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Drug Treatment Courts and Their Progeny in the U.S.: Overcoming Their Winding Trajectory to Make the Concept work for the Long Term

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Abstract:

Looking back over the past quarter century of justice system initiatives in the U.S., many will likely agree that the introduction of the drug court model has been one of the major innovations that occurred. For the field of court administration, it represented a practical application of Differentiated Case Management (DCM) principles – e.g. the recognition that all cases filed in a court system are not alike and that multiple paths for their disposition should be created for the purpose of both efficiency and justice. For the larger field of justice system operations, it represented a re-examination of the traditional approach for criminal case processing and a jumpstart to creating partnerships with agencies outside of the justice system per se -- in this case, public health – in order to more efficiently and effectively manage the case disposition process for certain criminal cases not productively handled through the traditional criminal case process.

For the legal profession, specifically – judges, prosecutors, defense counsel – it opened up the opportunity to use the leverage of the criminal justice system to utilize therapeutic approaches to the disposition of cases that did not lend themselves to the traditional punitive criminal case disposition approach – e.g., cases involving what later became recognized as the chronic disease of addiction and associated mental health disorders. Of particular import was that these nontraditional approaches were being instituted in an era of mandatory sentencing. All of these developments occurred within the framework of the constitutional and legal procedures, including "due process protections" that govern the criminal process and none of the founding drug court leaders ever intended for the drug court model to operate outside of that framework.

The focus of this article is upon the evolution of the drug court model in the U.S. since it was first introduced – not always a straightforward path as anticipated by the early developers of the model – and discussion of a few of the numerous issues that implementation of the drug court model has raised as new generations of leaders become involved, often without the institutional perspective of those who initially instituted the program, and suggestions for moving forward to promote the long term institutionalization of the drug court model within the constitutional and legal framework that applies to the U.S. criminal justice process.

The observations and recommendations which follow draw on the author's experience in providing technical assistance and training to over 800 drug courts in the U.S. since 1989, much of which is documented in technical assistance reports, training curricula, and presentations at state, regional and national conferences.[2]

Keywords: drug treatment courts, United States

1. Drug Court Model – Origins

1.1 Context in which it developed

When the Miami Drug Court opened in August 1989, local leaders were not intending to revolutionize the way the justice system operated; they were simply developing a pragmatic response to the tremendous surge of drug involved defendants circulating through the court's "revolving door" and the minimal, if any, impact of the traditional sentencing process for these defendants. The drug court concept in Miami was developed by a group of justice system and treatment professionals[3] who had long been dealing with substance using individuals involved with the criminal justice system, and who developed the model based on their practical experience. In doing this, they drew on the leverage they felt the

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[2] See www.american.edu/justice where many of these reports and presentations are posted.
[3] The key architects of the "drug court model" were Chief Judge Gerald Wetherington and Associate Judge Herbert Klein of the Miami-Dade County Circuit Court, the late Janet Reno, Miami-Dade County Prosecutor, Bennett Brummer, Miami-Dade County Public Defender, and Michael Smith, M.D., Director of the Substance Abuse Clinic at Lincoln Hospital in the Bronx.

criminal justice system could provide to promote treatment program participation and behavioral modification techniques that had been useful in drug treatment programs not necessarily connected with the court process. The practical wisdom that underlies the drug court model[4], although not at the time based on research findings, has since been corroborated by numerous research efforts as a far more effective strategy for dealing with drug using individuals than the traditional justice and/or treatment process then in use.[5]

1.2 Carrot and Stick Concept

The "Drug Court" offered an alternative to traditional prosecution of drug involved, nonviolent, offenders by offering them the opportunity to hold their prosecution in abeyance on the condition they entered and completed an intensive outpatient treatment program under the court's supervision. It also offered an opportunity to offer an alternative to the mandatory sentencing provisions that judges were otherwise required to impose if these cases were fully prosecuted. Much to local leaders' surprise, not only did numerous drug involved defendants accept the Drug Court opportunity but, within a short period of time, justice system leaders from both the U.S -- many of whom from jurisdictions subject to mandatory sentencing[6] requirements, -- and foreign jurisdictions descended upon the court to see firsthand the drug court concept in practice.

1.3 Subsequent Experience: Snapshot

Fast forward to 2017: The drug court model, with numerous adaptations, has since been introduced in every state in the U.S. as well as over 20 countries, with adaptation of the concept to a range of legal structures – both adversarial and inquisitorial – and legal cultures, with greatly expanded and associated permutations of the model developed and continuing to develop. The recent experience with Veterans Treatment Courts in the U.S., for example, has introduced a major focus on the role and interplay of "trauma" in the lives of drug users, including post-traumatic stress disorder and substance use, which, one hopes, should further impact the approach non-Veterans Treatment Courts are taking and the services they are providing.

