there’s some tension there, where at these hearings you don’t see that and you can really tell that they’re all here for the people that are in the program.”</td>
<td>“The probation officers are working closely with the defense attorneys, and they are really on the same page with what’s going on with these people. They’ll tell each other, ‘Hey I talked to this person. This is going on,’ or, ‘This is the reason why they missed this,’ … so I feel like that’s a little different than traditionally what happens.”</td>
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<td>Prosecutor</td>
<td>“The bottom-line role is that in the traditional prosecutor role we’re adversarial. We’re obviously prosecuting people – trying to put them in jail – and they don’t want to go to jail, so even when we’re negotiating it’s like, ‘I don’t want to go to jail.’ So there’s more conflict.”</td>
<td>“Here it’s more of a cooperative venture so it is more of a team approach. Although every now and then I will reach out to defense counsel and try to figure out what’s best for a defendant in an ordinary case - I think I do that probably more than a traditional prosecutor.”</td>
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<td>“The government attorney is right there with everyone, so it’s really more like they’re on the same team … you can really tell that it’s not like one against the other.”</td>
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| Defense attorney| “I guess the bottom line really is, if you’re in a [traditional] courtroom and the state has its burden of proof and there’s all these rules about due process, you have that job to do.” | “… here, no one really wants to hurt these guys. Any negative consequence they’re going to get is all in the name of helping them …”  
“I was never the type of criminal defense lawyer who thought it’s better for these guys just to be free in using drugs and beating up their girlfriends and shooting other people. I always had a kind of paternalistic attitude toward my clients to begin with.” |
| Probation officers | “We kind of keep things close to the vest in probation, and defense attorneys defend their defendants, and the prosecutors prosecute …”  
“Whereas someone who’s not in [the program], it’s you making decisions about the person’s supervision in conjunction with your supervisor, and that essentially is the team that you operate with …”  
“Sometimes it’s easier not to deal with all the other personalities that go along with [the program], and just start making case decisions by myself with my supervisor. And sometimes I think that’s a better approach with certain people, depending on what the issue is and depending on what the challenges that that person presents.”  
“That’s an issue that were he not in [the program] would have been dealt with just between the probation officer and him. And it wouldn’t have been all these other voices weighing in … sometimes it becomes cumbersome because I think in instances like that where things seem very clear as to what we need to do, it becomes complicated. An issue which we view as being straightforward … became a very drawn out complicated issue … Sometimes that will complicate things, because an issue has gotten tied up with group dynamic that’s going on.” | “I shared with them our paperwork, our progress reports, the process we went through, what collaboration was and wasn’t.”  
“…with [the program] its more supervision, it’s more accountability, there’s more input from people – obviously with the judge and the prosecutor and defense counsel. … There’s a lot of support that goes along with a participant in [the program] as opposed to someone who isn’t.” |
There is a continuum for each role and each team member either moves along that continuum between an adversarial position at one end and a collaborative position at the other, remains in one particular position, or may not appear at all on the continuum. This movement along the continuum also creates role conflict for the team members. This occurs when a team member experiences conflict in performing in his or her role as an adversary or as a collaborator. That role conflict, in turn, influences the team member’s decisions concerning program participants. This conflict does not occur for all team members, but for those who move along the adversarial and collaborative continuum. The judge, for example, moves little between the two ends. The judge is the focal point of the traditional, adversarial court and of the collaborative, problem-solving court. The judge is a negotiator in the adversarial court and a facilitator in the problem-solving court, which as discussed previously, are more alike than different. Both roles still require the judge to move between parties in the adversarial court and team members in the problem-solving court to facilitate outcomes that satisfy all concerned. Also, the judge is still the ultimate decision-maker whose decision is final. The challenge for the problem-solving court judge is how to facilitate collaboration, leaving aside her preconceptions about how to decide a case and allowing the other team members to weigh-in and present a unified resolution. When the judge is able to facilitate collaboration that leads to a team consensus, the group’s cohesiveness is strong. In some sense, judges in traditional courtrooms do this, too, to facilitate negotiations between parties and thus dispose of their cases.

Seemingly free of the continuum is the drug court team’s prosecutor. There is nothing for him to be adversarial about; he has tried the defendant’s case, secured a conviction, assisted in the imposition of a sentence and has moved on to prosecuting the next offender. In the collaborative, problem-solving court, he is relieved of the pressure as the government attorney
and may contribute more freely to any discussion of a participant’s status in the program; he has, in fact, already won his case. Because the participant has “already felt the heat” of the traditional, adversarial system, this prosecutor finds himself “working on different ways to help [the participants].” Being adversarial is no longer required. What the prosecutor brings to the drug court team, then, is a public safety perspective. The prosecutor on this drug court team may not have a present interest in a participant because of a pending case, but he is aware of the potential for a participant to re-offend and present a danger to the community. He also provides an unofficial check to make sure that certain requirements of a participant’s supervised probation are met. For example, one participant who was doing a good job of complying with the program’s requirements and graduating successfully from phase-to-phase kept putting off the restitution that he owned to one of his victims. The participant’s excuses for not completing the necessary paperwork and getting a repayment plan in place were regular, and the defense attorney attempted an argument that the amount owed was relatively small.

Defense attorney: “It’s only $2,000.”
Prosecutor: “He stole money! Pay it back.”

That brief exchange was enough for the team to come up with a plan where the participant would not be permitted to leave the courthouse until the paperwork was completed and the repayment plan in place. It was enough that the prosecutor, representing the government and the interests of the victim, was firm in the position that the participant had stolen the money and that he needed to pay it back to get the team to resolve that issue that day.

The current prosecutor experiences little, if any, role conflict. He does not “consider [him]self a traditional prosecutor” (current prosecutor). He is committed to the program and often shares with the team current research and trends in addiction, recovery, and programming that he has come across. He and the current defense attorney have developed a good working
relationship in the team meeting, in court, and outside of both in helping the participants succeed in the program. That collaborative relationship has extended to other cases that they find themselves working on, so that “every now and then, I will reach out to defense counsel and try to figure out what’s best for a defendant in an ordinary case” (current prosecutor). The team members share the perception that “he’s working on different ways to help them and not have them go into custody” (probation officer # 1). There is no evidence, therefore, that the current prosecutor experiences any internal conflict regarding the adversarial nature of his traditional role and its place within the collaborative environment of the program.

The team’s probation officers face a similar challenge. In a traditional courtroom workgroup, the probation officer makes decisions concerning the probationer, sometimes with a supervising probation officer. There may be some input from the judge and the attorneys, but generally, the probation officer decides how to proceed with the probationer on a routine basis, primarily to keep the probation in compliance with the terms of his probation. Non-compliance with probation conditions is dealt with more quickly through violations and possibly revocations. As a member of the drug court team, however, the probation officer may have the most current and detailed knowledge about the participant. The probation officer must report that information to the team and provide the other members with the opportunity to contribute to and collaborate in the participant’s treatment plan. Thus, the traditional approach for the probation officer appears to be more efficient, but less therapeutic. As one probation officer said about a probationer in the traditional system, “if somebody is using drugs … we don’t have to consult with others about what we do about that. You have to go for the revocation” (probation officer # 1). The collaborative approach for the probation officer is less efficient, but tries to provide be
more inclusive of the team in working towards keeping the participant “clean, law-abiding, and employed.”

The defense attorney runs along the continuum between being adversarial and collaborative. She does not see her role as black-and-white, but as a role that shifts depending on her work with a participant. For example, a participant who tests positive for drugs will often deny use to the probation officer, but admit using to her. In those cases, rather than find some way to advocate for the client, she would try to get the participant to seek treatment. As the participant’s advocate, however, there were times when she would argue for softer sanctions and simply “put the argument out there” for the other team members to consider. Overall, the current defense attorney recognizes that there are times, even in a program such as this, where she needs to be the zealous advocate on behalf of her clients. During those times, her vocabulary changes: in her adversarial defense attorney role, participants become clients. In her collaborative role, clients are participants, and the team works in their best interests.

Sometimes the defense attorney has to find a position between the two ends of the continuum, something that she struggles with, particularly in the areas of privileges and confidences. For example, one participant was being investigated for a serious crime. The defense attorney was not going to share this with the team. One of the team’s probation officers learned about the investigation and he wanted to question the client. The defense attorney did not want the participant – her client – questioned. She told the probation officer “you can’t question him” and she told the participant not to respond. When the defense attorney makes statements like that, she is acting in her adversarial role to protect the participant’s rights, as opposed to see how the participant’s current situation is affecting his recovery and participation in the program.
Situations like that are actually stressful for the defense attorney and she knows that she has to “figure out where I need to be fluid in my role.” She knows that there is “no structure for me to be traditionally adversarial … there are no rules of evidence, there is no due process. I can’t say, ‘I demand a hearing’.” When she takes a more adversarial position, it disrupts the team’s collaborative nature. For example, the tone of the meeting changes when she starts challenging requests from probation officers regarding information about one of the participants. As she put it, she starts “acting within my normal role of protecting.” When she is unwilling to provide information to the team to protect the participant, there is a sense that the team members are stepping into their adversarial positions.

So, on one hand, she wants to be collaborative, but on the other hand she needs to advocate for the participants to maintain “her own credibility with the group, so that everyone can understand that whatever idea my client is asking me to advance” is not her own idea. This creates conflict internally for her and comes through more pronouncedly when the defense attorney has to work to see if she can get the participant to move away from the position that the participant would like to take, a position that may not be in the participant’s best interest. In one instance, probation was asking a participant to sign a release of medical information. Probation wanted access to the information to see if the participant may be abusing prescription drugs. The defense attorney said that she agreed that it would be in the participant’s best interest for probation to have the information and that she would “do work behind-the-scenes with [the participant] to convince them that” signing the release would help the participant more than harm her. When the participant refused to sign, the defense attorney felt that it was still “my role to be the voice of the client” to communicate to the team what the participant wants to do.
What also changes for the defense attorney is the actual adversary on the team. Because this is a post-incarceration re-entry court, the defense attorney is more likely to run up against probation rather than the prosecutor:

“There have been issues around and disagreement over what is appropriate in certain contexts. Even if I ultimately agree with probation – it’s usually with probation not so much the government, because [the prosecutor] is quiet typically around these issues – I have to advocate for the position I feel that my client wants me to advocate for” (current defense attorney).

The position the defense must advocate usually have to do with whether a participant will receive a custodial sanction for non-compliance with the program rules, specifically, a positive drug test. A positive drug test may result in the participant being taken into custody for one-day. In some cases, that may require a participant to miss work, which could result the employer disciplining or terminating the participant. The defense attorney may argue that, if this is the one issue with the participant, it may not be in the participant’s long-term interests to lose pay or to lose the job because of one positive drug test. The probation officer may argue that, without a custodial sanction, the integrity of the program is tainted. Depending on how deep the defense attorney and the probation office dig in to their positions, it may create a tense team meeting and can lessen the collaborative spirt of the team. In situations like this, the program judge may step in and make the final decision, rather than attempt to arrive at a consensual decision.

The treatment counselor is not typically a sitting member of a traditional court’s workgroup. With this program, the treatment counselor is a team member and plays an active role in the team’s weekly meetings. The treatment counselor’s role outside of the drug court team is to meet with clients in individual and group therapy sessions. Here, as a member of this drug court team, she acts outside her normal role of providing treatment services by providing consulting services to the drug court team as to the types and modalities of treatment that might
be used with the program’s participants. For some of the participants, but not all, she may also serve as their individual treatment counselor.

Each program participant that is involved in treatment, whether with the team’s treatment provider or with a different treatment provider, signs an information release between the probation department and the participant’s provider so that probation and the participant’s provider can communicate about the participant’s treatment.

Any adversarial events that occurred between the treatment counselor and the team members were about how best to proceed with a particular participant. Where the defense attorney might advocate for the participants’ privacy or privilege or due process right, the treatment counselor was working from the position of what was in the best interests of the participant therapeutically. Disagreements generally came concerning choosing the most effective treatment methods for participants. Participants understand that their treatment providers will be discussing their progress in treatment and any potential issues that arise in treatment that could affect their participation in the drug court program.

This particular treatment counselor seems to feel a tension similar to that of the defense attorney. On one hand, she represents the participants in a therapeutic capacity, but she also provides advice to the rest of the team on the best course of treatment. This is further complicated by the fact that she is not the treatment counselor for all of the participants, so she really does not know their background or the therapeutic issues they might raise in the course of individual or group counseling sessions. You can feel her frustration in this type of environment: “It’s almost like I wish I could see everybody or not see anybody, so it’s an even playing field.” (treatment counselor). She believes that, if all of the program’s participants were also her clients,
then she would be able to work more closely with probation in creating and implementing treatment plans for the participants.

Operating Rules. The rules by which the drug court team operates helps determine whether a team is cohesive. Substantively, when reviewing each participant’s case, members look to the team’s experience with various types of cases and how the court has dealt with cases in the past. This history informally codifies a set of rules that the team uses in guiding and making future decisions. For example, if certain types of cases are severely prosecuted, other members will rely on that information in processing similar cases. This helps the members work together to get through the daily docket. When a member breaks with the workgroup’s history of processing those cases, there is noticeable tension between the two team members. Experiential precedent in processing participants is highly valued by this team. When a member assents to applying the team’s history to a particular situation, the team member’s assent is perceived as valued, even if that value is not verbally recognized by the rest of team. Rewarding or sanctioning team members this way keeps the team moving through the participant review process efficiently and uninterrupted (Eisenstein & Jacob, 1977). This is analogous to the concept of going rates in the traditional courtroom workgroup, those rules that represent outcomes of past case processing decisions that have been assumed into the operating rules for the courtroom workgroup (Ulmer, 1997).

For the drug court team to work efficiently and effectively the adoption of these operating rules is akin to the informal rules of a traditional courtroom workgroup. These rules govern how team members work with each other in performing the team’s routine tasks and tackling issues, either with the program or with the participants. These operating rules are the norms against which individual team member behavior is bounded and defines how each team member must
perform his or her role. Although these operating rules do not function in exactly the same way as the informal rules of a traditional workgroup, they have the same effect. For example, the drug court team has formal, pre-defined going rates for sanctions that are applied with participants are non-compliant with the program’s requirements. These sanctions are generally applied without discussion, unless the team believes that, given certain circumstances, a particular sanction should be waived. An example of this is where a participant was told by the judge to get a job, which he did. However, because he was called into that job early, he missed a drug test. Normally, that would mandate a sanction of the loss of one week’s credit, but the team decided that the sanction should not be imposed.

When issues arise concerning participants – for example, how to handle several consecutive missed appointments, or missed drug tests – the team simply applies the formal rules and going rate for those infractions with little discussion. However, when new issues come up, particularly serious issues, such as the impact of a participant’s relapse or an issue involving a participant’s rights, the team struggles to break through to resolve those issues. For example, one participant began drinking with her co-workers after work. Normally, the sanction for such use would be some form of custodial sanction and increased treatment. When informed of the sanctions by the judge, the participant said she understood the need for increasing her treatment, but that taking her into custody “isn’t going to keep me from drinking again if I want to.” Although the participant went into custody for the day, she struggled with whether custodial sanction was the appropriate rule if other participants engaged in the same conduct in the future.

Cohesion requires that the team articulate, understand and accept its common objectives, then work towards those objectives. While this team can state that the program seeks to graduate individuals who are clean, law-abiding, and employed, it is not clear what those objectives mean
because they seem to have a variety of meanings. There are also objectives certain team members have for the program, such as maintaining the program’s integrity, that seem to work against the common objectives the team members have for the participants. The team must also be able to understand their own and each other’s roles and responsibilities within the team, the shift they are required to make from an adversarial environment to a collaborative one, and how the team’s operating rules impact each other and how the process participants. Because of the adversarial facets to some of the roles, such as the defense attorney’s and the probation officer’s, it is easy to let an adversarial tone creep into the collaborative purpose of the drug court team meeting.

Stability, Proximity and Similarities

For purposes of this study, three concepts associated with the culture of the courtroom workgroup have been grouped together: proximity, similarities, and stability. *Similarity* suggests that the members of the courtroom workgroup will have similar values, beliefs, backgrounds and demographics. *Proximity* concerns geographic closeness. *Stability* refers to the number of years that individuals have worked together within the same jurisdiction. Taking these constructs together showed that the closer courtroom workgroup team members are in attitudes, backgrounds, beliefs, and values, and the closer and more frequently they work together, the more the workgroup members will become of one mind and work well together in managing the workgroup’s expectations in how cases should be processed in terms of outcomes and efficiency (Eisenstein et al., 1988; Eisenstein and Jacob, 1977; Haynes et al., 2010). Therefore, the formal and informal interdependent relationships that develop and the ability to compromise and cooperate in managing and disposing of cases have become central to the functioning of the courtroom workgroup (Ward et al., 2008; Knepper and Barton, 1997).
Grouping these three concepts follows Haynes et al. (2010) in their study of these three concepts on sentencing decisions. Haynes et al. (2010) examined the relationships between the members of the courtroom workgroup, specifically the judge, prosecutor, and defense attorney, to see if beliefs and characteristics by the courtroom workgroup members influenced sentencing decisions. This study focused on similarity and proximity and their relationship to how groups are formed, noting that “because most group members come from the same social network there tends to be considerable overlap in members’ knowledge, experiences, and perspectives (Haynes et al., 2010). Stability was included because it “affects group performance by reducing uncertainty about others intentions and probable behavior” (Haynes et al., 2010). Therefore, the researchers expected that these three concepts would interact in some way to affect sentencing decisions.

Each of these concepts individually does not, on its face, seem to have as much of an impact on the culture of the drug court team as do solidarity and cohesion. They are, however, closely related and together have a significant impact on the team’s culture, adding to the blend of other concepts that come together to form the drug team culture. For example, the team members are located physically in the courthouse are so close to one another that they see each other almost on a daily basis. All of the courthouse-based team members – the judge, prosecutor, defense attorney, probation officers, and session clerk – saw or worked with each other to some degree through the court’s work day and worked on either traditional cases in the criminal courts or casually in discussing program participants. The only member of the team that did not have regular, daily contact with the other members of the team in the courthouse was the treatment counselor. It is possible that her absence from the courthouse on a daily basis lessened the opportunities for face-to-face conduct with the other team members. It is also possible that
the difficulty she had in transitioning into the team and being assimilated by the team made continuous contact difficult, too. Also, the team members have similar backgrounds and similar characteristics. Lastly, even with the fairly high turnover of the prosecutors, turnover in general is low for the drug court team over the ten years it has been in existence.

These three characteristics of the traditional courtroom workgroup appear to be unimportant in the functioning of this drug court team. When asked, the team members had very little, if anything, to say about them. All of the team members’ offices, with the exception of the defense attorney’s, are located in the same courthouse. The defense attorney is in the courthouse daily. Informal meetings take place in the courthouse hallways, during court recesses, and in the courthouse dining commons, located on the second floor. Comradery has developed as a result of the greater number of interactions the team members have in the course of a day, and this “frequent interaction raises mutual interdependence” (Eisenstein et al., 1999, p. 265). The team members are similar in age, background, education, and experience, and all of them serve on the drug court team on a volunteer basis, with the exception of the defense attorney, who contracts with the court for her services. The team is stable, with low turnover, and appears to have little effect the team’s culture or the way in which it operates.

Socialization

*Socialization* is the process of assimilating new members into the drug court team. All organizations have some means by which new members are assimilated into it (Olson et al., 2001). A wide variety of organizations grapple with the methods to integrate new members (Clynch & Neubauer, 1981). Socialization teaches new members both the formal procedures by which the organization processes and manages its work, as well as the informal, operating rules that it uses to govern member interactions (Clynch & Neubauer, 1981). In the context of a
traditional courtroom workgroup in the criminal justice system, it concerns how easily members of that group move in-and-out of their roles, as these workgroups coalesce around different phases, activities, and tasks within the criminal justice system.

