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Introduction to Drug Courts

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To understand the nature and purpose of drug courts, it is important to know the events and policy actions that led to the movement and the philosophical basis behind it. This chapter discusses the history of the drug abuse problem in the United States, the effects of the drug problem on the criminal justice system, and the judicial response. It explores the concept and principles behind drug courts, and looks at the Tulare County, California, program and lessons learned in starting a drug court.

A Short History of Drug Abuse in the United States

The United States has suffered three drug epidemics with profound consequences to the criminal justice system. This section discusses the three phases of the history of illegal drug use in the United States.

The First Phase

The first phase, from 1885 to 1925, started with opium and morphine, which were prescribed freely as pain relievers. Major pharmaceutical companies advertised products containing heroin, cocaine, and codeine as refreshing drinks, children's pain relievers, and cough suppressants. When it became apparent that opiate addiction was becoming widespread, physicians turned to cocaine, which was touted as a nonaddictive cure that Sigmund Freud called a "magical drug" (1).

In 1900, public health officials estimated that 250,000 Americans, about 1 in 300, were addicted to opiates, and that 200,000 were addicted to cocaine. Congress responded by passing the Harrison Narcotics Act of 1914 and other laws controlling the import of opium and coca products and their dissemination by pharmacists and physicians. At the same time, local governments passed ordinances against opium dens and cocaine joints. President Taft dubbed this effort a "War on Drugs" (1).

Publicly funded rehabilitation clinics were established, but very little was known about addiction or how to treat it. By 1925, heroin had become illegal in the United States, and half of the prisoners in the federal penitentiary at Leavenworth, Kansas (717 of 1,482), were narcotics law violators. Government interdiction was apparently successful, and by the early 1940s illegal drugs were hard to find and heavily diluted when sold. By the onset of World War II, illegal drugs had virtually disappeared from the United States (1).

The Second Phase

The second wave of drugs swept over the United States between 1950 and 1970 as a badge of status and nonconformity. Heroin use seeped from the inner city slums into middle-class homes, while superstar musicians sang about the joys of using marijuana, LSD, and cocaine. Beatniks and hippies established a counterculture embracing drug use as a rebellion against mainstream society. Federal and state governments responded with laws prohibiting the distribution, possession, and use of many different types of drugs. Law enforcement agencies were expanded, and narcotics task forces were formed. Mandatory minimum sentences for drug offenders were established. Congressman Hale Boggs of Louisiana authored legislation that mandated 2- to 5-year sentences for first-time offenders, 5 to 10 years for second-time offenders, and 10 to 20 for third-time offenders. President Eisenhower declared a second war on drugs in 1954, and the mandatory minimum sentences for drug possession were increased again to 2 to 10 years for a first-time offense, 5 to 20 years without parole for the second offense, and 10 to 40 years without parole for the third offense (1,2).

Increasing demand for drugs fueled the supply, and European sources joined traditional Oriental suppliers of opiates, while South American farmers flooded the United States with cocaine. Mobsters like Lucky Luciano made millions of dollars in the narcotics trade. The infamous French Connection distributed tons of heroin into the United States during the 1950s and 1960s, despite the best efforts to stop the flow by the Federal Bureau of Narcotics, the Central Intelligence Agency, the Federal Bureau of Investigation, the U.S. Customs Service, and numerous state law enforcement agencies. The Bureau of Drug Abuse Control and the Bureau of Narcotics and Dangerous Drugs were created (1,2).

During the Nixon years, governments had contradictory policies about the drug problem. The use of marijuana became a minor offense in many states, and federal mandatory sentences for possession of marijuana were removed. However, upon learning of the high incidence of heroin use among soldiers serving in Vietnam, many of whom continued to use after their discharge, President Nixon declared drug abuse “the number one domestic concern.” Nixon created in 1973 the U.S. Drug Enforcement

Administration to enforce federal drug laws. For the first time, the federal government made a serious effort at treatment of addicts with the establishment of the White House Special Action Office for Drug Abuse Prevention, which was headed by a treatment specialist. Little was done to interdict the flow of drugs from foreign countries (1,2).

As drug use continued to grow, invading cities and causing welfare rolls to burgeon, experimentation in treatments expanded. Distribution of the synthetic opiate methadone showed promise to some researchers, whereas other experts denounced it as nothing more than legalized addiction and a mere resting point on the road to continued heroin use. Though scattered and ineffective, official attention to heroin addiction produced positive results. In 1973, heroin use declined for the first time in 6 years. As the hippie movement waned in the late 1960s, use of psychedelic drugs also declined (1–3).

The Third Phase

The latest epidemic began around 1980 with the reemergence of cocaine as a fashionable recreational drug and a new method to use it by smoking, called *free basing*. Increasing knowledge about addiction revealed that cocaine, far from providing a nonaddictive, relaxing diversion, is highly addictive, particularly when inhaled. Laboratory animals have been shown to voluntarily use cocaine to the exclusion of all other activities, including eating and sleeping, until they die (4). Exploding cocaine use proved lucrative to Colombian drug cartels. The Drug Enforcement Administration estimated in 1980 that Florida's illegal drug trafficking was a $7 billion business, surpassing tourism in dollars and making Miami substantially less attractive to tourists (5). In the spring of 1980, Fidel Castro authorized 125,000 Cubans to travel by boat to the United States, including over 7,000 criminals released from Cuban prisons. The influx of foreign drug users caused criminal drug activity to burgeon in Florida (1).

