

BEST PRACTICES FOR DRUG COURT: HOW DRUG COURT JUDGES  
INFLUENCE POSITIVE OUTCOMES

AN EXAMINATION OF THE LITERATURE

By

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This Alternate Plan Paper by Karen L. Stimler has been approved by the committee members below who recommend that it be accepted by the faculty of Minnesota State University at Mankato in partial fulfillment of requirements for the degree of

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## ABSTRACT

### Best Practices for Drug Court: How Drug Court Judges Influence Positive Outcomes An Examination of the Literature

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Drug courts are an important component in the criminal justice system directed toward efforts of rehabilitation of drug and alcohol addiction that lessens the rate of recidivism. Drug court is the alternative to incarceration and traditional addiction treatment. Drug court has been characterized as therapeutic adjudication. Using “Best Practices,” drug courts staffed by a judge, court team, and community partners individualize treatment protocols to motivate participant compliance and lessen the impact of the social milieu that impacts his or her recovery. Drug courts have been deemed successful in part due to the role of the judge. This research sought to compare theoretical consideration of bureaucratic authority and the ethic of care to the actions of the judge that produced narratives of positive praise of drug court participants’ success in their program. Literature on adult drug courts in the United States found that recidivism rates were reduced when the drug court participant’s length of stay in the program was at least one year and they stayed engaged in the program with the help of the judge.

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## CHAPTER I

### INTRODUCTION

#### **Background**

Drug courts, a branch of problem solving courts, have garnered a great deal of attention in the last several years for their methods of offering individuals the option of receiving treatment and intensive supervision through the courts and a treatment team. The emergence of drug courts in 1989 and their popularity in the subsequent years brought their number to over 1,000 courts by 2003. However, “there was not a body of empirical evidence establishing their effectiveness in reducing criminal behavior” (Ojmarh et al. 2011:61). The factors that make drug court successful are the underlying principles of their design, procedures that have been identified as “best practices,” and process evaluations to assess their strengths and make improvements in how the programs operate and produce outcomes.

Tiger (2011) examined sociological theories about patterns of drug use and addiction. She provided a clear and detailed explanation of how providing options for treatment and intervention through enhanced supervision of participants by the court system has proven successful. The drug court uses a therapeutic model of interventions as well as a model of coercion to have an impact on drug court participants that can be ambivalent to changing behaviors that lead to addiction (Satel 2000 and Huddleston et al. 2004, cited in Tiger 2011). Tiger points out that the relationship between the criminal justice system and drug offenses has a long history.

Persons committing drug-related offenses received severe sanctions, allowing prisons to be over-populated as the punitive Rockefeller drug laws that required mandatory minimum sentencing left judges without the ability to determine appropriate sentencing. The Rockefeller drug laws fueled unprecedented rates of incarceration of 15 years-to-life for buying or selling relatively small amounts of drugs. (Kohler-Hausmann 2010). Drug treatment in prison was under-funded and ineffective, allowing for other drug treatment programs outside of the prisons to be more widely used. Tiger (2011) elaborated on “how scientific theories are fused with moral considerations in the name of an enlightened criminal justice approach to complex social problems” (p.1). The findings of brain scientists on how drugs affect the brain has reached the criminal justice system, which is now cognizant of the need for a holistic approach. A drug court participant will come to recognize that through the drug court program, behaviors that may not be deviant may still lead to problems of addiction. According to Tiger (2011) former drug court participants make a strong point for the role of the judge, praising him or her frequently for the concern and personal attention given to participants by the judge.

The judge is seen as a powerful person who often presents him or herself as someone with great authority and who spends a great deal of time steering the participant as though a parental figure. The importance of this role is shown with the swift and consistent measures of rewards or sanctions during court appearances (Bureau of Justice Assistance 1997).

The National Association of Drug Court Professionals, a group made up of judges, prosecutors, court administrators, and treatment providers, drafted drug court guidelines now commonly referred to as The Ten Key Components (see appendix) from the best



evidence available about addiction, treatment, abstinence, and recovery. Each of the components expressed principles and best practices for conducting drug court. These guidelines provided a formula for consistent practices within all drug courts (Bureau of Justice Statistics 2012). The Ten Key Components address collaborative processes, early identification of new participants, rehabilitative services, interaction with the judge, partnerships with community agencies drug court planning, as well as addressing monitoring and evaluation (Hora 2002). Drug court mechanisms of collaboration and problem solving foster compliance from their participants to a far greater degree than the traditional courts that operate through the lens of adversarial processes and formal interpretation of law and legal outcomes with the emphasis on punishment based resolution. The framework of the drug court model based upon the interdependent key components has promoted positive outcomes and lowered recidivism (Hora 2002).

The measurement of recidivism is one indication of drug court effectiveness for participants as compared to non-participants taking the traditional criminal justice trajectory. With successful passage through the program, drug court often allows non-violent offenders the opportunity to have their record expunged. The study of data generated through many evaluations of various drug courts has indicated that the population that complete a drug court program has a lower rate of recidivism than those receiving a regular conviction and serving prison time (Ojmarrh et al. 2011).

This has important implications for the criminal justice system where “estimates suggest that at least two-thirds of the over 700,000 inmates who leave U.S. prisons each year had substance abuse or dependence problems prior to custody” (Martin et al. 2011:180). The value of drug courts is realized in increased public safety, decreased costs

to society, and making the drug court participants be actively engaged in the treatment process. Statistical information on re-entry trends reveals how drug related recidivism is a serious problem that fills up jails. For inmates who were released in 1983 from prisons in 15 states, including Minnesota, and tracked for three years, the re-arrest rate was 50.4% were drug related and in 1994, the number had grown to 66.7% (Bureau of Justice Statistics 2012).