This idea of socialization within the courtroom workgroup comes from the concept of the “craft of justice” (Flemming et al., 1992, p. 4). The craft of justice refers to how members of the courtroom workgroup, particularly judges and attorneys, “go about their tasks in the courtrooms, organize themselves for collective purposes, and interact politically in the institutional realm of the courthouse” (Flemming et al., 1992 p. 4). Understanding how workgroup members work together is essential for the success of courtroom workgroup as members move in-and-out of the workgroup. Members must not only have technical proficiency to perform in their role within the workgroup, but they must also know and understand the preferences of the other workgroup members and how the processes and relationships work to produce the desired outcomes for cases working their way through the system (Flemming et al., 1992, p. 7). Without the requisite technical proficiency, without the cultural and relational appreciation for how long-standing members work, and without a respect for the other members’ preferences, individuals who move in-and-out of the workgroup will struggle to achieve any kind of success.

Socialization within the drug court team tracks with the socialization process of the traditional courtroom workgroup. The “socialization agents” that have been identified with traditional courtroom workgroups are present in much the same way in the drug court team. These socialization agents include formal training and orientation programs, learning from prior team members, and learning from other members of the courtroom community (Clynch & Neubauer, 1981). There is no formal training or orientation into the drug court team; it is equally rare in traditional courtroom workgroups. Learning from team member predecessors is much
more common. For example, the founding judge worked with the current judge to help her move into his role in directing the program and the team. The current judge, who was the program’s second defense attorney, worked with the current defense attorney to help her transition into the drug court team. Finally, learning from the court community consisted mostly of sharing anecdotes around the program’s founding and how difficult it was to obtain buy-in from other agencies as to what it was trying to accomplish.

Individuals enter the team with varying degrees of ease, or having entered, experience varying degrees of resistance to the ideas and opinions they sought to contribute. An example of a team member who experienced relative ease in her socialization is the current judge, who was the program’s second defense attorney. As the second defense attorney, she found her socialization into the team to be fairly easy.

“I think it was easier for me than, say, for [the first defense attorney], because with my regular clients I was never the type of criminal defense lawyer who thought it’s better for these guys just to be free in using drugs and beating up their girlfriends and shooting other people. I always had a kind of paternalistic attitude toward my clients to begin with” (second defense attorney)

The first defense attorney, who was more traditional in approach as a zealous advocate for the team members, was replaced by an attorney with a different personality and advocacy philosophy that were found to fit in better with the other team members’ personalities and philosophies and with the team’s emerging, collaborative culture. The first defense attorney’s transition and socialization into the team was blocked by her conviction that the team should follow traditional procedural rules that would preserve the due process rights of the participant. She believed that maintaining her adversarial role as the zealous advocate and defender of the participants was compatible with a collaborative drug court team. Her struggle was somewhat self-inflicted by her establishing and maintaining a strong adversarial position. Because of that
conviction, she would not share her conversations with the participants with the rest of the drug
court team members. Her approach resulted in her having difficulty socializing into a team that
valued open, participative collaboration about all facets of a participant’s personal life and
treatment plan for recovery. Other team members resisted her approach, pushing back with
limited or no disclosure of certain pieces of information.

“The real challenge was with the [defense attorney’s sponsoring organization]. [The
defense attorney] who was involved at the time felt very strongly that her role was to
aggressively advocate for whatever her client wanted, and perhaps without intention,
often undermined our efforts” (probation officer # 1)

The current defense attorney experienced a fairly easy socialization process, most likely
because she was invited to join the team. Although all team members throughout the lifetime of
the program have volunteered – reluctantly or enthusiastically – to be part of the team, this is the
only team member who was personally invited to be part of the team. Because she received an
invitation, the current defense attorney’s socialization was much easier, in spite of the longevity
of some of the other team members and their associations with the team:

“I felt like I got a lot of support. I think that before [the most recent defense
attorney], there was another attorney who seemed very uncomfortable in her role.
There seemed to be a lot of clashes [with probation]. But as a defense attorney, I
try to be collaborative with the probation, I try to be collaborative with the
government and my clients, and try to get everyone thinking about what is best
for public safety, and what is best for the client, and what is the best [outcome]
overall. And I want to think productively rather than just in this adversarial way.
So I came in with that background, and I think most of the folks knew me from
just practicing here in the first place, so it was not that difficult. I had a lot of
support from [the founding judge], who was just very supportive of me in a lot of
ways. So it felt fine, felt good” (current defense attorney).
The current defense attorney’s easy socialization into the team may also be related to proximity.\textsuperscript{6} For one her, it seems that frequent contact with other team members helped the socialization process not only with the team, but with the courthouse community itself:

“I have weekly contact with the judge, the attorneys, the treatment specialists, the [probation] officers … I get one-on-one contact with all the participants. They all know me when they come to the office and have something like a form [that] usually goes to me, so I have that contact. … So I’ve known some of the participants now for five months, and have become – sometimes I’ve seen them once a week, now I’m seeing them every other week. Some of them I see three times a week individually. So, I’m a part of it rather than just an observer” (current defense attorney).

There are also individuals who also experienced fairly easy transitions in their socialization, but who were watched carefully for a period of time until they were accepted by the rest of the team. This happened with the current program judge in her transition into that role after the founding judge. Although the founding judge and the current judge worked together on the team for four years when the current judge was the defense attorney, there was not much of a transition from the founding judge to the current judge; there was nothing to support any kind of socialization by the current judge back into the group or in assuming her new duties as the magistrate judge in charge of the program.

“[The founding judge] was still doing [the program] when I first started, and then he gradually transitioned out. There were some weeks where he was sitting in the audience, and I was up on the bench and vice versa. So yeah we had a little transition” (current program judge).

Also, the team was not as immediately accepting of the current judge in her new role, even though they had worked with her when she was the defense attorney.

\textsuperscript{6} As mentioned earlier in this chapter, proximity did not come up as an issue for any of the team members who were interviewed. All of the team members work in close proximity with each other on a daily basis. The only time proximity came up was in my interview with another probation officer who was involved in the initial planning for the program, but not its implementation. At the time of the program’s implementation, he was stationed in another part of the state, and his location wasn’t conducive to the initial use of the program.
“I felt like the team sort of had me on probation for a while. I could tell they weren’t totally convinced that I was going to be a good [program] judge, and I think there was a period of transition where the probation officers were wondering how I was going to do. Also it’s a lot different to be in charge of the group, because you have to be proactive about planning things, and looking ahead and seeing what’s needed. And I deliberately was trying not to do everything at once, so I let things develop. And I’m doing a lot more now than I did at first, because I thought at first I would just leave it status quo. But I think we are doing well. I think the program is developing and evolving, and I feel good about it. There’s still a lot more we could be doing, but I think we’re on our way” (current program judge).

When one team member is replaced with another, socialization can be difficult for the new team members. For example, the current treatment counselor did not experience a solid socialization process when she joined the team. There were three reasons for this. First, the relationship the program had with its previous treatment provider and its counselors was considered to be solid, at least by the probation department. Second, the current treatment provider did not have much experience working in the legal community and did not understand legal terminology and the criminal justice process. Third, as she self-educated on criminal justice processes and drug courts specifically, her interactions with probation and her open challenging of the team’s operating rules regarding experiential decision-making created tension, particularly where the probation officers had more experience with working in this drug court. The training course she attended and the research articles she read seemed to increase her understanding of how drug courts worked, but she used her training and reading as a way to confront the team’s decision-making process and rationale instead of using it understand it.

The struggle with the treatment counselor’s socialization may be out of her ignorance about the criminal justice system generally and the program specifically. It may also be due to the level of comfort that had been reached with the first treatment provider, something that was disrupted with the arrival of a new treatment provider and this counselor.
“I don’t know about treatment, currently, whether or not we have that same level of collaboration when [the previous treatment provider] was with us. They were treatment providers that had been working with us for a really long time … technically they work for the court because that’s what the contract is, but they work in collaboration with the probation office. And that was really nice, because we’d sit at the table, especially when [the second and current defense attorneys], and I went back to [being open with participant information] that I was doing before. Like, ‘This is what’s going on. This is what she’s saying. This is what I’m seeing. What are you guys seeing in treatment?’” (probation officer # 1).

Socialization of the current treatment counselor was also challenging as she self-educated. For example, the treatment counselor was unable to attend one particular team meeting and called in via conference call. In the course of discussing one of the participant’s treatment plans, the current treatment counselor began summarizing a research study she had read and was attempting to apply it to the participant’s current situation. The other team members seemed to disconnect from the treatment counselor’s narrative; two team members were leaning their heads on one of their hands and another team member had her face in her hands, suggesting that they were content to let the treatment counselor continue to talk without really paying attention to what she was saying.

Although there was some discomfort between all of the team members and the treatment counselor, that discomfort was most likely brought on by the tension between one of the probation officers and the treatment counselor. A tenser example concerned a participant, mentioned earlier, who was objecting to signing a full medical release giving the probation officer access to her full medical records. The team had been discussing this situation for several weeks. During a team meeting when the participant’s probation officer was not present, the team vigorously debated how to proceed with obtaining the participant’s release:

Supervising probation officer: “Our goal is to make sure that the prescribing doctors know she is at risk, she’s suicidal, she’s taking benzos, and has mental health issues.”
Defense attorney: “Your goal is different from her perception.”

Treatment counselor: “She is not rational … we are not dealing with a rational-thinking person.”

Defense attorney: “We should modify the existing release and limit it to substance abuse issues” (which is what the team talked about last week).

Treatment counselor: “[The participant] said she was willing to sign her records over to [another treatment counselor and she can decide what to disclose].”

Supervising probation officer: “We don’t need the records. I will tell [probation officer # 1] that. All we need is a phone conversation.”

Program judge: “Someone needs to talk with the doctor.”

At this point, the treatment counselor expressed her concern about the probation officer’s working relationship with female participants. The judge stepped in and expressed her concern about discussing the probation officer without him present, yet made a paradoxical proposal:

Program judge: “We are not talking about [probation officer # 1] without him being there. We are not undermining him. Is there a woman P.O. that [the participant] can talk with instead?

Supervising probation officer: “We need to separate ourselves from the procedural issues and look at her clinically. We have to question how much of this is her throwing up roadblocks. She pulled the pin and threw the grenade in the middle of the team to get it into turmoil.”

Treatment provider: “I disagree.”

Program judge: “She’s panicking about her drug supply being cut off. Can we pull in a female PO?”

Treatment provider: “This is getting lost in translation. I agree with needing a female PO. We need to keep this from happening again. I’ve had this problem with [probation officer # 1] before.”

Supervising probation officer: “We are not having that conversation without [probation officer # 1] being present.”

Two things are interesting about this exchange. First, after specifically expressing her concern about discussing one of the current probation officers while he was absent and doing nothing to
undermine his relationship with the participant, the judge proposes to replace him, albeit temporarily, with a female probation officer. Second, the treatment counselor unabashedly agrees with this suggestion, then purports that this has been an ongoing problem with that particular probation officer. Unfortunately, there is never any discussion in the team meaning as to why the treatment counselor perceives this probation officer as problematic, because the supervising probation officer stepped in and stopped that dialog from continuing. His tone was firm and strong, indicating that that portion of the conversation was over. What happens, then, is that the discussion about what is best for the participant becomes adversarial as the program judge and the treatment counselor advocate for the participant and the supervising probation officer advocating for the probation officer. The team’s discussion, at this point, concludes because these team members must advocate positions that protect their interests.

It has been suggested that probation officers in a problem-solving court “are not just a member of the court team. They are its most important members” (Rudes & Portillo, 2012, p. 406). It is argued that this is because they “wielded significant power”:

“Our data suggest that POs possess an undetected, yet substantially superior level of power when compared to other court team members and thus have a profound influence on PS court decisional outcomes – despite the court teams’ belief that all team members have equal position and impact” (Rudes and Portillo, 2012, p. 420).

It has been argued that the most important power that probation officers have in problem-solving courts is informational (Rudes and Portillo, 2012). “Informational power extends almost exclusively from familiarity with case details … the life circumstances, backgrounds of the clients, and criminal justice history” (Rudes and Portillo, 2012). As a result, they are actually in a position to control how and what information is disseminated to the other team members. It is possible that the current treatment counselor seeking to use empirically-based decision-making
as she attempted to socialize into a group with a history of experientially-based decision-making, and to have exclusive access to a participant’s medical information and providers, threatened the “informational power” of the probation officers and “systemic opportunities outside the reach of other court team members” (Rudes & Portillo, 2012, p. 412; 420-412). If that is true, the treatment counselor’s socialization would be – and was – incredibly difficult. Moreover, the collaborative nature of the team might be threatened if the probation officers began to withhold information from the entire team about participants’ progress, issues, and status. Conversely, probation not having full access to the participant’s medical records and her medical providers may have been a threat to its power, compounded by the fact that the participant was willing to execute a full release to a treatment counselor, who, in turn, would decide what information to distribute to the probation officer individually and to the team as a whole. If probation wishes to maintain a level of informational power, another team member controlling participant information would lower that power level and open the possibility to future participants deciding what team members would have access to information about them, rather than the probation department.

Socialization was an issue for the treatment provider as a sponsoring organization, too. As a such an organization, the assignment of the treatment counselor to the program was almost an after-thought, a non-strategic and non-tactical decision tacked on to the treatment provider’s contract at the last minute:

“So [the treatment provider] got the contract in November 2014. It was supposed to start October 2014, but it was delayed and was pushed back by the federal government. The contract … was held by [another treatment provider], but there was no transition, to my knowledge. We showed up … and we did a meet-and-greet when we got the contract. … Then we showed up at the courthouse one day to meet our contracting officer. We met [the probation officers on the team] and that was it.”
For the treatment counselor, it created a feeling that was disorganized and unsettling:

“For me, it was kind of like fly-by-the-seat-of-your-pants … where you think people have been working together for years. Then, I found out that [the defense attorney] is new-ish. [The prosecutor], I don’t know. [The current judge] is fairly new because I think at my first session, it was [the founding judge], and then [the current judge] took over after a year. [The probation officers], to my knowledge, have all been there a decade … I read all the documentation they gave me and what they told me, and I was still kind of confused. It was confusing because there wasn’t a rhyme or reason to a lot of things. It was arbitrary to me.”

Because this treatment counselor came from an empirical background, she looked for data that supported the team’s decisions. When she learned there was no data, she came to the conclusion that “they’re experiential.”

“There’s a philosophy that they have … experiential is the only thing that I can come up with. [The team] recommends things, but the judge has the final say. Then, [the probation officer] will do stuff and I never really understood why. I also didn’t know what I didn’t know, so as time went on, I thought that’s just the way it is. I just figured that was status quo, that’s how all drug courts worked, that’s how state drug courts worked … I didn’t know any different until I went to a training on my own for drug courts … then I started questioning [the team members] and saying, ‘Why is this? What’s the basis? What’s the data?’”, but I really didn’t get any answers.”

The result was a new team member, coming on the team, with little or no knowledge of what the team did or how the program worked, attempting to fit in and provide “expert services” and participant advocacy without really understanding anything about the team, the program, or its approach to processing these offenders, never mind the procedures within the traditional criminal justice system. Then, having done some self-education on what the program was trying to do and seeing what it was doing in comparison to what other programs were doing, caused some friction between the team members and the treatment counselor.”

“It’s never been easy. It was easier when I was ignorant about what I didn’t know … but since I didn’t know anything … I would read stuff here and there. If I didn’t get it, I would ask, ‘Well, what does this mean?’ And people were really helpful. ‘Okay, well, this means it has to go back to this district court judge because it’s blah, blah.’ I didn’t know the verbiage and how that worked. I still
don’t a lot but I know a little more. So it was a little confusing but it became more confusing when I figured out that there were decisions based on precedent that really had no basis” (current treatment counselor).

The treatment counselor’s confusion came from her lack of knowledge of the criminal justice system, the program, and her own internal conflict with what her role was supposed to be. This lack of knowledge combined with her ignorance about sanctions – their purpose, the policy behind them, and how they were applied.

“They would say, ‘What do you think?’ … I could give my opinion, a treatment opinion. But I wouldn’t give any advice about a sanction. That’s out of the scope of my role. But then, probation would write the treatment plan, so I starting wondering, ‘Why am I here if you’re writing the treatment plans?’ So it was confusing in that regard” (current treatment counselor).

Even one year later, the treatment counselor found her assimilation difficult and incomplete. Some of this was due to her lack of knowledge and experience working with individuals such as these participants who were exiting the correctional system. Some of this was due to the absence of a clear understanding as to what her role was as part of a treatment organization that was working under contract with the probation department. At some point, however, a meeting took place with this treatment provider and the probation department. Whatever was said that meeting allowed the treatment provider and probation department to reconcile any differences that they did have, because the tenor of future team meetings changed noticeably. The tension was gone and information about the participants was shared freely among the team members, particularly the probation officers and the treatment provider.

The drug court team has no process by which it can determine whether someone will fit in with the team. Other than the treatment provider who contracts with the court to provide specific services, including membership on the drug court team, the other team members volunteer their time and do drug court work in addition to their caseload in the traditional court.
Therefore, the team relies on willing volunteers to be active and engaged members of the drug court team, leaving the program and the team to hope for the best. As the current project judge stated:

“I think you just have to hope they’d get along with the team. I don’t think most people would want to do this unless they wanted to work as a team. That’s sort of what we’re all about. It’s hard to imagine you would get a person who just was not a team player who even wanted to do this” (current program judge).

Organizations have been characterized as being organic or mechanistic (Burns and Stalker, 1961). Generally, organic organizations are very informal, flexible, and have decentralized authority. Mechanistic organizations are highly structured, hierarchical, bureaucratic, and very formal organizations. Although this drug court program has codified some criteria and rules regarding its participants, it is arguably an organic organization without any formal rules or procedures that guide decision-making and other actions for the program or for the team. Team members learn by participating and becoming part of the team, which works like an organic unit. Socialization, then, becomes a very important concept, since new team members experience an informal socialization process where they learn by doing and this presents challenges for the team. For example, the current judge taking over from the founding judge was potentially disruptive should the current judge not live up to the “probationary” status she was assignment when she assumed that role. It was disruptive when treatment providers were changed. But in both cases, there was no plan, or method, or simple acknowledgment that new people were coming onto the team and that there should be some initial transition period that was not just probationary, but provided some training and education on how the program worked, how the team worked, and how each member’s role contributed to the team. This judge recognized that a team member coming onto the team, or leaving the team is “something we
would have to adjust to. I mean we’ve really lucked out with this group. I think this is a great group” (current program judge).

**Traditional Court Sponsoring Organizations and Problem-Solving Court “Home Bases”**

Traditional courtroom workgroup literature describes the concept of *sponsoring organizations* as independent authorities with their own policies, priorities, and procedures, who provide representatives who make up the various members of courtroom workgroups (Eisenstein and Jacob, 1977). Sponsoring organizations exert influence on courtroom workgroups in three ways: (1) by determining what representatives of the organization will be part of the courtroom workgroup; (2) by determining what resources its representatives will be allowed to bring to the workgroup; and (3) by regulating the behavior of its representatives in their roles within the workgroup (Eisenstein & Jacob, 1977). For staffing, judges are assigned to specific courts (and law clerks and session clerks assigned to specific judges); prosecutors come from district attorneys’ or prosecutors’ offices; defense attorneys are assigned by public defenders’ offices or come from the private defense bar; and probation officers come from probation departments. Other sponsoring organizations, such as treatment providers, may supply treatment counselors or therapists as well. Sponsoring organizations also allocate other resources – facilities and budgeted funds, for example – to the workgroups. Any constraints on these human and financial resources are set by the sponsoring organizations. Finally, sponsoring organizations define the policies and procedures by which it is run as an agency or organization, and they expect that their representatives will adhere to those policies and procedures. The court organization itself is a supra-sponsoring organization, as its membership is made up of the individual sponsor organizations that work within its environment, providing resources and setting policies and procedures for the interactions of the individual organizations.
Much of the influence and effect of the various sponsoring organizations for this program was discussed in the last chapter. Currently, the two sponsoring organizations that continue to have some direct effect are “the Bench,” Jacob’s (1977) reference to the judiciary, and the probation department. The prosecutor’s sponsoring organization and the defense attorney’s sponsoring organization – her private law firm – do not appear to apply as much external pressure or influence on these representatives’ work as members of the drug court team. As long as the team members “real work” was not compromised by the team members’ voluntary participation on the team, these latter two sponsoring agencies do not seem to care too much about what the team members do in the program, until there is a conflict between the sponsoring organizations’ human and financial resources and the demand for those resources by the drug court team.