On the West Coast, methamphetamine use proliferated, and it rapidly became the drug of choice. Easy to manufacture in a small garage or mobile home and comparatively inexpensive, crank, or meth, rapidly outstripped the more expensive cocaine, heroin, and psychedelic drugs, which required more elaborate operations to manufacture. Although meth produces a high similar to that of cocaine, it lasts for hours rather than minutes (1).

Legislatures again turned to increasingly harsh mandatory minimum sentences. Although new diagnostic techniques such as positron emission tomography brain scans continued to demonstrate that addicted brains have different physical characteristics from unaddicted brains and that addiction can be appropriately designated a disease or disorder, popular misunderstanding about addiction drove legislatures to treat drug use as a criminal rather than a public health issue. The perception that government could punish addicts out of drug use prevailed (1,2).

Effects on Law Enforcement and the Judicial System

Law enforcement agencies had all they could handle in arresting and prosecuting drug offenders in Dade County, Florida, and the court and penal systems were inadequate to handle the flood of convicted drug criminals. The situation was the same throughout the United States. President Reagan designated narcotics an official threat to our national security. Congress created the Office of National Drug Control Policy in 1988. There was no place to incarcerate defendants once they had been convicted, resulting in the release of prisoners after they had served days or weeks of their long sentences (6). Associate Chief Judge Herbert Klein of Florida's Eleventh Judicial Circuit (6) explained:

> Putting more and more offenders on probation just perpetuates the problem. The same people are picked up again and again until they end up in the state penitentiary and take up space that should be used for violent offenders.

Criminal court judges became frustrated at committing the same drug offenders to jail over and over, each time seeing them in increasingly deteriorated physical condition. Placement in court-ordered treatment facilities achieved some results, but such facilities were also inadequate to handle the tide of convicted addicts. A single failure to comply with the prescribed treatment frequently resulted in revocation of probation and return to custody, which often meant release because of jail overcrowding.

The Judicial Response

Recognizing the futility of the existing system, some judges sought changes that would break the criminality–addiction vortex. One possible alternative was decriminalizing the use and possession of drugs. Support for this alternative was the recognition that the pharmaceutical cost of producing drugs is about 2% of the street price, with the 98% markup due to illegality. Proponents of decriminalization argued that decreasing the cost of drug use from hundreds or thousands of dollars per day to $5 or $10 per day would eliminate the need for addicts to steal and prostitute and would disempower criminal gangs and cartels that flourish in the underground drug market. They also pointed out that treatment has been shown to be five to seven times more effective at decreasing drug use than prosecution and incarceration, meaning that we could decriminalize drug use, reduce our resources dedicated to the war on drugs by half or more, provide drug treatment centers with the balance, and have a much greater impact on drug abuse (7,8).

Other observers advocated taxing drug sales to raise revenue for drug treatment. Still others advocated "dumping piles of drugs in the streets and letting anyone who wants them to kill themselves and good riddance." This

comment was made by a friend of the author's who, although somewhat extreme in his approach, is by no means alone in his viewpoint.

Some judges have simply refused to participate further in drug cases, citing conscientious objection to imposing decades-long or lifetime sentences for addicts. Some have taken the extreme position of resigning from office rather than imposing mandatory minimum sentences (9).

Continuing budget constraints have made construction of new jails and prisons difficult, while the advisability of constructing them has been actively debated. An increasingly strong voice contends that the policy of incarcerating addicted people is not only unacceptably costly but also poor social policy. Many social critics question whether additional prisons should be built because nonviolent addicts are housed with violent antisocial offenders, causing the addicts to become educated in violent criminal behaviors (10,11).

As the cost of incarceration increased and the cost of new construction of penal facilities became prohibitive, corrections officials tried other methods of punishment, including home arrest, electronic monitoring, day reporting, and work release. Judges have also made unsupervised referrals to addiction treatment facilities. Although these actions marginally relieved the pressure on penal facilities, their value in either punishing or rehabilitating offenders is questionable. Many prisoners were released to relieve overcrowding long before they completed their sentences (11,12).

A major drawback of unsupervised referrals to addiction treatment facilities was the lack of a rapid feedback loop to the judge. It was common for months to pass before it came to the judge's attention that an offender had absconded from the facility.

For a judge, it is unacceptable to sentence repeat offenders to a year in custody only to have them released after a few weeks and immediately rearrested on new charges. Such early releases send the message to drug and alcohol addicts that there are no consequences for undesirable behavior and, in fact, may reinforce the very behavior society is attempting to extinguish. The revolving door of justice for drug use undermines the integrity of and public confidence in the criminal justice system.

Rather than abandoning the value of the criminal court system in interdicting drug use, judges and prosecutors in Florida conceived the idea of combining the coercive power of the criminal justice system with rehabilitative treatment. Coerced treatment has been found to be as effective in reducing drug use as voluntarily sought treatment (2). Most drug addicts are unhappy with their lives and want to quit using drugs but do not know how to do so. Drug treatment courts are not only humanely appealing to judges constitutionally charged with fair treatment of offenders but personally satisfying as they see positive, observable changes in offenders who achieve abstinence, become employed, reunite with their families, complete their educations, and resume normal lifestyles. As a result, drug courts have proliferated. The first drug court began in Miami in 1989. By 1999, over 470

drug courts were functioning across the nation with another 200 in the planning stages. By 2005, over 1,600 drug courts were operational, and almost 500 more were being organized (13).