Drug courts integrate treatment plans monitored by the court rather than by the use of jail time and probation. Drug court employs a regime of programming more precisely tailored to the participant. The National Drug Court Institute states “drug courts represent the coordinated efforts of the judiciary, prosecution, defense bar, probation, law enforcement, mental health, social service and treatment communities to actively and forcefully intervene and break the cycle of substance abuse, addiction and crime” (Burke 2010:120). The use of deferred prosecution or post-adjudication programs will give the eligible offender a chance to participate in a drug court program before he or she would be charged. Or the participant may plead guilty and have the sentence deferred while participating. Upon successful completion of the program the sentence could be waived. In that time, a requirement is that they stay drug free and without further arrests for up to one year before considering the program completed. While in the program participants are actively engaged in a process that includes frequent appearances before a judge and drug tests that will lead to privileges or sanctions depending on the results of the tests. Further, a participant may be given additional requirements to complete such as education requirements, doing service in their community, or attending meetings outside of court to support recovery. Evaluators have identified as one of the strongest

components of participant success the judge's active personal attention to each individual each time they return to court, a non-traditional occurrence in the standard judicial system (U.S. Department of Justice 2006). A report issued by the Bureau of Justice Statistics found that "offenders report that interactions with the judge are one of the most important influences on the experience they have while in the program" (U.S. Department of Justice 2006: iii).

Due to the interactional relationship with a judge who has the power to resolve problems outside of the courtroom, drug court participants have better outcomes if they stay in the program for an extended length of time and are exposed to the same judge consistently. Researchers evaluating drug court indicated as a source of failure how participants don't feel "personally connected to the judge" and participants "received inconsistent treatment from session to session with the regard to handling noncompliance" (Office of Justice Programs 2006:20).

### **Statement of Problem**

The success of drug court participants is widely and consistently attributed to the ongoing role of the judge in the empirical literature, outcome evaluations, and accolades from the participants (Office of Justice Programs 2006; Tiger 2011; Marlowe 2006; Hora 2002; Burke 2010). There is a dichotomy between the roles played by a judge in a traditional courtroom and that of a drug court. In a traditional court room setting, the judge impartially examines the findings and applies the law to make rulings deemed to be standard and fair. Conversely, the drug court judge is lauded as the one person on the drug court team who made a difference for that participant. This paper seeks to examine

theories that might help understand the role of the judge in the success of drug court clients.

**Research Question**

What theoretical frameworks help us understand why the role of the judge is so important in influencing the successful outcomes of drug court?

## CHAPTER II

### THEORETICAL FRAMEWORKS

In the following chapter I describe the main components of two alternative theoretical frameworks that may help us understand why the role of the judge in drug court is so important in determining drug court participant success. The selection of Weber's bureaucratic authority and Gilligan's Ethic of Care represents a dichotomy of approaches to problem-solving and treatment of individuals. Bureaucracy operates through a process of impersonal generalization to systematically control outcomes without particular concern for the individual. The ethic of care guides a moral approach of the welfare and care of the individual with respect as a necessary value beyond the rights and rules.

#### **Weber's Bureaucratic Authority**

Weber's theory of authority was built on types of legitimacy and power within three frameworks seen as a belief system as well as rules of conduct or norms of behavior (Spencer 1970). Legitimacy is supported by rules and principles and the desire to follow convention. Traditional authority is rooted and legitimized in custom and tradition. This system remains consistent, rigid and without change; the rules and orders are agreed upon and held up as the standard for all to follow. Weber felt that "ordered interaction is achieved when a high probability exists that a significant number of actors in a given context will orient their behavior to the same norms" (Spencer 1970:124). Weber distinguished charismatic authority as authority wielded by an influential person with the goals and vision to impassion others. "The leverage wielded by or through this individual however is dependent upon how this influence or charisma is defined by those who define him or her as a charismatic leader" (Ritzer 2010:133).

Weber's final type of authority was a bureaucratic legal rational system. Bureaucratic authority or leadership is structured in principles of a bureaucracy, a hierarchal structure governed by rules and procedures. A hallmark of this system is that "administrative acts, decisions and rules are formulated and recorded in writing" (Ritzer 2010:131). Roles in this system are held by many individuals, generally highly educated who guide society through precedent and logical reasoning. This rational process maintains the social order.

A social system would erupt in chaos without the influences of this system of order and the recognition of the benefit of consistent rules. Though bureaucracy may be viewed as a system of impersonal formality, Weber's view brought a hint of compassion as he reasoned that "bureaucratic rationality does not require the eradication of all personal feelings and their replacement by soulless instrumentalism" (du Gay 2000:115).

### **Ethic of Care**

Ethic of care is a philosophy of placing the principles of need and care toward another person as a moral and ethical action while not compromising caring for oneself. The care ethic is reasoned by Held to be "a substantive moral philosophy for the compelling moral salience of attending to and meeting the needs of the particular others for whom we take responsibility" (Robertson and Walter 2007:209). The ethics of care framework, first articulated by Carol Gilligan (1982), has brought forth the idea of differences in existing modes of gendered thinking and moral reasoning. Gilligan's set of ideas rejects "the orientation of impartiality, impersonality, justice, formal rationality and universal principle" (Blum 1988:472). Within the realm of the welfare of another person, a position of respectful observance in recognizing and appreciating characteristics in that individual must be available to empathize and deliver appropriate action.

