

The Juvenile Drug Court Judge and Lawyer: Four Common Mistakes in Treating Drug Court Adolescents

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A B S T R A C T

This article will present information gleaned from anecdotal experience of existing juvenile drug treatment courts regarding several common mistakes often made by those new to the drug court. The mistakes discussed include: 1) Believing the work and role responsibilities in a traditional juvenile court will not change significantly when entering a juvenile drug court; 2) Citing the "elimination of drug and alcohol use" as a final outcome goal when developing the mission statement for a juvenile drug court; 3) Believing that a juvenile drug court ensures "accountability" by keeping a close eye on participants and setting immediate consequences for any break in program rules; 4) Using vicarious learning to "teach a lesson"—making an example of an individual participant who has broken program rules in front of the large group. The goal of this article is not only to raise caution to these pitfalls, but also to help incoming judges and lawyers become aware of the changes that working in a juvenile drug court will demand.

I N T R O D U C T I O N

It is the rare judge or lawyer who has not experienced the satisfaction of being approached by a past defendant eager to tell a personal story of redemption—a less than desirable life or a miserable substance abusing situation seemingly made worse by an arrest and conviction. Yet as the story unfolds, the court appearance mysteriously becomes a catalyst for a positive turnaround. A negative life's trajectory has been changed. We revel in their gratitude and joy.

The formula to consistently duplicate these redemptive stories seems to elude our field. The field of addiction treatment has long had the desire and methodology to apply treatment for dissuading drug use and improving health. However, regardless of the expertise or commitment of these substance abuse staff, they have had to stand by and watch helplessly while many clients

have walked out the door and prematurely left treatment, muttering either indignation or indifference. Our court systems, serving goals of public safety and social control, could coerce mandated attendance and continuance of these same clients, yet courts never had the treatment services to extend with "in-house" autonomy and efficacy. I am reminded of Kuhn's (1970)

idea that new paradigms grow out of the mysteries of existing ones. It is not surprising, therefore, that the "marriage" between the court's mandated power and the treatment field's know-how would be brought together in a powerfully new combination within the drug treatment courts.

Adult Drug Treatment Courts

It appears the adage, "Necessity is the mother of invention" was the genesis for drug treatment courts. The first drug treatment court for adults started in the

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Dade County Circuit Court in Miami during the summer of 1989. With miles of remote shoreline, Florida was beset by drug traffickers during the cocaine "boom" of the 1980s. Lengthy sentences imposed for drug trafficking had clogged Florida's penal system, taking away detention space needed for violent and habitual offenders.

Florida was not alone. This influx of drug charges was also a burden across the country. Hora, Schma and Rosenthal (1999) report, "The 1984 Comprehensive Crime Control Act, the 1986 Anti-Drug Abuse Act, and the 1988 Anti-Drug Abuse Act, all expanded and increased federal penalties for drug trafficking and use. State legislatures followed suit by enacting similar laws that required mandatory minimum sentences with increased penalties for drug offenses. As law enforcement officials implemented the new drug laws, a wave of drug cases pushed into state and federal courts. The numbers of arrested drug offenders processed by our criminal justice system demonstrated this. Drug arrests nationally increased 134% between 1980 and 1989..." (p. 459).

To react to this large influx of drug cases, courts began trying to consolidate and expedite within the traditional criminal justice system. Hora et al. (1999) explain,

This method of consolidation developed into two general models for processing drug offense cases, both labeled drug courts—the Expedited Drug Case Method and the Drug Treatment Court. The term 'Expedited Drug Case Management' applies to those courts that still focus on standard means of punishment and probation or parole for drug offenders. EDCM courts emphasize case management and quick disposition of drug cases to eliminate or cope with the increases in drug cases. As an alternative to merely attempting to speed up the judicial process, some jurisdictions have taken a different approach. Instead of working on the symptoms of the increase in drug offenses (i.e., crowding of local court dockets), these courts looked for some method of curing the underlying problems of drug crimes—drug use and addiction. Now identified as 'Drug Treatment Courts,' this system of court-prompted and

supervised treatment for drug offenders aims at correcting the addictive behavior of the drug offenders who enter the courts. (p. 463).