Concept of Drug Court

Although specific methods vary, all drug courts use the same basic approach. Addicted offenders are identified and assessed for amenability to treatment. Certain classes of offenders are excluded because of the nature of their charges. For example, defendants with a history of sex offenses, violent offenses, possession of illegal or dangerous weapons, or with an extensive nondrug-related criminal history are generally excluded. Most drug courts do not accept defendants charged with sale of drugs or possession of drugs for sale; however, it should be noted that because of the high cost of drugs, most drug users are also drug sellers. Many drug courts have successfully dealt with offenders who have been convicted of selling small quantities of drugs to support their own drug addiction.

Instead of incarceration, offenders are referred to treatment programs and closely supervised by court personnel. Offenders may be referred prior to entering a plea, or they may be sent to treatment as a term of probation after pleading guilty. They are tested frequently for drug use, and sanctions are imposed for deviation from the treatment program. The judge is a critical part of the process, and most drug courts require the participants to return to court to report on their progress. In addition to negative sanctions for violations, positive rewards are presented for milestones of progress. Treatment providers, probation officers, county addiction personnel, or specialized drug court caseworkers closely supervise the clients.

The success and benefits of a specialized court process for nonviolent, drug-addicted offenders are well documented. Numerous studies have demonstrated that when drug offenders are incarcerated after conviction, recidivism is the norm rather than the exception. According to a U.S. Department of Justice study, 50.47% of drug offenders were rearrested for a new offense within 3 years of release from custody. By 1994, that number had grown to 66.7%. Almost every penal facility in the country has exceeded its maximum designed capacity, as drug arrests and convictions increased over 10 times between 1980 and 1996 (14).

Drug courts have demonstrated lower recidivism rates. Although with a wide variance in reported results, almost every study of drug courts has shown reduced recidivism in drug court participants both during and after participating in a drug court as compared with incarceration (5,15).

Although the success of drug courts has been remarkable, the cost of implementing them is always a challenge. Placing offenders in treatment programs saves the cost of incarceration, but the treatment, usually a fraction of the cost of jail or prison, must be financed. For example, in

California it costs approximately $26,000 to incarcerate one person for a year in the state prison system, while the cost of a year in a county jail varies between $12,500 and $40,000. Effective treatment for a year can cost as little as $3,000. Testing and supervision are critical elements of drug court, and each incurs a significant cost (16,17).

Drug Court Principles

There are seven principles on which drug courts are based:

1. Retaining the participant in treatment through the pain of withdrawal.
2. Helping the participant overcome fear, craving, and shame.
3. Providing modulated and immediate sanctions.
4. Discriminating between behavior and addiction symptoms.
5. Providing a system of rewards.
6. Understanding that whether an act constitutes a punishment or a reward depends on the perception of the recipient.
7. Dismissing charges as a reward.

Retaining the Participant in Treatment Through Withdrawal

Although treatment of addicts is effective, the pain of withdrawal from drug use in the early stages of recovery from addiction is so intense that most people will avoid it by returning to drug use unless coerced to remain in treatment. In drug court, a judge has the power to impose significant sanctions sufficient to coerce people to remain in treatment. The judge, prosecutor, defense counsel, probation department, and addiction treatment providers contribute their skills to craft a treatment program that will nurture and support the person seeking recovery while providing sufficient structure and guidance through the difficult path to recovery.

Overcoming Fear, Craving, and Shame

Addiction has physical, emotional, and psychological consequences, all of which trigger dysphoria when drug use ceases. Dysphoria is an intolerable state of anxiety, depression, and discomfort that demands action to alleviate the undesirable feelings. Dysphoria is an inherent defense mechanism of all animals that provides a physiologic drive to resolve the undesirable state. It is generally associated with processes that will ensure survival. For example, hunger or thirst creates a demand for food or water to eliminate the dysphoria. A person in a compelling state of hunger will think of little else except how to obtain food to eliminate the hunger.

When the natural survival processes go awry, serious, debilitating conditions result. For example, one of the most serious problems facing the

United States today is obesity. Most overweight people recognize their obvious condition and desperately desire to remedy it. Millions of dollars are spent on various methods to help people lose weight; most of these yield no results. The logical answer is simple: eat less. Yet when faced with the compelling hunger associated with eating less, most people succumb and eat until the hunger is satisfied. No amount of self-berating guilt, shame, or desire will counteract the compulsion of acute hunger for many people.

A drug user who attempts to stop using drugs will suffer intense cravings similar to acute hunger. The cravings are overpowering and intolerable and in some instances will be accompanied by physical pain, particularly in the case of withdrawal from opiates and alcohol. Most people will seek to escape the intense adverse effects of withdrawal if they possibly can. The most obvious and readily available method of doing so is to return to illicit drug use, a response with which they are familiar that has proved satisfactory in the past.

Studies have shown that the minimum dose–response time for recovery is 3 months of treatment. Those receiving less than 3 months of treatment derive no measurable benefit (18). Those remaining in treatment the longest were the most likely to reduce or eliminate drug abuse after treatment. The intensity of withdrawal cravings will attenuate over time, although they may unexpectedly come back with renewed intensity after a period of relative calm. A client who is strongly invested in treatment and who can seek the help of his or her trained counselor during times of acute craving is better able to withstand the cravings and apply abstinence techniques learned in treatment than one who is not presently involved in treatment.

The principal value of a drug court is the ability to encourage and pressure addicts to remain in treatment through periods of dysphoria. The most effective pressure is applied by sanctions or punishments that, while undesirable themselves, also serve as a reminder of the more significant and longer punishments that will result from abandoning treatment and returning to drug use. Rewards for adhering to the treatment and recovery plan have been shown to be much more effective at retaining people in treatment than have punishments (18).