## **Comparing Bureaucratic Authority and Ethics of Care**

Persons with problems of chemical use and addiction may find themselves placed into the position of making an appearance in a court of law in front of a judge. Their purpose in court most often is for satisfying the mandated and established protocol within the legal and justice system. The individual will enter the court room with a representative of the system and stand before a judge in black robes and a gavel. They will listen to a summation of violations committed. In the bureaucratic system, this process has been a part of a larger paternalistic ideology comprised of rules, regulations, and formality in observance of the unbending hierarchy of control. The judge as a designated authority will only observe the rights of the person as set out by the tenets of the law. This bureaucratic system functions as a through-put for processing a mass of individuals categorized as deviant and the established rules and regulations mandate that the judge provide a sanction of equal weight for all persons. A standard exists and is expected in a rule-based society to maintain order and a code of compliance. In the legal rational system, the judge carries a lofty position as the system designates power to the educated person who is held to a higher standard. The judge special skills allow him or her to apply the law and the consequences with authoritarian opinion (Spencer 1970).

The judge will not seek to consider other factors that led to the deviance. The bureaucracy, with input from other formal structures, does not promote any measure of needs of an individual that may have contributed to deviant behaviors. Therefore, a judge enforces punishments through set criteria. In this way, the deviant acts are recognized, punitive measures are administered and the matter is considered closed. The bureaucratic structure has met due diligence in keeping the system intact and expedient. (Spencer

1970) In contrast to a bureaucratically rigid system, the feminist theory of the ethic of care presents a model of giving attention to the relationship and care of an entire person rather than individual parts. This ethic exceeds the scope of traditional gender roles and escapes a masculine stance of a system based on roles and rules.

“A drug court judge who embraces a humanistic approach and supports the consideration of alternative treatments of deviance is demonstrating empathy and an ethic of care” (Robinson and Walter 2007). This system of justice does not preclude a disregard for sanctions as a necessary component of accountability. The theory of ethic of care allows the judge to regard the drug court participant as an individual who will respond to the personal attention and the time accorded to them by an important and powerful person. The drug court judge and the drug court participant over time build a relationship where rights, rules, and responsibilities are closer to a model of success in the criminal justice system and break the cycle of recidivism common to the criminal justice system.



## **CHAPTER III**

### **METHODS**

For the basis of scientifically and objectively selected literature to be reviewed and to conform with the purpose of the research question. I used the following methods of analysis. To examine how the theoretical frameworks of bureaucratic/legal-rational authority and ethic of care help us understand the role of the judge in the successful outcomes of drug court, I examined scholarly articles, dissertations, and theses from 1995 to the present available through the Minnesota State University Mankato Library databases.

#### **Research Question**

The research question for this study asked: What theoretical frameworks help us understand why the role of the judge is so important in influencing the successful outcomes of drug court? The literature reviewed for this study seeks to examine theories that might help understand the role of the judge in the success of drug court clients.

#### **Procedure**

To ensure that objectively and scientifically selected literature was reviewed for this study as well as to fit the purpose of the research question, the following research and reporting methods were used. The researcher used the Minnesota State University, Mankato Library to access the databases EBSCO Host, ProQuest, JSTOR, ScienceDirect, Sage Premier, and Criminal Justice Periodicals. I also examined data and statistics from three agencies within the Department of Justice.

Two key terms “drug courts” and “judge” were chosen and initially produced a total of 9,340 articles. A second search used the terms “drug courts,” “traditional court,” and

“judge” produced 2,079 articles. Search limiters were then narrowed with additional criteria:

- The articles were to be published from 1995 to the present
- The articles were to be full text and peer-reviewed
- Adults were to be the target population
- The source of the data was limited to academic articles and dissertations
- The result of the search required that the search term “Judge” appeared in the abstract
- The drug courts were to originate in the United States

After these limiters were introduced, the results then yielded 688 articles. As a search term “drug courts” produced results under “problem-solving courts” produced articles on mental health, sex offender and domestic violence that were not relevant to the search question, those items were, therefore, discarded. The remaining results were scanned for relevance specifically directed toward “judicial monitoring” and “strengths and weaknesses.” This resulted in 16 empirical studies that were reviewed for Chapter Four.

## CHAPTER IV

### FINDINGS

This chapter includes summaries of the 16 articles that met the criteria detailed in the methods section. The summary of each article includes the statement of purpose, the research methods used and the results reported in the summary. After each summary, I present a brief discussion of how each study spoke to the support for the purpose of this paper. An index table is also presented to summarize each article that will include the author(s), title, method, and result in relation to the role of the judge. Following this chapter's presentation of the findings, Chapter Five further discusses the results and presents the support or lack of support of the stated purpose of the paper.

**Table I. Summary of Studies Reviewed**

	Author(s)	Title	Method	Findings
(S1)	Tauber (1994)	Drug Courts: A Judicial Manual	Judicial Manual	Positive support for role of judge and ethic of care
(S2)	Bureau of Justice Assistance (1997)	Defining Drug Courts: The Key Components	Government Report	Defines the standard for the importance and support of the role of the judge
(S3)	Satel (2000)	Drug Treatment: The Case for Coercion	Literature Review	Support for role of judge
(S4)	Siedler (2000)	Therapeutic Jurisprudence: The Role of Perceived Empathy of Drug Court Judges and its Effect on Therapeutic Outcome	Dissertation Quasi-experimental design with 69 participants from six drug courts	Study supports ethic of care
(S5)	Goldkamp, White & Robinson (2001)	Do Drug Courts Work? Getting Inside the Drug Court Black Box	Drug Court Evaluation and Literature Review	Positive support for the role of the judge and the ethic of care