Despite the remarkable popularity of drug courts over the past 25+ years, the implementation trajectory of the drug court concept has not been straightforward, with continual challenges encountered in integrating evolving research findings and discipline specific evidence-based interventions within traditional silos of practice, particularly for criminal justice practitioners and substance use and mental health treatment providers, as well as in promoting the cross-discipline professional standards and collaborations necessary for the drug court concept to work. While early drug court leaders appeared to have an intrinsic sense of how these programs should operate, those succeeding them did not always fully share their vision and perspective, with the result that the core values of the drug court model[7] have not been consistently understood, let alone maintained in toto, as the model requires. Rather many programs have appeared to pick and choose the elements to be utilized and those to be disregarded.

For the "drug court" concept to work, both over the short and long term, the justice system and the public health system – the two key partners in this venture – must be on the same page, both internally and collaboratively, with compatible goals, measures of "success", standards of practice, and ready willingness to build on the continually evolving research findings and experience associated with the science of addiction and recovery. And all "pieces" of the drug court model – e.g., the "Key Components"[8] – must be operating in sync.

The following sections provide a brief synopsis of the various permutations that the drug court model has taken since its inception in 1989, followed by a discussion of critical training, legal, service delivery, and organizational issues that have since emerged that potentially challenge the long-term viability of the drug court model and therefore warrant prompt attention.

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[4] In 1997, a committee assembled by the National Association of Drug Court Professionals, with funding from the U.S. Department of Justice, crafted ten "key components" that appeared to capture the essential elements of drug court programs, reported in *Defining Drug Courts: The Key Components*". https://www.ncjrs.gov/pdffiles1/bja/205621.pdf.

[5]See *Adult Drug Court Best Practice Standards*. National Association of Drug Court Professionals. 2013 and 2015. http://www.nadcp.org/Standards.

[6] During the 1980's, the U.S. Congress and many state legislatures adopted laws imposing stiff penalties for individuals convicted of trafficking in illegal drugs and included mandatory incarceration for drug dealers and individuals in possession of certain amounts of illegal drugs for personal use. Despite studies that have demonstrated that incarceration for drug involved individuals has no effect on reoffending and/or on drug use, these laws, most of which were enacted during the "just say no" period of U.S. drug strategy., continue in effect strategy in the U.S. and are considered to be a major factor in contributing to the situation of "mass incarceration" that has been receiving increasing attention.

[7] See "*Key Components".* Note 4 above.

[8] See "*Key Components'*. Note 4 above.

2. Drug Court Model – Evolution and Permutations

The drug court model emerged in Miami as a pretrial diversion option for defendants with limited prior contact with the justice system. Defendants entered a "not guilty" plea at time of arraignment and waived only the constitutional right to a speedy trial.[9] If they did not complete the drug court program their case proceeded in accordance with the traditional case process. Although data is not readily available regarding the nature of the justice system process the drug court model presently follows in the various jurisdictions that have implemented these programs[10], the evolution appears to have followed the following path(s):

2.1Shift from Focus on Pretrial Defendants to Defendants on Probation

While some drug court programs implemented during the 1990's and early 2000's remained pretrial/pre-plea programs along the model of Miami's, many were post plea programs, requiring the defendant to enter a plea to the offense charged, with the plea stricken if the defendant completed the program and imposed with the applicable sentence if he/she did not complete the program. This approach met prosecutorial concerns about keeping cases open for protracted periods of time, only to then must prosecute them if the defendant wasn't successful. Although the net effect for defendants who successfully completed the program was the same as for the pretrial model, the necessity for entering a plea in order to enter the program raised concern for defense counsel, particularly without full discovery and other aspects of due process proceedings, such as the filing of motions regarding the legitimacy of the arrest, etc.

For a variety of reasons, starting in the 2003- 05 period[11], many of the drug courts that were subsequently implemented were designed as programs for defendants on probation who were either sentenced to probation (with a sentence of incarceration suspended upon their successful completion of the program terms) or who had violated the terms of their probation and now faced the imposition of a (mandatory) prison sentence and were referred to the drug court as a "last resort." Either way, the probation model operated very differently from the pretrial model.