Many jurisdictions rethought their approach to handling defendants charged with drug and drug related offenses. "Drug treatment court" or simply "drug court" programs began to emerge and function in tandem with the traditional adjudication process. Defendants referred to the drug court are generally non-violent offenders whose involvement with the criminal justice system is primarily due to their substance abuse or substance dependency (addiction). Defendants eligible for drug court programming are identified as quickly as possible after arrest. Referrals might also occur for those already adjudicated and receiving probation services if substance abuse problems are identified.

Once accepted into the drug court, intervention starts *immediately*. Drug court programming entails a multi-phase out-patient treatment program that involves weekly (often daily) contact with a treatment provider for therapy, counseling/education; frequent urinalysis (randomly assigned on a weekly basis), frequent progress review hearings before the drug court judge—generally occurring bi-weekly or very frequently within the early stage(s) of programming, and supportive services that might include vocational, educational, family, medical, or other rehabilitative services.

There is interest in increasing the target population. A recent report sponsored by the U.S. Department of Justice (1998) states:

Although, initially, many drug courts focused on first offenders, increasingly, jurisdictions are targeting more serious offenders for several reasons: (1) a recognition of the apparent futility of traditional probation and/or incarceration sentences which have already been imposed on many of these defendants and have failed to prevent continued drug use and criminal activity; and (2) a policy decision to use the limited resources available to the drug court for persons with serious substance addiction problems, rather than those with less severe problems who might be served through other programs (p.2).

The success has been dramatic. In a little over a decade, there have been almost 100,000 graduates from drug court programs. Drug court research (National Drug Court Institute, 2000) shows this service design provides closer and more comprehensive supervision of defendants than other forms of community oversight. The drug court modality offers a substantial cost reduction while substantially reducing drug use and criminality for defendants who are active in court programming. Criminal behavior is lower for those who have participated in drug court programs—much lower for successful graduates. There are over 280 adult drug courts in operation with 164 in planning process at this time. Adult drug courts have quickly become an innovative fixture within our criminal justice system.

Juvenile Drug Courts

With the success realized by the adult drug courts over the last 10 years, the application of drug court principles to the juvenile court population was the next logical step. The history of the juvenile drug court is brief as the first juvenile drug court was formed in 1995. Existing powers were simply extended and applied to encompass this new type of court. Cooper et al. (1998) reports, "Juvenile drug courts require no special legal authorization. The authority of the juvenile court is derived from the same source as that of the traditional judge" (p.18). Funding to support these courts can be found within Title V of the Violent Crime Control and Law Enforcement Act of 1994. The U.S. Department of Justice offers grant support and technical assistance to interested communities and jurisdictions. This assistance is coordinated by the Justice Department's Drug Court Program Office.

After several years of juvenile drug court implementations, more is now known about the foundation of knowledge and skills that is necessary for effective practice with adolescent substance abusers. This article will highlight two such qualifications for the judge, prosecutor and defense counsel. The first qualification involves a willingness to forgo traditional work roles and become aware of the unique demands of participation in the juvenile drug court team. A second qualification includes becoming more familiar with therapeutic methods and employing them for greater gains with juvenile drug court participants.

Four Common Mistakes

From my direct experience as a consultant, providing training and onsite technical assistance to juvenile drug courts, I find incoming court personnel often make four common mistakes as they join a juvenile drug court. These pitfalls include: 1) Believing the work and role responsibilities in a traditional juvenile court will not change significantly when entering a juvenile drug court; 2) Citing the "elimination of drug and alcohol use" as a final outcome goal when developing the mission statement for a juvenile drug court; 3) Believing that a juvenile drug court ensures "accountability" by keeping a close eye on participants and setting immediate consequences for any break in program rules; 4) Using vicarious learning to "teach a lesson"—making an example of an individual participant who has broken program rules in front of the large group.

