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Tough Love: Nurturing and Coercing Responsibility and Recovery in California Drug Courts

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This article considers the activities of the participants in California drug treatment courts and their differences from more traditional criminal courts. The article focuses on how drug court judges and defendants interact to construct the defendant as a personally responsible and rehabilitatively changed "recovering" person, or, alternatively, as an essentially "addicted" and deficient self. The research also explores broader links between the ways drug courts operate and the potential complications involved in mixing coerced treatment and "voluntary" participation. The study finds that certain kinds of defendants may be discovered to be unsuitable for participation in the program; that clients negotiate with the judge over the nature of their (numerous) infractions; and that clients proceeding through the program may be terminated, move backward in treatment stages, have their treatment extended, or be advanced forward and on to the next stage of treatment. The article argues that, while drug court provides offenders the chance to avoid imprisonment and permanent stigmatization by participating in the discourse of aid and treatment, "offenders" in drug court also submit to a combination of penal and therapeutic aims. In practice, this means that judges are likely to exercise enhanced supervision, monitoring, and control over their lives because they are being "rehabilitated."

Since the 1980s, state and federal governments have enhanced penalties for non-violent drug possession and use offenses, necessitating costly prison construction; they have also expended substantial criminal justice resources to fight the "war on drugs" (Shelden 2001). But because this war is widely regarded as having accomplished little in terms of deterrence or rehabilitation (Duke and Gross 1994a, 1994b; Hora, Schma, and Rosenthal 1999; Ryan 1998), many states have recently enacted legislation which fundamentally changes the way narcotics cases are handled (Bank 2001). Drug courts involve the closely supervised referral of drug offenders into programs which combine "treatment, life skills training, rewards and sanctions" (Flaherty 2002:1). Drug courts are specialized courts that emphasize rehabilitation over punishment and engage in the ongoing management of drug cases.

The first California drug court opened in Oakland in 1991, and the Los Angeles drug court program began in 1994. In November 2000, the voters of California by Initiative placed on the ballot and passed Proposition 36 ("Prop. 36"), dubbed the "Substance Abuse and Drug Prevention Act of 2000" (effective July 1, 2001). Proposition 36 extends the work of the original drug courts and mandates court-supervised treatment, not incarceration, for most (non-violent) drug possession and use offenses (i.e., excluding drug crimes relating to manufacture or sale). Drug courts signal a move away from a "get tough," retributive approach to criminal justice and toward a "tough love," rehabilitation and treatment-oriented approach.

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Developing upon Francis Allen's (1981) notion of the growth of a "new psychologism" in society, James Nolan (1998, 2001) notes the prevalence of a "therapeutic culture" in contemporary America and documents the expansion of therapeutic ideals and perspectives to drug courts. Nolan (2001) argues that the institutionalization of the therapeutic culture in drug courts involves the "legal appropriation of the therapeutic ethos [that] makes [many] . . . areas of human life open to judicial exploration [and] a deeper penetration into the . . . mind, psyche and soul of the individual client" (pp. 183–4).¹ Drug courts represent a unique combination of criminal justice and public health goals and concerns, and are an institutional venue engaged in the business of constructing defendants as salvageable and rehabilitating, or as irremediably deficient selves.

Relatedly, Jaber Gubrium and James Holstein (2001) discuss the "de-privatization of experience" and the institutional management of various "troubled identities" by a variety of self-processing settings in post-modern society. According to these authors, "institutional selves" are "cultural and institutional images [that] set the 'conditions of possibility' [Foucault 1979] for who and what we might be . . . These identities establish the general parameters for how the troubled self might recognizably and accountably be constructed" (2001:9–10). Discussing such self-construction in Alcoholics Anonymous (an organization with practices, orientations, and aims closely akin to drug courts), Melvin Pollner and Jill Stein (2001) note that "self-processing agents and agencies stipulate the substance and dynamics of subjectivity and provide programs through which the imputed qualities and capacities of self are formed and reformed" (p. 46).

Sociological accounts of the process of recovery from drug use also underscore the importance of persons constructing non-addict identities for themselves (McIntosh and McKeganey 2000; Peyrot 1985b; Pollner and Stein 2001). Several constructionist studies examine how recovering alcoholics and addicts in treatment programs utilize various institutionally sanctioned tools to facilitate self-transformation and commonly infuse their stories, accounts, and demonstrations of self-change with locally informed understandings of the nature of addiction, relapse, and recovery. As Norman Denzin (1987, 1993) emphasizes, there is some irony inherent in these identity-transforming processes. While the alcoholic/addict professes a sincere commitment to reform and to abandon his or her deficient self, success in the program is at the same time based on treatment staffs' assessments and determinations that the client is cooperating with and succeeding in recovery. Likewise, drug courts, which are not bound as much as other courts by formal legal requirements, base case dispositions on broader assessments of whether clients are kicking their drug habits and whether they are genuinely committed to changing their putatively dysfunctional drug involvements. Clients are encouraged and pressed to "maintain the appearance of a strong commitment to therapeutic principles" (Duster 1970:142).

Katherine Fox (2001) finds that inmates participating in a treatment program for violent offenders in prison are called upon by staff to exhibit adherence to a "rhetoric of cognitive self-change," but that treatment staff closely scrutinize the authenticity of participants' testimonials about "bottoming out," redemption, and reform because those who complete the program can seek early parole (see also Weinberg 1996). Fox (1999) emphasizes that clients in such recovery programs learned to "re-orient their 'thinking' about or perceptions of their own lives and selves" (p. 435) and to recast their personal stories into "narrative maps" (Pollner 1996) of addiction and recovery validated and enforced by treatment staff and programs.²

1. Likewise, Foucault (1979) observes that 19th century reforms in penal practice accentuated rehabilitation and treatment and brought about the expanding influence of "psychiatric expertise . . . and the repetitive discourse of criminology [to] provide the mechanisms of legal punishment with a justifiable hold not only on offences, but on individuals; not only on what they do, but also on what they are, will be [or] may be . . . to judging something other than crimes, namely, the 'soul' of the criminal" (pp. 18–9).

2. Similarly, Ferraro and Johnson (1983) and Loseke (1989, 2001) describe self-transformation among women entering battered women's shelters. In collaboration with shelter workers and other clients, these women progressively come to define themselves as "battered women," although before leaving their abusive relationships they did not view themselves as "battered" or their significant other as a "batterer," but employed various techniques of rationalization to explain and excuse his conduct.

This article considers the activities of the participants in California drug courts.³ The study focuses on how drug court judges and defendants interact (and sometimes vie) to construct the defendant as either a personally responsible, rehabilitatively changed, “recovering” person, or, alternatively, as a person in need of sanction. In so doing, our research contributes to the existing literature on stigma and stigma management (Benson 1994; Goffman 1963; Jenness 1990; Levi 1981; Reiss 1961; Scully and Marolla 1984) by investigating these processes in an as yet unexamined setting. The article also explores some broader links between how drug courts seek to accomplish the personal recovery of defendants and the potential complications and conflicts involved in mixing coerced treatment and “voluntary” participation (Peyrot 1985a).

Distinctive Features of Drug Courts

The daily operations of California drug courts and the roles of its “official” participants differ markedly from traditional criminal courts, which are characterized by greater formality and a concern with substantive law, due process, and other technical rights and protections. In fact, drug court is relatively non-adversarial. The participation of lawyers is minimized (Judge 1997) and judges shed their usual detached neutrality to adopt much more active roles in the proceedings (Marcus 2000; Nolan 2001). Judges interact directly with defendants (called “clients”) from the bench, with the overriding aim of curing them of their illegal addictions.⁴

Drug court judges are also “case managers” (Emerson 1983), with their own methods of processing and disposing of cases, who supervise and coordinate the work of what is usually a cooperative drug court “team.” This team is comprised of various criminal justice functionaries and professionals, including the judge, prosecutor, defense counsel, and treatment, probation, and incarceration personnel. Drug courts are a hybrid of therapeutic and criminal justice discourse in which the judge becomes a kind of therapeutic administrator. The hearings resemble a form of “tough love” in which the therapist-judge holds the threat of incarceration over the client.