Humans are imbued with an inherent fight or flight or stress response to frightening or threatening stimuli. A person who seeks recovery but succumbs to severe cravings and returns to illegal drug use will immediately suffer feelings of guilt and shame. Shame in particular seems to contribute to an inability to refrain from continued drug use (19). The failure to refrain from drug use, followed by feelings of guilt, shame, and fear, will provoke the flight response, and drug court participants will be inclined to flee rather than to appear in court to face undesired consequences. This flight response can be very powerful, even overwhelming, especially when combined with cravings and pain from withdrawal. Past experience with punishment in courtrooms has taught many addicts that it is much easier to flee than to

return to court and face the frightening prospects of punishment from the judge along with more cravings (18).

It is necessary for a drug court judge to understand the overpowering fear and craving experienced by those in early recovery and to understand that most addicts cannot simply stop using drugs. Although there are many and varied definitions of addiction, they all include elements of uncontrollable, compulsive drug-seeking behavior and use, even in the face of extremely negative health and social consequences (20). Simply stated, if a drug user can quit when the consequences of drug use become too undesirable, they are not addicted.

Although drug courts can benefit unaddicted offenders by persuading them to stop using drugs, most nonaddicted people will cease using drugs when faced with the undesirable consequences imposed by the traditional criminal justice system. It is the addicted persons, those who are unable to stop using drugs despite a burning desire to do so, who are most benefited by a drug court. Many have desperately tried time after time to cease their drug use as they observed their own physical, emotional, spiritual, mental, and social deterioration but have been unable to do so. Often they have been afforded access to addiction treatment but were unable to force themselves to remain in treatment long enough to benefit from it. Those remaining in treatment longer are less likely to return to drug use (21).

Modulated and Immediate Sanctions

The most important function of drug courts is the ability to impose appropriately modulated sanctions within a short period of time. An appropriately modulated response is critically important. Judges are frequently faced with the unpleasant task of either crushing a defendant with a heavy sentence or imposing an excessively light punishment or no punishment at all. The ability to use a range of sanctions allows a response commensurate with the violation that will neither leave the participant feeling that there is no consequence for undesirable behavior nor that he was treated with unfair severity. Excessively light responses breed continued violations; excessive severity that is perceived as unfair causes abandonment of the program.

An immediate response to any departure from the treatment protocol is important so that the client will associate the sanction with the undesirable behavior. Waiting weeks or months between the behavior and the response causes the participant to lose the connection and to associate the response with some later behavior or, even worse, with no behavior, leaving a feeling that the system is simply punishing for the sake of punishing.

A properly structured drug court will allow the treatment team to craft a response that is forceful enough to correct the problem but not so harsh as to cause the participant to flee or to give up. If an excessively harsh or otherwise inappropriate punishment is imposed, such as remanding a

participant to jail for every drug use, an unaddicted person may be persuaded to stop using and to complete the treatment. An addicted person will likely sense the futility of continuing and run away. If every gain is lost with every misstep, no progress will be made.

Discriminating Between Behavior and Addiction Symptoms

It is important to distinguish between behavior violations and addiction symptoms. No one would seriously argue that a patient who goes to a physician for an infection should be terminated from treatment and punished if the first antibiotic prescribed does not cure the infection. The doctor would continue to work with a patient, trying various antibiotics or other treatments until the patient recovers as long as the patient is compliant with the treatment protocol. If the patient refuses to take pills or to change bandages, the physician would be justified in terminating the relationship. As long as the patient does what the doctor directs, however, it would be unthinkable to send the patient away just because the medicine does not cure the disease.

Similarly, if the participant in the drug court refuses to attend the counseling sessions, continues to live with other drug users, fails to test, or fails to attend scheduled court appearances, punishment is appropriate. If such behaviors continue, it would ultimately be appropriate to terminate the participant from the drug court. There is no reason to waste valuable and scarce resources on a client who will not comply with the treatment protocol. It is, however, unreasonable, unrealistic, and unethical to punish someone who is fully compliant with all drug court requirements but continues to suffer the symptoms of addiction, including drug use. Additional and more intensive treatment may be necessary, such as moving from outpatient to residential treatment. However, punishing a client who is following the program as instructed but does not respond to the treatment as desired will cause hostility, frustration, helplessness, and abandonment.

System of Rewards

Drug courts can foster continued involvement in treatment and recovery through a system of rewards. Although short-term changes in behavior can be enforced through punishments, for many people behavior will revert to the baseline when the punishments cease. There are also unwanted side effects from imposing punishments, such as hostility and resistance (22). Punishing effectively is an art that many lack, and attempts at punishment leave the client feeling angry, frustrated, hostile, and resentful. Punishment teaches only what not to do, not what should be done.

A more effective way to induce long-term changes in behavior is through a system of rewards. The most effective rewards are those inherent in the

behavior, but artificial rewards can be used in the short term until inherent rewards are realized. The life of a clandestine, illegal drug user is horrible. One has only to enter *methamphetamine* into any Internet search engine to retrieve a host of horrific photographs showing extreme dental decay and oral infections, gaunt, frightening images of users who appear skeletal compared with photographs taken prior to drug use, and hideous examples of infected arms and faces clawed by addicts seeking to alleviate the sensation of insects crawling under their skin. Although repairing abscessed gums and removing broken, decayed teeth may take months, in general the health of drug users begins to improve markedly as soon as they cease drug use. Once the inherent rewards of abstinence manifest themselves, there is constant reaffirmation for remaining engaged in recovery. Until then, artificial rewards can assist many people to make it through the difficult withdrawal.

