

Creating Legitimacy in a Diversion Court: Testing the Theoretical Framework of Procedural Justice and Therapeutic Jurisprudence

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Abstract

Research on drug treatment courts (DTCs) consistently conclude that DTCs are effective at reducing recidivism. However, there is variation and contradiction in the literature on what elements of DTCs are key to this success. This is likely partly due to the atheoretical nature of most of the literature on these courts. Utilizing semi-structured qualitative interviews of 15 active drug court participants of a Midwest DTC, we sought to test the theoretical framework of therapeutic jurisprudence and procedural justice proposed by Kaiser and Holtfreter (2016). Therapeutic jurisprudence suggests ideal interactions with participants and procedural justice is thought to be the key to promoting success in DTCs. Participants in our study reported characteristics of therapeutic jurisprudence as key to developing perceptions of procedural justice. Feeling heard and treated compassionately helped shift participants' identities from "addict" or "criminal" to a "person with an addiction." Further, participants credited increased trust in the court when they were entrusted with at least part of their own recovery. Finally, some court team members were able to promote perceptions of procedural justice for the whole court. Implications and future directions are discussed in the conclusion.

Keywords: procedural justice, therapeutic jurisprudence, drug treatment courts, qualitative

Introduction

Since their inception in 1989, Drug Treatment Courts (DTCs) have been heralded as the “most significant criminal justice initiative of the 20th century” (Brown, 2011, p. 192) and “the most innovative, comprehensive, and successful alternative to incarceration yet developed” (Hennessey, 2001, p. 5). By 2014, there were 2,619 DTCs in the United States (Jewell et al., 2017) and the diversionary court structure has been so popular that it has spread to other types of diversion courts: OWI, mental health, juvenile courts, and so on. As of last count, there are over 4,000 treatment courts in the United States (National Drug Court Resource Center, 2023).

DTCs emerged primarily to alleviate the burden on the criminal justice system of the mandates of the war on drugs (Brown, 2011; Listwan et al., 2003). At the time, community-focused, diversionary efforts (i.e., community policing) were slowly gaining favor in the criminal justice world (Gill, 2016; Listwan et al., 2003). Centered on a therapeutic approach, drug courts emphasize treatment of addiction to address the criminogenic needs of participants (Marlowe, 2012). While treatment is the main priority, drug courts also work with clients to connect them with educational and/or employment opportunities, and stable, safe housing (Marlowe, 2012; Somers & Holtfreter, 2018). Those who successfully complete the requirements for graduation from DTCs will have charges dropped, lessened, or sentences satisfied.

There is a consensus over several decades of research that drug courts work to lower recidivism for both current participants and graduates (Belenko, 1998; Brown, 2011; Gifford et al., 2014; Hickert et al., 2009; Kalich & Evans, 2006; Listwan et al., 2003; Marlowe, 2012; Roman et al., 2020), and meta-analyses of evaluations have supported this conclusion as well (Mitchell et al., 2012; Sevigny et al., 2013). Unfortunately, there are significant contradictions in the literature on what elements of DTCs promote success (Hickert et al., 2009; Jewell et al., 2017; Mitchell et al., 2012).

Some of the inconsistency in findings is likely due to limitations in data. Many studies do not have an adequate comparison group (Gifford et al., 2014; Kalich & Evans, 2006) and others do not include enough of a follow-up period to properly track recidivism (Mitchell et al., 2012). Further, drug courts are varied in structure and deal with a significantly diverse population of individuals in terms of type of drug addiction, mental health problems, and risk levels (Belenko, 1998; Gifford et al., 2014; Jewell et al., 2017; Listwan et al., 2003; Marlowe, 2012). Finally, there have been few studies that have qualitatively examined active drug court participants’ perceptions about their experiences in the court, nor have many studies attempted to link theoretical explanations to why the court works. This study seeks to better understand participant experiences in the court and how this may explain why the court works, within a theoretical framework.

Qualitative Studies of Drug Treatment Court

Drug court participants have an important and unique perspective concerning the court that should be part of understanding its success. Relatively few studies of drug courts

have utilized qualitative methods (Lanier & DeVall, 2017) and most of these studies have looked at past participants, those that have graduated or been expelled (Gottfredson et al., 2005; Lanier & DeVall, 2017; Liang et al., 2016; Messer et al., 2016; Moore & Rigg, 2017; Newton-Taylor et al., 2009; Patten et al., 2015; Roberts & Wolfer, 2011; Wolfer, 2006; Wolfer & Roberts, 2008), or specific populations within DTCs such as women (Morse et al., 2015; Roberts & Wolfer, 2011). Only a limited number have focused on theory or included semi-structured interviews of active participants (Lanier & DeVall, 2017; Liang et al., 2016; Wolfer & Roberts, 2008).

Gallagher and various colleagues have published several qualitative studies. In the first, they analyzed responses to a 5-question open-ended survey from 15 drug court participants and concluded that praise from the judge and frequent drug testing were important elements for their success; however, participants felt their treatment needs were not being met (Gallagher et al., 2019a). Additionally, in 38 interviews of drug court participants, Gallagher et al. (2019b) found that medically assisted treatment (MAT) was very helpful for participants, and participants asked for more counseling support for MAT. Finally, Gallagher et al. (2019c) found in interviewing 31 African American drug court participants that while they felt respected and treated fairly in the court, particularly by the judge and case managers, they needed more support for employment.

Lanier and DeVall (2017) interviewed 23 Phase 3 participants and recent graduates to test the viability of Structural Ritualization Theory (SRT) in explaining the success of these types of courts. SRT explains that rituals, or routines, are key to creating meaning and patterns of behavior. Their findings were supportive of SRT. Court participants can abstain from drug use when they are given the opportunity to do so in a way that is clearly outlined, paired with resources, and when the team is collaborative¹.