In important ways, the role of judges in drug court is similar to that of judges in juvenile court, another specialized court that is an offshoot of traditional court (Emerson 1969, 1974; Feld 2000; Kupchik 2003; Platt 1977; Ryerson 1978; Tappan 1947). Juvenile court judges (like drug court judges) rely on fewer formally prescribed rules and guidelines than traditional criminal courts. They employ “several different and conflicting orientations summarized in the ‘social-agency’ and ‘legal image’ [views] . . . While the ‘legal image’ highlights the . . . court’s restraining, controlling and punishing functions . . . that demand some guarantee of due process . . . the ‘social-agency’ image orients activities toward providing ‘help’ and ‘treatment’” (Emerson 1969:3). In large part, the job of the juvenile court judge (like that of the drug court judge), is “to function as a . . . clinician, conducting the hearing so as to maximize personal rapport . . . and implementing a detailed treatment plan giving priority to . . . care, guidance and protection . . .” (Emerson 1974:621). Judges develop relationships with defendants to mentor them and to motivate them to stick with the program and complete treatment (see *County of Los Angeles Drug Court Program Standards and Practices* 1994:15–6).

Both drug courts and juvenile courts combine an emphasis on rehabilitation and punishment, and judges in both courts employ discretion to individualize sanctions and punishments.

3. The first drug court was established in Miami in 1989; by July 2000, there were more than 500 drug courts operating nationwide and an additional 295 in the planning stage (Hora et al. 1999:455; Nolan 2001:210).

4. Upon entry into the drug court program, defendants are referred to as “clients” of the court. This designation underscores a decisive change in defendant-orientation from traditional criminal courts. It suggests that drug court clients have become service recipients of the court organization and members of its organizational “team,” oriented to facilitating their own recovery from addiction and “best interests.” For related research on organizational “client construction” in various human service work settings, see Holstein (1992), Loeske (1989, 1993), and Spencer (1994).

Judges in juvenile court and drug court also exhibit great flexibility in conducting courtroom proceedings; the atmosphere attending proceedings in these courtrooms is routinely “therapeutic” compared with traditional criminal courts. However, there are also important differences between juvenile courts and drug courts. Drug court judges are more directly involved in supervising and monitoring the lives, treatment, and recovery of defendants than are judges in juvenile courts. They frequently review treatment and other progress reports, and conduct regularly scheduled court appearances during which they engage in substantial personal interaction with defendants proceeding through the program.⁵

To facilitate the participation and recovery of drug court defendants, many drug court judges try to accumulate as much individualized information on defendants as possible. One judge explained (J indicates judge):⁶

J: Many people, especially [those] with very long records [feel] . . . they are a number. They feel they’re invisible . . . And so a lot of times, it’s just their knowing [that] they’re no longer anonymous, they’re no longer a file number . . . And I tell them, “I know *everything* I can know about you in order to try and see if I can help you.” Sometimes, that works well. Because they figure, for the first time, somebody who really has the power to do something for me or hurt me, knows me . . . knows more about me than anybody ever did . . . They realize the game is kind of over. “Maybe I better get my act together.” (Interview with Drug Court Judge)

Much importance is placed on using such personalized knowledge in processing and interacting with individual defendants to show them that they are known and will be held accountable by the court.

J: One of the keys to this job . . . [is] the interaction of the bench officer with the participant. It’s a big key. If you are actually just an assembly line, rubber stamp, it’s not gonna have half the impact. Now, with some people, it’s not gonna have any impact anyway. But I feel it’s part of my job to try and retain as much personal information to try and show as much individuality as I can to each person in hopes that the person will say, “okay I’m no longer that number. I’m really gonna be held accountable here.” (Interview with Drug Court Judge)

Drug courts’ work of mentoring and monitoring defendants to help them (re)build their lives involves providing closely supervised time for clients to practice (and demonstrate in court) that they are living sober and responsible lives; it also involves holding clients accountable for their conduct and choices. Despite an emphasis on treatment and rehabilitation, drug courts are not completely free from resort to punishment. The judge’s authority is frequently exercised in courtroom exchanges to warn, admonish, or penalize a defendant who commits a perceived “infraction” of program conditions or broader treatment goals. Rewards for defendants who comply include less frequent court monitoring, fewer drug tests, gifts and advancement to the next stage, and, ultimately, “graduation.” The judge also uses a scheme of elevated remedies, including more frequent drug monitoring and testing, increased community service, and “shock” incarceration, all of which are believed to provide addicts with the “incentive” to complete treatment.

5. Scholars suggest that over the past thirty years, juvenile courts have moved away from their original focus on rehabilitation and now employ procedures which are closer in emphasis to the more retributive goals of adult criminal courts. Juvenile courts “waive” an increasing number of juveniles into adult court; the courts show a greater formalization of rules and procedures; and the system limits the discretion of juvenile court judges to individualize interventions and sentences incorporating therapy and treatment (Ainsworth 1991; Feld 2000).

6. In terms of the kind of client information which different treatment providers give the court:

J: It’s apples and oranges because . . . each treatment provider has its own format of reporting. Some of them are *very* close to the vest—they give out no information. They basically say, “client attended so many groups, so many individual, missed so many, or had so many urine analyses . . .” and they just go with that. Some of them actually give you an idea . . . if a client is cooperating—they put comments in “client’s cooperating” or “they’re open to change” or whatever. They actually do all these notations that really help the court. (Interview with Drug Court Judge)

Setting and Method

This article draws on prior sociological studies, including a body of ethnographic and ethnomethodological research on court activities, plea negotiations, and responsibility attributions (Burns 1996, 2000a, 2000b; Emerson 1969; Garfinkel 1967; Holstein 1993; Komter 1997; Lynch 1985, 1997; Moerman 1988; Peyrot 1982b, 2002; Peyrot and Burns 2001; Pollner 1974, 1979; Pomerantz 1978; Sudnow 1965). Like other ethnomethodologically-informed studies of work and ethnographies of institutional settings, the present research emphasizes the need to take into account the organizationally and institutionally specific competencies and features that comprise the dynamics under investigation (Burns 1998, 2000a, 2000b; Emerson 1969; Garfinkel 1988, 1996; Livingston 1986; Lynch 1985; Macbeth 1991; Miller 1994; Peyrot 1982a, 1982b; Sudnow 1965). In this study we pursued a naturalistic and ethnomethodological interest in discovering “what local people consider meaningful [and] making their concerns accessible to readers who are unfamiliar with their social world” (Emerson, Fretz, and Shaw 1995:108). We also sought to adopt a policy of “ethnomethodological indifference” (Garfinkel and Sacks 1970), suspending evaluations of whether the presentations of defendants are honest, the judges’ interpretations correct, or the actions taken effective in achieving rehabilitation goals.

Our efforts to obtain ethnographic access to California drug courts began in August 2000, when one of us requested permission from the presiding judges of the “Citrus Branch” and “Metropolis Branch” (pseudonyms) drug courts to observe there. Ethnographic observations were primarily conducted in these two Southern California drug courts. In addition, one of us twice visited the state’s largest drug court, “City Branch” (pseudonym) drug court. The Citrus Branch courthouse is located in a largely affluent and Caucasian community. Metropolis Branch, by contrast, is situated in a predominantly African American and increasingly Hispanic, low-income community. City Branch courthouse is located in a large downtown and primarily business district.