One of the reasons that participating in drug court has been so satisfying for judges is the stark contrast between their experience in repeatedly imposing punishments on the same people for the same offenses and their experience in seeing participants in drug court change to law-abiding, clean and sober people who are employed and happy. The traditional approach of punishment to stop drug use has been ineffective. If punishment were effective at stopping drug use, drugs would have been eradicated long ago. The combination of appropriate punishment and rewards for productive changes has rendered great results in drug courts.

A Punishment or a Reward Depends on the Perception of the Recipient

Whether an act by the judge constitutes a punishment or a reward depends on how the act is perceived by the recipient, not on the intent of the deliverer. What is intended as a punishment may be perceived as a reward, and an intended reward may be viewed as a punishment. For example, one young man who was sentenced to participate in the author's program was entitled to receive a special mug with the drug court logo on it for completing the first 6 months of treatment. He had complied with the requirements but had always appeared stoic, uninterested and somewhat resistant at review hearings. When the mug was offered to him as a reward, he said, with some hostility, "I don't want it, or any of the other things you hand out. I would just throw them away. I just want out of here, and you will never see me again as soon as I am done." He apparently perceived the small rewards offered as an insult rather than an encouraging reward. Ten months later at the community graduation ceremony, after he had completed the program, this same young man came to the author and said, with apparent sincerity, "I just wanted to thank you for helping me. I never told you in court, but I am very grateful for the opportunity to participate in the drug court and all you did for me." Although he was resistant to

participate in the drug court, considering it a punishment, he came to consider it a reward after experiencing the benefits of sobriety.

Dismissal of Charges as a Reward

Many drug offenders will be attracted to a drug court by the potential of an ultimate reward, having the charges against them dismissed or expunged. This is not true of every potential participant, as many have lengthy criminal records and have spent years behind bars. However, a benefit for all participants, and a probable motivator to some degree, is the possibility of having their charges reduced, dismissed, or expunged after completing the drug court process.

Political ramifications differ in every jurisdiction, but, if it is politically palatable, it makes sense to provide some form of ultimate reward for those who complete the program successfully. The clients have made a difficult decision, struggled through withdrawal, and invested a great deal of time, money, and effort. They have saved the taxpayers thousands or tens of thousands of dollars and have reduced the probability that they will return with new charges. Yet these successful clients are now hampered in their desire to reintegrate into mainstream society by their criminal records, which impair their ability to obtain meaningful employment. It seems a small cost with great benefit to provide them with a way to eliminate or reduce the severity of their criminal record.

Expansion of Drug Courts

After the first bold step in Dade County, Florida, in 1989, the concept of drug courts spread with increasing rapidity. Two years later there were five drug courts, a number that doubled every year for the next 5 years. Over 100 new drug courts were added during the next 3 years, then almost 200 per year from 1999 to 2003. Nearly 500 new drug courts opened in 2004, with 500 more in the planning stages (13). One federal district court in New York has implemented a drug court.

Once the efficacy of the treatment court paradigm was demonstrated, translation to other criminal justice problems followed. Juvenile court systems, inundated with children who have been removed from their homes for neglect or abuse, became the next extension. When drug use by the parents is the root of the problem, there may be insufficient evidence to justify the filing of criminal charges, but the drug use must be addressed or the abuse and neglect will continue. Family or dependency drug courts allow the court to address the parents' addiction so that children can ultimately be returned to a stable, drug-free home. In addition, 357 juvenile drug courts help drug users or addicts under the age of 18 years escape the downward spiral of drug use before they have to face the adult criminal system.

According to the National Highway Traffic Safety Administration, there were 16,694 deaths from alcohol-related traffic crashes in 2004, with another 248,000 injured. Approximately 1.4 million drivers were arrested for driving under the influence of alcohol or some other drug in 2003. Of drivers involved in alcohol-related fatal crashes, 86% had a blood alcohol level of 0.08% or higher (23). Recognizing the serious threat intoxicated drivers pose to society, 176 jurisdictions have created special driving-under-the-influence courts to treat drivers convicted of driving while impaired by alcohol or some other drug.

Because over 600,000 prisoners are released from prison every year, many with serious, untreated drug addictions, reentry drug courts have been established to help them reintegrate into society. This concept is particularly valuable, because recently paroled people have a difficult time seeking employment and many have been denied any form of public assistance because of their criminal records. With no other form of sustenance, they turn to theft, prostitution, or drug sales to support themselves; they resume drug use to escape the unpleasant realities of life. Many have continued their drug use while imprisoned and have learned advanced criminal behaviors. Reentry drug courts can break the cycle of criminality and imprisonment, particularly if they assist with training in the life skills necessary to function in society.

Native American tribes have established tribal healing-to-wellness courts to assist members. These courts incorporate cultural values specific to the particular tribe to deal with substance abuse. Many reservations have been inordinately affected by substance abuse, and the healing-to-wellness courts can overcome cultural barriers in state-run criminal courts. Because they have sovereign status, tribes can implement the courts in a fashion that will not conflict with traditional customs and values.

Other "problem-solving courts" have been implemented to combine the power of a judicial or quasijudicial officer with treatment programs. Perpetrators of domestic violence, people with illegal weapons, compulsive gamblers, homeless persons, the mentally ill, habitually truant minors, and juveniles who engage in minor offenses have all been the subject of specialized courts that seek to address the root problem rather than simply impose punishment. Colorado State University and Indiana University have implemented special programs within their existing campus judicial systems to deal with thousands of university students who succumb to excessive alcohol and other drug use, derailing their academic careers and costing universities millions in lost tuition and fees every year. Rather than being terminated and expelled, offending students are sent to appropriate treatment and closely supervised.