Fulkerson, Keena, and Longman (2016) interviewed 15 active court participants on their motivations for entering DTCs and found that initially participants primarily wanted to avoid incarceration. The motivation to get clean and succeed in drug court came later. Morse et al. (2015) and Fischer et al. (2007) interviewed women in DTCs to understand the specific structural barriers that prevented their success. Both studies found that housing, transportation, health care, treatment availability, stigmas related to their statuses as drug addicts/convicted criminals, and conflicts in court/treatment vs. childcare responsibilities prevented their success.

Fendrich and LeBel (2019) studied a drug treatment court in Milwaukee County through focus group interviews of drug court participants and individual interviews with team members (N=187), as well as field notes of team meetings and court sessions. They concluded that program staff had an aversion to MAT or thought of it as a last resort, while most participants believed that MAT was crucial to ending drug use and wanted it to be widely available. Goldberg et al. (2019) studied the transcriptions from counseling appointments of active female drug court participants and found that strained family relationships compromised success. Finally, Witkin and Hays (2019) interviewed 15 participants across five rural

1 Liang et al. (2016) also found support for SRT in examining post-graduation letters from 229 former participants.

courts and found that the National Association of Drug Court Professionals's (NADCP) "Key Components" were the basis for the positive experiences of court participants. However, participants noted limited treatment options and inadequate social services.

Use of Theory in Examining Treatment Courts

Importantly, and the specific focus for this research, is the lack of a theoretical framework to explain why diversion courts like drug treatment court work. Very little drug court research has sought to theoretically link the working elements of the court (Kaiser & Holtfreter, 2016). Lanier and Devall (2017) identified only a handful of studies that tested theories such as reintegrative shaming (Meithe et al., 2000; Wolfer & Roberts, 2008), deterrence (Marlowe et al., 2005); social learning (May, 2008), containment (Wolfer & Roberts, 2008), and social bond theories (Gilmore et al., 2005). In addition to Lanier and DeVall (2017), Liang and colleagues (2016) have looked at Structural Ritualization Theory (SRT) finding support for this framework in explaining the success of the court. Roman et al. (2020) have conducted one of the only studies evaluating procedural justice and therapeutic jurisprudence along with deterrence theory to explain the success of drug treatment courts. Using interview data from participants at entry, then 6- and 18-month follow-ups across 29 courts (N=1349 participants, n=877 drug court participants and a control of n=472), they utilized structural equation modeling and found support for procedural justice and therapeutic orientations but not for deterrence. While their study makes progress on assessing procedural justice and therapeutic jurisprudence, the theories are discussed as separate entities rather than a process from one to the other. They argue that "despite the breadth of prior work, little is known about how drug courts achieve that success...A number of theories have been proposed—but not tested" (2020, p. 2). While the majority found support for the theories tested, there is a significant lack of replication in the literature related to testing these frameworks (Lanier & DeVall, 2017).

The atheoretical nature of the vast majority of DTC studies means that most have focused on identifying characteristics that promote success for participants but have failed to identify why these elements promote success. Further, these studies often have contradictory findings (see Gill, 2016 for an extensive review). Logan and Link (2019) argue that without a theoretical framework "to isolate the critical instrumental elements...findings from scattered evaluations will accumulate like apples and oranges" (citing Goldkamp et al., 2002, p. 28). Theoretical frameworks can provide guidance in sifting out the noise of disparate findings by furthering the theoretical work of identifying *why the courts work* (Lanier & DeVall, 2017). Kaiser and Holtfreter (2016) suggest a theoretical framework combining two theories often discussed in relation to drug treatment courts: therapeutic jurisprudence and procedural justice.

Measuring Therapeutic Jurisprudence and Procedural Justice

Therapeutic jurisprudence is the philosophy behind treatment courts, that the law should be reshaped to work in a way that improves the "psychological functioning and emotional well-being of those affected" (Kaiser & Holtfreter, 2016, p. 47). Ultimately, this approach

requires that court actors “have a cognitive awareness of how their actions and words... promote or hinder rehabilitative efforts” with an emphasis on “understanding the impact and consequences of the law, legal process, and legal actors on the well-being of persons affected by the law” (Kaiser & Holtfreter, 2016, pp. 47–48). According to Winnick and Wexler (2015), therapeutic jurisprudence in drug treatment courts is measured through the following characteristics: supportive and compassionate judicial involvement; close monitoring of treatment services; multidisciplinary involvement with participants; and collaboration with community services. Several studies have quantitatively linked supportive and compassionate involvement with greater compliance with the court (see, for example Fay–Ramirez, 2015; Lurigio, 2008). These measures typically entail several statements to assess compassionate treatment such as: “you have had an opportunity to tell your side of the story” or you have been “treated fairly” or “with respect” (Canada & Watson, 2013). For this study, we focused on identifying supportive and compassionate involvement to measure therapeutic jurisprudence by asking participants to describe their relationships with members of the court team and to identify and describe times when they felt the court was supportive of their recovery and times when they were not. The other three aspects of therapeutic jurisprudence are related to court structure and could not be measured through perspectives of court participants.

Procedural Justice is a focus on how perceptions can be shaped to promote the idea of legitimacy in the court. Under this theory, legitimacy is based on perceived fairness of the court and a sense of group belonging among participants (Lind & Tyler, 1988). Tyler (2007; 1990) posits the following measures for assessing procedural justice, all of which have been connected to successful compliance in the court (see Gottfredson et al., 2007; Paternoster et al., 1997; Tyler, 1990).

- Whether participants felt they had an opportunity to be heard by the judge and court team. If people feel heard, they feel that they have some control in the process (Thibault & Walker 1975) and that they are being treated with dignity and respect (Tyler, 1990).
- Whether they felt the court was consistent and impartial in allocating sanctions and incentives.
- Whether they felt the court adequately explained the reasons for decisions made.
- If the court was ethical: polite, respectful, and demonstrated an authentic concern for individuals’ rights.