This shift in the role of drug courts from those providing a diversion option at the front end to an incarceration alternative at the back end has had major implications in terms of the operation of the drug court model and its potential impact both for participants and the "system". For example, the concept of "early intervention"[12] which has been deemed critical for dealing with chronic disease, including drug addiction, was lost, with months if not years elapsing from the time of arrest to the court order for treatment program entry. Similarly, the "non-adversarial approach"[13] upon which the drug court model is based became much less significant since the defendant was already convicted of the offense, with the prosecution and often defense no longer involved in the case. The shift to defendants already on probation also removed the earlier incentive which the pre-trial model provided to the "system" by diverting a significant portion of the court's caseload that would otherwise have required the full persecutorial, defense and court and resources to handle through the traditional process.

2.2 Application to Juvenile Caseloads

Starting in 1994, the drug court concept began to be adapted for juvenile caseloads with significant success. In 2003, the U.S. Department of Justice assembled a multidisciplinary group of practitioners to define the key elements of juvenile drug courts, similar to the effort undertaken seven years earlier to define the "Key Components" of adult drug courts[14] Treatment strategies focusing on the developmental needs of drug involved adolescents were applied, along with a range of experiential and skill building opportunities to promote participating drug-involved youth to continue in school, become involved with community activities, and develop the self-esteem considered fundamental to succeeding in other domains

[9] U.S. Constitution. Sixth Amendment, which reads: "…In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

[10] Although the implementation of the early drug courts during the decade following Miami's followed a fairly clear-cut procedural model, closely allied with the "*Key Components",* as the years went on, operational procedures varied significantly, particularly in terms of (a) offering the drug court as an *alternative* to traditional adjudication and (b) ensuring prompt entry into the drug court and its associated treatment resources following arrest. With the 2007-8 economic decline, drug courts became an attractive option for reducing prison costs and therefore many programs became alternatives to prison for defendants already sentenced, thereby satisfying many state government leaders interested in reducing the state budget(s).

[11] See Note 9 above.

[12] See Key Component # 3: Eligible participants are identified early and promptly and promptly placed in the drug court program.

[13] See Key Component # 2: Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.

[14] See *Juvenile Drug Courts: Strategies in Practice*. Office of Justice Programs. U.S. Department of Justice. 2003. https://www.ncjrs.gov/pdffiles1/bja/197866.pdf.

of the adolescent's life.[15] The implementation and operation of juvenile drug courts also introduced new complexities in terms of required services and oversight the adult drug courts had not dealt with, particularly regarding services to the families of participants who themselves often presented situations of addiction, instability, and lack of parental skills that had to be addressed in order to sustain the progress of the juvenile drug court participant. For a variety of reasons, including the absence of federal technical assistance and training resources for juvenile drug court programs (although these resources continued for adult programs through the Bureau of Justice Assistance), it proved difficult to sustain the early juvenile drug courts, particularly as the founding judges retired. Subsequently, a "new generation" of juvenile drug courts emerged but evaluation results have not been positive, at least for the youth that need these services.[16] Recent federal government efforts to jumpstart attention to juvenile drug courts and develop guidelines for their implementation appear to have, as of yet, had minimal impact in terms of restarting the vision in the field that made them effective during the earlier period of their operation.[17]

2.3 Family Drug Treatment Courts

The passage of the Adoption and Safe Families Act (ASFA) in 1997[18] jumpstarted attention to the potential application of the drug court concept to cases involving abuse and neglect. Under the provisions of ASFA, states were mandated to file a petition to terminate parental rights and concurrently place for adoption children who had been in foster care for 15 out of the most recent 22 months, measured from the date of the first judicial finding of abuse or neglect, or 60 days after the child was removed from his/her home.[19]

The overall goal of the family drug court has been to expedite the delivery of services to parents and children involved in abuse and neglect proceedings and to initiate the development of a meaningful permanency plan -- which could involve a number of options, including reunification of the child(ren) with the parent(s), and/or involvement with other family members. While family treatment courts have not been the subject of significant recent evaluation, those that have been conducted have focused primarily upon whether differences were noted between court, child welfare, and treatment outcomes for families involved with Family Treatment Courts vs. those who proceeded through the traditional child welfare system in the locale.[20]

2.4 Adaptation of the Drug Court Model to the Tribal Justice Systems of American Indian Nations

In 1997, the Drug Court Program Office (DCPO), Office of Justice Programs, U.S. Department of Justice developed a special program to assist American Indian Nations to plan and implement a drug court within their respective tribal government structure. Twenty-Two Indian Nations were awarded funds to implement the first of what are now 72 operational "Tribal Healing to Wellness Courts" in the U.S. [21] In 2002, a set of "tribal key components"[22] were developed by a committee of tribal justice and other community leaders, to provide the structure for Healing to Wellness Courts that adapted the "Key Components" for Adult Drug Courts to the context of tribal justice systems and communities. Although Tribal Healing to Wellness Courts operate within the jurisdiction(s) of their respective Indian Nations, many have cooperative relationships with neighboring state drug courts, particularly in situations where a tribal member may be charged with a state offense committed off tribal land. In these situations, it is not uncommon for the state drug court to transfer supervision and services to the Tribal Healing to Wellness Court, while still retaining ultimate jurisdiction for disposition of the case.