1. Believing the work and role responsibilities in a traditional juvenile court will not change significantly when entering a juvenile drug court.

As with any procedural change in the work place, old habits die hard. So, too, with the traditional roles of the judge, prosecuting attorney, and defense counsel who enter a juvenile drug court. The roles from the adversarial (traditional) process have been honed for decades and are clearly defined. The judge is a detached and objective arbiter over the court, concerned with procedures and "correct" application of the law. The prosecuting attorney has a primary focus on the ("winnable") merits of a case and is concerned for the triad of conviction-punishment-public safety. The defense counsel stands vigilant to charges that should be dropped and presses for the full application of their client's legal rights, while ultimately concerned with minimizing the client's exposure to criminal sanctions.

Many enter the juvenile drug court with a vague understanding that their work role will be different, but may cling stubbornly to the status quo. Vague notions or minimal information simply do not transform behavior. There appear to be several reasons for this reluctance—being inundated with work load, having little time to prepare for the position transfer, lacking training or mentoring, and/or resisting feeling vulnerable in the face of

professional change and learning anew.

How different can this juvenile drug court really be? The answer may shock some who do not enter it with prior knowledge and the necessary personal commitment. Juvenile drug court judges relinquish the traditional detached arbiter role and are thrust into the central hub of a team effort. Judges develop new expertise by recognizing the nature of adolescent development and the nature of drug abuse behavior patterns. By far, the greatest change for the judge is the sensitivity and development of a one-to-one working relationship with the drug court participant. Although most juvenile court judges approach adolescents with this sensitivity and interest, there is an increase in personal connection and active mentoring to program participants by drug court judges. This relationship often becomes parent-like when the judge fully embraces the drug court role. Juvenile drug court judges have been known to attend a sports game or a program recital for an adolescent in critical need of a "boost." I have witnessed more than one drug court participant group refer to the judge with positive nicknames. I was impressed that these participants would use these positive nicknames not just within their own group, but openly throughout the program. Although these nicknames are recognized as terms of respect, they also belie a hoped-for reciprocity of caring and affinity. Hora et al. (1999) note, "Rather than moralize about an addict's character flaws, the judge must assume...the role of confessor, task master, cheerleader, and mentor" (p. 477).

The efforts of the prosecutor and defense attorney are similar to traditional roles at the start of a new drug court case, but there are important differences here as well. Prosecutors still enforce public safety, but do so by making sure each prospective drug court participant meets requirements and program eligibility criteria. They stay vigilant throughout a participant's stay in the drug court program, keeping an eye that requirements are being completed. Their power rests not only with the authority extended from their position, but also from the trust and respect gained from developing close relationships with the adolescents. It is not uncommon for graduates to ask the prosecutor to stand with them during the graduation ceremony or to ask the prosecutor to join in a family photo following the ceremony. However non-traditional this camaraderie may seem, these prosecu-

tor/participant alliances are very common within the juvenile drug court. Defense counsel also meets with a prospective participant and thoroughly reviews legal rights and procedural options. This is done, however, with a "treatment orientation." For those who qualify and choose to enter the program, the defense attorney reverses roles to foster honesty and engagement with the court. Their role changes are no less dramatic—to make all efforts to ensure a drug-free and healthy client, not necessarily a client who has been "protected" from the court.

Hora et al. (1999) state, "Instead of the adversarial nature of working a case 'for or against' a drug court participant, the prosecutor and defense attorney approach a case with the juvenile's recovery in mind" (p.478). I have known these two drug court team members to jump in a car and make occasional home visits to spark better performance from a participant who might be slipping. I have also witnessed defense counsel argue for consequences while the prosecuting attorney has advised a "wait and see" approach during a tense discussion within a weekly team meeting. These role reversals are not so hard to imagine when one considers the drug court obligation of "smart punishment," which uses the least amount of consequences necessary to continue and impel treatment. Hora et al. state, "Drug treatment courts' therapeutic orientation compels the court and its participants to pursue and utilize relationships, methods, and ideas which will reinforce and support the goal of getting the individual to stop using drugs." (p.470) The sole focus of a traditional juvenile court on wrongdoing and subsequent punishment is relegated to a minor role, while the mission of increasing health and advancing more responsible behavior takes "center stage" in a juvenile drug court.