Kaiser and Holtfreter’s (2016) theoretical model indicate that through the application of therapeutic jurisprudence, procedural justice is served. Specifically, therapeutic jurisprudence suggests what elements might work and procedural justice explains the conditions under which these elements do work.

Method

The drug court studied is in a small urban city in the Midwest region of the U.S. The court enrolls an average of 30 participants at a time. The team is made up of a drug

court coordinator (DCC), a Department of Corrections (DOC) probation officer, a circuit court judge, representatives from the District Attorney's and Public Defender offices, as well as a treatment provider and police officer. Court meets weekly and admits high risk, high needs clients with substance use disorders. Per federal restrictions, dealers and those with violent felonies are excluded from the court. Referrals mostly come from attorneys, probation agents, and individuals themselves. The court team follows NADCP best practices for phasing, drug testing, time in front of the judge, and positive to negative reinforcement ratios.

The court program consists of three phases. Phase 1 lasts at least two months. Participants are required to attend weekly court sessions and meetings with the DCC and DOC agent. They must also attend 95% of their treatment and have at least 30 consistent days of abstinence to advance to Phase 2. Phase 2 lasts a minimum of four months. Participants are required to attend court and meetings with the DCC and DOC agent every two weeks. They also must get a job, enroll in school, or do community service, and must have at least 30 days of abstinence to progress to Phase 3. Phase 3 lasts a minimum of six months where participants attend court and meet with the DCC and DOC agent monthly. They must pay their drug court fees and maintain at least 90 days of abstinence to graduate.

Sample

We interviewed 15 active or recently graduated DTC participants, 13 of whom were white and two Hmong. There were nine males and six females, and the average age was 35.3 years old. Seven individuals were in Phase 1 of the drug court when interviewed, three in Phase 2, two in Phase 3, and three graduates: two that we interviewed within a week of their graduation and one that we interviewed three months after graduation. All the participants listed methamphetamine as a primary drug of choice in their drug court applications. About half reported using methamphetamine exclusively, and the rest reported methamphetamine use in combination with heroin, alcohol, and/or crack cocaine.

Participants for this study were selected through convenience and snowball sampling (Cresswell, 2013; Lofland et al., 2006). We, or the judge, announced the need for participants in the court, had the drug court coordinator and DOC representative post flyers in their offices, and we asked those that participated to encourage others to participate as well. With support of the court, participants were offered two hours of community service for their participation in the interview. Participants were assured verbally and in their informed consent letter that their answers to the questions would remain confidential and they could stop participation at any time without penalty. If the participant requested credit for community service, a receipt of service was emailed to the drug court coordinator. This prevented complete confidentiality in the participation of these interviews however, we balanced this loss with several reasons. First, we believed that the participants should get compensated for their time. We could not provide them with cash or gift cards per the court, but community service is often part of their weekly requirements and we felt that their participation fit the very definition of community service. Second, participants were often recruited by the court team, and initial conversations about participation were then mediated through the drug court coordinator. Additionally, participants often discussed their participation of their

own accord with the drug court team, in court, and/or with other participants. Essentially, confidentiality with regards to participation was fleeting. Finally, we made it clear in the negotiation with the drug court team that providing this incentive did not mean the participant actually participated in the interview, only that they set up a time to be interviewed. Thus, the fact that many participants did not need or take the incentive, and our efforts to mask identifying information helped to ensure confidentiality in the discussions. The study was approved by the University of Wisconsin-La Crosse Institutional Review Board.

Semi-structured Interviews

Semi-structured qualitative interviews were administered between November 2018 and September 2019. This format allowed for more conversational flexibility in the interview to explore topics and themes that emerged during the interviews. The interview guide focused on perceptions of the court, relationships with court team members, and experiences in the court that were positive and negative. In addition to questions related to procedural justice and therapeutic jurisprudence (i.e., tell me about your relationship with the judge/DOC agent/DCC; tell me about a time that you felt the court was acting fairly/not fair; tell me about a time that the court was acting in a way that promoted your success/did not promote), we asked questions about the general operation of the courts: sanctions, incentives, the admission process, treatment and other supports, and barriers to success.

Interviews were audio recorded and took place primarily at the courthouse in private rooms, but also at halfway houses, inpatient treatment facilities, and in the authors' campus offices. Each audio recording was transcribed by research assistants. To ensure confidentiality, all names were replaced with pseudonyms, except for the court team, and locations were abstracted to general descriptions. Direct quotes were only used if they appeared to be general enough. Otherwise, we reported general conclusions instead.

All qualitative data went through a two-step coding process by the two principal investigators. This coding was done independently and later compared to establish agreement on themes. In the initial coding phase, transcripts of interviews and court observations were read through twice to identify general, broad themes. Secondly, the data was organized by general themes to be analyzed for more specific, in-depth themes (Esterberg, 2002; Loffland et al., 2006). The strongest patterns are those topics that were discussed by nearly every participant. We achieved data saturation (Fusch & Ness, 2015) meaning our data is comprehensive enough for replication and our last few interviews did not produce new information or notable deviations.

In addition to qualitative interviews, we also conducted court observations. We attended pre-court team meetings and court sessions from March 2018 to August 2019 observing a total of 27 sessions. Discussions within the team meetings and court sessions were transcribed in live time and summaries of the observations including themes, notable non-verbal elements, and a list of those in attendance were completed immediately after the court session. The data for this article come from the qualitative interviews and include data from court observations to ensure consistency and accuracy as it related to the participants' perceptions.