(S6)	Nolan (2002)	Therapeutic Adjudication	Literature Review	Support for role of the judge
(S7)	Satel (2002)	Observational Study of Courtroom Dynamics in Selected Drug Courts	Literature Review, Interviews, Courtroom observations	Support for ethic of care and role of the judge
(S8)	Judge Peggy Hora (2002)	A Dozen Years of Drug Treatment Courts: Uncovering our Theoretical Foundation and Construction of a Mainstream Paradigm	Literature Review	Supports the theory of care in the role of the judge
(S9)	National Institute of Justice (2006)	Drug Courts: The Second Decade	Government Report	Finds support for judge's role in participant success
(S10)	Huddleston , Marlowe and Casebolt (2008)	Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Courts Programs in the United States	Government Report with Tables and Figures	Indicates support for the role of the judge in drug court
(S11)	Judge Kevin Burke (2010)	Just What Made Drug Courts Successful?	Literature Review	Shows support for role of the judge
(S12)	Marlowe (2010)	Need to Know: Research Update on Adult Drug Court	Government Report	Gives support in favor of the role of the judge
(S13)	Tiger (2011)	Drug Courts and the Logic of Coerced Treatment	Literature Review	Lends support for the role of the judge and ethic of care
(S14)	Marlowe and Meyer (2011)	The Drug Court Judicial Bench Book	Drug Court Manual	Shows support for role of the judge and ethic of care
(S15)	Moore (2011)	The Benevolent Watch: Therapeutic Surveillance in Drug Treatment Court	Literature Review	Positive support for the role of the judge and the ethic of care

(S16)	Taylor (2012)	Balancing Act: The Adaption of Traditional Judicial Roles in Re-entry Court	Literature Review	Support is shown for the role of the judge
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*Study 1*

Retired drug court Judge Jeffrey Tauber compiled a drug court judicial manual in order to more effectively manage drug offenders. His 1994 “Drug Courts: A Judicial Manual” originated in the Oakland, California, court system for use in developing successful drug court program. It includes research data as well as examples of forms that have been used in that program. Tauber presented a large appendix of documentation. While this writing can be considered dated information, it is an empirical and inclusive collection of information that examined drug court models, the characteristics of a structurally sound program, sanctions, and how a drug offender’s actions appearing as contempt should be viewed in a different light by the drug court judge. As a drug court judge, Tauber spoke as a knowledgeable authority on “pragmatic or smart sentencing that calls for imposing the least amount of punishment necessary to meet the minimum sentencing goals of reduced criminality and drug use” (Tauber 1994:9). On the subject of the judge’s role, Tauber stressed communication and the judge making a personal connection not only to the participant but to everyone in the courtroom. As an ideal, the judge has the responsibility for regarding every aspect of his work as an act of leadership that supports and grows more drug court programs.

This excellent compilation of knowledge and procedures about drug courts still carries valid and timely points about the operation of drug courts and the role of the judge as

critical important feature of a successful program. This manual presents positive support for the importance of the role of the judge and an ethic of care.

### *Study 2*

The Bureau of Justice Assistance (1997) in Washington, DC has compiled and presented as part of the drug courts resource series the 10 Key Components for consistent structure and ongoing management of best practices of drug courts. With assistance from the National Association of Drug Court Professionals each key component has been written with a definition, the purpose, and performance benchmarks. Of particular importance to my research is Key Component Number Seven titled “Ongoing Judicial Interaction with Each Drug Court Participant is Essential.” While all of the key components have empirical support and provide an essential purpose toward the success of drug courts, the role of the judge carries a significant therapeutic presence in the courtroom with the model of caring and empathy.

The judge in the drug court conducts frequent status hearings to personally monitor participant’s compliance and make determinations about rewards and sanctions as well as educate other participants in the courtroom. This role of the judge has been further defined by evidence of a therapeutic rapport that develops between the judge and participant that demonstrates empathy and care about each participant. A great deal of anecdotal reports from drug court participants in drug court evaluations have pointed to the judge as the primary reason for their success in the program. In their articulation of the 10 Key components that define drug courts, this Bureau of Justice Assistance report presents valid and scholarly support for drug court’s success.

In particular, Key Component Seven represents the starting point at which a drug court judge moves away from a punitive model of justice to show that of showing care, concern, and empathy to build a relationship with the drug court participant. This component supports the ethic of care.

### *Study 3*

Satel (2000) with support from the National Drug Court Institute in Rockville, Maryland, discussed drug control policy and the direction some policy makers suggested. The article cited recent studies on effective drug treatment. With some exceptions, drug advocates support legalization and relaxing control. The other side looks at conservative measures with drug production controls and punitive measures. Satel is an advocate of coerced treatment for addicts who need to be controlled and compelled to stay in treatment in order to lead productive lives. Drug treatment considered as coercive has been vetted in drug court literature as a viable method of incentivizing drug court clients who are ambivalent to treatment. Satel, a practicing psychologist who writes extensively on addiction issues, also points out that even in the workplace individuals can have leverage placed on them to enter treatment programs successfully. This article cites recent studies on effective drug treatment.

This article demonstrates support for treatment that is defined as coercive. Drug court treatment in empirical literature has been referred to as coercive. In drug court the judge uses various methods of understanding, psychology, incentives, and motivation in order to allow clients to consider that their treatment program is in their best interests and compel them to remain in the program for an extended length of time.

The ethic of care was not mentioned nor specifically implied in this article but it did not specifically reject support for the role of the judge and the ethic of care.

#### *Study 4*

Siedler's dissertation (2000), "Therapeutic Jurisprudence and the Role of Perceived Empathy of Drug Court Judges," researched the empathy response of drug court judges and the impact on participant retention in the program after six months. Siedler hypothesized that participants' levels of ambivalence about entering a treatment program would report their perception of the empathy of the judge. This research undertaken in Alameda, California, used a quasi-experimental design with 69 participants between the ages of 18-55 from six drug courts. The participants completed relationship and empathy assessments and the Stages of Change Readiness and Treatment Eagerness Scale (SOCRATES). Siedler discussed the drug court judge, noting that there is no empirical literature that details approach, behavior, or training.