[15] See "Juvenile Drug Court Programs". Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Justice. May 2001. https://www.ncjrs.gov/pdffiles1/ojjdp/184744.pdf.

[16] See for example. *Final Report: Outcome and Process Evaluation of Juvenile Drug Courts*. Edward J. Latessa, Ph.D., 2013. https://www.ncjrs.gov/pdffiles1/ojjdp/grants/241643.pdf or Idaho Juvenile Drug Courts Evaluaton.2015. https://isc.idaho.gov/psc/reports/Juvenile%20Drug%20Court%20Evaluation%20Report%202015%20Courts.pdf.

[17] See "Juvenile Drug Court Guidelines." Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Justice. 2016. http://www.ncjfcj.org/sites/default/files/Juvenile_drug_treatment_court_GUIDELINES%20%20508C.pdf.

[18] ASFA, Public Law 105-89.

[19] See Note 13 above.

[20] See Family Treatment Drug Court Evaluation. Final Report. NPC Research 2007. http://www.ndcrc.org/sites/default/files/ftdc_evaluation_final_report.pdf.

[21] See Overview of Tribal Healing to Wellness Courts: Tribal Law and Policy Institute. September 2014. http://www.wellnesscourts.org/files/THWC%20Overview%20Final%20-%20Sept%20%202014.pdf.

[22] See Note 20 above.

3. Drug Courts: A Few of the Critical Training, Legal, Service Delivery, and Organizational Issues that have Emerged[23]

3.1 Need for Adequate and Ongoing Training and Cross-Training for Drug Court Personnel

While the early drug court judges and other drug court personnel appeared to demonstrate a clear vision regarding the goals of the drug court programs, the services they needed to provide and the operational framework essential to providing them, as judges and other personnel changed, this universally shared perspective was often lost. Frequently, assignments of new "team" members were made without their receiving any prior training on the drug court model, the relationships entailed in implementing it, or critical issues relevant to the science of addiction, the cognitive effects on the brain resulting, and/or the major shift in paradigm that the drug courts vs. the traditional criminal justice or treatment process introduced.

In addition to general training, bringing together multiple disciplines to work together as a 'team" -- many of whom had never previously worked in a similar collaborative effort -- had required specialized training on team functioning, discipline boundaries, and organizational relationships. Understanding of the functions of the various disciplines involved in a drug court team – prosecution, defense, probation, treatment, for example, -- has been a major challenge among team members in many programs. Role definition and boundaries, as well as respect for the functions of the specific disciplines involved with the drug court, has been a major challenge for many programs, exacerbated with periodic but ongoing team member turnover.

For example, a common issue that has occurred in many programs has related to the decision to terminate a participant; if a participant is to be terminated from the drug court, the termination decision is made by the judge, not the treatment provider – and not by the vote of the team. Related to the need for role definition has been an understanding among team members regarding what each discipline does and the ethical and performance standards that may apply. This issue has had particular import in developing a common understanding among team members of "due process" requirements and constitutional rights.

3.2 Legal Issues

3.2.1 Decreasing Support and Involvement of Defense Counsel

The support and involvement of defense counsel with drug courts has decreased significantly over the years. While a number of factors are at play, the most significant of these are interrelated and appear to be the product of three factors: (a) the loss of drug courts as a "front-end" dispositional option, (b) the shift to a probation focus, and (c) the punitive vs. therapeutic nature that at least some drug courts exhibit.

The loss of drug courts as a "front-end" dispositional option creates a major void for defense counsel seeking a disposition that could assist their client with addressing their drug problem as well as concluding their case without a criminal conviction and thereby avoiding the associated collateral consequences[24]– a critical "carrot" that the early drug courts offered. With the shift to a probation focus, drug courts no longer offer a front-end alternative for plea negotiation that defense counsel might support.