Several studies have quantitatively linked supportive and compassionate involvement with greater compliance with the court (see, for example Fay-Ramirez, 2015; Lurigio, 2008). These measures include statements such as: “you have had an opportunity to tell your side of the story” and you have been “treated fairly” or “with respect” (Canada & Watson, 2013). However, as Canada and Watson (2013) note from their mixed methods study of two separate mental health courts, “Although scores on quantitative measures of procedural justice do not differ by court, participant perceptions discussed in semistructured interviews do” (p. 209).

Because we are specifically looking at perspectives of compassionate treatment (therapeutic jurisprudence) and whether the court is fair (procedural justice), qualitative methods are ideal (Esterberg, 2002; Shon et al., 2021). First, as Farole and Cissner (2010) argue, qualitative research allows researchers to uncover the complexities of participants’ experiences and perspectives. Second, it is important to let participants explain their experiences using language that makes sense to them. Gilliam’s (2001) study of the poor in rural Ohio illustrates the importance of understanding how individuals put words to their experiences and what language is used. His participants did not use expected legalistic language to convey their concerns about privacy and surveillance and quantitative surveys were unable to uncover their concerns or the complex ways they experience and evade monitoring. Overall, as Cresswell (2009) notes, “in the entire qualitative research process, the researcher keeps a focus on learning the meaning that the participants hold...not the meaning that the researchers bring to the research” (p. 175).

Findings

We found that the drug treatment court we studied was perceived as procedurally just because participants perceived the actions of the court team to be consistent with elements of therapeutic jurisprudence. Participants described the elements of therapeutic jurisprudence as their reasons for trusting the court and achieving success in the court—specifically being treated compassionately. Participants credit being treated compassionately with believing that the court respects them as people, allows them some control in the process, and truly cares about them. Pseudonyms are used in all quotes to disguise participants’ identities.

Treated Compassionately: feeling heard, respected, and a sense of control

There was a strong and consistent theme of participants connecting feeling heard with compassionate treatment (therapeutic jurisprudence), which contributed to their overall trust in the court. Karla provided a clear illustration of the power of feeling heard. In her interview she talks about experiencing a situation where she was heard and one where she did not feel heard. In the first instance, she talks about her expulsion hearing. We asked her how she felt going into the expulsion hearing and expected that she would talk about it being stressful, but instead she talked very positively about it: “it gave me an opportunity to explain myself and really get honest too...I knew...they didn’t want to hear...[lies]. And

that they were going to see right through it so I...was completely 100% honest with them... it was helpful.” This quote illustrates many aspects of procedural justice and the importance of therapeutic jurisprudence. In addition to the usefulness of a multidisciplinary team (therapeutic jurisprudence), this experience Karla had was positive, not as a positive situation, but that she felt that she had the attention of the team to make her case to be retained. Overall, she trusted the team to listen to her if she was being honest.

Later, Karla spoke about how she felt the court acted unfairly in a sanction they applied to her. When asked why, she said it was because she “didn’t have a chance to talk to [the drug court coordinator] or [the DOC representative]...and...they already had the plan, I had no idea what was going on...I had no say so.” Karla felt left out of the process in not being heard, she did not feel the court adequately explained the reasons for the sanction, and ultimately, she did not feel a sense of control in the decisions being made. She was not part of the group discussion.

Billy spoke indirectly about being heard. He felt that the court was fair because they treated him empathetically: “They try to find out what is the cause, what’s the underlying reason why you’re doing the things you’re doing, what can you do to change and that’s way better...cause if sobriety was easy we wouldn’t have addicts in the world.” For Billy, feeling like he could communicate with and be heard by the drug court team, particularly the judge, the drug court coordinator, and the DOC agent, made him feel respected and increased his trust in the court and their ability to help him remain drug-free.

Sense of Control

Participants connected feeling heard to feelings of control. All participants were asked to provide an example, if possible, of a time when the court treated them fairly. Those who provided an example were then asked why they thought this example illustrated the fairness of the court. Many examples described a situation in which the court showed lenience. As we reviewed the data, it became clear that this was a statement of having some control and being part of the process. As Ryan explains, the court is fair because:

They give me the rope and if I [hang] myself, well you can still work with me, you can still show me ‘hey, this is what happened’...they’ve always believed in me, they’ve always told me that I can do it, and they eventually let me have that rope... and they were super supportive during that time. They didn’t like ya know, rub it in my face...They were just there.

Similar sentiments were expressed by others including Dustin and Eli. These participants appreciated compassionate, supportive treatment from the court team and the sense of mutual trust and respect that comes with getting some leeway in the process. Eli’s quote in particular shows how leniency coupled with compassion is more effective:

I think when some of the consequences can be too strict, then some people can kinda just throw in the towel. That’s probably what I mean by fair. It’s just you know, let’s say if I used and then I go to drug court and they throw me in jail for a month. I’m

just going to throw in the towel and say eff it...cause we don't want to come to drug court and be scared that we're going to jail. But everybody knows that if I use today, they'll let me slide on Thursday because I'm going to be honest about it. But if next week I'm still high, I'm definitely going to jail so I think that one week period for me, I think it's enough time for you to you know, get yourself together.

The supportive and compassionate treatment noted here connects fairness to the perception from participants that the drug court staff believe in their ability. As Eli discusses, strong, negative sanctions will make him give up on himself. Consistently, participants talked about getting confidence from the drug team's belief in their recovery. Leniency allows for some sense of control and makes participants feel like the court still supports and believes in them. Also of note is Eli's concluding statement—he knows what to expect. Sanctions that are predictable bolster perceptions of fairness. Finally, balancing sanctions and allowing participants to learn from their mistakes leads to a sense of dignity and respect.