Siedler cited Frank (2005), who stated that a client's image of a therapist depends upon the belief that the therapist possess' knowledge of healing skills. Siedler characterized the judge as a therapist once the drug court participant sheds his or her negative perceptions of the criminal justice system as one that is solely punitive (2000). The judge shows him or herself as receptive, caring, and empathic, and the drug court client finds the court to be supportive of his or her needs. Siedler stressed the quasi-therapeutic relationship between the drug court judge and participant stating that "empathy is the single most important human or technical tool at a therapists disposal as it asserts a continued effort at understanding the patients feelings, struggles, concerns and anxieties" (2000:22). Siedler reported that the hypothesis that participants who were less



ambivalent about receiving treatment as measured by their three scores on the three levels of SOCRATES would rate the judge as more empathetic could not be supported. The SOCRATES instrument is used to measure indicators of a participant's readiness for change and acceptance of treatment.

This dissertation presented evidence of the therapeutic nature of drug court and of the empathy of the drug court judge. The ethic of care of the judge is very well represented and supported in this writing as Siedler stresses the complex nature of connection between the judge and participant through empathy.

#### *Study 5*

Goldkamp et al. (2001) presented evaluations of two drug courts. The literature explored what was known about drug courts and examined the reasons for their impact to improve rates of recidivism. Their discussion included the role and actions of the judge. Their data revealed that "the significant elements of the court room experience and direct person-to-person exchanges with the judge are thought to interact to produce a therapeutic effect greater than traditional treatment or deterrent approaches alone could achieve" (p. 42). Their descriptions of the drug court participant's experiences included the classroom setting, frequent services, and the observations of interactions with other participants.

This article presented measurable components of the drug court judge's methods for establishing treatment goals and highlighted positive reactions of drug court participant. This article presents support for the importance of the role of the judge and ethic of care.

### *Study 6*

Nolan (2002) reviewed drug court literature on the re-defined role of the judge. He presented the observations and narratives of 12 drug court judges from throughout the United States. The judges discussed their role as drug court judges demonstrating their understanding of commitment to drug court with examples of unorthodox methods of motivating drug court clients. Nolan found that drug court judges are “assertive and compassionate rather than restrained and impartial” (p. 34). He concluded that drug court judges are personally fulfilled in their role supporting a court system that is cost-effective and puts the drug court client in a position for success.

Nolan’s article shows support for the drug court judge’s “acceptance of an unconventional role” (p. 34) and as one that steps out of the traditional court processes and presents a stance of caring and compassion to the drug court participant.

### *Study 7*

Satel, a practicing psychiatrist, reviewed empirical literature in 2002 on the role of the judge in drug courts. She conducted interviews with nine drug court judges and drug court participants and observed 15 courtrooms to analyze the role of the drug court judge. As a practicing clinician, Satel examined the necessary attributes of a successful judge including a working knowledge of addiction issues. She surveyed a group of judges for their opinion on the six most important characteristics of a drug court judge. In order of importance the responses were the ability to be empathic, knowledge about drug addiction and pharmacology, team leadership, acceptance of an unconventional role, consistency in applying sanctions, and knowledge of the addict community and street life in the jurisdiction. The author discussed the judge’s participation in the courtroom as set

out by the 10 Key Components. These actions by the judge present a picture of thorough engagement with the drug court participants as an opportunity to educate everyone in the courtroom. Satel discussed judge and participant interaction where the judge traverses a line of authority, showing compassion and opening him or herself to the possibility of manipulation by addicts. The representations of drug court judges in this article demonstrate their commitment in helping the drug court participant cultivate an interest in their program and remain enthusiastic.

Dr. Satel's research on the role of the drug court judge presents a grounded view of courtroom dynamics between the judge and the drug court participant as well as uncovering intrinsic qualities that differentiate a drug court judge from his or her judicial peers. Support for the ethic of care is present in this study.

#### *Study 8*

A 2002 literature review authored by Hora, a former drug court judge, conducted after 12 years of drug court existence, presents a discussion on principles of drug court, therapeutic jurisprudence, and the Ten Key Components. Judge Hora pointed out that while drugs courts were created as a response to patterns of recidivism in the criminal justice system, the problem-solving court did not have an empirical foundation or widespread support. Early courts developed a reputation as a fad due to the lack of a formal process that would dictate consistent standards. Hora provided background information on how therapeutic jurisprudence developed and how that approach affects the psychological well-being of an individual. The effects of legal rulings can be applied in a manner considered therapeutic while at the same time maintaining respect for values in the criminal justice system. Hora examined each of the 10 Key Components to target how

each component can be applied to the principles of therapeutic jurisprudence. A proponent of drug court, Hora provided a chart comparing court processes between traditional and problem-solving court.

Judge Hora's interpretation of Key Component Number Seven reinforces the strong role of the drug court judge. That relationship develops the trusting and therapeutic role of the judge in drug court with positive response from the drug court client. This article finds support for the theory of care from the drug court judge.

### *Study 9*

To evaluate and determine the progress and fiscal savings of drug courts after 10 years in operation, in 2006 National Institute of Justice issued a report titled "Drug Courts: The Second Decade." The report reviewed available data and statistics to provide an overview of drug-courts, target populations, treatment issues, the judge's role, and interventions for juveniles. A summary evaluation from a Clark County, Nevada, drug court "demonstrates that factors outside the control of the drug court, especially a shift from diversion to conviction-based entry requirements changed the characteristics of the target population and had a substantial impact on the drug court's effectiveness" (2006:5), revealing that all agencies involved play a role on drug court outcomes. A section is included in detailing the judge's role for a participant's success, hypothesizing about the importance of a dedicated judge.

The researchers used a logic model and multivariate analysis that considered the relationship of offender attributes, type of drug dependency, criminal history, and mental health measured against the drug court program functions. Results indicated that drug court participants experiencing their court sessions with one judge were far less likely to

terminate their program prematurely (2006). The researchers looked at recidivism factors and statistics and charted by client demographics. The conclusion of this study did not point to any faults within the drug court model. However, the data revealed deficiencies in how services were delivered to the client. It would be important to address these deficiencies in order to give the drug court participant everything the program could deliver.