The drug court defendants observed were all adults and tended to be younger (generally in their 20s and 30s); a substantial number of them were female. Most of the drug court defendants in the Metropolis Branch drug court program were black or Hispanic, while most of the defendants in the Citrus Branch program were white or Hispanic, although some were black. Most of the defendants in the City Branch drug court on the days observed were black or Hispanic, although several were Caucasian. None of the defendants in any of the drug court sites appeared to be Asian American.

Approximately 75 drug court sessions were observed, and the data include detailed fieldnotes of the interactions between judge and defendant in these sessions. All of the observational data reported in this article are from interactions in drug courts collected from August 2000 through August 2002. Most of the fieldnotes reported in the article were collected by one of the authors, except for a few cases which were recorded by students who conducted field research after receiving training in data collection techniques.

The drug court sessions were held either in the morning or the afternoon. The morning session typically ran from about 9:00 a.m. until 12:00 p.m. and the afternoon session from about 1:30 p.m. until 3:30 p.m. The courtroom sessions consisted mainly of exchanges between the drug court defendant and the presiding judge. Using a shorthand of legal and conversational notations and abbreviations, we worked to produce as accurate a record as possible of the unfolding interchange and activities in their detailed, contingent character (Emerson et. al 1995). Of course, as a result of this method of collecting data, features of fine temporal organization are not available in the transcripts (West 1996). However, the data do provide access to practices of reasoning, negotiation, and argument which are highly consequential to case processing and disposition in California drug courts (Burns 2000b, 2001).

The data also include four semi-structured interviews conducted in the summers of 2001

and 2002 with current and past presiding judges of the Metropolis, City Branch, and Citrus Branch drug court programs. These face-to-face interviews lasted from one to two hours each and all of the interviews were tape recorded. The interviews addressed the history of the California drug courts and the judge's work therein (especially in interacting with defendants to determine eligibility and infractions).

Several informal interviews were conducted with prosecutors and defense attorneys in the Metropolis and Citrus Branch drug courts during days of observation. Also, an informal conversation/interview with one drug court judge occurred after the judge observed the researcher's copious note-taking. The judge was concerned that such note-taking might affect the defendants' recovery; he also worried about protecting the anonymity of the defendants and the confidentiality of their sensitive medical, relapse, and other personal information. Anonymity of the participants was promised and no interviews or informal conversations were attempted with any of the drug court defendants.⁷

The data also include televised interviews with the supervising judge of the countywide Los Angeles Drug Court Program, a presiding drug court judge, two of the authors of California drug court legislation, and a district attorney, public defender, and probation officer involved in the California drug court program. The televised interviews were videotaped and transcribed from broadcast coverage on two local cable station news programs entitled "Week in Review," and "Perspectives on Prop. 36," and a public television program called "Life and Times," all of which aired between May 2001 and late August 2001. Finally, the data include media accounts of the drug war, drug courts and drug court legislation from two public newspapers (the *Los Angeles Times* and the *Wall Street Journal*), a legal newspaper (the *Los Angeles Daily Journal*), and the official California State Bar publication (*California Bar Journal*).

The California Drug Court Treatment Program

Not all defendants arrested for substance abuse-related offenses are eligible to participate in the drug court treatment program. For example, those who have committed crimes involving the sale or manufacture of controlled substances, or those who have committed any prior violent criminal offenses are ineligible "because our federal funding eliminates the ability to treat [these] people" (Interview with Drug Court Judge). However, even where there are clear criteria in principle, the application of those principles involves discretion.

J: Even misdemeanor violence keeps you out of drug court . . . If you do have misdemeanor violence convictions, then you are only eligible for drug court if everyone in the team votes you in. And usually the "no" votes are from the bench or from the prosecutor . . . If treatment wants to work with you despite the fact you had something 20 years ago in your background, they usually vote "yes" . . . If you have a unanimous vote, you can get in with misdemeanor violence. (Interview with Drug Court Judge)

Clients admitted to the drug court treatment program progress through several stages as they comply with treatment requirements.⁸ There is an initial "trial phase" of the program that lasts from two weeks to "however long it takes them to actually get acclimated to the program" (Interview with Drug Court Judge). During the trial phase, defendants must attend an initial program orientation, assessments are undertaken by the Probation Department of each

7. As a result of not having access to defendants' vernacular descriptions of their activities, this article necessarily analyzes events from the perspective of the judges, i.e., the article is an analysis of judges' work, including the ways that judges interpret and respond to the activities of defendants. However, this analysis does not imply that we agree (or disagree) with the judges' characterization of defendants. We use judges' vernacular accounts to provide access to the organization of interaction in the courtroom.

8. This article thus follows the "moral career" of drug court participants, which entails the "regular sequence of changes . . . in the person's self and his framework of imagery for judging himself and others" (Goffman 1961:127-8).

defendant's eligibility to participate and by the treatment provider of their suitability for treatment, and the defendant's potential for continuing in the program is evaluated.

Stage 1 of the program focuses on stabilizing defendants, orienting them to the program, and assessing their adaptation to treatment. A comprehensive treatment plan is then developed (e.g., attending individual and/or group therapy and twelve-step meetings such as Narcotics Anonymous or Alcoholics Anonymous) and there are frequent drug tests, group meetings, and group and individual counseling sessions.

Stage 2 is a continuation of intensive substance abuse treatment, with individual and group counseling sessions, 12-step meetings, vocational/educational counseling and referral, and less frequent urinalysis drug testing. The emphasis of this stage is on a drug-free lifestyle, social adjustment, and the development of coping skills and a drug-free philosophy.

Stage 3 focuses on transition and preparing the client for no longer being in the program. It continues to center on a drug-free lifestyle, usually with increased emphasis on the development of work skills and the progress of educational and vocational training and plans. Before a participant is allowed to complete the program and have his or her criminal charges dismissed, he or she must attend even more sessions and meetings and is subject to periodic urinalysis testing. In addition, participants must have demonstrated fulfillment of the goals stated in their master treatment plan. In this stage, the court engages in ongoing review of compliance with the treatment and transition plans (see *County of Los Angeles Drug Court Program Standards and Practices* 1994:12).

The criteria for advancing through the stages of the drug court treatment program to graduation were summarized by one judge as follows:

J: There are set criteria for how much time you have to [spend in each phase] . . . After you finish the trial phase . . . you're admitted to drug court . . . You go through Phase 1 [which is three months] . . . We don't publicize this to the participants, but only the last 30 days of the three months has to be clean tests. Phase 2 is also three months. It requires the last 60 days in Phase 2 to be absolutely clean tests. And meeting all the 12-step requirements . . . If they have a dirty test, they have to go back to day 1 of that phase . . . Phase 3 is a six-month period and the last three months . . . have to be drug-free . . . in order to set you up for graduation . . . You're supposed to be vocationally occupied, career occupied, or trying to get your basic skills together. (Interview with Drug Court Judge)

The individual defendant's progress through the drug court treatment program is not always a linear progression; often, defendants move backward, as well as forward, in these stages. Judges make readings on whether the defendant appears to be sufficiently recovering, sometimes returning a defendant to an earlier stage of treatment as an individualized sanction when the judge believes this will best facilitate the person's recovery.

J: It's really what we think is the best next step that will promote recovery—it can be either going back in a stage, it can be requiring the person to go to jail for a couple of days as a real shock, it could be requiring them to go into the treatment module for a month . . . basically saying, "You need such great focus and such attention that it's with you 24 hours a day." (Interview with Drug Court Judge)

Drug court judges consistently view incarceration of defendants following a relapse in positive terms, "as a sort of extension of the recovery . . . They realize they used, they realize this is the consequence. This is good . . . You have to be accountable for your continued using" (Interview with Drug Court Judge). In further explicating the rationale for such sanctioning, another drug court judge indicated that "for a lot of them that's rock bottom. That's the crisis that allows us to reach them" through treatment (Banks 2000:E4, quoting a drug court judge). Yet another drug court judge suggested that incarceration in response to relapse can operate to prevent further drug use through behavior modification.