Dignity and Respect

Perhaps the most obvious connection from therapeutic jurisprudence to procedural justice is that compassionate and supportive treatment leads to feelings of dignity and respect. If participants feel respected, they will feel part of the group, and this in turn promotes the idea of just treatment in the court. The most common answer to our question of why participants trust the court was the notion that they were treated with dignity. Participants discussed how their interactions with the drug court coordinator and the DOC agent were the most impactful. Repeatedly, participants talked about how these court team members “treat me like a person” or “treat me like a human being” as opposed to “just an addict” or “a piece of [crap]” or “worthless.” Again, this was key to them feeling like they could trust the court and that the treatment they received from the entire drug court team was fair.

Some participants did not feel treated with dignity and respect. For example, Tim felt that they judged him based on his past: “I feel like they used the past and...the stigma that you acquired over the years...against you. Bottom line...I feel like they need to not just look at paper, not look at background [their] criminality. Look at 'em as an addict *and* a human being” [emphasis original]. For Tim, this perception made him believe that the team “had their favorites.” He also discusses how he’s “heard negative things my whole life ya know? ...I would rather have compassion and understanding than tough love cause I've had that my whole life.” Instead, he attributed his success to his discovery of religion and the feelings of support, compassion, and belonging he experienced at his church.

Similarly, Stella often felt the court wanted her to fail in that they expected her to fail: “They were wondering how I was doing so well...they made it seem like...they want me to fail because they know I'm a drug addict and they know I'm going to fail.” For Stella, her success was not due to the court but rather to her readiness to be done with the tiring existence of drug addiction and her strong desire to get her children back in her life.

For both, their perspective that the court did not view them as anything more than an addict hampered their trust in the court because they were not being treated in a dignified

or respectful manner. It is notable but beyond the scope of this study that the elements they attributed their success to joining churches and reconnecting with children. Many court participants are successful, at least in part, because of joining churches or other supportive community environments, as well as the motivation to re-establish relationships with children. It is unclear why these elements alone, at least for these two participants, were key to their success, but their comments show that elements of therapeutic jurisprudence are essential to perceiving the court as fair.

Specific Court Team Members Promote Procedural Justice

Participants spoke of the significant impact of therapeutic jurisprudence among criminal practitioners in general as well as the drug court team. However, certain members of the court team were found to be most important in conveying procedural justice: the judge, the drug court coordinator (DCC), and the Department of Corrections (DOC) representative. We found that the compassionate treatment by these three individuals help to establish trust among the whole team. Initially, trust is established through the significant interaction court participants have with the drug court coordinator and the DOC representative. Compassionate treatment among these two team members is crucial for promoting trust in the court overall.

Most participants had little interaction with members of the team outside the judge in court and their scheduled meetings with the DCC and DOC representatives. Many participants talked about how they did not know most of the drug court team, unless they had a history with them or participated in treatment with the treatment provider representative. Further, they had no interaction with most team members, were unclear about their roles on the team, and yet nearly everyone we interviewed (except for 2) trusted the *whole* team and felt they were procedurally just in their decision making.

Ryan's quote best illustrates what we heard from those we interviewed: "That's the thing, there are three or four others [on the drug court team] and I've never actually spoken [to them]...I just kinda take it as they're on the same side as [the drug court coordinator] and [DOC representative] and Judge...and I trust them, so." Ryan's quote is great because it explicitly states this pattern, while others talked about it more implicitly.

In other conversations about relationships with the drug court team and feelings of trust and fairness, participants went straight to conversations about the DCC and DOC representative, perhaps as representatives of the whole team. When Trevor was asked about fairness and the court, he went into a lengthy discussion about his relationship with these two:

[The Drug Court Coordinator] is cool. [The DCC is] very personable, [and] knows addiction...[The coordinator and DOC representative] try to see you more as a person instead of a number or they try to see you as Trevor instead of addict Trevor. They try to see who you really are, compared to whatever you look like on paper... they make it more personable [than probation and parole] because they actually care, actually take the time...and they remember stuff...they brought up the things we talked about last time, they brought up...how I was progressing at work and...they

remember things that make me know that they're paying attention instead of just sitting there [going] 'okay, thank you. Next!' like the DMV.

A majority of those interviewed talked about the impact of these two team members, as well as the judge. Significant trust and feelings of support are built when team members show that they know and remember elements of the participants' lives. In a few instances, interviewees recounted times when team members forgot their name or details about their lives, and this resulted in feelings of distrust or dislike towards that specific staff member. Further, as Trevor's quote shows, this practice of therapeutic jurisprudence helps to separate the drug court team from the "typical" criminal justice practitioner that many of these individuals are used to.

Eli also conveys this when we talked about his relationship with the court and how he thought the court viewed him: "I think they view you as a person. I don't think they view you as anything else. Cause if they viewed you differently, they're probably a [correctional officer]." When asked to clarify the difference between the drug court practitioners and other criminal justice practitioners, he talks about the drug court team's desire to help, to see you as successful, and their knowledge about his life:

I don't think they would want to help you, offer to help you...they would probably be D.A.s...[instead] they stay in touch...if I have a problem or have a question...I know I can contact them. And they seem to always be in tune with what you're doing and just know what you're doing...it's just really helpful, you know? It's not like seeing your P.O. and always constantly having to remind them you know, what drug I use or-I feel like I'm the only drug court participant when I talk to [the coordinator and DOC representative] but I know that they see so many other people too but when you meet with them they...they're right there where you left off last you know, last meeting. And it feels good.

This differential treatment from the coordinator and DOC representative leads to participants' identity shift as well. When asked why she trusted the drug court team, Karla said it was the support and empathy she gets from the team, "especially [the drug court coordinator]. [The DCC is] really good about...never mak[ing]...me feel like a junkie. Like I'm a piece of crap...they're compassionate and empathetic to addiction."