All these problem-solving courts have shown results superior to the conventional approach of imposing a punishment and expecting the offender to translate the punishment into improved behavior. People caught in the descending spiral of destructive behaviors such as drug addiction, domestic

violence, and theft frequently want to return to a state of normal, law-abiding behavior and to escape the enslavement of their addictions but do not know how. Years of drug use, a history of sexual or physical abuse, poverty, mental illness, and ignorance have taken a toll on their ability to make rational choices and decisions and to adapt their behavior to accepted social norms. Problem-solving courts can assist them with support, training, treatment, and incentives to achieve what they cannot do alone.

Lessons Learned in the Tulare County Program

Tulare County is located in California's rural, agriculture-rich San Joaquin Valley. It is one of the most productive agricultural counties in the nation. Much of the agriculture is dependent on migrant farm workers, many of whom live at a subsistence income level. Many residents live in poverty, and significant social problems challenge the county government. The rates of teenage pregnancy and unemployment are high, and a significant amount of money is expended on public assistance (24).

Beginning in 1990, Tulare County experienced a rapid increase in arrests for drug offenses, principally due to the influx of methamphetamine. It was comparatively easy to manufacture locally with readily available chemicals, as opposed to cocaine and heroin, which require importation of substances usually grown or manufactured outside the country. With an investment of $5,000, methamphetamine dealers can quickly turn a profit of up to $100,000. The addictive properties of methamphetamine rapidly ensnared thousands of people of all ages throughout the county. In increasing numbers, the courts sentenced drug offenders, many of whom were seriously addicted, to jail. As inmate populations grew, the jail facilities were unable to accommodate them, and prisoners were released early from their sentences. More serious offenders were sent to the state prison and returned to Tulare County on parole, usually to reoffend.

It became obvious to county judges that the standard practice of incarcerating addicts was a poor use of public funds. A meeting was held involving law enforcement, the judiciary, county government, and mental health officials; a judge and probation official from a neighboring county presented the concept of a drug court and provided convincing testimonials of its success. Many of those who attended the meeting were excited about the concept, and a series of planning meetings was held in which there was mixed support and opposition. Although there was a high level of support from the court, the probation department, local treatment providers, and the mental health department, there was vocal opposition from the district attorney's office and law enforcement. The general feeling was that no funds were available with which to implement the program.

It was the opinion of the judges that no additional judicial resources would be required because the defendants would either be involved in the

drug court or proceed through the routine criminal process. If the drug court option induced only a few defendants to plead guilty without proceeding to jury trials, a large amount of court time and money would be saved. Probation officers assigned to each division of the court were willing to assume the additional burden of administering the program. The major obstacle was funding for drug treatment. Although the county alcohol and drug program administrators expressed support for the concept, they indicated they had no funds to contribute toward treatment.

Despite the existence of several alcohol-rehabilitation programs, there was little knowledge of treatment for nonalcohol drug addiction in the county. The owner of the local program for alcohol offenders proposed that participants be sent to this program, with modifications, and that they pay the cost of their treatment. At first this seemed unrealistic, as most people in the county with untreated addiction were thought to be destitute. The argument was made that if addicts are paying up to $200 per day for drugs, they could afford to pay $50 per week for treatment. The difficulty with this argument was that they were stealing, prostituting, or selling drugs to finance their own drug use, all of which the court wanted to eradicate. However, another treatment provider, himself in recovery, indicated that such behaviors are inconsistent with the process of recovery and that addicts would not steal, sell drugs, or prostitute to pay for recovery. Another judge with experience in a drug court laughed out loud when presented with that idea, saying, "Addicts are not going to waste their money from stealing on treatment!"

Many offenders had jobs and could be expected to use income that in the past had been used to buy drugs to pay for treatment. It was discovered later in a retrospective study that approximately 70% of the drug court clients had jobs at the time of their arrest and continued to work while in the program, many in state jobs (25).

With no other resources to draw on, the court was faced with the harsh reality of either starting the program by having participants pay for their own treatment or not having a drug court at all. Given those options, it seemed preferable to experiment with self-funded treatment rather than abandoning the concept entirely. With an uncertain future, the drug court began.

Potential participants were identified by the judges and referred to the probation officer for an interview in which the program was explained and background information about the defendant obtained. If the probation officer determined the defendant was interested in changing his or her life and embracing recovery and could pay the cost of treatment, the defendant was offered drug court. Formal terms of probation were signed that constituted an agreement to comply with the drug court requirements. The defendant was referred back to the judge and sentenced into the drug court.

Almost every participant was referred initially to an outpatient program. Several were determined to be unable to benefit from outpatient treatment

and were referred to existing residential programs. Those who could not abstain from drug use after several weeks of outpatient treatment were also referred to residential treatment. Because of long waiting lists, participants referred to residential treatment were frequently required to wait in jail for several months until a bed became available. Experience showed that over 90% of participants who graduated were able to succeed with outpatient treatment.

The original program design consisted of a 1-year program divided into three phases. Phase one treatment required two 90-minute group sessions, 1 hour of individual counseling, and attendance at two, 12 Step self-help meetings each week. Participants came to court every week and showed proof on a card provided by the treatment provider of attendance at 12 Step meetings. The counselors assigned to the participants filled out a simple, 1-page form indicating progress for the week. This report was provided to the court the day before the scheduled hearing and placed in the file by the court clerk.