With their minimal or non-existent investment in this program, it is difficult to characterize these agencies as true sponsoring organizations. A better characterization would be home bases, those places where individual team members reside and perform their assigned duties in traditional courtroom workgroups located through the supra-sponsoring court organization. These home bases merely permit an individual to participate as a member of the drug court team on a voluntary basis. The diagram below depicts the home bases for the individual team members.
The individual organizations offer no additional money or staff to help in carrying out the drug court team’s tasks. The supra-sponsoring court organization offers no dedicated physical or financial resources for the drug court team, although it does allow usage of space set aside for more traditional uses. For example, the drug court team meetings are held in a jury deliberation room. If monies are desired by the drug court team for items such as a graduate ceremony, the program judge must request money from the supra-sponsoring court organizations’ budget. Perhaps the individual organization that comes closest to being a true sponsoring organization is the probation department, however, probation officers still would be required to perform many of the similar duties that they currently perform, such as supervising probationers, scheduling drug tests, arranging home and work visits, and coordinating treatment and legal services.

Eisenstein and Jacob (1977) argue that “the quality of a workgroup depends on the actions of its sponsors” (p. 52):

“They, rather than the workgroups, decide who will be judge, who will prosecute, and who will defend in a particular courtroom. They also decide how long the
personnel stay, what they are paid, and what fringe benefits they may enjoy. These powers sensitize workgroup members to the goals of sponsoring organizations. They help make the sponsoring organizations a critical element of the workgroup’s environment” (pp. 52-53).

This absence of any direct influence or involvement by the home bases holds the program back from growing in participation or results. Funds are reluctantly asked for from any of the home bases, whether for the program’s weekly operations or for funds towards taking on new initiatives. For example, team members have come up with several ideas on new initiatives, particularly in the areas of housing and employment. In one instance, the prosecutor and the judge discussed the idea of the prosecutor’s office helping program participants to get jobs. The judge thought that if potential participants knew that job placement was available, the program might be more attractive. The prosecutor originally thought that the prosecutor’s office might not do anything like that, but then did mention that there had been an informal initiative started by the previous head of the prosecutor’s office that never really went anywhere, other than to place a few individuals in a few positions. After following up with the prosecutor’s office, there did not seem any interest in providing the resources necessary for such an initiative, although the prosecutor did not elaborate as to why.

This does not mean that the team members’ home bases exert no influence over their representatives to the team or over the program as a whole. The absence of resource contributions from the home bases sends the message that, while the program may be tolerated, the home bases do not share the same level of commitment to the program. Currently, there appears to be no animosity towards the program; the program just “is” and is allowed to continue, as long as its work does not run in contention with the “real work” of the home bases. Perhaps this is why the program has lost some of its luster.
Yet the home bases still expect their policies and procedures to be followed. In one meeting, the team was discussing how one of the probation officers still needed to visit a potential participant’s residence prior to permitting the individual to join the program. For this probation officer to make that home visit, one of the probation officers would have to e-mail the supervising probation officer with the request for the home visit, who in turn would e-mail that request to the assistant chief probation officer or the chief probation officer. The assistant chief or the chief would then e-mail the probation officer who would make the visit with approval for the request. The comment was made that there was “still so much bureaucracy” in the probation office when it involved screening probationers for participation in the program.

The probation department may be the home base that really drives the team. Probation officers lead the team meeting and are the primary point-of-contact for all of the program’s participants (Rudes and Portillo, 2012). Participants interact with the probation officers and the department more than any other team member or sponsoring organization (Rudes and Portillo, 2012). Although the judge is the final decision-maker regarding how any reward or sanction will be applied to a particular defendant, the probation officers’ recommendations are rarely challenged or changed.

When this program was started, it was unusual to have the treatment provider have a representative seated with the drug court team on a regular basis. Treatment counselors are now seen as active team members who provide general information about treatment, but who also engage in the status reviews of the program’s participants (Taxman, 2004; Taxman and Bouffard, 2003). The challenges for this treatment provider and its counselors were discussed in the last chapter and still exist, primarily in two areas: evidence-based decision-making and in client representation. First, the current drug court team relies heavily on its experience in
working with offenders. It has not captured any data on how its decisions have impacted participant outcomes. As explained previously, the treatment counselor’s attempt to explain the treatment provider’s practice of using evidence-based decision-making resulted in some friction between the treatment counselor and some of the other team members.

“I was still kind of confused. It was confusing because there wasn’t a rhyme or reason to a lot of things. It was arbitrary to me” (current treatment counselor).

Second, not all of the participants are clients of the current treatment provider. Still, the treatment counselor felt compelled to weigh-in and speak as a team member on the behalf of the participants with whom she does not work individually. Unlike the defense attorney, who represents all of the participants individually, the treatment counselor seemed much less comfortable speaking about participants that she had not counseled individually.

Conclusion

The collaborative courtroom workgroup model creates opportunities and barriers for success, failure, and stagnation of the group and their work. The absence of direct external pressure or influence by the home bases on their representatives to the drug court team does not mean that they do not affect the drug court team or the program at all. Their hands-off, laissez-faire approach comes across as an attitude of tolerance, provided none of the program’s or team members’ activities draw on financial or human resources from the home bases, usurp time from the drug court team members’ traditional duties, or disrupt the daily routine and workflow of the home bases.

Fiscal resource allocations are difficult to obtain by the program. There is no separate budget for the drug court team and human resources come to the drug court team on a strictly volunteer basis. The drug court team members’ home bases are not true investors in the drug court program; they seem to tolerate the program and their representatives’ participation on the
drug court team, as long their own workflow and daily operations are undisturbed. They provide no proactive support, with no tangible resource allocations to the program and the team, and the team cannot develop new initiatives or programs that might expand the number of participants in the program or begin collecting and analyzing data that would allow it to move from experientially-based practices to evidence-based practices. Without any proactive support, particularly in the area of financial resources, the program stagnates, having few participants and lacking the ability to develop additional programs, such as housing assistance or legal aid services, that may help participants better reenter and reintegrate with their communities.
CHAPTER SIX: THE FOCAL CONCERNS OF A RE-ENTRY PROBLEM-SOLVING COURT

All courtroom workgroups generate outcomes and shape their decisions by the various concerns of their individual members. Focal concerns theory attempts to explain how these concerns become input to the decision making processes of judges and prosecutors (Hartley et al., 2007; Spohn et al., 2001; Steffensmeier, 1998). Traditionally, judges make decisions on the basis of three major concerns: (1) the offender’s blameworthiness or culpability; (2) the protection of the community by incarcerating dangerous offenders or deterring future offenders; and (3) the practical and social costs and consequences of their sentencing decisions (Steffensmeier, 1998). Where there is insufficient information about an offender’s blameworthiness, culpability, or dangerousness, judges will develop a “perceptual shorthand” constructed from offender characteristics of age, race, and sex to inform their decisions (Hawkins, 1981; Steffensmeier, 1998). This certainly is not a settled finding that this “perceptual shorthand” is used when other information about the offenders is unclear, but arguably there is a strong suggestion that this perceptual shorthand is influential (Hartley, 2014).

Prosecutors express similar focal concerns in their charging decisions (Spohn et al., 2001). Like judges, the seriousness of the offense, the degree of harm to the victim, and the culpability of the suspect are considered. Prosecutors are more likely to charge an offender where a serious offense is present, when the victim has been actually harmed, and where there is strong evidence against the offender (Spohn et al., 2001). However, where judges are more likely to focus on sentencing costs and consequences, prosecutors focus on the likelihood of conviction. Taking a “downstream orientation” (Frohmann, 1997), prosecutors try to predict how defendants, witnesses, and victims will be evaluated by judges and jurors. Like judges,
prosecutors develop a “perceptual shorthand” using past crimes and assessments of victim and witness credibility (Spohn et al., 2001). Therefore, prosecutors ultimately consider victims’ backgrounds, character and behaviors, their relationships with offenders, and victims’ willingness to prosecute the offenders (Spohn et al., 2001).

Focal concerns help to explain probation officers’ recommendations in their presentence investigation (PSI) reports (Freiburger and Hilinski, 2011) and parole officers’ release decisions (Huebner and Bynum, 2006). They are similar to the focal concerns of the judge, but overall their main focal concern is protecting the community (Huebner and Bynum, 2006). In the case of probation officers and their sentencing recommendations to the court, they are likely to have greater certainty about an appropriate sentence, since they have an opportunity to gather a considerable amount of information about the offender and more time to think about an appropriate sentence. This increased time and detailed information arguably reduces their need to rely on a perceptual shorthand, as does the judge (Freiburger and Hilinski, 2011). Also, recidivism is of particular concern, since individuals who reoffend while released to supervised probation or parole will reflect poorly on the corrections system.

This chapter will examine the traditional focal concerns of the drug court team members in this federal re-entry program. Similarities and differences between the focal concerns of the traditional courtroom workgroup and the those of the drug court team will be discussed. Then, new or alternate focal concerns that are unique to the drug court team will be presented and discussed.

Traditional Focal Concerns and the Re-Entry Drug Court

The three traditional focal concerns of blameworthiness, community protection, and the costs and consequences of sentencing decisions in the traditional courtroom workgroup do not
have precise parallels in the drug court team. This is most likely due to the role of the workgroup member or drug court team member whose focal concerns are driving the decisions and outcomes at different stages of the criminal justice process. In addition, the stage in which the workgroup or team will find itself also determines which member steps to the forefront of the proceeding. The table below shows each stage of the traditional criminal justice process, the member driving the stage of the process, his or her associated focal concerns, and the degree to which the member uses a perceptual shorthand.

**Table 8: Traditional courtroom workgroup focal concerns by member**

<table>
<thead>
<tr>
<th>Stage</th>
<th>Member</th>
<th>Focal concerns</th>
<th>Use of perceptual shorthand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pretrial</td>
<td>Prosecutor</td>
<td>Seriousness of offense&lt;br&gt;Degree of harm to victim&lt;br&gt;Strong evidence against defendant&lt;br&gt;Likelihood of conviction</td>
<td>Moderate-to-high</td>
</tr>
<tr>
<td>Trial or adjudication</td>
<td>Judge</td>
<td>Offender blameworthiness&lt;br&gt;Community protection</td>
<td>High</td>
</tr>
<tr>
<td></td>
<td>Judge</td>
<td>Community protection&lt;br&gt;Sentencing costs and consequences</td>
<td>High</td>
</tr>
<tr>
<td></td>
<td>Probation officer</td>
<td>Community protection</td>
<td>Low-to-moderate</td>
</tr>
</tbody>
</table>

At the pretrial stage of the traditional criminal justice process, which includes the defendant’s arraignment, pretrial detention or bail hearing, and plea bargaining, the prosecutor’s focal concerns will emerge as central to that stage. For example, the prosecutor may choose to charge a defendant with multiple offenses, from the most serious offense to a less serious offense. This type of charging decision aggregates the prosecutor’s focal concerns and gives the prosecutor a greater presence in the pretrial stage. The most serious charge takes into consideration the offense’s seriousness and any harm to a victim. It also addresses the prosecutor’s concern for a conviction, since having multiple offenses provides the prosecutor
with leverage during plea bargaining and gives a judge or jury the option of finding a defendant guilty of a lesser charge during the trial or adjudication stage. Although the prosecutor would prefer a guilty outcome on the more serious charge, a conviction is still secured with the lesser charge.

At the adjudication stage in the traditional criminal justice process, and more so at the sentencing stage, the judge’s focal concerns will be preeminent. The judge is more likely to consider “the degree of the offenders’ culpability or the degree of injury caused”, comprised of the offender’s criminal history, the seriousness of the offense, and the type of offense (Hartley et al., 2007, p. 60). At the sentencing stage, the judge will consider sentencing costs and consequences. Both the judge and the probation officer are likely to share similar concerns at this concern for community protection, particularly in how best to deter or incapacitate the offender (Hartley et al., 2007). The probation officer is likely to have more information about the defendant, thus lessening the need for using a perceptual shorthand. If the judge is confident in the probation officer’s ability to address the community protection concerns, then the judge is likely to adopt the probation officer’s recommendations (Freiburger and Hilinski, 2011).

In the drug court, blameworthiness matters in two different and distinct ways for the drug court: first, as part of an offender’s admissions evaluation for acceptance into the program and second, as a means by which to evaluate participants’ violations of the program’s rules, such as attending court sessions or making their scheduled call-ins for drug testing.

Blameworthiness and program admission. Participation in the program is voluntary, but offenders are referred to the program for evaluation prior to their admission. Each offender is screened for eligibility to determine if they are sufficiently stable enough to engage in treatment prior to starting the program and meet other program criteria. A pre-screening process is used,
where a probation officer assesses an offender generally and makes a visit to the offender’s home to determine the stability of that environment. A potential participant is considered stable by the probation department when the participant is found to have stable housing, sobriety, and compliance with their probation supervision. Probationers are excluded from consideration for participation in the program if a probationer has an open revocation, no housing plan, and is actively engaging in some form of substance abuse.

Substance abuse issues are assessed using the Texas Christian University Drug Screen (TCUDS) and through a review of any involvement in treatment while in prison. Offenders complete the federal Post Conviction Risk Assessment (PCRA) too, which determines the level of an offender’s risk of committing a new offense and helps the probation department improve its supervision of the offender. (Please see Appendix D for a detailed discussion of how PCRA is used for scoring potential participants risk-levels.) The offender must have a risk level of moderate-to-high and show that drugs and alcohol are a risk factor towards reoffending to be eligible for the program. An offender’s risk-level is a significant concern for this drug court.

Participants in this program have been assessed using the PCRA tool as being at a moderate-to-high or high risk for revocation and re-arrest. Like the traditional courtroom workgroup, specifically the judges and prosecutors, the seriousness of the offenses for which these individuals are on supervised release is taken into consideration. In the traditional courtroom, however, these serious offenses are considered for purposes of charging by the prosecutor and for sentencing by the judge. Here, the seriousness of their offenses is considered for their inclusion into the program that will intensify the amount of supervision they require and increase the conditions of their supervised release by adding in additional reporting and treatment. The difference is in the desired outcome. The concern of blameworthiness in the
traditional court has to do with making sure the individual is appropriately sentenced and the community protected through charging and sentencing decisions. The concern of blameworthiness in the drug court has to do with making sure an individual is admitted into the program for purposes of rehabilitation, so that dangerous offenders receives proper treatment and support that allows them to re-entry their communities sober, law-abiding, and employed.

*Blameworthiness and program infractions.* Once accepted into the program, participants must execute a contract in which they agree to abide by a code of conduct. Non-compliant behavior results in sanctions, which have been designed with different levels of intensity and frequency.

“Factors which will influence the type of sanction employed include the seriousness of the violation, the number of violations, and the amount of time the participant has remained compliant, either before a first violation, or between violations. In addition, an important factor will be whether the participant voluntarily discloses the violation. Dishonesty on the part of the participant will result in enhanced sanctions. Depending on these factors, any of the sanctions listed below, including termination from the program, is available. As a general rule, when there are repeat violations, more serious sanctions will be applied incrementally (Interagency Agreement, p. 12).

Sanctions include the following:

- The participant receives a judicial reprimand in open court.
- The participant receives a “sit sanction,” where a participant is ordered to return to court and to observe proceedings for a half-day or full-day.
- The participant is ordered to provide an explanation in writing or some other means, for his/her noncompliant behavior, (such as reason for failure to attend treatment, reason for testing positive, triggers that most often cause relapse and why, what participant will do differently this time to avoid another failure. It may be about someone the participant admires and why).
- The participant is ordered to participate in community service (the site of which will be left to the discretion of the program judge).
- The participant is ordered to comply with curfew restrictions or home confinement with electronic monitoring.
- The participant is ordered to participate in a day reporting program.
• The participant is ordered to complete a term at a community corrections center.
• The participant is ordered to spend up to seven days in jail.
• The participant is ordered terminated from the program.

The drug court team looks at the seriousness of any infraction of the program’s rules to determine any sanction. The concept is the similar to traditional blameworthiness: the drug court team takes into consideration culpability for certain violations, for which participants are held responsible. For example, an incident occurred where a participant relapsed when she went out to drink with her co-workers. When the matter was brought up as part of the team meeting, members discussed the participant’s actions leading up to her drinking. The discussion, however, focused on behavior for which the participant needed to be held accountable, not blamed.

Probation officer: “She went to a party, and then went to a bar after the party. She drank and possibly used [cocaine] until she blacked out. She said she couldn’t come to [drug court] today because she had to work and that she was going to talk with [the defense attorney].”

Defense attorney: “She did call me and left a message to call her at work. I called the number she left me and got [the restaurant].

Probation officer: “My worry is about what happens this week and weekend.”

At this point, the team realizes there needs to be a sanction and it will involve the participant being taken into custody for some period of time. But it is clear that the team is not really comfortable with a custodial sanction as the answer to the participant’s relapse.

Defense attorney: “Should we take her in all weekend?”

Probation officer: “She’d be safe. She’s not attending meetings and she hasn’t been talking with [the treatment counselor].”

Program judge: “She’s not doing what she’s supposed to.”

Prosecutor: “Her job is her priority; her sobriety is taking a back seat.”

Defense attorney: “This feels likes she’s going backwards. Can she get stabilized first?”
Probation officer: “She says she needs structure, but she does nothing.”

Program judge: “She’s failed at IOP.”

Probation officer: “What she’s really saying is, ‘I can’t stop on my own.’”

Program judge: “Perhaps she could go into [a residential program] for 30 days, then go to a halfway house. Or, probation could think about a clinical program and then to a residential program.”

Probation officer: “That will probably result in her losing her job.”

This dialog is one of tragedy, not condemnation or judgment. It is dialog rich with a sense that the team may lose this participant to her addiction. The team emotes its powerlessness over the participant’s ability to stay sober, and a sense that no matter what it decides, it may not prevent the participant from drinking. There is also a desperation to do something in terms of treatment or sanction or both; the team must come up with some solution. Ultimately, the judge decided to take the participant into custody and had probation arrange for intense outpatient treatment.

The team’s concern is not about guilt and punishment, but of accountability, responsibility, and recovery, too. In a traditional criminal court, the workgroup would consider the defendant’s criminal history, the seriousness of the offense, and the type of offense; here, the team expects that relapse may be part of a participant’s recovery, but the participant must be held accountable for any behavior that jeopardizes that recovery. The tension created is between rehabilitation and punishment. The focus of the team’s concern is that the participant recognizes that certain behaviors, outside of those behaviors that contribute to a sustained recovery, have contributed to his relapse.

This traditional focal concern of community protection keys on the need to incapacitate and/or deter offenders. This concept involves the judge’s ability to predict the future dangerousness of the offender. Variables used to measure the protection of the community
include criminal history, use of weapons in the offense, education, employment, and family history.

Because this program accepts “high risk” offenders, as compared with other drug court programs that select “low risk” offenders, team members stated clearly that they are aware of “the kind of public safety risk these guys represent” (current program judge) and “we want to protect the community.” (supervising probation officer). They know it is easy to forget the crimes these participants have been convicted of and the relationship of their drug use with those crimes:

“[O]ur responsibilities are not only to help the person to be successful, but also and equally if not more importantly to diminish community risk. So when we have somebody that’s not working collaboratively with us – they’re using drugs, they’re heroin addicts that rob banks with firearms over the counter – we know that the community is at risk. And we need to do something about that.” (probation officer # 1).

The current program judge was particularly concerned with the risk that these participants could pose to their communities. Although this is a drug court, it is still a court, and the judge makes the final decision regarding all aspects of a participant’s involvement in the program. That responsibility keeps the potential dangerousness of these participants in the forefront of her thinking:

“That’s another whole aspect of this … They could violate their supervised release and go away, and then the kind of nightmare thing is they could commit another major crime. With their records, like [one of the participants], if he were to fall off the wagon and rob a bank or something, he would never get out. He would just die in jail … and not to mention the kind of public safety risk of these guys going down in flames” (current program judge).