The conclusion of this study reached by researchers on the single judge model offered evidence to both support and not support the hypothesis of greater participant success from the specific case outcomes studied. There was considerable support for the role of the judge to resolve issues for the client so the drug court participant would remain in the program. This article discussed the judge effect on outcomes and appears to support the ethic of care.

### *Study 10*

A 2008 report authored by Huddleston, Marlowe, and Casebolt and developed for the National Drug Court Institute (NDCI) in Alexandria, Virginia, updates the activity for problem-solving courts in every state in the country. The problem-solving courts in this report served clients with all types of chemical abuse use and included an analysis of “drug-free infants born to former active female drug court participants in 2005” (2008: vi). The researchers use a survey instrument specific to the needs of the NDCI. They highlighted fiscal savings and client success. The authors reported statistics for types of drugs used in specific geographic areas, presented a drug court timeline for progress in court development and accountability, and provided state-by-state rankings of the number and type of problem-solving courts. This report highlights the extent at which problem-

solving courts are evolving and providing a valid means for helping individuals who have not found success through previous attempts to become drug-free.

This report gives considerable empirical support for continued growth of drug courts and the need for further research. The report considered a report card that included a review of literature emphasizing the success of drug courts and the 10 Key Components as well as a passage written by a successful drug court participant. The report briefly discussed the necessity of intense judicial interactions with the drug court client as making a difference in outcomes. This indicates support for importance of the judge in drug courts.

### *Study 11*

Minneapolis, Minnesota, drug court Judge Kevin Burke (2010) authored an article titled “Just What Made Drug Courts Successful?”, giving comprehensive key facts on drug court procedure. Burke cited the National Drug Court Institute, the National Association of Drug Court Professionals, and the Department of Justice published Key Components that advocate best practices for successful drug courts. As a driving force for the 1997 inception of Hennepin County drug courts, Burke acknowledged that “the proper role of the judge has been a troubling aspect of drug courts for many” (p. 58). He discussed perceptions about judges hugging and interacting inappropriately with drug court participants. Neutrality is an important attribute for a judge to balance a caring stance with the necessity of sanctions. Burke weighed the pros and cons of drug courts and found procedural fairness as areas of concern. He addressed drug court history and critiqued areas of cost and the failure to treat serious drug use. He argued that even with the 10 Key Components in place, courts vary a great deal. To explain the courts’ success,

he attributed the “concept of procedural fairness; why people will obey rules that restrict their behavior in ways they would otherwise find unacceptable” (p.52).

Burke’s article lends support to the theoretical framework of bureaucratic authority that allows the judge to preside over a casual courtroom while maintaining cautious conduct and deliberately measured interactions with drug court participants. As a drug court judge, Burke’s analysis shows minimal support for the ethic of care.

### *Study 12*

Authored by Marlowe (2010), this report the written in conjunction with the National Association of Drug Court Professionals. Marlowe discussed facts on the success of drug courts after 20 years of operation based on a literature review. Success has been attributed to following the 10 Key Components, targeting the right population, the cost effectiveness and the judicial status hearings. Marlowe reported that status hearings are “an indispensable element and the optimal amount appear to be bi-weekly at least for the first few months” (2010:4). The judge has the decision in the process as to lowering the amount of status hearings after the drug court participant has had a period of stability. The report concludes with the recommendation to keep clients in treatment longer as data shows that this allows for better results. This report reiterated a substantial amount of research and data on how drug court programs present individuals with treatment options and a compassionate court to help them move forward in their lives. Drug courts have evidence of reducing crime, improving family relationships, and lessening substance abuse. This report demonstrates support for the role of the judge and ethic of care.

### *Study 13*

Tiger (2011) analyzed coerced treatment in her review of literature on the sociological aspects of medicalization and criminological theory. The author looked at the history of increased incarceration periods in the era of Rockefeller drug laws. Tiger's methods section provided a discussion of theories, the relationship between institutions, knowledge, addiction and recovery, as well as narrative from the National Association of Drug Court Professionals and the Center for Court Innovation that has evaluated drug courts. Tiger detailed how drug court as a part of the branch of problem-solving court advocates for a positive treatment process that allows for individuals ambivalent to living without drugs and alcohol. According to Tiger the criminal justice system has not demonstrated effective treatment for drug addiction since traditional addiction recovery programs yields high rates of recidivism with the individual often returning to criminal behavior. The author states that the individual attention given to each drug court participant accounts for the higher level of motivation shown by drug court participants as compared to the motivation of participants in traditional court-ordered treatment options.

Tiger's article presents strong support for the ethic of care involving client satisfaction and success attributable to the judge's role of caring influence in their recovery. Her study recognized the positive role of the judge and highlighted how the judge, sometimes viewed as a parental figure exerts powerful motivation and influence on the drug court participants that recognizes the positive role of the judge.



### *Study 14*

Contained within the Drug Court Judicial Bench Book (2011) is an exhaustive compilation of principles and procedures for drug court judges based upon empirical support and best practices. Edited by Marlowe and Meyer and with support from the National Drug Court Institute, this article concerns itself with the law, the conduct of courtroom personnel, guidelines for rewards and sanctions, and fundamental information on community supervision, drug-testing, mental health issues, and evidence-based practices for therapeutic motivation. A chapter on judges presents 10 pages on the various roles of the drug court judge: leader, communicator, educator, community collaborator, and institution builder. Within the chapter are nine competencies required of a drug court judge that distinguish the drug court judge duties down to very minute detail such as the statement that the program will have greater success if the judge spends at least three minutes with each participant.