2. Citing the "elimination of drug and alcohol use" as a final outcome goal when developing the mission statement for a juvenile drug court.

There is a problem with abstinence. Note that illicit drug use, albeit harmful, is not always construed as harmful by many impressionable adolescents as drugs also extend a "positive" experience of euphoria, excitement, and release from boredom and pain. When juvenile drug court youth are prompted to withdraw from alco-

hol and drug use, what will take their place? Cessation of alcohol and illicit drug use is a *primary* objective for juvenile drug courts, and these specialty courts are adept at compelling abstinence. Yet abstinence alone is shortsighted and should never be looked upon as an envisioned outcome or *final* goal. Any credible goal should be framed as the presence of a new behavior, not only the end to an undesirable prior behavior. Final outcomes for juvenile drug courts should be described as the presence of healthy activities rather than the absence of substance use. For this reason, strength-based practice (Clark, 1995, 1996a, 1996b, 1997a, 1997b, 1988, Nissen and Clark, in press) has become an important and successful approach to juvenile drug court programming. Strength-based practice considers the adolescent's developmental position and looks to assess and support prosocial proclivities—a youth's interests, passions, skills, and wants.

Juvenile drug courts that operate at advanced levels of strength-based practice will compel abstinence while they simultaneously assess and amplify interests. For example, I have seen cosmetology, dance, nursing studies, sports, graphic arts, and guitar lessons written into juvenile drug court case plans. This forms a winning tandem where the objective of abstinence is reached while interests are simultaneously developed. In striving for the final outcome, juvenile drug court teams consider the adage, "The good life is far more than removing what's wrong."

One poignant example of how adult drug court models do not make an effective leap to adolescent work can be found in the term "recovery." Change is needed with the concept of recovery because it does not apply favorably to the goals of the juvenile drug court. Even if applied to the minority of teens who are truly addicted, Richards (1993) cautions, "The term recovery processes [or process of recovery] is meant to denote several things. Initially, one might argue that, like the term rehabilitation, the word 'recovery' implies that the individual will return to his or her prior state. Here again we have the disease model implied [a return to health from the disease], but although in reality, returning to a prior state is often a very undesirable outcome for treatment" (p. 171). Richards notes the term "recovery" belies a return to a former state of health or responsible living, which is not always the case for the still-developing adolescent.

Juveniles do not necessarily need "recovery"; they need expansion and growth, choices, impact, and excitement. Most efforts will involve habilitation rather than rehabilitation as juvenile drug courts teach and build skills, interests (as designated by the youth), and careers to rival the excitement of drug use.

3. Believing that a juvenile drug court ensures "accountability" by keeping a close eye on participants and setting immediate consequences for any break in program rules.

The increased level of accountability that juvenile drug courts can realize is one of the defining accomplishments of this model. Following the initial hearing to establish program entry or acceptance, progress review hearings are set every week or every other week. Parental contact is maintained on a weekly basis to constantly gather the parents' observations and feedback. Drug screen urinalysis occurs frequently, and to avoid prior knowledge, samples are collected on a random schedule. Direct supervision by probation staff or case managers is coupled with a good deal of the juvenile's free time scheduled by treatment programming. All of this programming and oversight turns the drug court participant's life into an open book. Accountability is raised because the participant has little room to hide. This level of contact allows consequences to be set with much more immediacy. Evading court directions or shirking the necessary follow-through is made infinitely harder.

The common mistake involved in this conception of accountability for newly appointed team members is that staff believe this representation is complete. This mistake is especially troublesome for drug court work because no matter how thorough this explanation of accountability may seem, it is lopsided and fractional. Lopsided because it focuses solely on what is wrong, broken, missing, and flawed; fractional because this exclusive focus toward the negative can obscure healthy patterns and successful behaviors that could be utilized for building solutions.