For the program judge, assessing the threat to the community is not unlike that of the traditional judge. Both judges are attempting to predict future criminal behavior. Both judges generally
have a sense of any past criminal behavior, assuming that the offender appearing before the traditional judge has a criminal history.

Another difference between the traditional court and the drug court is that the team is much more informed and aware of what participants are doing outside of the drug court sessions, particularly the probation officers and to a lesser extent, the defense attorney. Although community protection is something the entire team keeps in mind, there seems to be a much lower chance of a participant or graduate relapsing and participating in the type of crime that he or she committed in the past.

“I don’t think that happens that often in this program because you could tell. This is why [the probation officers are] are so relentless in going to where you work, going to your house, asking how much your rent is. They’re really nosy, and the reason is they want to know, ‘What are you doing when I’m not here?’” (current program judge).

This focal concern, then, is similar to that of the judge and the probation officers in the traditional courtroom workgroup, but the drug court team appears to be much better informed and aware of the circumstances and environments of the participants. The drug court team should have something of an advantage over the traditional courtroom workgroup because it should be able to better predict the real risk of relapse and reoffending, rather than rely on the biases imbedded within the workgroup members’ perceptual shorthand that lets them guess these risks. This is not always the case. For example, one participant was making good progress with his sobriety, his employment, and improving relations with his family. His wife accompanied him to the drug court sessions and confirmed that he had been doing all the things the program required him to do. He was progressing phase-to-phase with minor issues that he and his probation officer were able to resolve. His one area of concern, however, was his financial situation and he reported a few times that he was working hard, given his concern about meeting
his financial obligations. He became involved in a pickpocketing scheme with another individual and was ultimately arrested for assault with a deadly weapon and theft. He stayed sober, maintained regular contact with this probation officer, and had the open support of this family, but it is possible that that his financial insecurity may have weighed on him more heavily than anyone had perceived.

In the traditional courtroom workgroup, costs and consequences of sentencing decisions looks at the relationship among courtroom workgroup members, the case flow through the workgroup, and an awareness of correctional resources (within the traditional criminal justice system). These costs and consequences are actually measures of system efficiencies and bring out the practical constraints and consequences associated with a courtroom workgroup and its ability to process cases (Hartley et al., 2007). Sentencing decisions are different in the drug court than in traditional court. Sentencing decisions are actually the imposition of sanctions for participants’ infractions of program rules. These sanctions can range from a loss of credit for time in the program, to a short period of custodial confinement.

In a traditional court, the costs and consequences of sentencing decisions can impact the efficient processing of cases, as well as the efficacy of the sentences for the offenders. The drug court has similar concerns. Imposing sanctions can affect both efficiency and efficacy of the drug court team’s handling of participants’ rule infractions. Efficiency is impacted when the drug court struggles with the type of sanction to impose. For example, the team often struggles with sentencing for sanctions, whether that sentencing is actually a period of custodial confinement or a loss of credit for time in the program. On more than one occasion, the team wrestled with how, when and for how long a participant should be incarcerated for an infraction.
Also, the team could not agree on how to handle incidents where participants did not call in to probation to see if they were required to have a drug test. The team muddled through trying to figure out what to do for several weeks in an attempt to figure out whether to take participants’ missed call-ins on a case-by-case basis or whether to have a categorical rule. The team cannot be processing cases efficiently if each solution for a sanction is crafted to the participant’s particular case and circumstances. It may be more efficacious for the team and the individual to have custom responses to violations and other incidents, but it is not efficient. It is also interesting that the drug court team is using a looser, less structured scheme that is different from the highly structured sentencing system within the federal court system. However, it has been recognized that problem-solving courts have the luxuries of more time and more information are necessary to maintain the therapeutic nature of the court and to allow for more “judicial contemplation” prior to reaching a decision about a participant (Jeffries & Bond, 2012).

When the team spends time creating custom solutions for participants’ issues, it gets caught up with specific participants or in discussions of a particular issues, then realizes it is out of time for reviewing the remaining participants. The judge generally signals the team that it needs to do a “quick review” because the team was running out of time before the start of the drug court session. In one meeting, time was so short that the judge told the probation officers providing the summary reviews to “Keep going; don’t stop.” These “quick reviews” also occurred during the drug court sessions. During one session, the judge said that she would be conducting a “brisk call-up” of the remaining participants near the end of that particular court session. These “quick reviews” and “brisk call-ups” do not seem to be based on any particular prioritization system, such as dealing with problematic cases first, but rather the team members
engaging with one another at length in the team meeting about a particular participant and with
the judge engaging at length with some of the participants during the drug court session.

One reason for this concern about time is that the team – the judge in particular – is
conscious of the participants’ time. She wants the team meetings and the court sessions to start
and end on-time. Participants are expected to be on-time and, therefore, the team should also be
on-time. So, when the team runs out of time, it is not because time was squandered on trivial
issues and tasks. Generally, the team is thoughtful and tries to give meaningful attention to other
program issues, such as revising its policy on incentives and sanctions. It also tries to pay
attention to significant issues and circumstances in the lives of the participants and the impact
that those issues and circumstances have the participants’ recovery. When the team spends, what
is seemingly an inordinate amount of time, on one particular participant, it is with the goal of
constructing the best possible action plan for that participant.

Efficacy is impacted when the sanction does not have the desired effect of keeping a
participant clean, law-abiding, and employed and, in fact, may result in the participant
withdrawing from the program entirely. Like its struggle with how sanctions should be imposed,
the team struggles with whether sanctions have any effect at all. One participant stated in court
that, “locking me up isn’t going to keep me from drinking if I want to drink.” Another team
member stated that “if a participant is not doing well in [the program], then they should probably
just be on supervised release.” Supervised release may be more efficient by eliminating the
increased monitoring and treatment that a participant receives, but it will not necessarily be more
effective in a probationer successfully completing that period of release or for the community’s
safety.
The focal concerns of the traditional courtroom workgroup are not identical with those of the drug court team, although they do parallel. Blameworthiness in the drug court program deals with admission to the program, ensuring participants are assessed by probation, and it concerns sanctions for infractions of the program’s rules. Because the program works with high-risk offenders, public safety and protecting the community are significant concerns for the entire drug court team. Sentencing – imposing sanctions for participants’ infractions of program rules – detracts from the drug court team’s efficiency and may lower the efficacy of any imposed sanctions. The team may need to take more time developing and imposing a given sanction with the specific circumstances of a participant and the context in which an infraction has occurred. Even then, with a well-thought-out sanction, it may not have the corrective effect that the team has hoped it would.

Alternative Focal Concerns and the Re-Entry Drug Court

Only one, true alternative focal concern to the focal concerns of traditional courts emerged from this study, that of relapse prevention. Relapse prevention consists of the team’s focus on participants’ recovery and on how to help participants process and learn from any participant relapses. Although it almost seems obvious that the team would have as its focal concern the participants’ recovery, it is not simply about the participants successfully completing the program for these team members. These team members are invested in these participants and they take their successes and failures to-heart.

Many team members initially felt that “we’re just trying to get [the participants] to stop using” (current program judge). As the program matured and as individual team members gained experiencing in working together and creating a more collaborative environment, participants’ recoveries were seen more holistically – that is, by have participants engage in and
complete the program successfully. One of the defense attorneys told me that “I felt like you could afford to say to the client, ‘I don’t care if you go in to jail for a week right now, you got to stop using drugs. You have to stop committing petty crimes. You have to get your act together’” (defense attorney # 2).

The program’s stated goals for the participants – staying sober, law-abiding, and employed – guide the group, but they are not all equal. Sobriety is really the main goal for the program, the participants, and the team members. The team has an ability to accept breaking the law as long as the offense is relatively low and they understand that employment (or education) is a process that must be navigated, with waiting periods built into that process, such as with interviews.

The probation officers, perhaps more than the other team members, encounter participants most frequently regarding their recoveries. Both probation officers are involved in all aspects of the participants’ lives, the participants’ supervision is more intense, and the probation officers spend more time brokering appropriate community relationships for the participants.

“We try to follow all aspects of their life very closely: changes of employment, their treatment, their drug testing. And I don’t mean to say this in a negative way, but there’s more micro-Managing that goes on [in the program] of the aspects of their life that normally wouldn’t take place in the more traditional track of supervision” (probation officer # 2)

“We’re not looking to just supervise people and have them be successful under supervision, but also beyond. So if they’re establishing networks within the community, that’s a good thing. We’ve been expanding upon that and trying to connect people with resources that are in unique to what it is that they need, if that’s what their interested in doing. If not, they certainly have our contract agencies, and we usually start with the contract agencies anyway” (probation officer # 1)

The program and the team members consider relapse to be part of recovery. However, a participant who relapses has a profound effect on the team members. Their reactions to hearing
about a relapse are not veiled; the team members are visibly upset when hearing that a participant has returned to drugs or alcohol. Relapse may be accepted as part of recovery, but it is of great concern when it not only effects the individual’s recovery, but also his or her status with the court system. Also, public safety concerns are heightened as the community again may be at-risk, given the participants’ criminal histories. However, relapse was not always considered to be part of an offender’s recovery.

“I could see from the time I started in the early 2000s up to the time I left the [the public defender’s office] about a year ago, that during the space of about twelve years, the attitude in the court toward addiction just completely changed. It used to be, if someone relapsed, they just went to jail. The judge was like, ‘That’s it, you relapsed, you’re gone,’ and everyone just accepted that. Then there was gradual realization, ‘Oh, addicts are going to relapse, we have to have a different approach, and you have to keep trying with addicts.’ I saw a big difference just in the culture in the courthouse and the way the judges were treating people who violated” (defense attorney # 2).

In general, change comes more easily within a court community where the “major residents” of that community agree something must be done to address a particular issue or problem (Eisenstein et al. 1999, p. 303). This “gradual realization” that this team member talks about likely came about from the changes in the federal administration – a new President – and a recognition at the federal and state levels that addiction was a major public health concern.

For this team, relapse seems to run along a spectrum of severity. At one end are minor relapses, such as a participant having a few drinks or getting high; these are expected. At the other end are more severe relapses that may result in overdoses.

“For me, I think it’s just considered that it’s going to happen, you’re going to relapse. A lot of the participants, especially at the beginning in the first phase, they relapse. The issue is whether they just go completely off the reservation or they overdose. The overdoses … really affect me because you think, ‘Wow, we almost lost that guy.’ We haven’t had anyone die in the program yet, but whenever something really serious happens to someone and email goes around – you can tell everyone is just shocked and it really takes the wind out of you” (current program judge).
The team feels a participant’s relapse very deeply, regardless of where the relapse lies on the spectrum, but serious relapses deeply effect the them.

Relapses, including overdoses, also threaten the community in cases where participants commit crimes that are related to their drug use.

“That’s another whole aspect if this is – these guys are at risk to die if they overdose because they’re in remission or whatever and they’re not used to taking. They could build up this great network of job and home and family and then relapse and lose it all. They could violate their supervised release and go away, and then the kind of nightmare thing is they could commit another major crime and with their records … [they] would never get out … not to mention the kind of public safety risk when these guys go out” (current program judge).

Relapse also encompasses more than just use. Some relapses are not about the participant’s drug use per se, but about the participant being involved in the sale of drugs.

“There was a man, older African-American guy, very religious, always wore a suit and tie, worked at City Hall, he was very connected in the community and had a lot of important people he called friends. I think he was convicted of selling drugs and had done a lot of time, like maybe ten years. He gets out and he’s very pious. It’s always ‘Have a blessed day’ and ‘I’m blessed to see you.’ He couldn’t stay in the program. He kept testing positive at very low levels. He’s chipping cocaine. You’re just like, ‘Why is he chipping cocaine?’ He just can’t stay away from it.

“Then, it turns out, he was selling cocaine and he was selling big quantities that he was dividing up with a relative in his house and then they were distributing it. Now, he’s doing fifteen years. He didn’t relapse per se, like, he’s a helpless addict, but I was kicking myself that I didn’t figure out why he was chipping and what was going on, like why did he have such ready access to cocaine and he keeps taking little nips of it. It’s because he’s got a kilogram under his bed and he’s always working it up for sale so he just snorts a little bit and hopes it doesn’t show up on the test. That I really blamed myself for that. You could just see it happening in slow motion over period of months and nobody intervened with the guy” (current program judge)

All of the drug team members take participants’ relapses seriously. They want to know what triggers participants into relapsing, whether it is using drugs or selling and distributing them. The drug team does not like to fail with any of the participants, particularly with the ones
who appear to be doing so well in the program. When a participant has a relapse, the team members sometimes feel that the program has failed. For example, the team may question whether it missed an event or circumstance that a participant experienced that may have acted as a trigger for the participant’s relapse. That event or experience may come from the participant’s home life, work life, or the individuals with whom the participant associates, and the team may feel it should have noticed that event or circumstance.

One participant was particularly challenging for the group. She had a good job and was performing it well. She had been accepted into the company’s management training program. Her work and training, however, were taking priority in her life. She began hanging out after work with her co-workers, but they were drinkers and gathered together after work to do just that. Over time, the participant continued to work more hours, spend more time with her co-workers in drinking environments, and less time on her recovery. Ultimately, she went out one night with her co-workers and drank.

Concerned with her relapse and the potential for her one night out to result in her continuing to drink, the team put together a treatment program for her and arranged to have her spend time in an intensive outpatient treatment program (IOP). The participant graduated from the IOP, but the team was concerned that the IOP may not have had the effect the team wanted. The participant returned to her job, moved back into her old apartment, and picked up her life where she had left off prior to her relapse. At this point, the team was concerned that she was returning to the same point she was at just before she drank.

Probation officer: “[The participant] was ‘successfully discharged’ from the [IOP] and is back working at her old job.”

Treatment counselor: “I talked with her briefly. Things were ‘good and bad’ at the [IOP]. It’s probably not necessarily good that she didn’t lose her job or the apartment.”
The team recognized the participant’s instability in her recovery and was seeing the signs that another relapse may be coming. However, it was not until after the relapse that the team seemed to voice its concerns, step in with a more aggressive treatment program, and re-direct the participant. The team learned what this participant’s triggers were that led to her relapse, but could not see them initially. The success the participant was having at work may have redirected the team members from seeing signs that could have prevented the participant from relapsing the first time.

Conclusion

The drug court team members make attributions that relate to the drug court team’s focal concerns at the time participants are admitted into the program, then during their time with the program when sanctions are imposed for infractions of the program rules. Unlike the judge and the prosecutor using attributions in the traditional courtroom workgroup, the probation officer’s attributions have the strongest impact on the team’s decision-making at admission and during participation, since the probation officer is responsible for making assessments of the participant and the participant’s social, financial, familial, and work status. This is consistent with Freiburger and Hilinski’s (2011) findings. For example, the probation officer’s attributions may be based on the participant’s openness and willingness to accept criticism, guidance, and correction concerning the participant’s behaviors and attitudes to recovery and participating in
the program. Those attributions carry great weight when shared with the other members during the team meeting, particularly when team members such as the judge, the prosecutor, and, in some cases, even the treatment counselor, do not share equal access to the participant (Freiburger and Hilinski, 2011).

These same attributions – the participant’s internal openness, responsiveness, and willingness, as well as external pressures and circumstances in the participant’s life – are considered by the drug court team in managing the participant’s recovery and in considering a participant’s potential for relapse. Balanced against those two focal concerns are how the team’s actions effect the program’s integrity, as well as add or subtract for the actual and perceived value of the program. How these attributes work individually and together to impact the drug court team’s decision making, and the dynamics of the relationships between them, result in decisions that are not as straightforward as the team might like them to be. The program’s sanctions, designed to reduce or eliminate bias in applying the sanctions to program infractions, do not operate well categorically but are often better used as guidelines.
CHAPTER SEVEN: THE RE-ENTRY COURT’S IMPLEMENTATION & IMPACT AS A PUBLIC POLICY RESPONSE

Two concepts help with understanding how this drug court program worked as a public policy response to drug addiction by working with offenders who are re-entering their communities. The first concept, implementation, was initially defined by Pressman and Wildavsky as “to carry out, accomplish, fulfill, produce, complete” (1984, p. xxi). This simple definition was used to capture the idea that a government agency’s workers implement public policy by serving the people who seek its services. Second, Lipsky’s (1980) concept of “street-level bureaucrats” is used to define what the drug court team members do and who they are. Lipsky’s (1980) is the foundational public policy literature for this study. He purported that these street-level bureaucrats are those individuals who work at the lowest level of an agency, engaging with the individuals who have sought out the particular agency for services. He argued that “policy implementation in the end comes down to the people who actually implement it” (Lipsky, 1980, p. 8). Street-level bureaucrats, generally, work in roles that either help individuals directly or make decisions concerning them. Problems arise when these street-level bureaucrats craft practices and routines that help their case processing and management, but may or may not help the individuals targeted by the policy. As will be discussed, this happens with this drug court as it attempts to maintain the program’s integrity and to justify the program’s existence by demonstrating its value to participants and to the community. As a result, bureaucracies that are “oriented toward transforming clients, such as judicial institutions and social welfare agencies, are revolving doors because the solutions they offer people are not adequate” (Lipsky, 1980, p. 78). When decisions are made as the result of these practices and routines designed for the benefit of the decision-makers, the policy’s intent is rerouted and
individuals may not receive the treatment they expected. These two concepts will be applied to this re-entry drug court below.

The Implementation of the Re-Entry Drug Court

Pressman and Wildavsky’s (1984) study of the implementation of EDA projects in Oakland, California led them to conclude that one of the most critical and vital components of public policy development is the implementation phase because it is this phase that determines the success or failure of a given policy. In other words, the effective implementation of a policy is what makes it a success, and successful policies solve social problems. They also believed that policy design and implementation must be integrated and that leaving implementation tasks and activities as afterthoughts were most likely to result in failed public policy implementations. Another critical point they made was that there must be continuity in leadership. In their analysis of the EDA projects, the sudden disappearance of a key implementation manager created such chaos that the projects implementations began immediately began to crumble.

The policy design and implementation were integrated for this program, but without the benefit of any enabling legislation. Enabling legislation, or enabling statutes, are laws that “create new powers; esp. a congressional statute conferring powers on an executive agency to carry out various delegated acts” (Black’s Law Dictionary 1999). Various state drug courts had the benefit of enabling legislation that secured not only the necessary legitimacy for the existence of the drug courts, but included the means by which they would be staffed and funded. Federal enabling legislation would have provided a stronger mandate for the creation and sustainability of this drug court program.

The program was designed and implemented by representatives of the home bases who agreed to participate in its formation and execution. These individuals put together the
program’s details and outlined its operation. For example, the team decided it would take on high-risk offenders. These individuals were not merely users; these were violent offenders, involved in drug-related felonies. The prosecutor’s office thought that these participants were “too dangerous” and threatened public safety. The founding judge suggested, however, that by treating them, by providing them an opportunity to have increased monitoring as to their activities and to have increased supervision through regular drug testing, as well as introducing a treatment model to them, the program would provide them with an opportunity in the long-term to be “clean, employed, and law-abiding.” The idea was that it made more sense to have these “dangerous” individuals subjected to closer monitoring, increased testing, and appropriate treatment for a longer period of time. The founding judge’s philosophy was if you only look at one relapse at one point in time, you are not seeing the success or failure of an individual over the long-term. Ultimately, the team reached a consensus and moved forward with its eligibility criteria for program participants.

Even so, reconciliation of the different philosophies of the home bases and the initial drug court team members was difficult, given initial pushback against the program:

“The [prosecutor’s office] wasn’t in favor of it, and they came out and said that. I don’t know if it was in a memo to Congress or from Congress to them, but there was some memo saying that it wasn’t appropriate for the federal system; we didn’t have the same kind of defendants; we’re post-conviction, they’re not, but there’s this program in [the state]; but let’s see how it goes” (probation officer #1)

With the home bases not favoring the drug court program’s implementation, individual team members struggled to reconcile their differences as well. The drug court’s first defense attorney was at odds with the prosecutor and the probation officers, especially in terms of procedure that she believed protected participants’ due process rights. For example, prior to this program’s implementation, the probation department would prepare a revocation motion for any
probationer who tested positive, go into court, and the defense attorney would have to defend against the motion. Under the program, all of the circumstances leading to the revocation were laid out before the team and the probation department’s information was subject to review by the entire team prior to issuing a revocation motion. The defense attorney believed that whether in traditional court or drug court, her duty was to defend the participant against the revocation motion, requiring to hold back from full disclosure of any information to the other team members. In spite of these philosophical differences, the team pressed forward with the implementation of the program.