The core competencies contained in Key Component Four require that the judge be cognizant of gender or cultural conditions that could affect treatment (Bureau of Justice Assistance 1997) and Component Ten compels the judge to bring in community collaborators to make treatment sustainable (Bureau of Justice Assistance 1997). These, according to Marlowe and Meyer, may be the most important in the eyes of the drug court participants. These elements are recognized in the literature as receiving the most attention in empirical evaluations of drug courts as the factors that the clients say impress them the most clients and say that it makes a difference for them. Each Key Component contributes to drug court success, though it is Key Component Seven that allows the

judge the latitude to understand and individualize participants' goals that will promote success.

The 10 Key Components present an outline for one area of problem-solving courts that differentiate them from other courts in the criminal justice system. The components are cited in empirical literature to support best practices and demonstrate a history of success. Key Component Seven finds support for the importance of the role of the judge and ethic of care.

### *Study 15*

Moore's (2011) literature review discussed the role of the judge in drug courts that expands upon the judge's actions in court viewed as simply caring about the drug court participant's progress. She presented the term "therapeutic surveillance" to describe how the judge uses information from his or her conversation with the drug court participant to help the participant understand themselves. Moore provided a transcript of a court room conversation demonstrating the fact he heard that the drug court participant could not explain his or her actions left the door open for the judge to refer the drug court participant back to the therapist for more work. Moore distinguished the judge's role as "interested in how the individual is doing, targeting a number of things including whether or not the individual being honest about drug use and then monitoring his recovery process" (p.261). She concluded that the well-trained judge has the ability to match client responses with appropriate treatment methods.

Moore presented a rich and detailed description of the drug court judge's ability to assess the need for additional treatment options help the client understand his or her addiction. There is support for the importance of the role of the judge and ethic of care.

### *Study 16*

Taylor's (2012) literature review discusses research on the drug court judge in Federal Re-entry Court that has shown very good results for the 700,000 individuals exiting prisons. Referred to as a dual role, the drug court judges work to "re-inforce positive client behaviors as well as balancing informal, supportive relationships with participants with more traditional, authoritative, disciplinarian roles" (p.351).

Taylor presented an impression of the judge as the person who coordinates treatment processes that uniquely fit the needs of the drug court participant and publicly supports their success when they achieve it. Taylor's article explained some of the processes and procedures that drug court judge may utilize to help each drug court participant and shows support for the importance of role of the judge as part of the success of the participant and the ethic of care.

## CHAPTER V

### CONCLUSIONS AND RECOMMENDATIONS

The purpose of this paper was to examine the relevant literature on drug courts and specifically the role of the judge as a factor for participant success in a drug court program. The analysis of literature on drug courts to determine theoretical support for bureaucratic authority was found to be lacking. Drug courts operate in a less formalized atmosphere than conventional courtrooms where an adversarial process is evident.

A judge in the traditional courtroom considers the evidence in front of him or her and with brief communication through the defendant's legal representative. This resulted in "the isolation and abstraction of legal facts that generate legal principles" (Weber 1978: 655) and "relationships which ensure that the legally relevant characteristics of the facts are disclosed through the logical analysis of meaning and where, accordingly, definitely fixed legal concepts in the form of highly abstract rules are formulated and applied" (Weber 1978:657 cited by Isher-Paul 2009:217). In drug court, bureaucratic authority is most closely emulated through the necessity of sanctions for the participant who is not in compliance.

Conversely, the drug court model according to Nolan "departs considerably from the American judicial role offering a more humane and compassionate approach toward offenders" (2002:29), with the emphasis upon a therapeutic atmosphere. The drug court judge does not perform the role of a therapist. The judge "must carry the image of someone who possesses knowledge and skills of healing and the client must come to perceive the judge as supporting and guiding their abstinence from an addictive substance

demonstrated through the capacity to listen, convey acceptance, empathy and respect” (Frank 1974 cited by Siedler 2000: 31). As stated by Marlowe and Meyer, the judge plays many roles such as leader, communicator, educator, community collaborator, and institution builder (Marlowe and Meyer 2011: VI). These roles were derived from the 10 Core Competencies identified by the National Drug Court Institute that grew out of a grass-roots movement when traditional interventions were deemed failures in the criminal justice system. In this, the role of the drug court judge demonstrates an ethic of care similar to the role of a physician. Drug court participants may first encounter the compassion of the drug court judge in the judge’s role as communicator. According to retired Judge Jeffrey Tauber (1994), judges are instructed to be “less the dignified, detached judicial officer as this is the opportunity to reach the offender, to show concern as well as toughness while expressing to them the belief that they can and will succeed if they work at it” (p.15).

What separates a traditional courtroom judge and a drug court judge is the training on “addiction, understanding how to motivate behavior change, and simple empathy and is a significant factor in recovery” (Marlowe and Meyer 2011:50). Participants have cited the judge as the key to the success of drug courts as an effective treatment solution.

Participants state that their engagement with treatment has implicated the judge by participants impressed by the many face-to-face meetings with the judge stating that this made a difference for them to remain motivated. Reported by Marlowe and Meyer (2011), “In some cases, when participants tell evaluators that the judge really cares, the true meaning of this superficial endorsement is not always clear. In optimal instances, this means that the judge is genuinely engaged with the participants and has become a

central and respected figure in their drug court and recovery experience. In these situations, motivation to succeed may stem partly from a desire to “make the judge proud of me” (p.51).

### *Therapeutic Jurisprudence*

Although the principles of therapeutic jurisprudence as a theoretical consideration were not a part of my research, this concept has been liberally used in academic literature generated with my search terms. Drug treatment courts were designed to lessen the cycle of drug use and recidivism. Therapeutic jurisprudence has been incorporated into the fundamental operation of drug courts to promote its success. The term therapeutic jurisprudence describes “an academic body of thinking that says, in essence, whether intended or not, that substantive rules, procedures, and legal roles have therapeutic or anti-therapeutic effects” (Hora 2002:1471). The practice of therapeutic jurisprudence seems to embody an ethic of care.