In a number of jurisdictions, the shift to a probation focus has also removed the state's authority to provide public defense services – for which almost all drug court defendants qualify – because frequently the right to a public defender ceases, by statute or practice, upon case disposition. Although a public defender may represent a defendant at a probation violation hearing, the public defender does not continue to provide services while the probation violator is enrolled in the drug court. Consequently, the drug court defendant does not have assistance of counsel because his/her case is considered in probation status where, after the probation violation hearing, under the traditional process, he/she is not exposed to potential loss of liberty or other rights – a situation that does not, however, apply in the drug court., but, nevertheless, is frequently not distinguished from traditional probation services. Numerous appellate challenges to the termination of drug court participants in probation status who were unrepresented and the imposition of prison sentences have been dismissed, most frequently on the grounds that probation is a privilege and not a right.[25]

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[23] The observations in this section are drawn from the author's extensive and ongoing contact with hundreds of drug courts during the 1989-present period.

[24] See Caroline Cooper. "Drug Courts – Just the Beginning: How to Get Other Areas of Public Policy in Sync? Addressing Continuing Collateral Consequences for Drug Offenders." https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=2577096.

[25] See Caroline s. Cooper. "Excerpts from Selected Opinions of Federal, State and Tribal Courts Relevant to Drug Court Programs. Decision Summaries by Issue and Jurisdiction. March 2014. http://jpo.wrlc.org/bitstream/handle/11204/4086/Volume%20One_Decision%20Summaries%20By%20Issue.pdf?sequence=5.

The third factor that appears to have undermined defense counsel support and involvement with drug court programs relates to the commonly perceived punitive orientation of some drug courts (see No. 2 below) and the apparent lack of due process protections in drug court program decisions that affect a participant's participation, and potential loss of liberty and ultimate program termination that may occur. Many defense counsel report that their clients are better off accepting a plea offer from the prosecutor than risking what often appears to be uncharted policies and procedures of the drug court in their local community.

3.2.2. Inconsistent Practices Regarding Protection of Constitutional Rights of Participants

Many – but not all -- drug courts are designed to ensure the protection of participants' constitutional and legal rights. However, the frequent absence of defense counsel actively representing participants in many programs as well as in legal and policy decisions regarding program operations, opens the way for violations of participants' legal rights and/or, at best, lack of attention to protecting them. It is also not uncommon to find programs requiring participants to sign blanket waivers of constitutional rights without specifying what these rights are and the circumstances under which they might be suspended. Although reference is commonly made to the "non-adversarial" nature of drug court programs, everyone involved must be continually reminded that these are *court* programs that operate according to the applicable statutes and rules that govern all court operations.

3.2.3 Need for Clearly Articulated Eligibility Criteria Consistently and Universally Applied

One of the initial tasks in developing a drug court is the articulation of the program's eligibility criteria – particularly in terms of offenses and criminal history. Once these are articulated, however, they need to be consistently and systematically applied to all defendants to identify those who qualify. Many drug courts appear to have adopted a practice of subjectively determining who can participate rather than applying clearly articulated eligibility criteria to all potentially eligible defendants. A few programs even require an application process which the defendant must follow even though, on paper, he/she would quality, at least preliminarily, for the drug court program. Some programs require a "team vote" as to whether an individual defendant can be admitted. While the origin and rationale for these processes are not known, they are inconsistent with the legal principles and framework underlying the drug court concept: to make court supervised treatment services available to all who needed them and qualified for them. Anecdotally, programs that use these processes have been found to have relatively low retention rates[26] – an expected result since they clearly are not using evidence based criteria for identifying candidates whom the program can best serve. Most significant, however, these subjective "selection processes" appear to be major factors accounting for the relatively low levels of participation many drug courts are experiencing.

3.3 Demographic Disconnects Between Arrestee Populations and those in Drug Courts, with Disparity and Other Disconnects Resulting

One of the direct results of the lack of systematic mechanisms to identify drug court-eligible participants for drug court program participation discussed above is the disconnect that has frequently resulted between the demographics of arrestee populations and those participating in drug courts. The discrepancy is particularly noted in the degree to which African Americans participate in drug courts compared with their representation in the arrestee population. Unfortunately, data is not collected systematically by drug court programs or the criminal justice system generally that can fully identify the number(s) of arrestees potentially eligible for drug court services and their demographics, with the result that the full extent of the problem is not documented and not yet systematically addressed [27] It is, however, a concern of many, both within and outside of the justice system, and a topic addressed in a plenary session at the 2016 Annual Conference of the National Association of Drug Court Professionals (NADCP).