J: The sanctioning . . . is supposed to put that kind of torture and fear and whatever else is unpleasant in your memory so that when you do cross that trigger again, you really remember

“when I did this last time, it cost me 35 days before I got back on my feet,” besides losing your sobriety . . . So . . . the behavior modification thing . . . is basically pleasure and pain, because people are very much on pleasure and pain for the first six months after they really stop using drugs . . . and it takes at least six months to bounce back. And [otherwise] most people just cannot stand that feeling of absolute depression when they find they can take that one hit and feel better, in five minutes. (Interview with Drug Court Judge)

Often during court sessions, judges engage defendants in an exchange designed to teach them a lesson or effect some change. In one such case, the judge confronted the defendant who had used drugs immediately after completing his initial detoxification. The judge used sanctions to try to convince the defendant [D] to “choose” to remain in the program.

J: You know where you’re going to detox [now]? LA County jail. If you’re not ready, you should tell me why . . . We’ll put Mr. [Jones] in jail since he wants to de-tox so badly.

D: [shakes head, indicating resistance to being jailed for de-tox]

J: Where else you gonna detox? . . . You’ve had free dope. Smoky, smoky. But now you’re gonna pay . . . You ready to go in [to jail detox] today? Today. It’s today or goodbye drug court . . . and find out how much jail [you’re gonna get] . . . State prison is a definite possibility . . . Just let me know.

[No response from D]

J: So what you’re telling me is that you’re not ready. I thought you said there was hope and you wanna get your life together.

[No response from D]

J: I’m taking you out of drug court—I’m remanding for Probation Violation hearing. PV hearing. I’ll set bail at a level you’re not gonna make . . . So you wanna detox or a Probation Violation hearing?

[Public Defender approaches and converses privately with D. Upon ending the conference, the PD informs the J that D will agree to jail detox in jail today]

J: [to D] So you’re seeing the light now? [Take the] probation violation [hearing] off calendar.

While traditional criminal courts use sanctions following law violations to segregate, punish, and deter, drug courts use sanctions as motivation. This case shows how drug courts utilize sanctions to get relapsing defendants to re-commit to clean and sober living. Despite expressing doubts about the defendant’s prospects for successful rehabilitation, the judge works hard to keep him in the program. But because treatment cannot be forced or imposed without the client’s consent (and rehabilitation is thought not to work without the internal motivation), the judge obtains the defendant’s consent to jail detoxification, rather than being removed from the program. To get the defendant to make this choice, the judge significantly constrains the options from which he can select, in effect *coercing* the defendant to *volunteer* for treatment by formulating an alternative (“State prison”) which is clearly a worse option (Peyrot 1985a). The strict sanction of immediate jail detoxification is intended to teach the defendant not only that his personal choices and actions have consequences, but that rehabilitation literally begins with the internal decision to change. Although drug court judges treat recovery as something that is personally motivated from within, and though defendants may voluntarily “consent” to participate in treatment, this does not necessarily mean that all of them subjectively seek a cure or desire treatment. It may mean that they consider their “voluntary” participation the best option, given the highly undesirable set of alternative options.

Unsuitable Clients

One of us (Peyrot 1982a) has suggested in a previous study that treatment-oriented practitioners often seek to conserve scarce treatment resources by identifying certain persons as

being unable to benefit from treatment and denying them access to treatment.⁹ In the drug court treatment program several types of clients are suspected of being unsuitable, and the judge often seeks to determine whether a client fits any of the unsuitable types. These include clients who are in denial, who perceive themselves as victims, or who have no incentive to change.

Denial of Addiction

Drug court judges make discretionary decisions about whether an individual defendant is demonstrating sufficient “amenability” to treatment, especially by admitting that they have an addiction and are in need of treatment. In one such case, the judge considered whether a recently admitted defendant who had missed several required group therapy meetings should be allowed to continue his participation.

J: [You attended only] Eleven of 25 [required group] meetings.

D: [indicates that he’s having trouble fitting the meetings into his work schedule]

J: Are you an addict?

D: I don’t believe so.

J: You do 11 meetings and I tell you 25. You’re hanging on by a thread. Mr. [client’s name]—what do you want? Wanna set your case for trial or plea? . . . You still have all your rights. Maybe Prop. 36? Drug court is denied. You don’t think you’re an addict. [Case is transferred to the courtroom of the sentencing judge]

Judges often require defendants to demonstrate their commitment to rehabilitation by characterizing themselves as “addicts.” Such admissions are commonly referred to as “insight,” while a defendant who refuses to acknowledge his abuse (with any use usually treated as abuse) is considered “in denial” (Rosenhan 1973; Szasz 1963). A denial of addiction is not typically responded to by the court as an interactional move, but is instead treated as a symptom of the addiction.

J: [Addicts] have to be held responsible . . . whatever the consequences are . . . to . . . address the issues and own up to them . . . Some people are really in denial. [From their perspective] they have a *case* problem, they do not have a drug problem. (Interview with Drug Court Judge)

Judges believe that defendants’ “denial” leads them to think the problem is that they have a court case, not that they have a drug problem. Acceptance of responsibility is seen as a key to recovery.

Defendant as Victim

Defendants sometimes complain about the treatment program, staff, or other participants. These complaints are treated by drug courts as *prima facie* evidence that a defendant is not properly “working the program” and recovering, but is instead trying to justify being an addict. In one such instance, a defendant with several prior infractions tried unsuccessfully to persuade the judge that he had an excuse for missing required group counseling meetings because he was being unfairly treated by the counselor and his peers.

D: They [the counselor and other therapy participants] are picking on me.

J: I have worked long and hard to fight for this program. I will not let you stand there and waste my time. You are a grown man and you claim that they are picking on you? Are you fourteen years old? You are twenty-four years old Mr. [client’s name] . . . The [drug treatment] program

9. These practices serve to screen out clients who are regarded as least likely to benefit from the program. To the degree that this screening is successful, the success rate of the program is enhanced. Thus, it could be argued that success rates for drug court and traditional criminal court cannot be compared fairly.

is a confrontational one-on-one program. The purpose is for the people to pick on the clients and they must learn to deal with that . . .

Judges are committed to the success of the drug court program and want cases to succeed, not only for the good of the client, but also because their success validates the program. Thus, in collaboratively assembling an understanding of treatment, the court discredited the defendant's construction of himself as a victim and countered that the defendant was not entitled to question the program (see Loseke 1993 on victim-victimizer contests). Confrontation is part of the program and a recovering person must "learn to deal with" potential "triggers" without using.

Lacking Incentive to Change

In attempting to determine a defendant's suitability for the program, judges often try to find out whether a defendant has any incentive to change. Some defendants have no need to recover because someone else is preventing their distress—taking care of all their responsibilities and hence facilitating their addiction. As the judge in the previous case noted, "your father pays for your place . . . Why would you want to get clean and sober?" Another judge explained: "Sometimes . . . you really have to try to evaluate what they have to lose and what they have to fall back on" (Interview with Drug Court Judge). The assumption is that if a defendant has little to gain from recovery, they will be less invested in the process. Therefore, much of the work of drug court judges in responding to defendants involves separating defendants who genuinely want to recover from those who simply want to get out of jail and avoid incarceration.

J: We're trying to sort out the people who are actually trying to get clean and sober . . . and those people who are just trying to get out of jail and trying to flee or not accept responsibility . . . A lot of times a person with very little record is actually a very difficult person to work with because they haven't bottomed out. [They are] very hard to work with because the consequences are not as real. (Interview with Drug Court Judge)¹⁰

For instance, the judge in the next case constructed the defendant as anything but a self-controlled person genuinely committed to treatment. In response, the defendant attempted to re-characterize himself as someone with a real incentive to seek recovery.

