

# Bridging the Gap

Researchers, Practitioners and the Future of Drug Courts

*Edited and introduction by*

Aubrey Fox

2004

This publication was supported by the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice under Grant Number 98-DC-VX-K007 awarded to the Center for Court Innovation. Points of view and opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

**About the Author**

Aubrey Fox is director of special projects at the Center for Court Innovation.

**Acknowledgements**

The author would like to thank Greg Berman, Valerie Raine, Michael Rempel, Robert V. Wolf and Alina Vogel for their assistance with this essay.

# Researchers, Practitioners and the Future of Drug Courts

## Introduction

In an effort to bridge the worlds of research and practice at a critical moment in the life of drug courts, the Center for Court Innovation, working with the U.S. Department of Justice, brought together in November 2003 a select group of state administrators and drug court scholars to discuss a series of important questions: What can researchers tell state officials about drug court operations and impacts? What can't they tell them that they need to know? Going forward, are there a handful of strategic investments in research that would reap significant dividends for the field as a whole? And how will state leaders know if their efforts to promote statewide drug court reform are successful?

One thing became quickly apparent during the conversation: as in many areas of social policy, researchers and practitioners rarely talk to one another. Indeed, the scholars at the table lamented that research had not played a particularly influential role in shaping drug court policy to date.

Why is that so? There were several reasons cited at the roundtable, but they all spoke generally to a single theme: the cultural divide between research and practice. This divide has several dimensions. One is philosophical: Urban Institute researcher Shelli Rossman summarized this neatly when she observed that “researchers start with the assumption that an intervention does not work and try to disprove it . . . Practitioners, however, want to start from the position that they’re doing something that they already know works.”

Another dimension is practical: researchers tend to talk to one another, rather than to practitioners whose work they are studying, observed University of Pennsylvania scholar Douglas Marlowe. For Hennepin County, Minnesota Chief Judge Kevin Burke, the issue is the differing reward systems for both professions. While researchers worry about getting papers published, judges worry about getting re-elected and re-appointed.

Although research may not have been integral to drug court development to date, this may soon change. While the first phase of the drug court movement was dominated by individual judicial leaders at the grassroots level and the second phase by drug courts’ success at attracting the attention of decisionmakers at the federal level, the action seems to be shifting more and more to the state level. All across the country, states are increasingly assuming fiscal and programmatic authority over drug courts. Along with this new authority comes the pressure to document results – and to identify best practices, enforce quality standards and

## Roundtable Participants

**Jon Baron** is executive director of the Coalition for Evidence-Based Policy.

**Steven Belenko** joined the Treatment Research Institute at the University of Pennsylvania in November 2002 as a senior scientist.

**Donna L. Boone** is president-elect of the Congress of State Drug Courts and executive director of the National Program for Therapeutic Courts, William & Mary Law School.

**Kevin Burke** is a district judge in Hennepin County, Minnesota, and currently the Hennepin County chief judge.

**Karen Freeman-Wilson** is chief executive officer of the National Association of Drug Court Professionals and executive director of the National Drug Court Institute.

**Francis X. Hartmann** (moderator) is executive director and senior research fellow of the Program in Criminal Justice Policy and Management at the John F. Kennedy School of Government, Harvard University.

**Cary Heck** is director of the Louisiana State Supreme Court Drug Court Program Office.

**Lars Levy** is administrative director for treatment services for the 16th Judicial District Drug Courts in the parishes of St. Mary and Iberia.

**Douglas B. Marlowe** is director of Law & Ethics Research at the Treatment Research Institute at the University of Pennsylvania.

**Janice T. Munsterman** is a senior social science analyst at the National Institute of Justice's Office of Research and Evaluation.

**William Ray Price Jr.** was appointed to the Missouri Supreme Court in 1992 and served a two-year term as chief justice. Judge Price also serves as the chairman of the Missouri Drug Court Commission.

**Valerie Raine** is director of drug treatment programs at the Center for Court Innovation.

**Michael Rempel** is director of research at the Center for Court Innovation.

**John Roman** is a research associate in the Justice Policy Center at the Urban Institute.

**Shelli Rossman** is a senior research associate in the Urban Institute's Justice Policy Center.

**Richard Schwermer** has been a court administrator since 1990 and has served as Utah's Assistant State Court Administrator since 1995.

**Michael Stringer** has served as division chief for the Ohio Department of Alcohol and Drug Addiction Services for the last 14 years.

**Dr. Faye S. Taxman** is director of the Bureau of Governmental Research and an associate professor in the Department of Criminology and Criminal Justice at the University of Maryland, College Park.

**Douglas Young** is a senior faculty research associate with the Bureau of Governmental Research at the University of Maryland, College Park.

determine eligibility criteria (including whether drug courts should handle higher-level offenders). Research can help administrators make better, more informed decisions in all of these areas.