3.4 Reinvigorating the Leadership Role of the Drug Court Judge

Many drug courts have been/are served by outstanding judicial leaders. Unfortunately, the enormous role they have taken on is not always recognized by the court to which they are assigned and, unfortunately, when they retire or are reassigned, a tremendous leadership vacuum is created. While it may not result in the immediate demise of the program it can reduce its outreach and impact and, most important, its therapeutic focus.

Drug courts rely on services from many sectors and can only be sustained through the ongoing leadership which the court must provide to engage these entities and sustain the collaboration necessary to make drug courts work over the long

[26] These findings are based on the author's assessment of participant retention in the hundreds of drug courts she has worked with and generally documented in the individual technical assistance reports she has prepared. See: www.american.edu/justice.

[27] See Douglas B. Marlowe. "Achieving Racial and Ethnic Fairness in Drug Courts. http://aja.ncsc.dni.us/publications/courtrv/cr49-1/CR49-1Marlowe.pdf. "Wisconsin Drug Courts Grow but Racial Disparities Persist." August 16, 2014. http://www.greenbaypressgazette.com/story/news/investigations/2014/08/17/wisconsin-drug-courts-grow-racial-disparities-persist/14163761/.

term. The leadership role of judges in this regard to establish – and sustain – drug courts cannot be overstated. The judge's role vis a vis a drug court goes far beyond the courtroom and is crucial to instituting the collaborative partnership of the justice system with the public health/mental health system(s) and related agencies to make a drug court possible. With the multitude of leadership, budget, policy and other changes that affect – and can affect -- the multi-faceted justice/public health system environment in which the drug court must function, the critical leadership role of the judge in sustaining a drug court program is vital – and now more important than ever.

The judge's leadership role is also critical in keeping the drug court team focused on the therapeutic purposes and principles that underlie the Drug Court concept and how it differs from the traditional adversarial process. Without this continual therapeutic focus, it is, easy to slip back into the traditional paradigm, especially with personnel turnover.

3.5 Inconsistent Use of Evidence Based Practices

While the science of addiction and addiction medicine has developed significantly since the first drug court was introduced, these developments have yet to be systematically incorporated into the continuum of drug court treatment and related services. For example, the basic treatment services that drug courts have relied upon have been the *Intensive Outpatient* (IOP) model that entails a minimum of nine hours of counselling per week, supplemented with additional individual and/or group services as may be needed. Nevertheless, it is not uncommon to encounter drug courts that offer much more limited treatment services – clearly inconsistent with the intensive outpatient treatment services deemed critical. Similarly, the effectiveness of medication assisted treatment (MAT) has been well documented in numerous research efforts[28] and yet it is not uncommon to find drug courts that resist the use of MAT because they have been traditionally "abstinence based". The federal government's recent mandate that any program that receives federal funding cannot exclude the use of MAT if it is available has brought the issue to the "front burner". However, the long-term impact of the directive is at this point problematic for a number of reasons. The most significant reason is a shortage of physicians qualified to prescribe MAT, particularly in rural areas hit hard by the opioid crisis and desperately needing this medication. There is a need for (a) prescribers to work in close coordination with the psycho-social services provided by the drug court and (b) for procedures to be in place to minimize the possibility of diversion of the substance.

4. Strengthening and Sustaining Drug Courts over the Long Term

The preceding sections of this article were designed to provide a brief overview of the context in which drug courts have evolved and a few of the issues that have emerged as the drug court concept proliferated, adapting to the various criminal justice and political environments in which it was implemented. Many of the challenges the implementation of the drug court model is presently encountering are tied to decisions – made formally or informally – to "tweak" the model, resulting in programs calling themselves "drug courts" but clearly lacking all of the *Ten Key Components* required. In some instances, this "tweaking" also entails foregoing the constitutional and legal protections to which all defendants in criminal matters in the U.S. – drug court and non-drug court –are entitled.

It is not the purpose of this article to provide an "action plan" for remedying operational issues that have emerged, some of which are addressed above. That task can be taken on by those working more closely with individual programs. The purpose of this article, rather, is to suggest a few systemic steps that can be taken to strengthen the drug court model over the longer term and preserve the unprecedented opportunities it provides for individuals to rebuild their lives, restore relationships with families and communities, and promote public safety in a systematic and constructive way that hasn't previously been done. While there are still many excellent drug courts operating, actively achieving all of the *Ten Key Components,* it behooves all students of the justice system to take account of the past and the lessons it provides to build for the future.