J: You need to stop using. You don't have the stress of having to provide food, clothing and shelter. "I can mess up. My dad's gonna catch me." That's good for your kids, he takes care of them, but bad for you . . . [You have a] cozy environment. Why do you deserve another chance?

D: There's hope.

J: Where are you looking that you see hope? It cost \$3,000 already to get you three weeks at Impact. [You're] in [the recovery center] 28 days and three days later, you use. What makes you think you have hope now?

D: I wanna do it for my kids.

The judge focuses on the central fact that the defendant cannot recover until he "stop[s] using" and emphasizes that he lacks the incentive to do so because of his "cozy environment." The best parry the defendant can offer is to assert, "there's hope," and later, "I wanna do it for my kids." In the encounter, the judge and defendant vie to establish which of two alternative court conceptions of the defendant (pertinent to the court's own priorities, constraints, and tasks in getting the day's work done) will be accepted—that of a person who can benefit from

10. "Hitting bottom" or "[c]onfronting one's alcoholic situation, finding it intolerable, and surrendering to alcoholism" is also a key notion in the Alcoholics Anonymous version of alcoholic career trajectories (Denzin 1993:144, 156–7, 374). Hitting bottom is the first stage in "becoming sober," which is a step-wise process "that may be repeated several times before the alcoholic establishes a stable sobriety trajectory" [i.e., period of continuous sobriety] (Denzin 1993:156).

his mistakes, move forward and take responsibility, or someone who is essentially unchanged, a manipulative addict who lacks self-control and the personal motivation for recovery. The key for judges in determining suitability and whether the client is ready for recovery is whether or not the person admits that he or she is in need of help.

Negotiating Infractions

Judicial assessments of defendants' continued suitability to participate in the drug court program and of their compliance with (or infraction of) program requirements are continually negotiated in courtroom interchanges.¹¹ Although the rules of the program and the nature of infractions are explicitly stated, many ethnomethodological studies have shown that practical actions involve a case-by-case (re)specification of what the rules actually are and how they apply to the case at hand (e.g., Burns 2000a, 2001; Garfinkel 1967; Lynch 1997; Peyrot 1982b; Pollner 1979; Sudnow 1965). Defendants' infractions of program conditions or requirements routinely become the focus of interchanges between the judge and defendant, as the judge calls upon the defendant to account for his or her alleged act and accept responsibility and accountability for it (see Burns 2000b; Emerson and Messinger 1977; Pomerantz 1978). Not surprisingly, since defendants who violate program conditions are subject to reprimand or sanction by the court, many do not voluntarily *accept* blame for a claimed infraction, but defend against accusations by challenging the charges and offering excuses (Emerson and Messinger 1977; Holstein 1993).¹² Drug court judges regularly test asserted excuses which define relapsing as something which was not their fault. Judges often regard such accounts as dishonest and confront defendants on their "maneuvering and conniving," as in the following case:

- J: [Defendant] is having problems with the truth too. Not three days [to relapse]. It took 12 hours . . . How did the conversation come around to dope? [Reading the case file]
- D: I ran out of gas. She offered.
- J: Not even close to what happened. I believe you ran outa gas. But how did you come to share some dope? Your honesty is also an issue.
- D: She had it—
- J: And *you* said?
- D: [softly] Yes.
- J: Did you pay her money for it?
- D: I accepted it. I used.
- J: Twenty-eight days of sobriety and you happened to get picked up by the one lady in LA who wants to give you dope. She said, "while I'm taking you to get gas, can I please, please give you some dope?" You don't have a job. Your father pays for your place. Your friends give you some dope. Why would you want to stay clean and sober? . . . And then you called [treatment] with some story that you had to go to the hospital and couldn't get treatment. You were high. You're not ready.

The judge constructed the defendant as someone who tried to minimize his responsibility for the relapse by casting himself as a passive recipient of another's instigation. The judge artfully mocked the implausibility of the defendant's story ("you happened to get picked up by the one lady in LA who wants to give you dope . . . can I please, please give you some dope?")

11. We use the term "negotiate" to refer to the interactive process of offering and responding to proposals regarding the nature of events under discussion and the actions which arise from the definition of these events. We do not imply that this process is based on equality of power among participants, nor that it involves a formal bargaining format. See Peyrot (1987) for a more detailed example of how the negotiation process works in conditions of unequal power.

12. Goffman (1971) notes that the function of "remedial work," such as requesting or granting excuses, "is to change the meaning that otherwise might be given to an act, transforming what could be seen as offensive into what can be seen as acceptable" (p. 109).

[see Pomerantz 1986 on “extreme case formulations”]). In addition, the judge noted that the defendant lied to cover up after using to avoid getting caught (“you called with some story that you had to go to the hospital and couldn’t get treatment—you were high”). The judge found this defendant to be dishonest and thus “not ready” for rehabilitation.

Although judges often regard the occurrence of relapse as a fact, the evidence for relapse may be equivocal. For example, drug tests may themselves be unreliable and a positive drug test is not always regarded as a sufficient condition for identifying an infraction.

J: The same substance that’s in Putafed and many of the other over-the-counter non-prescription medications have the same active chemicals that they use in making methamphetamine. And so when someone comes in as a methamphetamine case, we have to say “I’m sorry. You cannot take Putafed or anything else that’s over-the-counter that has a ‘mene’ in it because it’s gonna show positive for methamphetamine and I’m not gonna believe that you took Putafed rather than taking methamphetamine.” (Interview with Drug Court Judge)

Drug court judges (like defense counsel in criminal prosecutions of drug cases) are keenly aware that “other substances can create the same result” as the illegal drug at issue. But unlike a defense attorney who might mount an attack on the analysis of a drug by a forensic chemist testifying for the prosecution, drug court judges show little interest in matters which could lead such experts to acknowledge the limited validity of their testing procedures, e.g., questions about the chain of possession and authenticity (or contamination) of the test sample, the carelessness or bias of the testing laboratory, the qualifications of the testing chemist, etc. (Otieri, Weinberg, and Pinales 1982:250). Drug court is not a criminal trial court where a defense attorney zealously advocates for the accused and where the burden of proving the case beyond a reasonable doubt is on the prosecution. Thus, drug court judges can presume guilt in pursuing a confession of relapse and place the burden of explaining away an apparently positive drug test result on the defendant.

Even if a positive drug test is accepted as accurate, it may not be regarded as indicative of *illegal* drug use. For example, one defendant involved in the program for heroin abuse admitted to being prescribed codeine (which caused her to fail a mandatory drug test), but maintained that she received the drug from an emergency room doctor after receiving an injury to her hand which necessitated several stitches. (DA is the district attorney.)

J: [reading file] I understand she had some problems because of her hand. She was playing basketball and put her hand through a window. Of course, she doesn’t need any medication?
 D: It hurts.
 DA: So you ARE taking something?
 D: At least for a few days.
 J: So we can’t patch her? [a “patch” is a kind of drug test]. You’re either having a bad month or you’re doing just what a real addict does—a real addict makes sure they have all kinds of medical problems to keep a prescription going. If I see something else, I know it’s a fake . . .

The judge indicated his understanding of the common ploys of addicts to get drugs (“a good addict is gonna be as manipulative as possible”—Drug Court Judge) and expressed skepticism that the injury was genuine. While the judge did not sanction the defendant at that time, he put the defendant on notice that a relapse would be presumed if she failed a drug test again.

Even when defendants admit to drug use infractions, they may offer an explanation that attempts to mitigate its severity. In the following case, a defendant who tested dirty for cocaine did not dispute her violation, but pled extenuating circumstances.