The Drug Court Team Members as Street-Level Bureaucrats

Street-level bureaucrats are expected to implement policy through the directives and guidelines issued by their agencies for dealing with individuals interfacing with these agencies (Lipsky, 1980). The reality of their daily work is that street-level bureaucrats must respond to situations that may require custom-crafted responses based on individuals’ circumstances (Lipsky 1980). For example, police officers cannot arrest everyone involved when they witness breaking the law. Using their discretion, they will decide whether a situation is serious enough to result in an arrest. They will assess the current circumstances and may consider any resource constraints or procedural requirements set up by the police department in making their decisions whether or not to arrest.

Generally, the drug court team regularly interacts with program participants to set treatment and employment goals, then crafts and devises plans to achieve those goals. The team members also work with offenders to resolve any underlying issues and circumstances the participants are experiencing, thus helping to change their behavior to prevent relapse and reoffending (Lipsky, 1980). This is a different type of an encounter from that of a police officer
making an arrest, but the application is still valid. To help these participants, the drug court team members rely on their discretion and the freedom “to make a choice among possible courses of action or inaction” (Davis, 1969, p.4). This use of their discretion, then, results in implementing policy that is “more meaningful for the client” (Tummers & Bekkers, 2012). As will be explained below, there are times, however, where participants’ infractions of program rules or changes in their circumstances create exceptions to the treatment plans that require the drug court team to deviate from its operating rules.

Lipsky (1980) points out that problems arise when these street-level bureaucrats craft practices and routines that help their case processing and management, but may or may not help the individuals targeted by the policy. Examples in the last chapter illustrate this point. The drug court team is committed to helping the participants, primarily with sobriety, but also with work, education, and family. In some cases, this is not good for the program, particularly a program such as this without good measurements in place for tracking participants and evaluating their success. Individualized, flexible responses send mixed messages to the current participants as well as to the court community, so the team must craft workaround solutions that maintain the program’s integrity and value, but still allow for flexibility. Doing so may actually undermine the participants’ successful treatment and the program’s success as a valuable program – two measures that, in this current environment, are undefined and not measured in a way that supports the drug court team’s decision-making and participant processing. As will be discussed below, the drug court team members believe in their program, even if they cannot or will not demonstrate its success with data. This is actually a significant limitation of this program and prevents anyone knowing whether the program is truly efficacious.
Maynard-Moody and Musheno (2003) asserted that street-level bureaucrats’ decisions are significantly affected by the contention between the rules under which they must operate and the moral judgments they make about the individuals with whom they interact. That is, street-level bureaucrats and their beliefs about the people they serve “continually rub against policies and rules” (Maynard-Moody and Musheno, 2003; Musheno et al., 1989). The decisions made about individuals that implement a given policy become, in fact, the policy itself. Thus, how drug court team members perceive and manage drug court participants may result in behavior that is contrary to drug court policies and procedures. The team demonstrated this when sanctions were not imposed for infractions of the program rules because a participant had been doing well in other areas of their treatment plan.

These mitigating circumstances – a residential move, a new job’s training program or hours, a child care issue – are often considered by the team as exceptions that should not be summarily dismissed in evaluating participants’ progress, particularly when it comes to making decisions about sanctions and their effect on the program’s integrity. Often the team discussion would attempt to answer the question, “What will the other participants think, or how the exception should be communicated (e.g., “Should we say this in front of the whole group?”). One question, then, is whether the program’s rewards and sanctions and its integrity in general is compromised by these customized solutions. The second and related question is whether the customized treatment plans and solutions actually help with participants’ treatment and, if so, whether the rules, rewards and sanctions are being held in higher esteem than the participants’ success in the program.

Drug court team members may not have complete information regarding participants’, particularly when participants’ create or experience exceptions that affect their achievement of
the program’s goals. Team members, as street-level bureaucrats, must occasionally respond to situations with limited information within a limited period of time (Tummers & Bekkers, 2012). To manage those responses, they must develop ways to cope with the problem of doing their job well (Lipsky, 1980). Thus, they simplify the nature of their jobs, or they develop routines of practice that help them do their jobs. The use of their discretion and their simplification and typification of their daily tasks suggest that they are the ultimate policy makers regarding programs and services (Lipsky, 1980). Thus, the way in which drug court team members use their discretion and make decisions regarding how they process program participants sets the substance abuse treatment policy for their court community. But the treatment policy is murky and participants are left with the uncertainty that they can never really be sure of a particular outcome regarding their case. While the drug court tries to be consistent and eliminate the disparities in outcomes, outcomes remain ambiguous as it tries to craft customized rewards and sanctions to participants’ compliance or non-compliance with the program.

Maintaining the Re-Entry Drug Court and Its Integrity and Value

This re-entry drug court program’s integrity and value is affected by its ability to remain as a viable, alternative program to traditional probation supervision. As a result, the drug court team operates on something of an ad hoc basis, rather than a regular, fully functioning part of this court’s community. This is quite different from the traditional courtroom workgroup model in various courts where all the same players will perform the same roles within the same operating rules for years. In this program, the players have changed over its ten-year existence, the roles are nuanced with adversarial and collaborate shifts, and operating rules are less rigid and more flexible so that the team can create individualized treatment plans for participants. Because there is more effort required in keeping home bases interested in the program, in
keeping balance within and between the team members’ roles, and because the operating rules are applied with great discretion, more effort is required to produce results that justify the program’s existence. As a result, the team members’ goals, at times, center around how to justify and maintain the program in the face of its critics, instead of taking note of potential program improvements.

Program Integrity

*Program integrity* has to do with its legitimacy, both internally and externally. Internally, the team wants to make sure that participants are held accountable and responsible for their actions while they are in the program and that they are working towards the program’s goals of being clean, law-abiding, and employed. The team wants to make sure that the program is one of integrity and that it takes its work seriously. When issues to come up with participants, it is usually around the use of sanctions, where the team struggles with trying to decide whether to impose a sanction for the good of the program that may not necessarily be in the best interests of a participant’s recovery. As a result, the drug court team struggles with adhering to the program’s rules and the imposition of appropriate rewards and sanctions versus crafting customized treatment plans and solutions for participants on an individual basis. Adherence to the program’s rules has less to do with case processing, however, than it does with maintaining the program’s integrity and sending a consistent message to participants that similar infractions of the rules or similar successes in the program will receive similar rewards and sanctions.

For example, one participant had tested positive for using marijuana, which she vehemently denied. She claimed that the marijuana entered her system through her passively inhaling second-hand marijuana smoke. In general, the program’s policy is to have the sample re-tested, to make sure there is no false positive. In this participant’s case, she had tested
positive previously, all of which she vehemently denied. However, just prior to or immediately after the re-testing results, she would admit to using marijuana. This would result in the imposition of a sanction.

The team had a long conversation about this participant. The participant was considering withdrawing from the program and the team was both concerned about the program’s integrity and the participant’s overall recovery:

Probation officer: “I had a heart-to-heart talk with [the participant]. She wants to leave the program. I proposed that she stay in [the program], but maybe take a step back to regroup. She wasn’t at [drug court] last week. She is agitated and confrontational. She’s not really that way with me, which is unusual.”

Defense attorney: “I called her to remind her about today.”

Probation officer: “If she stays in [the program], we need to deal with the sanction.”

Defense attorney: “I told her she would need to do the day in custody. But it’s important to acknowledge that she knew that was coming. Her housing issues have been very stressful. She is very destabilized right now, very weepy, and she seems depressed. Should we urge her to have a psychological evaluation?”

Probation officer: “She needs to be assessed in a treatment setting to see what we can do.”

Treatment counselor: “I agree that she is probably depressed.”

Defense attorney: “She feels defeated. She’s giving up.”

Judge: “What should we do with her? I think she needs to do the day today. A day is enough; she’s hanging on by a thread.”

Probation officer: “Should it be two? Not for her, but for the integrity of the program. When we delay like we have with imposing this sanction, it allows for other issues to come up.”

Judge: “I thought she was out of the program. She’s failed. She’s not going to succeed at the program. She’s not graduating. She has three months left of supervised release. She’s not going to get the year off.”
Probation officer: “If you talk that way to her, with that intensity, it will go a long way with the other participants.”

Judge: “We still have this tension between maintaining the integrity of the program and imposing sanctions. Do we lock everyone up? One day? Two days? At this point, locking her up is about the program, not her.”

Probation officer: “The immediacy of the sanction is gone. Tell her we’ll help her transition through the last three months of supervision and be her support. That’s all we can do.”

Judge: “We need to have a longer conversation separately about what to do if someone quits.”

There is conflict between the team’s focal concern of relapse prevention and its need to maintain the program’s integrity to sustain its viability as an alternative path for offender re-entry. This creates great tension between the team wanting to help this individual at some level and wanting to maintain the integrity of the program. The team members struggle with extracting their emotions from their logic and, as a result, they get stuck. They want the program to succeed, they want participants to succeed, but they are unable or unwilling to decide if any given participant can fail so that the program can succeed. And for the program to succeed, it needs participants. If potential participants feel they cannot succeed because of the restrictive nature of the program’s rules, they may not join the program, which has not experienced much growth in its ten-year existence. Potential participants may not see a one-year reduction off the term of their supervised release as worth the time and effort of being in the program. The question, then, is whether having probation be “so relentless … in going to where you work, going to your house, asking how much your rent is … being really nosy,” worth it? (current program judge). The program’s integrity may remain intact, but there may not be a program for lack of participants.
Significant better outcomes have been reported in studies of drug courts that developed and implemented an incentive and sanction strategy that was clearly and repeatedly communicated to participants (NADCP, 2015). This does not mean that the drug court team has no discretion in administering these incentives and sanctions; “discretion should be generally be limited to modifying the magnitude of the consequence as opposed to withholding a consequence altogether” (NADCP, 2015, p. 29). One statewide study found that the intermittent imposition of sanctions for program infractions by drug courts resulted in poorer outcomes (Cissner et al., 2013). Therefore, “withholding a consequence is appropriate only if subsequent information suggests an infraction or achievement did not in fact occur” (NADCP, 2015, p. 29). The team frustrates itself and provides an inconsistent impact on public policy with its struggles in awarding incentives and imposing sanctions.

**Program Value**

*Program value* has to do with the participants’ success in the program and after they graduate, but it also includes seeing the principles of the program spread into the traditional criminal justice system. Specifically, team members, such as the current program judge and the current prosecutor, want to see a change in how offenders are processed through the traditional criminal justice system.

“[H]ere you understand what the problem is, understand who the individuals are, are not doing this all or nothing sanction, and are not waiting for the problems to bubble over months and months and months. So I feel very strongly that this is the way supervision should look, and that there should be more resources, and it should be in a way that gets towards this model. Even if you can’t do the whole thing, it should look more like it. I’d be interested to see if [the judge who founded the program] and some of the other judges can move in that direction more comprehensively rather than having it limited to just people who have a drug problem” (current prosecutor).
“To me, the big value of the program is just being really thoughtful and thorough in figuring out how do we supervise these people in a kind of scientifically valid way to maximize their chances of making it” (current program judge).

Interestingly, part of the program’s desired public policy impact is to change probationary supervision so that the program does not need to exist. Instead, system-wide reforms as a direct result of this program would be institutionalized to better address the needs of offenders with substance abuse issues that come through the courts. It is a strange dynamic, however, since team members see the value of an alternative program using a special model lying in its separateness from the traditional criminal justice system and its probationary practices, yet, at the same time, find policies and practices that might be applied for the good of the system as a whole.

Belenko (2001) noted that the quality of data and the data management systems used by drug courts are partially responsible for any drug court’s inability to generate useful information about the program or its participants. Several team members expressed their concern that they cannot demonstrate the value of the program quantitatively. For some, data is key in determining whether the program is actually working, whereas for others, there is a fear that measurement is a questionable practice that may produce questionable benefits. Several comments from team members illustrate these ideas.

“I wish that the system recognized more the benefits and I think for that to happen, we need to show what they are” (probation officer # 1).

“I just want to know why [certain aspects of the program work]. If we can have some really solid research to support these things, we see whether what we do is supported by that research” (current treatment counselor).

“I feel like there’s this move towards measurement right now, like measurement of achievement, measurement of success. I have a little bit of philosophical … aversion to that in the sense that I think that it’s a little bit dangerous to be reductive like that with people’s success because I think success means different things for different people. And the fact that someone feels compassion today, four relapses later and period of incarceration later, maybe what saves their life ten years from now, just an interaction
that they had with one of us, so you can’t really measure that. I don’t think that we shouldn’t be measuring at all, but I do think that the sort of human exchange should take priority over the, “Well is your program succeeding? Are people not relapsing and not having ramifications?” … whatever measure we use in success, I think we have to be really careful about that” (current defense attorney).

The team members believe that they are doing something others may not understand or appreciate, but a quantitative analysis may demonstrate that the model they believe in so strongly is simply not supported by the quantitative data. Therefore, as long as the program keeps a low profile, with little, if any, impact on the court as a supra-sponsoring organization, they can keep their “interesting little cauldron of best practices” bubbling (current program judge). However, without quantitative evidence, it is difficult to argue that these are truly “best practices” (NADCP, 2013).

This tension within the team members about measuring or not measuring, about having rules or not having rules, also seems to undermine its work and the program’s value. Its work is undermined because its decision-making process, in some instances, is painfully slow as it tries to work through how to proceed with any given individual participant. The program’s value is undermined because no really knows if it works, how it works, what works, what does not work, and mixed messages are sent to participants in a form of sentencing disparities where two participants are given two different sanctions for the same infraction of program rules. This is done consciously as the team tries to craft customize solutions to individual participants’ circumstances and performance in the program. It is done because the team wants to have a positive, long-term effect on program participants.

Yet the team still questions itself at times, wondering if it is having a positive effect on participants. It seems to be with good reason that the team wonders if it is generating positive outcomes in the participants’ lives – there is no data to support the idea that they are having any
short-term or long-term effects on participants. There is nothing to support that they are, in fact, best practices. There is a gut-level sense that what the team is doing is valuable, but team members also know they do not have the data to support that feeling.

“I think the positive reinforcement helps people, it helps their own self-efficacy. I think that it does keep people sober. I don’t know, but I also think it can be somewhat of a deterrent [to their recovery]; I just don’t know. I don’t have the data” (current treatment counselor).

“I hope we’re helping people. There is this evidence-based practice that if people are supervised too much, it’s worse for them, and I just trust probation that we’re getting the right people in here, that we’re not hurting anyone by over-supervising them” (current program judge).

Currently, the team’s assessment of the program’s value is a subjective measure and the program is evaluated on the basis of what the team has done in the past. However, data is sparse where it does exist and there are no efforts underway to collect data. Program graduates – assuming that they are still clean and sober, law-abiding, and working or in school – are not good about following up when asked. This may be a matter of prioritizing their life events, or it may be a result of their unwillingness to maintain that which they supposedly learned while in the program.

The team has spent some time trying to come up with a way to quantify the program’s value. For a number of reasons, they have not done so. Yet, they cling to the belief that what they are doing is benefitting participants and benefitting the criminal justice system as a whole.

“[One researcher] came in here and we were talking about devising a study to study the efficacy of [the program] … First of all, it was going to be kind of expensive to do and the court wasn’t going to fund it. Secondly, it wasn’t at all clear that it would be positive, because it’s just so hard to get a control group and to define success. There are just so many variables in who we take and who we don’t take. Even if you did something really complicated and statistically sound, in the end the numbers are so small, you could end up with this really bad result. In the end, we just thought, ‘Well, let’s not even go there,’ because we feel like it’s working. But to me, even if you, let’s say, can’t show that these people, when they graduate from the program, are statistically less likely to recidivate than
people who didn’t go through the program, I still think the program has a lot of value” (current program judge).

There is something about the program’s status within the overall judicial structure in this courthouse that is contributing to the program’s stagnation. The initial team members may have been able to implement the program, and the team in its various compositions has been able to keep it running for ten years, but one wonders if it will ever grow out of this perpetual embryonic stage given the lack of any empirical support for its success.

“I try to articulate … what are we trying to do? It’s just, are we really doing that? We don’t even know. That’s the kind of crazy thing. If you ask [probation], they’ll tell you that the people in Washington don’t have a policy supporting re-entry courts because there’s no evidence that people benefit from them which is a pretty big issue. If you hear people today talking, it seems like it is helping them, right? But we don’t really ‘know’” (current program judge).

Team members want to believe that what they are doing matters and that the program has value, but they cannot support their practices with any data. There is no data to support or question whether what they are doing is efficacious in helping participants stay clean and sober, remain law abiding, and pursue educational and employment opportunities. Without that data, it is difficult for them to justify making the improvements to the program that they would like to make.

Program Improvements

The team allocated a portion of each team meeting to discussing improvements to the program. The team is interested in specific improvements to the program concerning how it can better help participants with some of the challenges they face in early recovery, as well as general improvements that can impact the entire criminal justice system.

The team would like to see the treatment provider more integrated into the program. Currently, participants may have their own treatment counselor or they may use the team’s
treatment counselor. As discussed previously, this can present problems for the participants and the treatment counselor, who feels she knows the participants that she sees better than participants she does not see.

Another area of concern focuses on helping participants with life issues, such as housing. One participant worked very hard to fulfill the requirements for obtaining affordable housing. She had navigated the process successfully and secured the required voucher, only to find that she would need to produce first month’s rent, last month’s rent, and a security deposit. As with many of the participants, surplus cash is non-existent, so to come up with that sum was a real challenge. One of the team members asked, “How do we help with that?” Shortly after, this participant did find the key money for the apartment. One of the team members offered furniture that she had in storage, if the participant needed anything. This, of course, led to a conversation about how it would be picked up and moved to the participant’s apartment, which the team was able to help coordinate.

Another example involves a participant who was graduating from one phase of the program to the next. As part of that process, participants are required to write an essay on an assigned topic, then read that essay during the court session. This participant’s essay was particularly well-written, prompting the team to consider how it might help him in developing that skill. When the judge asked the participant if there was something the team could do to help him find an education opportunity, he indicated that he would be willing to look into it. That led to the team trying to find a program suitable for the participant and one that it could afford.

The team also looks at other programs to see what they are doing and what they have been successful in implementing:
“We’re always looking for new ways to try to make changes and improve upon the program, and that’s something that just comes from time. We’re going to go to [another court] to see what they do down there and see if there’s some things that we can take from them. And maybe build upon our program to make it more comprehensive and something that’s going to have meaningful impact on some of our folks” (probation officer # 2).

Helping participants with these life issues, or helping them explore latent talents and skills, not part of the program’s original mission. Participants are generally left on their own for finding ways to move into a new apartment, get a laptop for school, have their own car for getting to work, get legal services, or try a new program or class. The team wants to help with these things, as other programs around the country have been able to do. It frustrates them when they cannot, primarily because of budget issues. The team wants to do more than merely process cases. The personal investment that team members seem willing to make in the lives of participants demonstrates a culture of caring, of really wanting to see those participants who demonstrate some effort in implementing and managing their own re-entry and re-integration to succeed.

As has been mentioned in other areas, the team also believes that what it is doing here with these participants can be transferred to the criminal justice system in general. The prosecutor and the defense attorney were the most vocal about the possibility of transferring the principles and practices of the problem-solving court model to the traditional criminal justice system, because of what they consider to be the drug court’s multidisciplinary approach.