Wesley described how he knows the drug court team members care, particularly [the coordinator and DOC representative] because "...They knew that I was going through some stuff, with my past trauma and whatnot." He spoke about struggling to open up given his past trauma. Seeing these two take this knowledge and use it to help him was incredibly impactful for him. He stated that it was the first time that someone understood that "it's not that I was a drug addict who then had mental issues. I had mental issues that turned into a drug addict." This compassionate treatment shows participants that the court is invested in knowing the participants and the root of their addiction. This is also important for making the switch to a court that is compassionate. As Wesley goes on to state:

[It's the] complete opposite...because all the [typical] judge really sees is that you're an offender, you're committing a crime. But he's not gonna really know the back

story to it. He doesn't...care about all that...that's why I didn't trust the county, I don't trust them. I don't trust P.O.'s because all they did was try to lock me up and they weren't trying to figure out why...I was behaving in such a manner. They didn't care. Lock him up. Revoke him. But now, [the DOC representative] and ya know, [the drug court coordinator] are taking an interest in finding out what is going on. And they give that moral support and positive support and positive feedback to push you to do better, to push you to get through the program because they somehow see that you're better than what you think you are.

The relationships the participants build with the coordinator and DOC representative are, at least, the starting point for coming to trust the court and team members.

The Drug Court Judge and Procedural Justice in the Court

The trust established among participants through interactions with the drug court coordinator and the DOC representative are further solidified by the compassionate treatment of the court judge. The structure of these relationships is different, and importantly so. The coordinator and DOC representative are members of the court team that participants go to for support and advice, to talk more openly about their progress. Their relationship with the judge is about deference. The key themes that emerged in our conversations with participants about the (male) judge were 1) they perceived him as a father figure—someone they wanted to make proud; 2) they felt nervous to speak to him in court at first but felt better once they did; 3) they appreciated that even on “bad weeks” he wanted to start with the positive—this helped them to shift their thinking from an identity of just being an addict to one where addiction is something they suffer from; and 4) they preferred the appointed/dedicated drug court judge to substitutes because he knows them, their history, and they believe he truly cares about them.

In our observations of the drug court sessions, we noted that the judge rarely went against the consensus of the group in the pre-court team meetings. In those instances where changes were made to the decisions, it was done so because new information emerged. This is consistent with the NADCP best practices and helps to convey trust in the team as a whole. As participants in the study mentioned, they trust the court because they believe that the coordinator and DOC representative advocate for them. If the court discussions were different than expected, this would likely lead to distrust among participants for the coordinator and DOC representative as well as the team. Further, we observed that the judge took his time with participants and adhered to the ratio of “carrots to sticks.” Our participants confirmed that this is a big part of their feelings of trust and deference.

Eleanor used the term “amazing” to describe the judge. When asked to elaborate she said,

[The judge] shows empathy, he looks at addiction...but...you have to take responsibility for your actions...[the judge] is thoughtful and is just caring. And he doesn't judge...when you get up there you don't get to face the...that you're a piece of crap...that you're just another statistic...he shows empathy, he shows he cares, he

takes the time to ask you if there is anything you need to discuss. It's not just 'mm, alright doing well, you did this, you're going to jail. Alright next!' He takes the time with each individual as a person and not looking at them as a druggie and a piece of crap."

Billy reported that while the judge is an authority figure, he has stopped thinking of him as such in the traditional sense: "Of course he's an authority figure cause he's a judge, but I don't feel that he's just out to get me, ya know? I don't feel that he wants me to do bad things. He wants good from me...he just wants to help you and to make you...think of yourself as a better person." As mentioned previously, this process of separating or shifting their identities from "worthless addict" to someone who has an addiction is an important part of the process of recovery and is due to compassionate treatment. Additionally, in court the judge helps to achieve this through the ratio of positives to negatives. Billy elaborated,

The one thing that [the] judge...does, even when you [mess] up, the first thing he usually asks [is] 'what's five positive things you did in the week.' Even knowing that you used. He always asks...so instead of looking at all the bad and negative...he still wants to know the good things that you did...and that is huge...you're not so worried about the [mess] up as you are about the good things. That helps.

We were also curious about how participants felt about the long court sessions and times when others ran the court session in place of the dedicated court judge. It was a bit surprising to hear from everyone we interviewed that they appreciated the long sessions, sometimes running over 2 hours, despite reporting trouble sitting through it.

In part, they preferred longer sessions and "their judge" because of the more familiar relationship. As Dustin illustrates: "I respect him, you know? He knows us, he knows the clients." Additionally, Billy spoke to the desire of the judge to create and maintain these relationships:

I know [he]...makes it longer because he's trying to relate to the people. He's trying to have that relationship [and] it's different when he's not the judge. I know [the other subs] care but they're just stepping in...that's what I like about [the judge]... he takes the time to listen and offer [help]. Sometimes it takes an extra 10 minutes to talk to that person to make them feel good or to give them the understanding."

Finally, Wesley stated that "it's kinda hard [when other judges sub in] because they're not really familiar with the process, the client ya know? So some things can get misconstrued." This last quote is consistent with what we observed during the four sessions, out of 27 sessions observed over two years, when the dedicated alternate judge presided. There was often confusion over the status of participants, mixing up characteristics such as who was on a GPS bracelet or what person had a child, and there were many instances where the substitute missed calling participants on the roster. The conversations with the participants were impersonal, seemed rushed, and were more scripted. As Ryan states: "It's just not the same process when you go up there [with a substitute judge]. It's like two questions and quick little answers and then you're outta there. With [our judge], like he really gets to the bottom of it, like he's not just gonna let you give a two-word answer and walk out...he talks to everyone

and kinda just...everyone is going through their own thing and he'll use it as an example to learn so everyone learns ya know?

Karla and Eli spoke at length about this aspect of court. For Karla, having the drug court judge there is “helpful...the judge does a good job of...focusing on things that are helpful for everybody.” Eli likes that in court he can “learn from other’s mistakes...we’re there to observe...not [in court] just for ourselves to be put on the spot. It’s about learning from other people’s experience going through the program and it’s awesome.” Finally, Jesse talks about how many court sessions are filled with good advice to participants, often lessons that he’s had to learn the hard way. In particular, he talks about housing and how when [the judge] talks about not ruining the chance he wants to say, “you better listen, that’s good advice right there.”