J: Let’s see how long it took you to find your drug dealer.
 D: I need this program [crying].
 J: Cut the garbage and save the tears because they are not doing a thing for me.
 D: [softly] I know, I know.
 J: Who’d you do it [the cocaine] with?

D: On Tuesday I used cocaine at somebody else's house after I found out that my father'd been shot and was in a coma.

J: Using cocaine wasn't gonna make your father any better. [addressing the courtroom audience] Notice how she stopped crying when I told her to? Nice way to control your crying Miss [client] . . . I'm gonna give you the patch [a drug monitoring device worn continuously on the body]. You wear it or you do jail time. [The judge explains that the patch detects whether a client uses drugs or not] If the patch comes off, I will assume you're dirty.

This defendant's defense—that her drug use relapse was triggered by hard times—is not accepted as a legitimate excuse for using. Instead, the judge deals with the defendant's emotion-laden excuse by formulating it as a strategic move designed to evoke sympathy and relieve her of responsibility, rather than a genuine expression of emotion (see Garfinkel and Sacks 1970 on "formulations" and Goffman 1959). Nevertheless, judges in relapse cases may still show mercy or kindness by tempering the severity of sanctions they impose in response.

J: We're always going to have a death in the family. We're always going to have a lost job, a broken right ankle. Are you going to [let them] use when those things happen? Or are [they] going to use different tools to overcome that? We don't want to give the impression that says "if something *really* bad happens, cocaine is alright." So in that situation, we read them the riot act, but say as an act of kindness, "I'm not gonna give you the worst punishment." (Interview with Drug Court Judge)

The judge in the previous case engaged in such a practice and took the circumstances of the defendant's father into account, allowing her to remain in the program and mitigating the sanction to enhanced drug monitoring.

Sometimes drug court judges determine that there has been compliance with the spirit and aims of the program requirements, even in the face of an actual infraction. In such cases, the defendant has made every reasonable effort to comply and has sometimes violated the letter of the law even while conforming to the spirit of the law. The defendant in one such case admitted missing a mandatory drug test, but denied that what he did was wrong under the circumstances (compare Scott and Lyman 1970:93).

J: We had a talk about not losing focus. Work couldn't take precedence over recovery. I'm not pleased to see you were late for your drug test. What's going on?

D: I had a parent two hours late to pick up a child. By the time I was able to call [to reschedule the test] it was too late. The phone system is not working downstairs [at D's place of employment]. The parent even wrote a note [explaining this]. I begged to be re-tested at rehab.

J: Well [Your sponsor] said you covered all the bases, but why couldn't you just go upstairs to use the phone?

D: Well there is only one key [to the room].

J: I feel you demonstrated zero neglect. It was an incredible mishap. I understand your explanation. With kids, unexpected stuff happens.

Defendants in drug courts seek to be seen as making every reasonable effort to comply and doing all that could be expected of a "reasonable person" in the circumstances (Prosser 1971). In this case, the competing actions involved two competing goods—doing a right thing (i.e., getting tested on time) or doing another right thing (i.e., watching a child until one of the parents arrived), with the latter perhaps being the act of greater responsibility and altruism in the best interests of an innocent child. In exhibiting much responsibility and serving the higher moral principle and good, the defendant convinced the judge that he was committed to recovery and that no sanction was warranted. This case suggests that the individual's *motivation* to engage in activity is what is important and that one key to recovery is to have the correct motives and intentions.

Demonstrating Commitment to Recovery

It is the commitment to recovery, rather than simply the behavior itself, which figures into the decisions of drug court judges. When considering whether to admit a defendant into

the drug court program, the judge looks for evidence that the defendant actually wants to get better. Given the belief that many want to get into drug court to avoid more serious sanctions, judges may require strong evidence to overcome this suspicion. The defendant in the following case was referred by the sentencing judge of the courthouse as a possible candidate for participation in the drug court program. Throughout the interchange with the drug court judge, she acknowledged her severe addiction and commitment to recovery. The defendant rejected the option of treatment through “narcotics replacement therapy” (methadone) as just “another form of getting hooked.” The defendant also had a record of being drug-free for seven years, was employed as a rehabilitation counselor and had held numerous other legitimate jobs. These factors led to her definition as suitable for treatment.

- J: Drug court referral from the top floor [sentencing judge]. [Reads file] Heroin habit. [to D] How many bags [do you use] a day?
- D: Four bags.
- J: How long have you been addicted?
- D: Twenty-five years. Clean for seven years [starting] in 1987.
- J: You tried methadone?
- D: Don't like methadone. It's another form of getting hooked.
- J: And you don't get high. How are we gonna get her clean? Who supports your habit? How do you pay for it?
- D: Do what I have to do. Sell myself—whatever I have to do.
- J: \$80–\$100 a day [habit]?
- D: Fifty a day and I be okay.
- J: If your habit is not that extreme, we have had people detox in jail.
- D: I'd prefer something else.
- J: . . . [to treatment representative in court] Let's see if we can find a medically supervised detox somewhere in the County. We've got to squeeze her in.
- J: [to D] Have you had legitimate work?
- D: Done everything from rehab counselor, to utility clerk at a supermarket, to waitress . . .

The data suggest that a defendant's account might provide evidence to support a simultaneous inference of severe addiction *and* of the capacity for recovery. The defendant's “self” was co-constructed in the episode as an ideal candidate for admission and she was permitted to remain free and avoid jail detoxification while awaiting a bed in a medically supervised detoxification facility in the community (the availability of which is the court's responsibility and cannot be blamed on the client).¹³

Even when a defendant commits an infraction or suffers a relapse, the judge's concern is with evidence of a continuing commitment to recovery. A volunteered confession is a demonstration of such commitment and earns the person credit or consideration, whereas admitting misconduct after being caught does not.¹⁴

13. Weinberg (2000) suggests that “out there” serves as one device by which treatment staff and recovering addicts reconcile the co-existence of severe addiction and the capacity to recover—by invoking the evil forebodings and eventual death likely to befall the addict who returns to the streets after failing in treatment.

14. Thus, pleading guilty and confessing in drug court often serves to convince the judge that the defendant is cooperating (sometimes resulting in a lesser sentence), while a defendant in a criminal trial rarely confesses since doing so would likely subject them to punishment. Compare the sequential logic of accusations in trials and tribunals (Atkinson and Drew 1979) with the game of evading and pursuing “confessional truth” in interrogation (Lynch and Bogen 1996). Atkinson and Drew (1979) discuss a preference for denials of accusations and defenses in the courtroom (p. 186) and note that witnesses attempt to avoid or minimize the blame-implicative direction of cross-examination questioning by offering pre-blame justifications and mitigation (p. 142). The authors suggest that the questioner's control of the sequential organization of questioning significantly constrains the witness' response (e.g., the preference for agreement following “yes-no” questions). Yet Lynch and Bogen's (1996) study of the Iran-Contra hearings points to “the situated pragmatics of recall” and much leeway in the “truth-finding engine of interrogation” (p. 180). They discuss several techniques witnesses use to resist or undermine the version proposed by the interrogator, such as selectively asserting a memory or failure to recollect, or questioning the validity of claims embedded in a “yes-no” question.

J: It [honesty after relapse] makes a big difference . . . Our most severe sanction is [for] perpetuating a fraud upon the program . . . For example, they miss the meetings and they forge the meetings and we find out . . . There is a great deal of positive reinforcement to be accomplished by a person owning up to the responsibility, coming forward on their own steam . . . So usually the sanctions are very, very different when they come forward and say “this is a problem I have and I need help” and they go directly to the treatment provider. (Interview with Drug Court Judge)

A defendant who demonstrates honesty and repentance is treated differently than a defendant who reveals the violation after being caught, and very differently from a defendant who continues to deny wrongdoing. Sanctions are often tempered when a defendant confesses, especially in instances where the infraction was unlikely to have otherwise been detected and/or when the client’s confession is viewed as a “turning point” in his or her recovery.