“I have more of a curious interest in these programs that bring together multidisciplinary approaches and look at things in a more pragmatic way to try to improve the system as you go along. I think swift, certain, and fair in probation is just – I think the court ought to go more to this model in supervision generally, and maybe even in a pretrial way as well – because I think you can pick up patterns of what the problems are, and try to address problems, and get better all the time, and keep improving performance. I think that there’s too little of that in the criminal justice system generally, so I think the more that you can do it and prove its value, the more you’ll have approaches like that” (current prosecutor).
“Here you understand what the problem is, understand who the individuals are, are not doing this all or nothing sanction, and are not waiting for the problems to bubble over months and months and months. So I feel very strongly that this is the way that supervision – what it should look like, and that there should be more resources, and it should be able to do it in a way that gets towards this model. Even if you can’t do the whole thing, it should look more like it. I’d be interested to see if [the founding judge] and some of the other judges can move in that direction more comprehensively rather than having it limited to just people who have a drug problem” (current prosecutor).

“I really also believe that it’s been a part of helping further culture shift in this courthouse and in other courthouses around what are we doing in the criminal justice system, and what is most productive. Do we just lock people up, or are we responsible for the people that we lock up when they get out? So I think programs like this really help provide an example of thinking differently around these issues. … I think it’s really valuable to have a treatment provider thinking about and raising treatment issues. I think that should be the focus of our program because that’s what’s going to allow people to be well” (current defense attorney).

“It’s profound – in a very slow moving institution, like the courts, even small changes are huge. It has reverberations outside of just the participants. I think even judges sentencing people, addicts who have nothing to do with [the program], are now more sensitized, in this building at least, to issues around the addiction, because they’ve had to go to all these meetings about [the program] in order to approve [the program]. So they’re thinking about people with addiction issues as people who are ill instead of just people who are choosing to be criminals. I like being part of that” (current defense attorney).

Two interesting considerations emerge from these quotes: (1) the current promotion of multidisciplinary models and whether the drug court team is truly multidisciplinary; and (2) whether the flexibility of a federal drug court program can actually operate within the federal court system structure and certainty of punishment.

*The Re-Entry Court and the Multidisciplinary Model*

Research on the multidisciplinary model runs counter to the arguments above that this drug court program cannot be evaluated. There may be financial and feasibility issues that hinder evaluation of this drug court program, but not scientific limitations. Evaluating this program is not impossible.
Colyer (2007) argues that problem solving courts operate within a multidisciplinary model and that “this form of organization is a strength and virtue of drug court programming.”

“Every member of the work group has a unique institutional position of leverage that can contribute to the outcome. Solutions are constructed through the discursive interaction among clinical, legal, and administrative personnel. Similar dynamics help the drug court maintain clients in treatment once in place” (Colyer, 2007, p. 322).

Colyer’s (2007) study examined a pre-trial diversion drug court in a city in the northeastern United States. That drug court was created as the result of intensive implementation planning and ongoing process evaluations, and its workgroup consisted of a judge, prosecutor, defense attorney, two administrators, and a local case management agency that coordinated participants’ treatment and managed their overall needs. Evidence-based practices were used in its decision-making. The purpose of the study was to examine how this drug court processed participants from selection through treatment and its premise was that the multidisciplinary drug court model “is optimally designed” to process participants (Colyer, 2007, p. 313). After observing this drug court for a two-year period, Colyer concluded that “the organization of the work group brings together representatives from a variety of institutions allowing them to … create a reasonable action plan that is likely to succeed” (Colyer, 2007, p. 322).

The multidisciplinary model is also being implemented in family treatment drug courts (FTDCs), which are designed to work with families involved in child welfare because of the parents’ substance abuse. The FTDCs’ goals are to “enhance the possibility of family reunification within legal timeframes by providing parents with support to become drug and alcohol abstinent, improve family functioning and child safety, and stabilize the home environment” (Bruns et al., 2012, p. 219). The FTDC team consists of the judge, attorneys (the prosecutor, the parents’ attorneys, and the children’s attorneys), social workers, parent and/or
child advocates, and treatment professionals (Bruns et al., 2012). Unlike other FTDC teams, this team included specific social workers who only served the FTDC families and had reduced caseloads. Last, this FTDC team included a “wraparound facilitator” who monitored up to fifteen families. This FTDC team used evidence-based practices in its decision-making.

Using an administrative database housing data on program participants, treatment service usage, contact frequencies, and court hearing document, Bruns et al. evaluated outcomes for the program participants. Although the purpose of the study was evaluative, the researchers also concluded that, given the novel multidisciplinary composition of the FTDC team, “there could be a cumulative or synergistic relationship between [the team] and positive outcomes” or that “specific [roles] may relate to specific outcomes”:

“For example, the treatment liaison may have been a primary facilitator of treatment outcomes, while having a judge and case workers dedicated to this relatively small number of families may have influenced child welfare processing and court decision making, and thus the child welfare outcomes” (Bruns et al., 2012, p. 227).

In other words, it is possible that a truly multidisciplinary team of specialists, dedicated to this problem-solving court, it much more likely to have a positive impact that that of the usual drug court team.

In traditional courtroom workgroups, the multidisciplinary nature of the workgroup is lost because proceedings “become quasi-administrative sessions among bureaucratic allies rather than formal judicial contests between adversaries” (Knepper and Barton, 1997, p. 293). The traditional courtroom workgroup members assimilate into a culture and environment as repeat players who minimize conflict and uncertainty by using informal operating rules that allow them to dispose of cases efficiently. These same informal operating rules that guide the traditional courtroom workgroup’s decision-making supplants the specialization that each workgroup
member brings. Therefore, case dispositions are not processed in the interests of justice, but in the interests of case efficiency.

This federal re-entry drug court team is more like the traditional courtroom workgroup than it is the two problem-solving courts mentioned above because of the suppression of its multidisciplinary nature. First, the drug court team’s composition is that of the traditional courtroom workgroup, plus the addition of a treatment counselor. The absence of dedicated administrative support means that team members are fulfilling that role as well as their substantive roles. The fact that the team members have responsibilities outside of the drug court team means that the program participants need to be processed each week with some measure of efficiency. This comes out in the team meetings when the team runs out of time and the judge asks for a quick review of any remaining participants’ progress.

Second, that treatment counselor’s role is not fully integrated with the drug court team. The treatment counselor serves as a consultant to the team for those participants not under her direct care, leaving a gap in a true multidisciplinary team. If the treatment counselor were fully integrated – that is, if all of the participants were the treatment counselor’s clients – it is arguable that the team shifts closer to the multidisciplinary ideal by having the treatment counselor’s complete input into the participant’s treatment plan.

Third, the probation officers, as opposed to the clinicians in Colyer’s study to whom the “nonclinical members nearly always defer,” have considerably more influence than does the treatment counselor given the amount of information the probation officers are able to gather and synthesize for presentation to the drug court team. Every member of the drug court team does not have “a unique institutional position of leverage than can contribute to the outcome” (Colyer, 2007, p. 322). The drug court team’s probation officers lead the participant’s reviews and have
more time to spend with each participant outside of the weekly team meetings and drug court sessions. Their visits to participants’ homes, employers, and their interactions with participants’ family and friends give them information power not necessarily available to the rest of the team (Rudes and Portillo, 2012).

*The Re-Entry Court’s Flexibility in the Federal Court System*

The drug court team’s defense attorney is not the first to suggesting that the principles used in problem-solving courts might be applied to traditional courts. Interest in applying these principles across all courts began emerging in 2005 (Farole et al., 2005). Although there have been studies on “the practice of problem solving,” little exploration into the potential for integrating the principles and the practices into the traditional courts has been done. Farole et al (2005) conducted an exploratory study using focus groups made of state court judges to determine what opportunities and barriers exist to the successful application of problem-solving principles. The following table provides a summary of problem-solving principles that are more easily applied versus that are more like to be barriers (Farole et al., 2005).

*Table 9: Problem-solving principles – opportunities and barriers*

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<thead>
<tr>
<th>Opportunity</th>
<th>Description</th>
<th>Barrier</th>
<th>Description</th>
</tr>
</thead>
</table>
| Judge’s problem-solving orientation | • Asking more questions  
• Seeking more information about a case  
• Exploring more solutions | Time and resources     | • Pressures to move cases along  
• Increased costs with additional return dates  
• Lack of additional staff resources |
| Direct interaction with defendant/litigant | • Motivates defendant  
• Exposes crucial needs of defendant/litigant  
• Lays groundwork for solutions | Judicial role and personality | • Conflicting judicial philosophies  
• Decision-makers v. problem-solvers |
<table>
<thead>
<tr>
<th>Opportunity</th>
<th>Description</th>
<th>Barrier</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing judicial supervision</td>
<td>• Report for treatment updates</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>• Increases accountability to judiciary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Integration of social services</td>
<td>• Increase frequency of setting treatment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Team-based, non-adversarial approach</td>
<td>• Limited case management meetings</td>
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This program has a certain amount of flexibility in the federal court system, but it still must operate within the boundaries set by the supra-sponsoring organization of the court organization. That supra-sponsoring organization controls the resources available to the judiciary and, to some extent, the other home bases associated with this drug court team. That means that time and resources, and the different philosophies of what the judges’ role is and the judges personalities, will continue to be barriers to be surmounted to allow application of the drug court principles outside of the drug court itself.

The Re-Entry Drug Court’s Impact on Public Policy

In the program’s first year, there was a lot of discussion between the team and the various sponsoring organizations. The sponsoring organizations felt they were giving a great deal of time to the program. The team was not convinced that the program was being taken seriously by some of the sponsoring organizations. For example, the prosecutor’s office was allocating time for participation in the program, but new prosecutors were being assigned to the program rather than experienced ones. Eventually, the prosecutor’s office did start assigning experienced prosecutors to the program, particularly because many of them wanted to do it. The home bases
came around to tolerating the concept of such a program, but it would still take some time until they were willing to embrace the program and its work.

Overall, the team believed the first year was a success. They had seen an area in which they believed they could organize a policy solution driven at the local level and that, as a result, they were successful in implementation and in treating the first group of participants.

“At the end of the year we thought we were having successful outcomes. Our anecdotal experience was that people who did the program did better: while they may have relapsed, they had a road-map to follow that they didn’t before, they had this connectedness with a group of various different professionals, both here and through treatment providers, and they just did better. We then went kind of on-the-road and also invited people here. So over the course of the next couple of years, we attended a magistrate judges’ conference at Duke, one at Stanford, one at Harvard, [and] we went to the National Association of Drug Court Professional Conference in Seattle” (probation officer # 1)

In the beginning, this program was setting the standards that other programs would follow.

“A lot of people educated in drug courts and treatment, along with a number of districts from around the country, started coming to observe [the program]. They put together re-entry court teams and came, and we shared with the individual officers what we went through so they wouldn’t have to go through a lot of the struggles and challenges that we had. We shared with them our paperwork, our progress reports, the process we went through, what collaboration was and wasn’t, because in the beginning we had an adversarial group where some people were adversarial. So we developed this network throughout the country. I don’t know what the current number is. What started with three and that has now blossomed into a lot more. We had officers from Guam, officers from the West coast, Hawaii, Florida, all over the country. And over time, we just continued to hone our kind of collaborative process” (probation officer # 1)

The team that came together and said, “Let’s try this,” turned into a national standard. As a public policy response, its impact has been substantial, given the number of re-entry courts that have come into existence at the federal and state level. Three federal re-entry courts existed in 2006; currently, there are approximately ninety re-entry courts addressing various issues including substance abuse, mental health, and veterans’ issues (Defender Services Office (DSO) of the Administrative Office of the U.S. Courts, https://www.fd.org/docs/select-
One reason may be the level at which this drug court resides in the federal court hierarchy. This court was not conceived by a district court judge, but rather by a magistrate judge. Both judges work in the district court. However, in the federal system, a magistrate judge is a judge assigned to the district court who conducts preliminary and pretrial matters in criminal and civil cases. The magistrate judge’s primary role is to help with the district judges’ caseloads and move cases more swiftly through the federal judiciary. These judges are appointed for eight-year terms. Other similar re-entry court programs are headed by district court judges, who are appointed to the federal bench for life and who can better marshal resources for their courts. It may be that the lack of sufficient rank limits the ability of this drug court to be noticed.

Related to the program’s position in the court hierarchy is how resources are made available. The budget for the district court comes under the chief. A complementary reason could be the absence of formal resource commitment by the sponsoring organizations, such as having the drug court as a line-item in each organization’s budget. Drug court team members serve voluntarily. Any monies needed by the program, whether for operating expenses or program initiatives, must be requested by the magistrate judge from the chief district court judge. Also, the drug court does not generate grant applications and the sponsoring organizations, to-date, have not offered assistance in securing any grant monies specifically targeted for the drug court program.

Another reason may be the absence of evidence-based practices and its continued reliance on its experience over the past ten years. Evidence-based practices use research and evidence that has been systematically culled out experiences from facts, leaving the facts as the basis upon
which decisions are made (Mackenzie, 2000). This drug court team has relied heavily on its individual and collective experiences with a number of offenders over the past ten years and bases much of its current decision-making on that experience. However, there is a dearth of data associated with those decisions that can be used to validate their efficacy. As a result, the team reached out to the Federal Judicial Center (FJC) for assistance. The FJC is the educational and research group that works with the federal courts. The FJC pointed out to the group that what it does “work together to get to the best possible solution” and it presents “a thoughtful plan,” it still has not data to back up much of the conclusions and opinions that is has drawn about what works with program participants.

The FJC suggested to the drug court team that it begin collecting data on incentives and on its participants. The team developed a survey that it attempted to administer to the current participants. The survey used a Likert scale and asked participants several questions about their experience in the program. There had been three participant responses to the survey, which suggested to the team that there were no pressing issues that the participants felt the need to report. With only three responses, the FJC told the team that more responses were needed so that the FJC and the team could “have a discussion about analytics after the data collection was complete.” The team was caught: it was told it needed data, but it was unable to collect the data. Breaking away from an experiential framework for making decisions was going to be difficult given the lack of empirical data about the participants.

It is also likely that the team may not like what it finds within the outcomes data. If the data does not show any difference between the outcomes that probationers attain under traditional supervision, as compared with the outcomes that participants attain through participation in the drug court program, justification for the continued existence of the drug court
program may be untenable. However, evaluation should not be shunned for fear of the results obtained from the evaluation; best practice standards indicate that programs should examine their outcomes empirically and regularly (NADCP, 2015). The point of evaluation is to determine effectiveness; if the program is not effective, then perhaps that program should not be used. That leaves the drug court team trying to do some very difficult work that may be better for the participants as they go through the program, but it may not change the participants’ paths to maintaining their sobriety.

Another area of difficulty for the team is in the area of rewards and sanctions. These came up during the program’s implementation and have been partially resolved or are still unresolved after ten years of the program’s existence. Shortly after implementation, the team wanted some form of reward that would recognize participant successes in the program.

“When we started, we had rewards built into the program … I forget exactly what everything was. In phase one, you got a Dunkin’ Donuts card. In phase two, you got a movie pass. No, sorry, phase one, at the six-week mark and the twelve-week mark, there were candy bars. Phase two was a Dunkin’ Donuts card and phase three was a movie pass. Phase four was obviously the year off. And there was some resistance on this … they just felt that we were rewarding people for what they should be doing, and it was kind of a mockery to give people candy bars. So then there was this commentary in the elevator about a candy bar court and people were sort of against it. It was a challenge on terms of our reputation. We ultimately got rid of the rewards because of the PR component of that” (probation officer # 1)

The discussion about rewards continues, although the team has become incredibly creative with ideas. The discussion now is more about incentives and rewards that will facilitate re-entry, such as tattoo removal, continuing education courses, appropriate clothes for certain kinds of jobs, some form of housing assistance.

The team had to develop sanctions and continues to struggle with the effectiveness of those sanctions and whether they need to be revised. The issue, again, is that the team has no
data on what has worked. Participants graduate the program and often are unreachable by the probation department, never mind the team. Moreover, the team has not fully applied the best practice standards regarding incentives and sanctions. For example, small-magnitude positive rewards should be delivered liberally and incentives should not focus primarily or exclusively on reductions in services (NADCP, 2015). The question remains whether any of the sanctions imposed on individuals while they are active participants in the program are actually effective.

Conclusion

This re-entry drug court is an example of bottom-up policymaking, Lipsky’s (1980) perspective that the individual actors at the local level, along with the groups that they form, make policy. The implementation of this drug court worked to establish policy for high-risk offenders with substance abuse issues who are re-entering their communities under the supervision of the probation department. The drug court team, consisting of individuals at lower organizational levels of their respective agencies, played an active part in implementing the program. The lack of formal support by these agencies allowed drug court team members discretion in shaping the program’s objectives. These objectives – that participants will re-enter their communities sober, law-abiding, and employed – became the public policy the was created by the interaction of the drug court team members, their sponsoring organizations, and other individuals, and other individuals.

It has been suggested that this bottom-up approach to policy implementation can make evaluating the policy’s effects difficult (Buse et al., 2005). Evaluating this program’s efficacy is difficult because of the absence of any mechanism by which data may be captured for purposes of evaluation. Also, the drug court team struggles with how policy objectives will be achieved because of the tension over how best to implement certain aspects of the program. For example,
the team is comfortable with customizing rewards and sanctions for individual participants, creating a better fit for the participants, but is conflicted about that approach and how it might compromise the integrity of the program as a whole and the value of the program to other participants who do not share in accepting a customized approach. However, the team has established routines, ways to work with the uncertainties involved with helping offenders re-enter their communities, all of which “effectively become the public policies they carry out” (Lipsky, 1993, p. 382).

The drug court team works hard to maintain the program. However, it cannot move forward with initiatives that will increase participation without additional resources. Additional resources cannot be obtained without data and the data may not be sufficient to justify the allocation of those additional resources. If the data shows that there is no difference between the traditional probationers’ outcomes or the drug court program participants’ outcomes, the program remains static. Worse, if the data shows that the traditional probationers’ outcomes are better than the drug court participants’ outcomes, then the program is in danger of extinction.
CHAPTER EIGHT: CONCLUSION

Counter to the team’s notion that the program cannot or should not be evaluated scientifically, drug court studies have evaluated participant outcomes and have demonstrated that they are effective in reducing recidivism by providing participants with treatment opportunities and plans that address their substance abuse issues. However, research about the drug court team’s culture, roles, rules, challenges, opportunities, and focal concerns is limited. Little is known about how, or if, drug court team members actually unite and form a truly collaborative team that works together toward clear, shared common objectives. Little is known about how drug court team members experience drug court programs and the tension team members experience as they move between their traditional, adversarial courtroom workgroups and the drug court teams. Without this knowledge, it cannot be argued that these teams are truly collaborative in seeking their common objectives and, therefore, that they directly contribute to participants’ success in these drug court programs. The descriptions in this study of the lived experiences of the drug court team members provide a foundation for future research into the “black box” of the drug court team, the relationships between the team members, the relationships between the team members and their home bases, and whether this type of drug court is an effective public policy solution for offenders with substance abuse who are re-entering their communities.

To address some these limitations in our knowledge of drug court teams, this phenomenological study provides a richer and deeper description of the culture, roles, and operating rules of a re-entry drug court team in the federal court system. It provides a deeper comparative analysis of the traditional courtroom workgroup’s adversarial environment against that of the drug court team’s collaborative environment by actually reaching the team members
who are required to work in both environments and transition between the roles they are required
to perform in each one. Using examples from team meetings and team member interviews, it
shows how team members actually perceive their roles within the drug court team and it
documents their concerns about how they perform in those roles, along with the rules that the
team uses in making decisions about participants’ performance in the program. Other examples
showed that the socialization for process for new members can be difficult, particularly where
new team members struggle with fitting in with other team members’ historical and current
perceptions of how the team manages its participants.

The results of this study then identify the traditional and emergent focal concerns of the
drug court team and the process by which team members make decisions in the absence of
sufficient information so that risk and uncertainty are minimized. This study describes how the
drug court team’s focal concerns are similar, yet different, from those of a traditional courtroom
workgroup. Perhaps most importantly, this study identified the emergent and singularly
important focal concern of this drug court team – preventing a participant’s relapse. The drug
court team’s focus on relapse prevention is both the driving force behind all its does and yet may
be a hindrance to solidarity and cohesion necessary in forming a strong, collaborative culture.