The full notion of accountability is found in a "pound-for-pound" philosophy (Clark, 1985), which requires that the juvenile drug court team will consider equal amounts of positive behavior and troublesome

activity. A "pound" of strengths, past success, or aspirations will be considered for every "pound" of failure, mistakes, and problems. I have found that drug court teams who strive to be strength-based will work to integrate both strengths/aspirations and problems/shortcomings into the treatment planning process. They regularly search for *both* negative and positive elements as they assess an individual's recent behavior for an upcoming progress review hearing. The teams compose their response for that week to any participant by reviewing both compliments regarding accomplishments and suggestions/chastisements. Strength-based teams place conscious effort toward achieving a balance and will understand that (in some weeks) the hunt for a compliment might be difficult and require an "innovative" attitude. If a team session becomes too negatively focused regarding a drug court participant's situation, any team member will feel obliged to turn the larger discussion back into balance. These teams have purposely built into their process this turning back and finding a balance, whether they split the discussion by prior agreement (which eventually becomes habitual in the process) or whether they list both views (positive and negative) in staff meeting paperwork to ensure that the negative will not be allowed to dominate by simple omission. During progress review hearings, feedback from the judge and comments from the prosecutor and defense—from all the drug court team—will always include compliments and supportive banter. These compliments and support will be extended even while glaring slip-ups are being addressed.

Allowing this balanced view does not ignore or condone the problem, nor does it lend agreement to what chafes. Rather, juvenile drug court work never loses sight of what can further intrinsic motivation (the only true motivation that emanates from within) rather than force compliance and obedience. To consider the positives or potential does not negate the problems or concerns. Common sense must prevail. Anyone would welcome obedience when confronted by flagrant program violations or further delinquent behavior. Yet beyond any crisis situation, compliance makes a poor final goal for drug courts. Obedience is not a lofty goal. We can teach animals to obey. Strength-based practice and the pound-for-pound philosophy are constantly used to increase intrinsic motivation that will build sustainable *growth* that will contin-

ue far after the adolescent has finished our programming.

Adopting a more balanced and positive view is one of the tougher transitions for judges and lawyers who have long been inculturated in the pessimism and negative focus of the criminal justice system. A measure of understanding is needed. Lynn Johnson (Personal Communication, May 2, 1999) reports that in our culture criticizing is deemed academic and intellectual. Taking a critical look at any issue or aspect of a drug court or the participants certainly has its place—constructive criticism can validate ideas and improve planning. Yet the juvenile justice field suffers from a mutation of this form of examination. I believe the drain on the energy of any juvenile drug court team does not come from strategizing how to resolve a sizeable problem within a participant's case. Most drug court team members come into their positions with both the skills and enduring stamina for that. Rather, the drain on the team's energy and effectiveness comes from insistent harping from a negative mind set. The problem with all critiques is that they start out with a premise that something is wrong and it is in the best tradition of scholarship to find out what it is. This is part of the academic mind set; constructive criticism is a worthy endeavor. However, this helpful endeavor may swerve into negativity by juvenile drug court staff. An example is found in case review meetings where cases involving the adolescent and family are brought up for discussion and evaluation. These meetings can become toxic in content as only failure and flaws are reported and considered. Consider the Hazelden (1991) adage, "Criticizing may be a helpful first stage in learning, but it is seductive because it holds little risk and we feel safe doing it. In that comfort, we forget to go forward to create what we really want. Our negative energy, when we are seduced by it, creates negative results." Optimistic people or those who consider positive attributes are seen as shallow and "Pollyanna-ish" while negative or pessimistic people are seen as deep and intelligent as this outlook is often considered to have greater validity.

Juvenile drug courts take on a balanced demeanor. To be "strength-based" means simply that we take advantage of all resources. Nissen (Nissen & Clark, in press) cautions that strengths are believed to be the most commonly wasted resources in the juvenile justice system: strengths of the youth as well as the strengths of their