Discussion

Overall, the participants we interviewed perceived the court as procedurally just because of the compassionate treatment they received from the court team. Practitioners, in engaging in therapeutic jurisprudence, built trust among a group of people who are prone to distrust, particularly towards the criminal justice system. Of primary importance for perceptions of procedural justice is that individuals feel heard. The court we studied achieved this for participants by not only giving the space and time to be heard but also in conveying to participants that they saw them as people, sought to understand the reasons behind their behaviors, and gave them some control in the process that in effect, built feelings of mutual trust. The team showed they understood addiction which helped with identity shifting—conveying to participants that they saw them as more than their addiction and criminal behavior. Overall, participants reported feeling supported, saw themselves in a new light, and gained confidence in their ability to achieve their goals.

This compassionate treatment also helped to create group engagement, key for making procedural justice effective (Tyler & Blader, 2003). Our participants referenced the court as “like family” and were often fiercely loyal in protecting the group from those who were in drug court “for all the wrong reasons.” As Tyler and Blader (2003) note, social identity, an individual’s sense of worth and belonging as defined by the group, increases compliance when this identity is defined positively. The participants in our study talked a lot about their identity shifts and how this helped them to see the court as fair.

Some court team members were key in conveying a sense of procedural justice for the whole team. The Drug Court Coordinator (DCC) and the DOC agent assigned to the court were on the frontlines of promoting legitimacy among the court while the Judge played the deferential figure head in court. For all three, it was important that they remembered important aspects of the participants’ lives and journey toward sobriety such as how many weeks they had been sober, their kids’ names, or the struggles they had experienced in weeks past. Taking time to talk with each participant and remembering these details made participants believe that these three wanted to help and extended this belief to the rest of the court team. For the DCC and DOC agent, it was also most effective if they conducted

meetings with participants that did not feel rushed, that they were not late to meet with participants, and were able to remember where they left off from the previous meeting (see also Burke & Leben, 2007 for similar conclusions). This compassionate treatment and a united front in court—the judge went along with recommendations from team—conveyed trust for the entire team.

These differences in perceptions of procedural justice among court actors is consistent with the findings from Dollar et al. (2018) who identified high levels of procedural justice at baseline for case managers but relatively low levels of procedural justice perceptions when it came to participants' views of the judge. Over three months however, perceptions of procedural justice toward the judge caught up with case managers. Those who occupy more traditional criminal justice roles that are perceived as adversarial (i.e., prosecutor, judge) may need to engage in therapeutic jurisprudence for a longer period to gain legitimacy. However, legitimacy for these more traditional practitioners catches up to other court actors who are perceived trustworthy earlier on. This highlights the importance of examining differences of procedural justice among the various court actors, changes over time, and the impact perceptions of procedural justice for the court as a whole. Beyond the scope of this study, we concur with Dollar et al. that, “future researchers investigating procedural justice should continue to assess perceptions of procedural justice by court staff separately, as doing so is necessary to better evaluate the who, where, and how procedural justice may be transmitted” (2018, p. 42).

Understanding the impact of various court practitioners on procedural justice can assist in providing recommendations to the court studied on ways of adjusting the court structure to best promote perceptions of legitimacy among court participants. For example, it was recommended that the DCC and DOC agent be relieved of some of their additional responsibilities to best serve the drug court clients in a way that promoted trust. The DOC agent had a large caseload with part drug court clients, part non-drug court clients. This caused considerable strain on their position, and it was suggested that the court team's DOC representative only take on drug court clients.

There are decades worth of studies on the effectiveness of procedural justice at obtaining compliance (Beijersbergen et al., 2016; Burke 2010; Burke & Lebin, 2007; Casper et al., 1988; Murphy et al., 2009; Sunshine & Tyler, 2003; Tyler, 1990). An important distinction to make here is that the elements of procedural justice—being heard, a court that is unbiased and treats participants with respect, and a court that consists of trustworthy authority (Tyler, 1990)—are not achievable in themselves. Rather they are perspectives that participants come to have about the court. Understanding how the perspectives are built is key to structuring courts, corrections, law enforcement, and so on to best promote compliance.

Further, at least one of the elements of procedural justice is impossible to achieve—that of unbiased, fair allocation of sanctions and incentives. The perception of fairness then is key to promoting the legitimacy of the court. Perceptions of procedural justice promote compliance even when outcomes are unfavorable (Tyler, 1990). In other words, court participants are more likely to comply with negative sanctions and still feel the court has their best interest in mind if they perceive the court to be procedurally just. As our participants

indicated in their interviews, allocations of sanctions rely on details that are not always available to those in the court. If you trust the court, you believe the court has reasons for what is perceived on the surface as disparate treatment. For example, Eleanor told us that she believed sanctions and incentives in the court were fair even when they seemed disparate because “we don’t know both sides...and I do believe that the team is giving them fairly...cause I trust they’re making the right judgment.” Ryan talked about sanctions being fair because “it’s case by case...I don’t get mad when I see me go to jail and someone else not. Because I actually trust them and understand that they’re doing what’s best for me.” On the other hand, those who did not trust the court believed that the court was unfair. Rose believed she was being treated more harshly than others, that some were getting “slaps on the wrist” while she was “being hauled away to jail.” She goes on to talk about how the whole system is “messed up” and “unfair”, associating the drug court with the criminal justice system she’s had a lengthy, and negative, experience with.