As a matter of public policy, it is unknown whether this drug court program and its team
has made a positive impact in accomplishing its mission of producing graduates who are sober,
employed, and law-abiding. The problem is that the extent of that impact cannot be known
without data. Absent quantifiable data about participant outcomes based on the team’s decision-
making process, it cannot be known whether the team has made a positive impact, negative
impact, or no impact. Further, the team’s reluctance to embrace some system of quantitative
measurement and the absence of adequate funding to set up such a system compounds the
problem. The team’s reliance on its own experience as to what works with participants does not permit any evidenced-based practices that allow for it to consistently apply its practices to maximize any positive impact felt by participants. The experiential basis for its decision-making and its practices runs counter to the research demonstrating the success of drug court programs that adhere to best practice standards. With the team’s reluctance to move towards evidence-based practices and to adhere to best practice standards, along with its seeming contentment with being off the supra-sponsoring organization’s radar, this study discussed what is required for this drug court program and team to improve its public policy impact as a means by which to reduce recidivism for those offenders with substance abuse issues and/or participation in drug-related crimes. In short, its outcomes cannot improve in the absence of formal policies and procedures for administering incentives and sanctions. Without this study, the foundation for future research into knowing why these program participants are marginally successful cannot be known.

In this chapter, I present my most important findings from this study, some additional analysis about the drug court team’s culture and focal concerns, and expand on the public policy impact of this court. I then explain the limitations of this study and offer some suggestions for future research.

The Re-Entry Drug Court Team’s Culture

The data from this study and the resulting findings present a drug court team having difficulty in processing program participants that is, in large part, due to its embedded culture. Using six concepts from the literature on traditional courtroom workgroups – stability, cohesion, similarity, proximity, stability, and socialization – this study provides a description of a drug court team’s culture that struggles in two significant ways. First, this drug court team has a weak sense of solidarity, mostly due to the adversarial nature of some of the roles of the drug court
team members that lurks in the background and comes out in certain situations. When participants introduce issues that the team members must resolve, solidarity is compromised when the team members fall back to advocating for positions rather than for the participants, something that the team members would do as adversaries, not collaborators. The team’s cohesiveness is suspect usually when the team members struggle with working toward the established program objectives in light of any given participant’s circumstances, or individual team members allow other program objectives to intrude with the program’s objectives for its participants. When team members do not understand each other’s roles, or when a team member is unsure of which role he or she needs to play, that, too, detracts from the team’s cohesiveness. And when the team cannot or will not apply the informal rules it uses to monitor and process participants, their work is further disjointed when those rules need to be compromised.

Therefore, because of the tenuousness of the team’s solidarity and cohesion, they seem to undermine the creation of a strong, collaborative culture that is able to withstand occasional adversarial intrusions. Without a constant collaborative culture built on a strong sense of solidarity and tight cohesion, the team struggles to obtain its common objectives. Team members become uncomfortable as they shift between their adversarial and collaborative roles and it is not surprising that a set of rules based on experience takes hold, rather than practices based on solid evidence.⁷

Second, this team’s socialization process has interesting effects on the drug court team’s collaborative culture because of two other things: first, in the selection of new team members,

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⁷ As mentioned earlier, similarity, proximity, and stability play relatively unimportant roles, most likely due to the tight-knit community from which drug court team members are drawn. The drug court team members are similar in age, race, background and experience. All of the team members work and interact within the same building. Although there has been turnover, the team members have known each other and worked together for so long within the same court building that they were all known to each other prior to joining the drug court team as members.
and, second, in the assimilation of new team members. These two processes have the effect of isolating the team from new ideas and preventing new team members from disruption the team’s operation. Some “new” team members are not really new; they are successors, where one team member steps into the place of another team member. For example, the current program judge replaced the founding program judge by moving from her position as the defense attorney for the drug court team. While her new role may have required the other team members to adjust, she was known to the team. Other team members are new to the team, but having worked with the other team members in traditional courtroom workgroups, they, too, are not truly new to each other. The only team member that was truly new to the team was the treatment counselor. The new treatment counselor created two exceptions. First, she was part of a new treatment provider that had replaced the treatment provider who had been associated with the team for its first eight years. Second, her being uncomfortable with the experiential decision-making the team used in processing participants disturbed the team’s processing of program participants. The team relies so much on what it has done historically that it bristled at the thought of evidence-based practices that would actually require the team’s decisions to have some form of empirical support. The tension increased when the new treatment counselor introduced the idea that one of the probation officers was ultimate obstacle to the team’s changing. When a new team member is both new and introduces ideas that run counter to the team’s culture and its way of operating, socialization into the team’s culture and operating environment is difficult, if not impossible. Add to that the absence of any orientation as to what the program’s mission is, what the roles of the drug court team members are, the challenges and characteristics of the program’s participants, and how the entire program fits within the context of the criminal justice system and socialization for the new team member moves closer to being impossible.
Underneath this tension between the team’s solidarity, cohesion, and socialization process lies a network of home bases that seem to merely tolerate the program’s existence, evidenced by their lack of real human and financial investment in the drug court program. Whereas the sponsoring organizations of the traditional courtroom workgroup exert influence on courtroom workgroups, these home bases do not bother with the drug court program or its team, so long as the program and its team do not disrupt the home bases’ operations or their other functions within the supra-sponsoring court organization. This apathy from the home bases is a blessing and a curse to both the program and the drug court team. It is blessed because the program and the drug court team members fly under the radar of the home bases and the supra-sponsoring court organization, leaving both free to essentially do as they please within the confines of the program. The curse is that the power and money necessary to expand the program and thus delegate greater responsibility to the drug court team must come from the home bases and the supra-sponsoring court organization. Not only does collaboration remain challenging at the micro-level of the drug court team, but the absence of any collaboration from the home bases in fulfilling the program’s mission within the supra-sponsoring court organization’s structure renders it impotent.

The Re-Entry Drug Court Team’s Focal Concerns

The data from this study presents two key findings in the area of this drug court team’s focal concerns. First, it affirms that the drug court team’s focal concerns would be different from, albeit similar to, those of the traditional courtroom workgroup. Blameworthiness has a different application in the drug court program, as do sentencing costs and consequences. Offenders’ blameworthiness as to their offenses affects whether they would be admitted to the program, as the program targets high-risk offenders. Offenders’ blameworthiness also goes to
participants’ infractions of the programs rules and conditions. The drug court team considers the frequency and severity of program infractions in making recommendations about appropriate sanctions to the program judge. Therefore, blameworthiness remains a focal concern within the context of the drug court team although it is applied differently from that of traditional courtroom workgroups.

The focus on community protection is consistent with that of the traditional courtroom workgroup and was very important to the drug court team members. The drug court team members are aware that current participants have committed serious and sometimes violent crimes and their reoffending can put the public at considerable risk. Therefore, the team members keep in mind the potential for participants to commit these serious offenses again.

Finally, sentencing costs and consequences – like offenders’ blameworthiness – is manifested in the different context of the drug court program. The drug court team, in making its recommendations, considers the effect of certain sanctions on program participants’ success in the program and the message that the imposition of certain sanctions sends to other participants. For example, an infraction of the program rules may require the imposition of a custodial sanction. However, if the participant is succeeding in meeting the program’s goals of remaining law-abiding and finding employment, recommending that the judge impose a custodial sanction may not be in the best interests of the participant’s sobriety, his or her ability to remain employed, or somehow trigger a new offense. The balancing required against those considerations is the recognition that not imposing the sanction may send the opposite message to the rest of the program’s participants – that is, certain sanctions for some infractions may be mitigated if a participant’s overall compliance with other areas of the program is satisfactory.
Therefore, as with blameworthiness, sentencing costs and consequences remain a focal concern of the drug court team although applied differently within the context of the drug court program.

A significant finding from the data is this drug court team’s almost exclusive focus on relapse prevention. The team members seem to believe and practice a strategy and tactics where if participants are prevented from relapse, their ability to remain law-abiding and employed will fall into place. However, there was at least one incident where a participant reoffended, but continued to remain sober and continued to work. The team assumed that, as long as the individual was sober, everything else was going well, too. Additionally, this focal concern also hinders processing participants efficiently, as the team shifts its attention and resources to promoting effective outcomes regarding participants’ substance use.

This study also showed that it is this focal concern that is the major driving force that shifts these drug court team members from releasing their hold on their adversarial roles to performing in their collaborative roles. In other words, their positions regarding a participant or an issue are superseded by the need to prevent participants from relapsing and, in turn, potentially reoffending. Team members demonstrated during team meeting and stated in their interviews that when a participant’s sobriety was threatened or when a participant had relapsed, their collective spirit circled around the participant and the team worked to either prevent a relapse or help a participant rebound from one.

This study also shows that when the drug court team focuses on relapse prevention work, it is also addressing its concern with community protection. Because participants are high-risk offenders and some convicted of serious and violent crimes, the team members believe that helping them stay clean and sober keeps them from repeating these crimes. The difficulty, as this study shows, is that sometimes the team members do not see potential triggers within the
circumstances of participants’ that may lead to relapse. When they miss the cues and relapses occur, the team members take them personally and in varying degrees believe that the program has failed in some way.

The prominence and singularity of relapse prevention as a focal concern suggests that it will be found in other problem-solving courts. However, the degree to which the drug court team focuses more on relapse prevention and less on other aspects of participants’ program goals, such as remaining law-abiding and employed, may reduce the efficiency of the team to process participants. Also, it is likely that participants whose likelihood of relapse is less than their likelihood of reoffending, may not receive the attention they require to prevent them from committing new offenses. Other drug courts may have a similar preoccupation with relapse prevention that shifts their attention away from other issues participants have and that may not allow them to achieve a higher, overall efficiency in processing other program participants. Balancing the team’s focus on relapse prevention against the concerns of participants re-offending and finding employment may also increase participants’ success in completing the program.

The Re-Entry Drug Court and Public Policy

This drug court program began as a well-intentioned initiative to do something at the federal level with offenders with substance abuse issues who were re-entering their communities. Designed and implemented at the grass-roots level without any enabling legislation to support it politically or financially, it came together as a response to a rise in the number of drug-related cases in the state in which it operates. The drug court team members acted as street-level bureaucrats to implement a policy that really had yet to be defined, running somewhat contrary to the definition of what a street-level bureaucrat actually is – an individual responsible for
implementing existing agency policy and directives. Although the drug court movement began as a grass-roots response to the increase in the number of drug cases in Miami, the initial movement had developed into a structure and model by which most state drug courts were created and run. The absence of any enabling federal legislation resulted in the drug court team and its home bases being left to their own devices to create a program that did not have the support of the federal government.

This program borrowed from the state court programs that did have enabling legislation. That is not the same as having federal legislation in place that would seed programs such as this one. Instead, the representatives from the home bases within the supra-sponsoring organization came together and created their own form of enabling legislation as expressed through an interagency agreement. While not the same as enabling legislation, it certainly fleshed out the public policy solution that the team wanted to create to address drug addiction and drug-related crimes within its jurisdiction. It did so by soliciting input from the home bases and securing the unanimous approval of the supra-sponsoring court organization. While this is certainly a significant achievement, the absence of any enabling legislation left out the kind of investment that true sponsoring organizations would have made in the program with their human and financial resources had they been mandated to do so. As a result, the program struggled to gain momentum and is now stagnate in terms of growth and innovation.

The absence of any legislative support, and thus any mandated investment or support from the home bases, left the program undernourished philosophically as well. Individual team members had a sense that creating this program was a good solution for the increasing addiction problem among offenders within the court’s jurisdiction, but the absence of any clear direction from the home bases left the individual team members using their personal philosophies to create
the program’s recovery philosophy. Additionally, these individual philosophies heavily
influenced whether team decision-making would be collaborative and consensual. For example,
the first defense attorney and first prosecutor were unable to fully surrender their adversarial
positions. In turn, information generally was not shared freely among team members and the
team had less-the-complete information about the participants from which to make decisions and
design treatment plans that would help the participants succeed.

The drug court team’s concern with the program’s integrity and value is interesting. On
one hand, the team seeks to maintain the integrity and value of the program by attempting to
adhere to the program’s rules regarding participant behavior. This adherence is to ensure that
participants are treated similarly when the team applies rewards and sanctions for their behavior.
It also helps reinforce the team’s belief that what it has done in the past in similar situations
actually works, even without any metrics to support those decisions and actions.

On the other hand, the team undermines the program’s integrity and value when it creates
customized treatment plans based on the circumstances of individual participants. The team is to
be commended for knowing its participants as well as it does and for its willingness to
understand how certain circumstances may justify increasing the rewards and decreasing the
sanctions for some participants, but word spreads that there is an inequality in how participants
may be treated. This damages the program’s integrity and value for current and future
participants who wonder why some participants are treated differently from others.

Evidence in support of the program’s value remains experiential and anecdotal.
Measures are required to assess the program’s efficacy, thus lending support for those program
activities that are produce positive outcomes and highlighting those activities that need to be
eliminated or reworked to produce the desired outcomes. This study has shown that the team
resists measurement, quite possibly due to the fear of what those measurements would reveal about the program’s lack of success. Also, the supra-sponsoring court organization and the home bases were not likely to fund a program evaluation or efficacy study, which is consistent with their lack of formal investment in the program. Good measurements that document the value of this program would help create buy-in from the supra-sponsoring court organization and the home bases, even in the absence of any formal legislative mandated. In the meantime, it is difficult for the team to create consistent treatment plans for participants generally, since the best evidence is the experience of the team members in creating customized treatment plans for the few participants that have passed through the program.

The absence of quantitative measurements for this program lessens the impact of its work in general and detracts from the public policy goals of decreasing recidivism and reducing system costs associated with processing offenders with substance abuse issues. Without quantitative measures, the program cannot know if it is achieving its mission to produce sober, law-abiding, and employed graduates, particularly when those goals are not defined with sufficient clarity. It is possible that the drug court team does not understand that, in order to secure financial, human and other operational resources, it must show that it is achieving its mission.

As for the culture and operation of the drug court team, the absence of quantitative measures leaves the team without any basis to assess its performance. Measures can be developed to show the team how well it is doing in accomplishing its mission through indicators of whether a participant is sober, law-abiding, and employed; they can help identify practices that have been successful with participants; they can identify policies and practices in need of improvement; and they can identify policies and practices that can be discarded because of their
ineffectiveness. As the team further implements successful practices, improves deficient ones, and eliminates those with no effect, the team’s solidarity and cohesiveness will strengthen as it develops a tangible evidence base that shows it is accomplishing its mission. This, in turn, will allow the team to make resource requests on the basis of quantitative data that objectively and empirically supports its culture and practices. Also, publishing performance data will help incentivize the team to continue improving its work and positive data will improve and sustain the team’s morale and motivation to continue with its mission.

Summary and Recommendations

This drug court program has essentially stalled. It has not grown in terms of participants, resources, or status. Resources and status may be the underlying cause of these issues. Other programs within other jurisdictions have secured grant monies, increased support and cooperation from sponsoring organizations, and support from the court administration through the jurisdiction’s chief judge. This program’s requests for additional or special funding are tentative, mostly likely because of the team’s strong loyalty to experience-based practices rather than evidence-based practices. There is a noticeable absence of any quantitative data to support its funding requests. To make the necessary changes, it is necessary to understand the current culture of this courtroom workgroup, the concerns, perceptions, and attributions that guides its decision-making, and how it implements public policy in the absence of a higher-level mandate for programing such as it provides.

This study has helped with that understanding by describing the current culture, the degree to which the team members collaborate, and courtroom workgroup attributes that help and hinder the building of a strong, collaborative culture. It has helped by describing the traditional and alternative focal concerns of this drug court team, specifically describing the
relationship between the team’s concern for protecting the community and its concern for preventing participants’ relapses. It has helped by describing how the team not only implemented a public policy solution to the drug crisis within its jurisdiction, but how it had to create it and then maintain it as well.

There are several recommendations for this drug court program and its team as a result of this study. These recommendations are meant to help the team improve its ability to work as a collaborative drug court team, with a focus on improving its solidarity and its cohesiveness, as well as to introduce balancing its extraordinary concern with relapse prevention against the program’s other two concerns that participants remain law-abiding and that they obtain employment. Overall, these recommendations are meant to help the program get out of its doldrums and start moving forward again.

This drug court team has a significant issue with its culture. Its entrepreneurial spirit and thinking that served as a catalyst to the program’s creation and implementation now requires the incorporation of best practices and standards that have come out of over twenty-five years of drug court research. Two interventions are required that will help increase this drug court team’s efficiency and its effectiveness. First, the team must focus on team-building exercises. These exercises will help the team improve its productivity, communications, problem-solving skills, and foster creativity (NADCP, 2015). As part of those team-building exercises, all team members should take advantage of specific training opportunities in the areas of “substance abuse and mental health treatment, complementary treatment and social services, behavior modification, community supervision, and drug and alcohol testing … skills and knowledge sets not taught in traditional law school, graduate school, or most continuing education programs” (NADCP, 2015, p. 46).
As the team matures following its team-building exercises, a regular, sustainable training program must be developed that accomplishes three things for all drug court team members: (1) provides an orientation to the drug court program within the context of the supra-sponsoring court organization and the home bases; (2) provides training on court systems and procedures and their relationship to the drug court program; and (3) provides training on addiction, recovery, and relapse prevention. Each of these needs was implicitly suggested by at least one the drug court team members. This training should be designed to improve the overall collaborative nature of the team by ensuring that all drug court team members are at the same level of understanding regarding the program, its context, its mission and goals, and the nature of the addictions and treatment opportunities available to its participants. It should include training on relapse and its triggers, as well as ways in which to further relapse prevention within the context of the drug court program. This training should help improve the collaborative nature of the drug court team by improving its solidarity and cohesiveness, as well as the process by which it socializes new team members. It should also be designed to help team members fully understand the program’s common objectives, the roles and responsibilities of the drug court team members, and the informal operating rules by which the drug court team functions. All training should be in accordance with the *Adult Drug Court Best Practice Standards* (NADCP, 2013, 2015). An additional benefit of this training will be to help the drug court team shift from its exclusive focus on relapse prevention to a more balanced approach that addresses the program’s and participants’ goals of remaining clean and sober, law-abiding, and employed. All of this will help improve the team’s solidarity, cohesion, and socialization so that its culture promotes processing efficiency and effectiveness.
An ancillary training need concerns the treatment provider and its treatment counselor, especially since the highest turnover rates are among treatment providers (NADCP, 2015). “Research has determined that drug courts are more effective when they provide introductory tutorials for new hires” (NADCP, 2015, p. 47). Although there may be contractual limitations as to what the treatment provider and its counselor are willing and able to do, the team needs to find a way to better integrate the treatment counselor and not leave her at the periphery. This may require additional training and education, particularly if the treatment counselor has no experience with the criminal justice system, particularly its courts and their procedures for processing offenders, or it may be accomplished by the training mentioned immediately above. Contractual arrangements between the treatment provider and the court can be adjusted to better accommodate this change.

Second, the team needs to adopt the Adult Drug Court Best Practice Standards as promulgated by the National Association of Drug Court professionals (NADCP, 2013; NADCP, 2015). Creating a more structured program by incorporating these best practice standards will help the team “be more confident in the quality of their operations, [allow] researchers measure program quality in their evaluations, and trainers can identify areas needing further improvement and technical assistance” (NADCP, 2013, p. 1). With a shift in the team’s culture as a result of the incorporation of these best practice standards, the program should see increased participation, increased graduation rates, lower criminal recidivism, and higher cost savings (NADCP, 2013).

Third, the team needs to look further at applying a multidisciplinary model to its team with an eye towards incorporating the Adult Drug Court Best Practice Standard for multidisciplinary teams (NADCP, 2015). Team members “must also learn to perform their duties in a multidisciplinary environment, consistent with constitutional due process and the
ethical mandates of their respective professions” (NADCP, 2015, p. 46). Also, the team needs to move further way from its traditional courtroom workgroup roles to roles where each team member can make an equal contribution to the team. One way, discussed above, is to fully integrate the treatment counselor into the team by training her regarding court systems and procedures and by allowing her or the treatment provider to provide information and training on the nature of addiction, relapse, and relapse prevention. Another way is to create a team knowledge base and data base that can be accessed by all team members, who can contribute, access, and distribute information about each of the participants on a real-time basis. The probation department is currently the repository for much of that information, but due to that information residing exclusively within that department (and, perhaps, due to certain policy and procedures), the team as a whole does not always have complete information about a participant nor does it have the opportunity to add information for the rest of the team to use. This recommendation will also help improve the collaborative nature of the drug court team by making every team member responsible for providing full and complete information about participants from which the team can make better decisions.