Building for the future over the longer term will require a qualitative rethinking of the drug court model, not simply quantitative improvements. The following are key issues that should be considered:

4.1 Developing a Unifying Mission that all Disciplines whose Support is required can Adopt

One of the major reasons drug court programs have received the sustained support which they have is that they have become all things to all people. On the one end, they have served as pretrial diversion opportunities for defendants to obtain treatment and, if successful, to remove the stigma and associated collateral consequences of a criminal record. On the other end, they have been used as prison alternatives and advocated as vehicles for cost-savings. While these various purposes are not mutually exclusive, experience has shown that, often along the way, the overall mission of the drug court concept and the constitutional and legal framework in which it was designed to operate can become

[28] See, for example. Medication Assisted Treatment for Opioid Addiction *National Institute of Drug Abuse.* April 2012. https://www.drugabuse.gov/sites/default/files/tib_mat_opioid.pdf *; CDC Releases Guideline for Prescribing Opioids for Chronic Pain*. March 2016. https://www.cdc.gov/media/releases/2016/p0315-prescribing-opioids-guidelines.html.

compromised, particularly when the multidisciplinary collaborations required are not in sync, traditional silos of practice remain in place, and evolving research, particularly regarding addiction, treatment, therapeutic practices and related topics, does not systematically make its way into the day to day operations of a drug court program.

The "Key Components" were developed by a committee of professionals for whom the unifying mission of the drug court concept was an unspoken "given." With the many who have since circled in and out of drug court programs, it may be time to redirect attention to the purpose of these programs and develop a unifying mission statement that will set the tone and direction for these programs now and for the future and make sure everyone is on the same page as to the goals of the program, the services it needs to provide, and the therapeutic strategies that need to be employed. As part of this process, it will be useful to take into account some of the pathways drug courts have travelled that have been constructive and those which have not been. Hopefully observations presented in this article can provide a starting point.

4.2 Determining where Drug Courts belong in the Criminal Justice Spectrum

With most local prosecutors in the U.S. state judicial systems elected and the increasing focus on "high risk"/" high need" offenders who have been found to benefit significantly from the intensive supervision, treatment, and holistic services of the drug court, returning the drug court to a pre-trial status may not be feasible in many locales. However, even if drug courts operate as post-conviction and/or probation programs, there is no reason why the process cannot be expedited and enhanced so that the benefits of early intervention (*Key Component Three*) are achieved. There is also no reason why the dispositional process cannot be rethought to develop strategies for eliminating the felony conviction -- at some point -- for participants who complete the program, so that they do not suffer the collateral consequences and stigma that limit or foreclose altogether opportunities for employment, voting, professional licensing, and many other rights and privileges which are currently off limits to persons with a criminal history. Addressing these issues would go a long way in terms of promoting true reintegration of participants into the community.

4.3 Creating Partnerships with Graduate Schools to develop Curriculum that can prepare new Generations of Professionals regarding the Therapeutic Concepts imbedded in the Application of the Drug Court Concept

Among the many lessons the drug court experience has provided is the significant value a therapeutic jurisprudence approach – e.g., using the law as a potential therapeutic agent -- can add to the traditional criminal justice function. Many disciplines involved with the criminal process can benefit from this approach generally whether or not they are directly involved with drug court services. We have now developed sufficient history and experience with these concepts to incorporate them into the formal academic curriculum used for educating professionals, at least some of whom may likely be drug court practitioner or otherwise involved with the justice system in the future. Included in this curriculum should be an overview of the traditional approach for adjudicating criminal cases, along with concepts and case studies that can be applied to enhance traditional practices with such concepts as therapeutic jurisprudence, procedural justice[29] and justice system alternatives generally. In addition to law schools, schools of social work, psychology, sociology, and anthropology appear to be prime targets for this proposed academic collaboration, but there are likely many more.

4.4 (Related): Developing Partnerships with Medical Schools and Schools of Public Health.

Drug courts desperately need to partner with medical schools and schools of public health in order to ensure that continually evolving evidence based research findings are being incorporated into the treatment and related services drug courts provide. Judges, in particular, rely on scientific findings for their decision making for cases before them, and drug court cases are no exception. Partnerships with medical schools and schools of public health would have benefits for both partners. Drug Courts would have access to requisite medical professionals for both training and service delivery, as feasible, as well as current research that may be relevant to the needs of the participants their programs are serving. And medical schools and schools of public health can develop first-hand experience in dealing with the front-line substance use, mental health, medical and public health situations that drug court regularly confront.

4.5 (Related) Integrating Drug Court Principles into the Regular Continuing Education Programs for all Judges, Prosecutors and Defense Counsel regardless of whether they work in a Drug Court.