Veronica’s interview brought these two points together. If the court can shift perceptions of social identity, this can be key to perceptions of fairness and belonging. Veronica was very distrustful of the court because she believed they were treating her like a drug dealer and horrible person: “[I’m] not the drug dealing type. And for [the DA] to say that I’m like this horrible person who needs to be off the street like was just ridiculous.” She goes on to explain that she doesn’t trust the court because they don’t trust her and that her sanctions were not only harsher than her peers but also counterproductive towards her recovery: “Little hiccups happen and I don’t know, they give so many [other] people so many frickin chances.”

Theoretical frameworks are important to establish because they can help explain why certain aspects work. For example, best practices state that smaller drug courts (<150) and courts where participants spend three to seven minutes in front of the judge are more effective (Marlowe, 2012). This may be explained by participants’ viewing the court as more procedurally just when they are treated compassionately. Specifically, when they feel as if the court team members are not rushed when meeting with them and when team members remember key characteristics about their lives and recovery. Additionally, studies have found that teams that collaborate well together are more successful may be explained by our findings that the whole team is seen as legitimate when they are seen as united with those the court participants have individual interactions with.

We are not suggesting that our study has established these explanations as true or that these findings are generalizable. A common limitation of qualitative studies, and certainly true of this one, is that the findings are not capable of being generalized to other courts. Our sample of 15 is small but constituted about half of the active court participants and we were able to reach data saturation. We encourage others to replicate this study to determine what elements are at play in other courts that promote procedural justice.

We also cannot make any assessments based on specific characteristics of participants. For example, we were not able to look at differences of perceptions by phase of court. It may be that perceptions of procedural justice change the longer participants are in the court. Further, we were not able to tease out differences based on race, gender, or other important demographic characteristics. Our sample consisted of almost exclusively white participants.

The DTC we evaluated has long struggled with disparity along racial and ethnic groups in admittance, retention, and graduation rates. It is imperative that research continues to address the disparity of the court and the individualized needs of court participants along these demographic lines (Roberts & Wolfer, 2011). However, it was beyond the scope of this study.

Further, there is likely a selection bias from the sample obtained. Those who volunteered to participate are very likely to be qualitatively different than those we did not talk to. This is a difficult population to reach, and we had to rely on the courts to get participation. We cannot know if we were able to fully convince our participants that their responses would be kept confidential or that their participation would not negatively affect their status in the court. We emphasized to participants in the informed consent, both verbally and in writing, that their answers would remain confidential, that we were not part of the court, and their standing in the court would not be affected negatively by their participation. We perceived the interviews to be rather candid about the court and we interviewed folks who had deep mistrust and frustration with the court as well as those who wanted to participate because they felt the court had saved their lives. It is perhaps arguable that those who trusted the court the most were the most willing to participate and, in that sense, we received rich data on how this trust was achieved.

This research is particularly timely due to the pressing need for better evidence-based solutions to a growing drug problem in the 21st century. Drug use in recent years, particularly for opioids and methamphetamine, has been increasing (Center for Disease Control and Prevention and National Center for Health Statistics, 2021). Since 1999, the U.S. has reported more than 930,000 overdose deaths, with more than 100,000 overdose deaths in 2021 alone (Center for Disease Control and Prevention, 2022). As a result, drug overdose was the leading cause of unintentional injury deaths for Americans aged 1–44 years old in 2021, and fatal overdose costs alone were estimated to cost the U.S. roughly \$550 billion in 2017 (Center for Disease Control and Prevention, 2022). Further, there is a significant “treatment gap.” Around 22.7 million adults require alcohol or drug abuse (AODA) treatment; however, roughly 2.5 million people receive treatment. While drug courts may not be the ‘ideal’ form of treatment, they have been shown to serve as an important contact point for individuals to access drug and mental health treatment. Increasing the perceived legitimacy of the court among clients using compassionate treatment is an essential building block in increasing court effectiveness, and in reducing the potential short and long-term costs associated with continued substance use and potential incarceration.

It is also important to consider the external factors that influence the effectiveness of drug treatment courts. If we know that in addition to procedural justice, success depends on treatment, employment, and education those services must be available to the participants (Howard, 2016). For example, most of the drug court participants we observed and interviewed had co-occurring disorders (COD) and were being treated for both mental health and substance use disorders. At one point, 35 of the 37 participants in the court had COD. Hickert et al. (2009), in their study of 133 graduates and 155 terminated clients found that those most likely to fail drug court were those with mental health problems. While they

conclude that future studies should work to identify the “optimal drug court client,” we argue that identifying why drug treatment courts work is more productive and is less likely to make courts pick only those who are most likely to succeed. But further, this finding suggests that better community supports and services are needed for the more challenging drug court clients and are particularly advantageous financially due to the substantial impact DTCs can have on the future recidivism of high risk/high need individuals.

The Bureau of Justice Assistance (BJA) reports that about one-third of those imprisoned committed their crimes under the influence of drugs or alcohol but fewer than half report having ever received treatment for their substance abuse problems (Jewell et al., 2017; BJS, 2004). According to National Institute on Drug Abuse (NIDA, 2020) around 65% of the over two million people in jails or prisons have an active substance use disorder. Others have noted that this is as high as 70–85% of the incarcerated population (Belenko et al., 2011). Incarceration costs the U.S. roughly 81 to 182 billion dollars annually (Wagner & Rabuy, 2017)². Cost-benefit analyses show that drug courts provide savings of \$2.21 of direct costs and between \$2 and \$27 of indirect cost savings for every one dollar invested. More importantly, drug treatment courts have consistently shown to close the treatment gap (Marlowe, 2012). As these courts continue to expand across jurisdictions and as more courts are applying the drug treatment court model, it is essential to establish a theoretical basis for the success of diversion courts.

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² The cost varies based on what is included in the calculation. Prison, jails, parole, and probation are 80.7 billion per year. Health care is 12.3 billion, utilities are 1.7 billion, criminal law, judicial and legal costs, are 29 billion, and so on.

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