An individual standing before a judge in traditional court faces the consequences of an adversarial system that allows no possibility for judicial compassion. The judge makes rational decisions through legal code. Using principles of therapeutic jurisprudence allows respect for the tenets of the law while also balancing psychological well-being and rehabilitation through the role of the judge. Drug court judges engage in a role of concern and compassion rather than impartiality. According to Nolan, “when a dozen drug court judges were asked to list important characteristics of a drug court judge, the most popular response was the ability to be empathic and show genuine concern” (2002:34). Drug court practices have been successful through the development of Key Components, what is known as “Best Practices” developed in 1997 that allow for drug courts to operate on

consistent principles. Hora points out that when the “Best Practices” were drafted, therapeutic jurisprudence was not known but their principles are evident in the Key Components (2002). The following section is provided to give further detail on the ethic of care to apply these principles to how drug court judges preside in the drug court.

### **Elaborating on Ethic of Care**

The following section provides further detail on the ethic of care suggest how to apply those principles to how drug court judges preside in the drug court. The ethic of care provides an orientation for how moral problems are interpreted and resolved. “To provide care, one must identify the particular needs of concrete individuals – that is, one must engage in a search both across individuals and within individual psyches-and then fulfill those needs” (Tronto (1995:145) cited by Taylor 1998:479). This statement could apply as much to a father giving care to his daughter, a friend consoling a friend, or charitable giving to a non-profit that addresses the needs of impoverished citizens (Taylor 1998).

Monchinski stated that “the ethic of care remains unique and distinct from other forms of thinking” (2009:72), as the guiding foundation encourages a view as exclusive reality to the person. The care ethic frequently is juxtaposed with the ethic of justice. According to Taylor, “one important difference between ethic of care and ethic of justice is that the former is much more time-intensive than the latter. Care-giving entails the time-consuming identification of individual needs; justice on the other hand, requires the application of former rules that often abstract away from the particularity of individual needs” (1998:480). Little stresses that “ethic of justice problems are approached in the same way in which other kinds of problems are approached: they are analyzed, competing principles are weighted up, and a conclusion is drawn” (209:232).

“The concept of giving care while gender neutral has traditionally resided as a female orientation. The point has been raised by Gilligan that the care orientation early on has been improperly relegated to second-class citizenship in moral psychology because the discipline has tended to treat the male norm as the human norm while the care orientation is primarily heard in women’s voices” (Little 1998:192). The applications of care and justice are very amenable to the person-centered organization of a courtroom and collaboration with the judge and drug-court team. The complexities present in the needs of individuals seeking help generate a propensity toward “viewing moral situations through different perspectives and orientations” (Millette 1994:662).

While empathy and compassion are clearly central in the care ethic, Edwards (2009) as well as Gilligan (1982), contend that two other orientations of obligation and responsibility exist with relationships. Obligation, as a time-honored approach calls on the decision-maker to “work out what obligations if any they might have to respond to in a situation and then respond accordingly.” In contrast, “responsibility is the initial starting point” (Edwards 2009:234) the response is the assumption of how to help. The ethic of care is purposeful. However, Allmark reminds us that caring has values that include caring appropriately, with “sensitivity and skill, as the ethic of care says we should care and we should encourage conditions which create care” (1995:23).

The ethic of care has been shown to potentially change the conditions of judicial oversight and its relationship to offender rehabilitation. Knowledge that the ethic of care framework has been brought forward indicates that the qualities of individual attention and compassion by the judge provide a positive influence for drug court participants to persevere in the wake of personal challenges that impede their progress toward sobriety. The framework of therapeutic jurisprudence was first developed for mental health courts and then introduced in drug courts to enable the drug court participant to better maintain psychological well-being within the criminal justice system. Drug courts are cognizant



that their clientele enter drug court programs with a mindset that is ambivalent to pursuing permanent sobriety and yet drug courts provide positive results from judicial officials and the drug court program participants. The literature presents a great deal of positive correlation for the continued sustainability of drug courts for the economic savings over traditional treatment options that historically demonstrate considerable recidivism.

### **Limitations**

In this section I discuss the limitations of this literature review. This study was not conducted as an empirical study but rather as in-depth review of the existing literature. The search terms specified for this study may have been too broad or too specific, possibly eliminating some relevant results as well as generating results that did not provide meaningful information correlating courtroom processes that discussed the role of the judge. It was found that the statistical data provided within the studies summarized did not provide findings for the judge's role in drug court or if the gender of the judge influences drug court participant satisfaction. There have not been adequate follow-up studies as suggested by other researchers. Of the available research, few studies were adequately longitudinal. I did not make court-room observations of drug court programs and of judge's interactions with drug court clients. Further empirical study with interviews of judges would be required to be able to say with more certainty that judges are guided by an ethic of care.

## Recommendations

In light of the limitations of this study, I recommend future empirical studies to provide explicit knowledge of the role of the judge. Empirical research should be conducted to elaborate on the role of an ethic of care in therapeutic jurisprudence. The role of judicial compassion and the juxtaposition of leverage and sanctions affect outcomes. Future study should further define job fulfillment of judicial officers, how their perceived role affects them with their peers, and greater effectiveness of motivational strategies with drug court participants, particularly with participants of various races or ethnicities.

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## **Appendix                      Ten Key Components**

- 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 Participant’s 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, Other Drug 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 Participant’s 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 Court, Public Agencies and Community-Based Organizations Generates Local Support and Enhances Drug Court Program Effectiveness.

Source: “Defining Drug Courts. The Key Components.” Accessed December 2, 2012  
<https://www.ncjrs.gov/pdffiles1/bja/205621.pdf>