With drug courts now operating for more than a quarter of a century, it is time for the topic to be a regular component of continuing judicial and other legal education programs, just as evidence, criminal law and other substantive topics have become standard CLE segments. Hopefully other disciplines will take on this initiative as well. A well-structured CLE program on drug courts can include the critical issues that need to be addressed in developing sound evidence based programs that build on best practices, effective treatment and related service delivery models, and the organizational infrastructure necessary to ensure their effective operation. Even those who do not presently work in a drug court can

[29] Essential concepts of procedural justice, as applied to the court process, entail decision-making that is transparent, consistent, involved the "voice" of those involved, and is respectful even when decisions may not be popular for all involved. See "Beyond Intractability". http://www.beyondintractability.org/.

benefit from this training in light of the high percentages of drug and alcohol involved litigants that constitute most court caseloads – civil as well as criminal.

4.6 Developing and Disseminating Evaluative Information that Succinctly and Meaningfully demonstrates their Value

Because drug courts are complex organizations, it has been difficult to provide evaluative information that succinctly captures the benefits they provide – particularly compared to "business as usual". Most of the public doesn't fully understand how the "traditional" justice system operates, let alone the "outcomes" resulting, so providing salient evaluative information on drug courts will require its presentation against the backdrop of (1) the function(s) and outcomes of the "traditional" process, as well as (2) the research continually emerging regarding addiction, associated mental health disorders, and brain impairment that the traditional process has not addressed.

While traditional evaluation methodologies using comparison and/or control groups may make sense academically, the evaluations that drug courts need are those that can convey the diversity of needs presented by participants (e.g., substance use, mental health, medical, criminogenic, etc.), the range of services the drug court is providing, and the incremental outcomes – measured often in days – that are being achieved. Addiction is a chronic, recurring disease of the brain and recovery is an ongoing process with "cycles of relapse and remission"[30]; drug court evaluation methodologies need to follow the paths associated with these characteristics even if they don't traditional research methodological approaches.

Case in point: most drug court "evaluations" focus on the degree to which participants complete the program and do not reoffend. While these measures are important, they are meaningless without the context in which they develop. First, reporting primarily the number of "completers" and their recidivism rates, puts the burden of assessing the value of the drug court on the participant, rather than first looking at the quality of the services the program, the individualized treatment regime involved for each of the participants, and the degree to which the program reflects fidelity to the *Ten Key Components* and ongoing integration of evidence based practices. Given the frequency with which drug courts presently deviate from these quality benchmarks, evaluations of drug court programs can be significantly more useful if they first focus on the program's fidelity to the "key components", quality of services and then assess the outcomes for participants.

There is also no reason why Drug Court evaluation methodologies should not follow the protocols of evaluations of the treatment of other chronic diseases, focusing on the treatment regime in place, characteristics of the patients studied, and then the outcome(s) for the individuals involved. While summary aggregate data may be useful for some purposes, given the multi-faceted nature of addiction and recovery and the individualized treatment regimens that are needed, evaluation of drug court programs need to convey the range of needs participants present, the nature of services provided, and their respective situations at time of program entry – drugs used, years of drug use, family situation, living situation, associated mental health and other conditions, etc.

Documentation of aggregate participant outcomes can also be significantly enriched if the present focus on recidivism – e.g. reoffending – is augmented with measures of *desistance* –e.g. pro social measures associated with not reoffending -- such as employment status, family status, physical well-being, etc. -- that may account significantly for upward or downward recidivism findings. These measures can also tie into cost savings – for the justice system, employers, public health, emergency room admissions, and others where costs are incurred directly or indirectly to address the ramifications of drug use.

5. Moving Forward

How can these recommendations be implemented? Do they require money? And, if so, where will it come from?

Moving forward with these recommendations, at least initially, requires thoughtful follow up and collaboration. In most instances, the infrastructure is already in place to build upon. Ideally it would seem that follow-up efforts should proceed on a state by state basis, identifying judicial education and training entities, academic institutions, and administrative agencies that can potentially spearhead these efforts. In moving forward, however, the last recommendation – developing meaningful evaluative information – may be the first to focus on. Institutionalizing the change in paradigm that the drug court model has introduced requires convincing the various audiences whose support is needed that this paradigm shift is in everyone's interest(s). Experience has reinforced the recognition that, while the human benefits must be stressed ("drug courts save lives"), the economic benefits and cost savings must also be clearly documented. It is in everyone's interest to strengthen and sustain the drug court model.

[30] See American Society of Addiction Medicine. Definition of Addiction. http://www.asam.org/quality-practice/definition-of-addiction.

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