Fourth, the team needs to put metrics in place and begin to collect data on participants, decisions it makes about participants, and the actual participant outcomes that occur as a result of those decisions. The team’s use of experiential successes can be a springboard to evidence-based practices by depositing its anecdotes in knowledge database showing what has worked with participants and what has not. While the size of the program over the years may not produce significant quantitative data about decisions and outcomes, valid anecdotes about what the team has decided, what it has done, and whether it was a success or failure for the participants is better than nothing at all to guide future decisions. A repository of these stories
will also help the team, the home bases, and the supra-sponsoring court organization to think about the potential impact of their policy decisions. And this anecdotal evidence can aid in the development of future quantitative measurements if the program should begin to grow and move forward. Therefore, a quantitative evaluation of the program should be conducted that provides a baseline from which a system of metrics can be implemented that facilitates evidence-based decision-making for the team.

Study Limitations

Phenomenological research is an excellent approach for gathering rich, robust, and in-depth data. However, as with all research methods, it has its weaknesses. These include the effects on reliability and validity because of purposeful sampling, the lapse of time between living the experience and retelling the experience, participant bias, and research bias. Purposeful sampling does not allow for generalizations and does not control for selection bias. However, using a purposive sample for my study was necessary since I sought individuals who had first-hand experience working and participating in a problem-solving court. For phenomenological studies, individuals must be able to articulate their experiences in-depth. Also, because the members of my sample have extensive experience in a drug court and are able to fully articulate that experience, my data is much richer, more accurate, and actually has rigor by studying individuals involved in this re-entry problem-solving court. A random sample would not have consisted of individuals who are able to discuss their drug court experiences in-depth, if at all. My goal was not to statistically generalize across a population, but to capture the essence of the problem-solving court experience within a re-entry drug court (Hycner, 1985, p. 294).

The individuals I interviewed related their experiences after they have occurred. While the lapse of time may have been problematic for some, any description of an experience will be
different from actually living the experience (Hycner, 1985). However, the retelling of these individuals’ experiences came from greater reflection on those experiences and therefore they provided me with fuller and richer data with which to work (Hycner, 1985). This captured the complete experience and essence of a re-entry, problem-solving court.

The drug court team members’ responses during my interviews may have been affected by my demeanor, the types of questions that I asked, or their predetermination of the type of answers I sought. I may have unconsciously directed interview responses by any affirmations or additional questions that I was interested in, or through non-verbal expressions. Non-structured, open interviews are likely to result in different responses to different questions. Also, team members’ non-verbal expressions may not have been adequately captured, thus impacting the meaning of their responses.

Lastly, and has been mentioned previously, my findings relate to a floundering program and provide insights into how drug courts may fail, but they are not necessarily representative of many or most drug courts. As will be discussed below, further research is needed to determine whether other programs have the same issues and whether staff members experience the same role conflicts as in this program.

**Future Research Opportunities**

I present three future research opportunities as a result of this study. First, it would be helpful to have a similar study done that includes the perceptions and lived experiences of current participants and graduates in their interactions with the drug court team and its individual members. This would allow for a comparison of how participants and graduates see the drug court team’s culture and how the individual team members perform their roles and responsibilities against how see the team and its members see their culture and performance.
This would identify gaps in perception and how the gaps may affect participants’ success in the program.

A second opportunity for future research is a similar study across all of the federal re-entry drug courts. Drug courts are structured and operate in many different ways, with various levels of investment from the federal supra-sponsoring court organizations located throughout the country. A multi-site qualitative study of the various federal re-entry drug courts would provide an interesting examination of cultures and focal concerns for each site and how those various cultures and concerns affect the size of the program, the number of graduates, the level of investment by the home bases (sponsoring organizations), and the level at which the program operates within the supra-sponsoring court organization. Understanding each drug court team’s culture, its composition, and its concerns might show some correlation between those areas and the success of each particular court.

Third, there is an opportunity to examine each state’s enabling legislation, if it exists, and see its impact on the design, implementation, and sustainability of the state’s drug courts. It would be interesting to determine whether enabling legislation and its mandates for human, financial, and legal legitimacy in the drug court structure effect the drug court team’s organization, culture, and focal concerns. Also, it would be interesting to see whether the investment mandated by the enabling legislation has some relationship to the success of the states’ drug courts, however success is measured.
APPENDIX A: CONCEPTUAL FRAMEWORK TABLES

The following table describes the focal concerns associated with traditional courtroom workgroups, along with some potential interview questions designed to capture conceptual data:

<table>
<thead>
<tr>
<th>Concept</th>
<th>Description</th>
<th>Potential Exploratory Queries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender blameworthiness</td>
<td>As blameworthiness involves features of the defendant and the offense, it has been measured by variables such as the offender’s criminal history, the seriousness of the offense, and the type of offense (Hartley et al., 2007).</td>
<td>What is the offender’s criminal history?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>How serious was the offense?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>How blameworthy is the participant in terms of program violations?</td>
</tr>
<tr>
<td>Community protection</td>
<td>The protection of the community is “conceptually distinct” from blameworthiness; this focal concern keys upon the need to incapacitate and/or deter offenders. This concept involves the judge’s ability to predict the future dangerousness of the offender; as such variables used to measure the protection of the community include criminal history, use of weapons in the offense, education, employment, and family history. (Hartley et al., 2007).</td>
<td>In general, how safe is the drug court program with this individual participating?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>How safe is his/her community?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Is this a program violation that jeopardizes community safety?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Is the violation another drug offense?</td>
</tr>
<tr>
<td>Sentencing decisions costs &amp; consequences</td>
<td>Practical constraints and consequences (in actuality a concept for measures of system efficiency) include organizational concerns; this includes the relationship among courtroom actors, case flow, and an awareness of state and federal correctional resources (overcrowding). (Hartley et al., 2007).</td>
<td>What is the result for a violation (or reward for progress?)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>How was the decision to reward or sanction arrived at?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Was the participant accepting of responsibility for the sanction? Of praise for the reward?</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where any special circumstances considered that added to the sanction or the reward?</td>
</tr>
</tbody>
</table>
The following table describes the focal concerns associated with prosecutorial discretion, along with some potential interview questions designed to capture conceptual data:

<table>
<thead>
<tr>
<th>Concept</th>
<th>Description</th>
<th>Potential Exploratory Queries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Downward orientation</td>
<td>Prosecutors attempt to predict how the background, behavior, and motivation of the suspect (and any victim) will be interpreted by decisions makers (fact-finders) (Spohn et al. 2001).</td>
<td>What do you focus on in determining whether a participant will successfully graduate from drug court?</td>
</tr>
<tr>
<td>Prosecutorial policy</td>
<td>A prosecutor’s office structured approach for making charging decisions and which reflects the focal concerns of that office. (Jacoby 1976, 1980; Spohn et al. 2001).</td>
<td>What influences how offenders are managed through the drug court?</td>
</tr>
</tbody>
</table>

The following table describes concepts associated with therapeutic jurisprudence, along with some potential interview questions designed to capture conceptual data:

<table>
<thead>
<tr>
<th>Concept</th>
<th>Description</th>
<th>Queries</th>
</tr>
</thead>
</table>
| Voluntariness    | Voluntariness concerns whether offenders chose to participate in this drug court, but also seeks out their reasons for doing so.                                                                               | **Drug Court Team**  
|                  | “Why do you think offenders choose to participate in drug court?”                                                                                                                                          |                                                                                                           |
|                  | **Graduates**  
|                  | “Why did you volunteer for drug court?”                                                                                                                                                                 |                                                                                                           |
| Procedural Justice| Here, procedural justice concerns whether the drug court team members and participants believe that participants have a voice in drug court sessions, and whether participants were treated with respect and fairly both inside and outside of the formal drug court sessions. | **Drug Court Team**  
|                  | “Do you think participants have a voice in drug court sessions?”  
|                  | “How do you make sure participants are heard in drug court?”                                                                                                                                              |                                                                                                           |
|                  | **Graduates**  
|                  | “Do feel that the drug court team listened to you – that they really heard what you had to say?”                                                                                                            |                                                                                                           |
## Courtroom Workgroups

<table>
<thead>
<tr>
<th>Concept</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solidarity</td>
<td>SO</td>
<td>The single-mindedness of the group</td>
</tr>
<tr>
<td>Cohesion</td>
<td>CO</td>
<td>How well individuals work together</td>
</tr>
<tr>
<td>Similarities</td>
<td>SI</td>
<td>The similarities and differences amount drug court team members</td>
</tr>
<tr>
<td>Proximity</td>
<td>PR</td>
<td>The geographic location of the drug court team members</td>
</tr>
<tr>
<td>Stability</td>
<td>ST</td>
<td>The turnover of the drug court team members</td>
</tr>
</tbody>
</table>

## Focal Concerns

<table>
<thead>
<tr>
<th>Concept</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offender blameworthiness</td>
<td>OB</td>
<td>As blameworthiness involves features of the defendant and the offense, it has been measured by variables such as the offender’s criminal history, the seriousness of the offense, and the type of offense (Hartley et al. 2007).</td>
</tr>
<tr>
<td>Community protection</td>
<td>CP</td>
<td>The protection of the community is “conceptually distinct” from blameworthiness; this focal concern keys upon the need to incapacitate and/or deter offenders. This concept involves the judge’s ability to predict the future dangerousness of the offender; as such variables used to measure the protection of the community include criminal history, use of weapons in the offense, education, employment, and family history. (Hartley et al. 2007).</td>
</tr>
<tr>
<td>Sentencing decisions costs &amp; consequences</td>
<td>SD</td>
<td>Practical constraints and consequences (in actuality a concept for measures of system efficiency) include organizational concerns; this includes the relationship among courtroom actors, case flow, and an awareness of state and federal correctional resources (overcrowding). (Hartley et al. 2007).</td>
</tr>
</tbody>
</table>

## Therapeutic Jurisprudence

<table>
<thead>
<tr>
<th>Concept</th>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voluntariness</td>
<td>VO</td>
<td>Voluntariness concerns whether offenders chose to participate in this drug court, but also seeks out their reasons for doing so.</td>
</tr>
<tr>
<td>Procedural justice</td>
<td>PJ</td>
<td>Here, procedural justice concerns whether the drug court team members and participants believe that participants have a voice in drug court sessions, and whether participants were treated with respect and fairly both inside and outside of the formal drug court sessions.</td>
</tr>
</tbody>
</table>
APPENDIX C: INTERVIEW SCHEDULED FOR DRUG COURT TEAM MEMBERS

Introduction
1. My name is Kurt Ward and I am doing research through Northeastern University.
2. I would like to ask you some questions about your experience as a member of the drug court team.
3. I hope to use this information to better understand what makes your drug court successful in helping substance abusers stay clean and sober and learn more about what you experienced as a member of the drug court team.
4. The interview should take approximately sixty (60) minutes. Are you available to respond to some questions at this time?
5. Let me begin by asking you some general questions about your role in the drug court team.

General Questions About the Drug Court Team Roles
1. What is your role on the drug court team?
2. How long have you been in that role?
3. What are your responsibilities as part of the drug court team?
4. How did you learn about/who introduced you to drug court?
5. How often do you engage with the drug court participants who are currently in the program?
6. Do you engage with all of the participants in the program?
7. How does the drug court team make decisions about participants?
8. How are differences in resolved so that the team comes to a collaborative decision?
9. What parts of the drug court program do you believe are most beneficial?
10. What parts of the drug court program do you believe could me improved?
11. Are there programs or services that you believe should be part of the program?
12. Is being a collaborative team helpful?
13. Is there anything about being a collaborative team that is a disadvantage or a drawback?
14. Do you interact with other drug court team members outside of the team meetings and the court sessions concerning the drug court? Why? Where?
15. Has the composition of the team’s membership changed?
16. How often does the team’s membership change?
17. What has prepared you for your role on the drug court team?
18. Do you like being part of drug court team?
Judge
1. How does presiding over drug court team compare with presiding over traditional court?
2. How do you approach leading drug court team sessions?
3. How do you approach presiding over drug court team sessions?
4. When you talk with drug court team participants, what are you listening for in their conversation with you?

U.S. Attorney
1. How does representing the government differ for you in your role with the drug court team?
2. How do you transition from traditional criminal court to drug court proceedings?
3. What do you do when you’re unsure whether your role is that of prosecutor or team member (that is, acting in the best interests of the participant)?

Federal Public Defender
1. What is it like representing drug court participants?
2. How do you transition from a traditional criminal defense to “defending” drug court participants?
3. What do you do when you’re unsure whether your role is that of a zealous advocate for your client or team member (that is, acting in the best interests of the participant)?

U.S. Probation
1. What is different about supervising drug court participants from supervising traditional probationers?
2. How is your role different between traditional criminal court and drug court?
3. What do you do when acting as a probation officer you may not be acting in the best interests of the participant’s treatment?

Treatment Providers
1. What is it like being a member of the drug court team?
2. Who is your client?
3. How is treating participants different from treating other court referrals?
4. How does the drug court team make decisions about participants?

Closing
1. I appreciate the time you took for this interview. I would like to summarize the information that I recording during our interview.
2. Is there anything else you think would be helpful for me to know about the drug court, the drug court team members, or drug court participants in general or your experience during and after graduating from CARE?

3. Thank you for your help with this research.
APPENDIX D: OBSERVATION NOTE-TAKING GUIDELINES FOR DRUG CORUT TEAM MEETING & COURT SESSIONS

The purpose of this guideline is to serve as a reference or checklist during CARE team meetings and court observations. The focus is on the general nature of the meeting or court session and the interactions between the members of the CARE team.

General Information
1. Meeting/court session date
2. Agencies represented
3. Team members present
4. Number of drug court participants discussed
5. Number of drug current participants
6. Administrative/procedural matters discussed (e.g., schedule)

Team Meetings
1. What is the setting for the team meetings?
2. How do team members interact before the meeting?
3. How do team members arrange themselves for the meeting?
4. How does the judge start the meeting?
5. Do all team members participate in the meeting?
6. How do team members participate in the meeting?
7. When does the judge solicit input from other team members?
8. How does the judge solicit input from other team members?
9. Do team members “jump in” to meeting discussions? Why?
10. How is each case file evaluated? What order?
11. Do team members provide their own views during case evaluations? How?
12. Do team members provide the view of the agencies they represent during evaluations? How?
13. What issues are presented by team members?
14. What questions are asked by team members?
15. Do team members support each other’s participating in the meeting?
16. Do team members discourage each other’s participation in the meeting?
Court Sessions

1. What is the setting for the drug court?
2. How does court convene?
3. What team members are present in court?
4. What is the order of the court’s “docket” or “agenda”?
5. Does the judge interact with members of the court team? How?
6. Do members of the court team interact with the judge? How?
7. Do members of the court team interact with one another? How?
8. What issues come up during the court session?
   How are they raised?
   Who presents them?
   Who participates in discussing them?
   How are they resolved?
9. What problems come up during the court session?
   How are they raised?
   Who presents them?
   How are they resolved?
10. What is the atmosphere of the court session?
11. How does the court session conclude?
The purpose of the PCRA is to improve the effectiveness and efficiency of post-conviction supervision. A critical component of evidence-based practices is the use of an actuarial risk and needs assessment tool to identify: 1) which persons to target for correctional interventions, 2) what characteristics or needs to address, and 3) how to deliver supervision and treatment in a way that optimizes positive outcomes.

The PCRA consists of two sections. The Officer Assessment is completed by the probation officer and the Offender Self-Assessment is completed by the offender under supervision. Both sections contain scored items and unscored items. Scored items have been demonstrated by the empirical research conducted by the Administrative Office of the United States Courts to be statistically significant predictors of recidivism. These items contribute to PCRA’s final conclusion regarding an offender’s risk level and criminogenic needs. Unscored items have been shown by other empirical research to be predictors of recidivism but have not been studied by the Administrative Office in federal cases because of the lack of necessary data. These items are used for data collection purposes and as input to PCRA’s final conclusion regarding any potential barriers to an offender’s supervision and treatment and the offender’s criminogenic needs. These items are not used to determine an offender’s risk level.

Currently, there are fifteen scored items and forty-one unscored items. All scored items and the majority of the unscored items are obtained during the Officer Assessment from the interviews conducted and a file review. The Offender Self-Assessment is currently used only for twelve unscored items. PCRA includes information from the following seven areas:
<table>
<thead>
<tr>
<th>Area Examined (“Domain”)</th>
<th>Scored Items</th>
<th>Unscored Items</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal history</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>Education/employment</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Substance abuse</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Social networks</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Cognitions</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>Other (housing, finances, recreation)</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Responsivity</td>
<td>0</td>
<td>14</td>
</tr>
</tbody>
</table>

Criminal history is measured by “whether the person was arrested at or under age 18, the number of prior misdemeanor and felony arrests, whether there are prior violent offenses, whether there is a varied (more than one offense type) offending pattern, whether there has been a revocation for new criminal behavior on supervision, whether there has been problematic institutional adjustment while imprisoned, and the person’s age at the time of supervision” (Overview, 2001 p. 10). Education and employment measures include “the highest education level achieved, degree of employment, and number of jobs in past 12 months” (Overview, 2001 p. 10). Drug and alcohol use is measured by “whether there are disruptions at work, school, and home due to drug or alcohol use, whether the offender uses drugs or alcohol when it is physically hazardous, whether legal problems have occurred due to drug or alcohol use, whether the person continues to use drugs or alcohol despite social and interpersonal problems, and whether a current drug or alcohol problem exists” (Overview, 2001 p. 10). Under the social networks category, “marital status, whether the person lives with a spouse or children, whether there is a lack of family support, whether there is an unstable family situation, the nature of the person’s relationship with peers, and whether the person lacks positive pro-social support” is measured (Overview, 2001 p. 10). Within cognitions, the officer assesses “whether the person has antisocial attitudes and values and whether he is motivated toward supervision and change” (Overview, 2001 p. 10). The offender also completes an 80-question self-assessment, which is discussed below. The
“other” measures, consisting of housing, finances, and recreation, assess “the level of home stability, whether there are criminal risks at home, the financial situation, and the level of engagement in pro-social activities” (Overview, 2001 p. 10). Responsivity requires the officer to check for “low intelligence, physical handicap, reading and writing limitations, mental health issues, no desire to change/participate in programs, homelessness, transportation, child care, language, ethnic or cultural barriers, history of abuse/neglect, and interpersonal anxiety” (Overview, 2001 p. 10).

The **Offender Self-Assessment** section of the PCRA is based on the *Psychological Inventory of Criminal Thinking Styles* (PICTS):

“PICTS also includes the “General Criminal Thinking” score, which is the sum of the raw scores for the items in the self-assessment that make up the eight PICTS thinking style scales. Finally, the PICTS includes the “Proactive Criminal Thinking” composite scale and the “Reactive Criminal Thinking” composite scale, which identify the mode of criminal thinking to which an individual subscribes and may potentially lead to valuable information for treatment and supervision. Proactive thinking is goal-directed. Persons who are proactive tend to expect positive things to come from their criminal behavior such as money, status, and power. Others may describe them as devious, callous, calculating, and cold-blooded. Reactive thinking involves reactions to a situation rather than planned behavior. Persons who are reactive view the world suspiciously and misinterpret others as hostile. Others may describe them as impulsive, emotional, and hot-blooded” (Overview, 2001 p. 11).

When the two sections are completed, the offender’s risk category, criminogenic needs, and responsivity factors. An offender’s total risk score is the used to classify the offenders into one of four risk categories: **Low; Low/Moderate; Moderate; and High.** “The Administrative Office’s research indicates that, with each increase in risk category, the probability of failure (rearrest and revocation) increases” (Overview, 2001 p. 13).
REFERENCES