J: One of the people [whose case is on calendar today] had used alcohol, but when she walked in for her next meeting, she just disclosed it . . . They would not have been able to pick it up on a test . . . And the tone [of the drug court team] was this was a major breakthrough for her—this is her getting honest. While it’s not true that she’s relapse-free, relapse is part of this process. [And] part of the process here is [to ask] what do you do when you relapse—do you run, or do you binge or do you come back to your treatment provider and say, “help me”? (Interview with Drug Court Judge)

In the case discussed by this judge, the defendant’s confession was interpreted as an internally motivated breakthrough, rather than externally motivated by the fear of being caught. Hence, treatment staff recommended that she not be incarcerated and the judge instead assigned her a writing exercise to reflect on the growth she had attained as a result of the experience.

Success in drug court requires more than complying with the letter of the law. It is about demonstrating the recovering self. The problem of how defendants demonstrate that they are benefiting from treatment is illustrated in cases where they have complied with all objective requirements and indicators, but according to treatment staff and experts, do not appear to be recovering.

J: It’s perhaps the hardest thing because you want to be somewhat objective—you don’t really know if they’re benefiting. The [treatment] experts are telling you it doesn’t appear [that they are], but these experts are not infallible—they may be misperceiving. If they’re attending all their meetings, if they’re doing all their group sessions, if they’re meeting with their counselor regularly, if they’re testing negatively, you have to be very careful . . . I think I would raise it with the person [defendant] in court [and say] “you’re doing fine with everything objective, but . . . your counselor just doesn’t think you’re getting it” and then hear what the person says. (Interview with Drug Court Judge)

In the following case, the judge attempts to determine the degree of real progress underlying the defendant’s law-abiding behavior. Several female defendants in the county jail detoxification unit used a phone card to make unauthorized phone calls during their initial stage of treatment. After the judge reprimanded and sanctioned the two defendants who made the calls, he questioned a third defendant who attempted to establish her factual innocence by contending that she did not do anything wrong.¹⁵

J: Were you involved in the phone card incident?

D: I saw them using it and didn’t tell the guards.

J: You will have to spend two more weeks in jail. You were making excellent progress in the program overall up until this incident.

D: It’s not fair that I’m doing time for them using the phone. I’m here for my recovery, not theirs. [crying] My responsibility is to myself and the program, not to tell on others.

15. Almost all crimes have a requirement of an affirmative act [called the “actus reus”] and, in most cases, an omission or the failure to act is not criminal.

J: Honesty to self is the first thing. But part of the recovery process is dealing with honesty toward others.

The judge found innocence of the misdeed to be insufficient to demonstrate recovery (though it would have been sufficient to avoid responsibility in traditional criminal courts) and indicated that the conduct required of drug court defendants includes compliance with the spirit of the rules by not tolerating and reporting violations by others. Though the defendant in question did not commit the criminal act (theft/fraud) of the other two defendants, she also did not go to the next level of demonstrating recovery (compare the edict of “no snitching” in the “convict code” as identified in Wieder 1974). Yet, the defendant had been showing a fairly high level of recovery up to that point, which nagged at the judge who later informed the fieldworker that he was considering reducing her sentence. This case suggests that there are several levels of compliance, including: not making it in the program; being “on your way,” but not as good as you could be; and demonstrating acceptable recovery. Ambiguity about the degree to which the defendant in the case had demonstrated recovery occasioned the judge’s uncertainty about the appropriate point at which to impose sanctions.

Progress Toward Program Completion

Drug court judges give recognition to defendants who are succeeding in recovery by marking their progress in public interchanges, especially in advancement hearings and graduation ceremonies. In this sense, drug courts display the ritual and ceremonial features of a “rite of passage” (Turner 1974).

Advancing to the Next Stage

Defendants are promoted to the next stage of the treatment program during advancement hearings. Advancement is formally recognized by the judge, who often gives advancing defendants visible tokens which symbolize their progress toward graduation. For instance, when defendants advance from Stage 1 to Stage 2, the Citrus Branch drug court gives them gifts such as a gold coin symbolizing hope and light, and gives them a date planner when they advance from Stage 2 to Stage 3 to represent responsibility and orientation toward the future. Such courtroom acknowledgments (like the imposition of sanctions on rule-violating defendants) are produced not only for the benefit of the advancing client, but also for the courtroom audience, which is comprised almost entirely of other drug treatment participants.

The specific procedures for advancing to the next stage vary somewhat in the different drug courts observed, although the stages of the treatment program are basically the same. In the Metropolis Branch drug court program, the procedure for advancement to the next stage of treatment requires the active involvement of defendants. Defendants are ordered by the court to take the witness stand and attest to specifically how they have benefitted from the program and why they should be advanced. In the Metropolis Branch, the drug court judge regularly enlists the participation and assistance of the courtroom audience to validate the court’s advancement decision, often soliciting their applause in response to the question of whether a given defendant should be advanced.

J: Okay why should we move on to Phase 2? [J smiles at D] How is life different?

D: I have better coping skills and listen more.

J: I can see that. [pause] Do you still know everything?

D: No. I’m open-minded now.

J: Humble? Willing to LISTEN now?

D: [laughs and nods his head affirmatively]

- J: [to court staff] I wish there was a way to tape record the defendant at the beginning of the program and now so that we could see the difference.
- D: It's been a personal challenge. I THOUGHT I knew everything.
- J: [nods] Yes, there have been lots and lots of changes. [Looks at courtroom audience] Big hand? [Everyone in the courtroom audience applauds]
- D: [smiling] Thank you.
- J: [to audience] This is testimony of how the program can work and make a difference. [to D] Cure your urges, then you can accomplish a lot. Get your sobriety under your belt.

As one drug court judge explained, the purpose of a formal statement by the advancing client is that "if you don't say some of the right things, then maybe you haven't progressed as much as we think" (Interview with Drug Court Judge). In advancement hearings, aspects of a defendant's prior and present motives, actions and appearance before the court are often invoked and juxtaposed by participants to evidence how defendants have changed for the better, are recovering, and becoming more responsible in their decisions and conduct (compare Lynch 1997; Pollner 1979). As the preceding case and the following case suggest, in articulating how they have improved, defendants often mirror the court's own re-socializing discourse of rehabilitative change and individual responsibility, and do so through collaborative "co-tellings" with the judge (see Jefferson 1978).

[D asks to be advanced to Phase 3]

- J: How has your life been since you've been on the program?
- D: I'm now working full time at Tall Mart [retail store]. I only work and attend meetings. I have a much better relationship with my kids since entering the program.
- J: What was your relationship like with your children when you were not clean?
- D: [sighs] It was non-existent. I was not even there for my kids.
- J: It's never too late to heal things. Your dedication to cleaning things up has brought you back with your kids. What state was your life in a year ago to this day?
- D: I was off the deep end and going nowhere. I feel that doing the program has made me more responsible and I have no intention of stopping my treatment. Overall I feel much better about myself. I also recognize my blessings and humble myself everyday.
- J: You look marvelous and I'm happy your life is on track. You really look like you have it together. I should show you an old photo of yourself! Your skin is glowing and you are all together.
- [to courtroom audience] Do you think she's ready for Phase 3?
- [Courtroom audience says "yes"]
- J: Come receive your chip.
- [Audience and judge applaud as she is handed her chip]

Graduating Into a Moral Life

Even after offenders convicted in traditional criminal courts have served their sentence and re-paid their "debt to society," most have great difficulty returning to a conventional life. There is no formal ceremony capable of undoing the degradation and stigmatization that marked their conviction and of returning their status to that of a bona fide community member.¹⁶ Conversely, for most drug court defendants, no initial "status degradation ceremony" (such as a guilty plea or conviction) marks their departure from conforming society. Rather, most drug court defendants enter treatment before pleading guilty (with their ultimate status as law-abiding or "criminal" held in abeyance during treatment), and have their drug charges dismissed if they are able to complete treatment. Successful defendants in California drug courts not only avoid a criminal record, but as part of the routine operations of drug courts, participate in a public ceremony in their honor called "graduation." Graduation day amounts

16. On "status degradation ceremonies," see the early work of Garfinkel (1956:420) and Emerson (1969). Compare Tannenbaum (1938) and Tappan (1960) on the educative and socializing functions of criminal proceedings.

to an elaborate reintegration ceremony, in some instances with fancy cakes, the wearing of caps and gowns, and the distribution of diplomas and commemorative tee shirts (with such messages as “Refuse to Abuse” or “Hooked on Recovery” [Marcus 2000]), as well as inspirational commencement speeches by high profile public figures who often are themselves recovering addicts. These ceremonies are legitimizing public pronouncements that the offender’s deviance has ceased and that he or she is eligible for return to the community.