Prior to each drug court session, the treatment providers met with the judge and probation officer to discuss every participant and appropriate responses to deviations from treatment. Prosecutors and defense attorneys were invited to attend, but the district attorney and public defender chose not to, considering supervision of the participants to be the province of the court and probation. Each participant was called individually before the court to discuss progress, to make changes to the treatment program, and to receive a reward for good behavior or a sanction for undesirable behavior. The counselors performed drug testing as they felt necessary.

Participants were given the option of voluntarily leaving the program and accepting the punishment that would have been imposed had they initially decided not to participate. They were not punished with greater terms of incarceration because they attempted to go through treatment.

Initially, phase one lasted a minimum of 2 months. Advancement to phase two required at least 30 days' abstinence from drug abuse and substantial compliance with all treatment requirements. The only change between phase one and phase two was a 2-week interval between court appearances.

In phase three individual counseling sessions were reduced to every other week, with monthly court appearances. If the participants had been clean and sober for at least 180 days at the end of the 7 months of phase three, they graduated out of the drug court. They remained on probation but were encouraged to apply for early termination of probation.

Few offenders were terminated involuntarily, as the goal of the program was to keep the participants engaged in treatment as long as they were making progress. This was a subjective decision that was made by the judge after input from the treatment program and the probation officer. More frequently, participants voluntarily asked to be sent to jail or prison because they were unwilling or unable to continue to pay the cost of treatment or

to abide by the strict requirements. About one fourth of those beginning the drug court were terminated without successful graduation.

Subsequent Refinements

The drug court proved immediately effective in reducing drug use and motivating participants toward accepting and embracing recovery. Experience also quickly revealed that many changes were necessary to improve outcomes. Because the treatment was based on the classic 12 Step model, mandatory attendance was increased to five meetings per week until a sponsor was obtained and then reduced to four meetings per week for the duration of the program. More emphasis was placed on completion of the 12 Step process and knowledge of the meaning of each step. Phase one was increased to 13 weeks, phase two remained at 13 weeks, and phase three was reduced to 26 weeks.

Additional treatment providers approached the court, wanting to be involved. Initially, all were accepted until it became apparent that some programs were substandard, so standards were adopted for all participating programs. Programs must now have certified treatment counselors, and, although most programs are certified by the state, some faith-based programs participate that have chosen not to be certified and regulated by the state. The court and probation department monitor those programs closely.

Inconsistencies in urinary testing were a concern. Different programs tested at different frequencies. There were also allegations that some counselors were not observing the collection of samples. Different laboratories and testing methodologies were used, and their reports followed varying formats that were hard to decipher in court. Varying cut-off levels between laboratories meant that participants were treated unequally after using drugs. To overcome this disparity, a protocol was developed and a solicitation was made for proposals from testing companies. One company was selected, and all participants were sent to a central testing location.

Each participant was assigned to a testing group based on the phase of treatment. Every morning every participant is expected to call the testing agency between 7:00 and 9:00 am and listen to a recorded message indicating which groups are to be tested that day. The short message lasts less than 30 seconds, so it requires only a very brief call. When a participant's group number was announced, he or she would go into the office and leave a urine sample before 5:00 pm that same day. The expectation is that they will begin the day focused on what is required for recovery.

There was a learning curve in the program regarding urinary drug testing. Participants tried various scams to avoid giving a positive drug test. There was an initial reluctance on the part of the court to have confidence in drug test results, thinking there might be another reason for a positive result. These hurdles were overcome by using a drug testing company that had a

recovering addict on its staff who knew every trick in the book. A protocol was developed to minimize substitution or adulteration of a specimen. The second problem, lack of confidence in the results, was overcome by experience and consultation with a physician knowledgeable in the interpretation of drug-testing results.

Originally, various sanctions were imposed for missed tests, and up to 10% of participants failed to test on designated days. A wide range of excuses were given for missing tests, from death of relatives to malfunctioning vehicles. Because testing was such a critical part of drug court supervision, the sanction of incarceration was finally imposed for missing each test and compliance increased dramatically. It was explained to the participants that a positive test was seen as a clinical issue that indicated the need for increased treatment. Failure to test was treated as a behavioral issue, because it prevented the treatment provider from knowing whether or not the participant was responding to treatment. At present, less than 1% of participants fail to test as scheduled. The drug court judge has joked openly that sending people to jail for missing tests has tremendously improved the health of the participants' relatives and vehicles.

The philosophy of the drug court now is that behavioral issues are treated with punishment, whereas failure to maintain abstinence and drug use are considered treatment issues. Sanctions are intended to encourage compliance rather than to punish participants. A standard sanction list was adopted as a minimum response to deviations from treatment. These minimum sanctions are the general rule, with agreed upward departures imposed for aggravated violations.

Most clients responded more favorably to rewards than to sanctions, and the court adopted the goal of having participants feel better about themselves when they left the program than when they entered. Verbal accolades were freely given and small steps recognized. The courtroom audience was encouraged to applaud for milestones of sobriety, such as 30, 60, 90, or 180 days. As a humorous interlude, one participant was presented with a toy beach ball upon moving from phase one to phase two. Everyone laughed, but when the next participant was advanced, he asked, "Where's my beach ball?" It became the standard procedure to award participants small "trinkets" for milestones, most of which were obtained without cost. Court personnel donate miniature bottles of shampoo or lotion and bars of soap from hotel stays, and these are presented to recognize periods of sobriety. Pens, pencils, key chains, and similar useful items that are picked up on vacation trips are given freely to recognize improvement.