On graduation day, the judge typically congratulates each drug court graduate, commenting on both his/her problems and accomplishments.

J: Mr. [client’s name] had a cocaine dependency problem. He has one year clean and sober as of April 3rd. He has employment full-time and we believe he’s made a commitment to staying clean. One day at a time.

[J hands client a diploma and shakes his hand as a photo is taken and the audience loudly applauds].

Ending with the now familiar Alcoholics Anonymous mantra, this judge marked how, even at graduation, a client’s status remains one of a “continually recreated recovering self” (Pollner and Stein 2001) and not that of a person who has once-and-for-all recovered. While traditional criminal punishment has a definite endpoint, drug court rehabilitation and recovery remains ever open-ended.¹⁷

Conclusion and Implications

Steven Duke and Albert Gross (1994b) suggest that the current “drug problem” has two aspects: “The first is the human appetite for drugs and the costs of feeding that appetite . . . The second component is . . . the costs and casualties of the drug war itself” (Duke and Gross 1994b:8; also see Duke and Gross 1994a). The emergence of drug courts in California and across the country reflects a change in policy concerning how to properly characterize the problem of drug abuse and when and how to resort to the criminal justice system as an institution of social control. Drug courts provide an alternative to the recently prevailing retributive system of incarceration for substance abusers, which has been shown to be both expensive and ineffective. Their advent marks an overall shift in criminal justice policy away from an emphasis on punishment and deterrence of drug offenders and toward a greater emphasis on rehabilitation and treatment (Skolnick and Curry 2000).

When compared with traditional criminal courts, drug courts alter the terms of personal responsibility and accountability, as well as court surveillance, sanctioning, and control in interesting ways. They are less concerned with adjudicating and responding to legal transgressions and strive instead to “rehabilitate” their “clients.” By both medicalizing and moralizing the problem(s), judges are less interested in particular actions and more so in what the actions reveal about the selves under consideration. Because selves are at stake, surveillance takes a different form and expands to a new depth; judges look beyond, behind, and beneath surface appearances to see if defendants are worthy of “treatment” in drug court and if they are succeeding according to the court’s terms. Drug court judges try to determine if they are dealing with persons who can be repaired and restored, or with irremediably deficient selves (compare Emerson 1969 on moral assessment in juvenile courts).

Drug courts dispense justice as a distinctive form of “tough love,” conveying the dual message to defendants that while the criminal justice system cares about helping them overcome their addiction problems, it also requires defendants to be responsible and accountable.

17. A drug court “sentence” is deeply indeterminate in the sense that a defendant is never completely out from under it after “doing his time.” Just like in Alcoholics Anonymous and other 12-step programs, the drug court client is held accountable to the standards of being a perpetually “recovering” person, always *in-the-making*, *being rehabilitated* and *in recovery*.

These courts blend discipline with help and encouragement in an effort to end participants' drug use and aid them in becoming responsible and productive citizens. But there is also a recognition by drug courts of limits on their ability to alter personal motivation or collective morality and compel drug offenders to remain permanently drug-free, change their lives, or fit into society.

On a societal level, the drug court movement has continued and expanded. The newly enacted California Proposition 36 implements on a massive scale the court-supervised drug treatment that had begun just a few years earlier with the original California drug courts. Prior to the July 1, 2001 effective date of Prop. 36 (California Penal Code, section 1210), there were already operating in California, though relatively unnoticed, approximately 100 drug courts (Kimble 2000:9). Post July 1, the original drug courts continue to operate as County-sponsored drug programs, along with the "deferred entry of judgment" ("DEJ") drug diversion program (California Penal Code, section 1000). The majority of defendants with new drug possession and use offenses are now being processed in Prop. 36 drug courts (Interview with Drug Court Judge).¹⁸

Robert Emerson and Sheldon Messinger (1977) underscore that problems and their remedies are reflexively related—the specification of the "trouble" at issue delineates the remedy (or range of remedies) considered appropriate in response. And, the particular remedy which is adopted in turn affects the definition of the problem(s) it addresses (Emerson and Messinger 1977; Miller and Holstein 1993). Difficulties of treating persons in an institutional setting traditionally organized to allocate blame and impose punishment arise as central features of drug courts. Notwithstanding the "consent" of defendants to participate in the treatment program, the regulation of their living situations and the frequent drug testing they undergo involves some loss of privacy, disclosure of otherwise confidential medical information, and a measure of coercion—plus the risk (if the defendant does not complete treatment) of an incarceration sentence longer than that which typically results from a plea bargain or adjudicative disposition.

Yet the legitimacy of drug courts, indeed their very existence, is based on a departure from the mainstream model of criminal justice, which presumes that criminal defendants are self-interested, rational actors who are fully responsible for the conduct which brought them before the court and fully capable of changing their behavior in response to criminal penalty. The drug court model, by contrast, allows that some criminal defendants are not in fact fully responsible for their conduct because they suffer from an addiction that undermines their capacity to behave as autonomous and self-interested rational actors.

On the one hand, any treatment that is backed up by the threat of criminal sanctions is never fully "voluntary" (Peyrot 1985a). Along with the chance for offenders to end their illegal drug addiction and avoid imprisonment and permanent stigma by participating in the discourse of aid and treatment, substance abusers also submit to the drug court's combination of penal and therapeutic aims (Goldkamp 1994; Nolan 2001, 2002). In practice, this means offenders are held accountable to judges who employ broad discretion to make findings, select among penalties, and decide what is in their "best interests." The net result is the expansion of the state's supervision, monitoring, and control over offenders' lives because they are being "rehabilitated."

On the other hand, drug court advocates maintain that drug courts in California have thus far accomplished much and even saved lives (see comments of participants on "Week in Review" and "Life and Times," which aired May–August 2001; but see Belenko 1998 on the need for longer follow-up in evaluation studies of drug courts). If drug courts have greater

18. It is not clear whether the same individualized case-processing features of the original drug courts will be viable in Proposition 36 courts. This is a result of increasing caseload and changes in philosophy relating to the fact that clients are not selected for suitability and that participation in court-supervised treatment (not incarceration) is mandated for most first- or second-time drug possession and use offenders. Case-processing activities and treatment services in Proposition 36 courts may become more routinized with demands for more economical, rapid, and low intensity processing.

freedom from the routine procedural protections of traditional criminal courts, this is part and parcel of what gives them legitimacy in the first place. Drug courts operate on the basis of the belief that some defendants genuinely suffer from addictions that restrict their ability to behave as autonomous, rational actors; as a result, these defendants may actually benefit from a decrease in their legal rights by virtue of the fact that understanding of their disability has now been incorporated into the operation of the criminal justice system.

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