As the success of the program became apparent, other donations were received and used as rewards. A nonprofit foundation was created with a board of local community leaders that support the concept of recovery rather than incarceration. Although donations are not actively solicited, the foundation has received over $10,000 in donations. A business owner who employs a participant in a key position donated $500 to purchase key rings

with a drug court logo and the message, "Recovery is a process that lasts a lifetime." The key rings are awarded to participants moving into phase two. The drug testing company donated mugs with a drug court logo to be presented to participants moving into phase three. Rotary clubs donated T-shirts with a logo to those graduating from the program. Some graduates donated to the foundation, giving between $5 and $100 dollars for each year of sobriety.

A significant number of the initial graduates experienced relapse, and counselors indicated that many felt a sense of abandonment when involvement in the program ended suddenly. To remedy this, a 6-month aftercare phase was added. The additional 6 months of involvement reduced relapse rates and allowed a more attenuated severance from the drug court and a cushioned release rather than an abrupt drop.

As a further reward to the graduates, an annual graduation ceremony has been held. Prominent figures in recovery have been keynote speakers, including musicians David Crosby, Joe Walsh, and Dallas Taylor and actors Larry Hagman, Art Linkletter, Mackenzie Phillips, and Todd Bridges. Up to 3,000 people attend the annual graduations, which are emotional events for participants, family members, and interested members of the community. Dignitaries, including law enforcement officials, prosecutors, legislators, city council members, and mayors, routinely attend and shake hands with the graduates.

The initial goal was to accept no more than 50 people into the program and then evaluate success. Because the positive effect was so immediately apparent, the population quickly rose above 50. Because participants pay their own cost of treatment, each additional participant adds only a small incremental burden on the system, principally in court time needed to review their cases. Larger populations increase the efficiency of the program because of economies of scale. For example, larger numbers help keep the cost of testing low, as fixed costs for the testing agency are spread among more clients. The treatment providers are able to add more counselors as needed to accommodate larger client bases. By early 2004, over 500 people were participating in the program.

The approach in Tulare County has been that if the drug court is to have a significant impact on the drug problem, as many people as possible should be directed into treatment. A system was developed whereby prosecutors, using agreed upon criteria, screened every offender and completed a form indicating whether the offender was eligible to participate in the program. If eligible, the program was offered at the first pretrial conference, encouraging an early settlement of the case and avoiding additional court hearings.

The concept that people can and will pay for the cost of their addiction treatment has flourished and enabled hundreds of people every year to avoid jail, embrace recovery, and return to a normal lifestyle. After 10 years, no evidence has come forth that any participant has committed theft, drug sales, or prostitution to pay for treatment.

The response of law enforcement was at first hostile. As graduation ceremonies, statistical studies, and word of mouth demonstrated the value of drug courts, many police officers and sheriff's deputies came to respect the program. Ironically, most senior law enforcement officers were open minded, freely admitting that nothing had worked before so why not try something different. Junior officers who worked the streets were angry at discovering that people they had worked hard to incarcerate were back on the streets and in some "do gooder" program. Over time, junior officers came to recognize the value of drug court, especially after participants sought them out to thank them for arresting them. Eventually, law enforcement officers were enlisted in a community effort to help the participants by giving them positive messages when they were encountered. Many officers came to appreciate their arrests of drug offenders as a therapeutic intervention.

Results

Anecdotal evidence indicated that the drug court was a huge success. To verify this, the Tulare County courts commissioned a statistical study of the first 3 years of operation. Every drug offender considered for placement in the drug court was tracked from the entrance interview to the close of the study period. Studied subjects were divided into four groups for research purposes, depending on their involvement in the program: (1) those who were considered for the drug court but found unsuitable, (2) those who were found suitable and offered the drug court but declined to participate, (3) those who began participating in the drug court but either left voluntarily to do custody time or were terminated involuntarily, and (4) those who successfully graduated from the drug court (24).

Five percent of the graduates were convicted of new drug charges during the course of the 3-year study period as compared with nearly 41% of those who were rejected for admission into the drug court and 27% of those who were found suitable but declined. In interpreting these figures, it is important to note that those who graduated were at liberty the entire 3-year period (except for some short-term incarcerations as sanctions). Those who were rejected or who declined spent all or a large part of the 3-year period in custody, where they were much less likely to be arrested for new drug charges (Table 1.1). Validating the probation officers' skill in sorting out violent offenders, only one person selected for drug court was convicted of a violent crime, and five of those rejected were convicted of violent crimes.

Because no funds are available to do a follow-up study, there is no current information about outcomes after 10 years of operation. It is the sense of the drug court team that the successful trend has continued but that recidivism of the graduates has probably increased to between 20% and 30%, which is consistent with other studies of programs around the

TABLE 1.1. Percentages of criminal recidivism after 3 years, Tulare County, California (N = 459).

Outcome	Rejected	Declined	Terminated	Graduated
Nondrug conviction	22.2	20.0	16.5	2.8
Drug conviction	40.7	27.0	21.5	5.0
County jail time	37.8	32.4	24.7	3.5
State prison time	19.8	9.5	8.2	1.4
Driver's license suspended	84.7	67.6	61.9	6.4

Source: Lessenger et al. (25).

nation. The stark difference between a 30% recidivism rate for drug court graduates after 10 years and a 70% to 80% recidivism rate for incarcerated offenders after 2 years demonstrates the need for more drug courts.

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