Albeit frustrated by their lack of a voice in drug court policymaking decisions to date, scholars at the roundtable did report widespread consensus in the research community that, when properly implemented, drug courts offer a powerful means for changing the behavior of addicted offenders. As Doug Marlowe said, “There’s no room for debate: the application of certain, swift and appropriately modulated sanctions and rewards improves behavior over time.”

Participants around the table identified the following elements as crucial to successful drug court implementation:

- enrolling addicted offenders into treatment quickly;
- imposing sanctions and rewards swiftly and appropriately;
- bringing high-risk offenders back before the judge regularly;
- creating effective screening mechanisms to identify eligible cases;
- graduating a significant percentage of participants; and
- ensuring that drug court participants feel they are being treated respectfully by the judge and are being listened to in the courtroom.

At the same time, researchers also acknowledged that that there was much still to be learned about what makes drug courts work. “What we know [about drug courts] is very small and what we think we know is much bigger,” said Urban Institute researcher John Roman.

For researchers, the critical question is whether drug court implementation will heed the wisdom of drug court research, or if resource constraints will force administrators to cut corners and thus decrease the effectiveness of the drug court model. For example, roundtable participants raised questions about whether drug courts with heavy caseloads could afford to schedule weekly or bi-weekly judicial status hearings with the high-risk offenders who appear to benefit most from interacting regularly with a judge. In addition to resources, other participants raised concerns about a potential “novelty effect”: the idea that drug courts, like many demonstration projects, will show less positive results over time as the novelty wears off.

Both scholars and practitioners agreed that certain aspects of the drug court model needed improvement. Treatment emerged as a critical area of concern, with several roundtable participants noting that treatment programs in the field were slow to catch up with emerging best practice standards. While University of Maryland researcher Faye Taxman suggested that one obstacle to change was that these new treatment models appear to “threaten practitioner discretion,” other roundtable participants said that drug court judges could help move the process along, arguing (in Doug Marlowe’s words) that “if anyone is going to hold the treatment system accountable, it’s the court system.”

The issue of race also came up a number of times in the discussion, mostly by practitioners looking for guidance with regard to how to work effectively with minority populations. Hennepin County, Minnesota's chief judge, Kevin Burke, said the key to working with this population was to "build a sense of hope. . . . If there's anything a judge can do, it's to convey to a young person that they can be something." Taxman concurred, pointing out that research showed that young African-American males need "positive reinforce[ment]" from authority figures to succeed. However, Burke also raised concerns about fairness, contending that drug courts needed to be careful not to put excessive pressure on African-American defendants to forego an opportunity to challenge the constitutionality of an arrest in exchange for being offered drug treatment.

The "Bridging the Gap" roundtable was part of a series organized by the Center for Court Innovation and the Department of Justice. Previous roundtable events have addressed such topics as the reintegration of drug court graduates into their home communities, mental illness, community justice and due process in problem-solving courts. Edited transcripts of these discussions are available on-line at [www.courtinnovation.org](http://www.courtinnovation.org).

What follows is an edited transcript of the discussion, which took place over six hours in a Washington, D.C. conference room.

## Setting the Stage

*The conversation began with a discussion of the strategies that states are using to promote drug courts within the judiciary. Increasingly, state leaders in the judicial, legislative and executive branches are assuming fiscal and programmatic authority over drug courts. While research identifying the benefits of drug courts has played a role in fueling drug court growth, so too has frustration with "business as usual."*

**Hartmann:** There are a number of state drug court administrators here at the table. Give us a sense of what's going on with drug courts in your state.

**Schwerner:** We now have 21 drug courts in Utah. We've been fortunate in terms of funding, with tobacco settlement money getting diverted to us. Early on, we agreed that for every dollar that came in for drug courts, 87 cents would go to treatment, testing and case management and 13 cents for additional judge and clerk time. The state court administrator, the head of the department of corrections and the head of the department of human services decide where the money goes. The only ground rules are that all programs have to be post-plea, and they have to follow, in some vague way, the 10 key components. I tend to think that we will continue with this approach, though it may be time to add more requirements.

**Heck:** Last year, the Louisiana legislature provided \$13 million in drug court funding, which is a lot of money for a state with only four million people. At the Supreme Court, where I serve as statewide drug court coordinator, we've developed a fiscal monitoring and oversight plan to make sure the money is being spent appropriately. We're developing a number of initiatives, including starting a certification pro

gram for drug court professionals, releasing a statewide case management system and requiring that drug courts follow a set of best practices that we've developed.

**Price:** I'm the chairman of the board in Missouri that oversees all the drug courts in the state. In Missouri, drug courts grew from the bottom up: people did things differently from drug court to drug court. Now my job is to figure out what works, how to quantify it and what to require.

**Raine:** In New York, drug court momentum was initially driven by a small group of charismatic judges. Today, that is no longer the case. In 2001, the state's chief judge, Judith S. Kaye, pledged to expand drug courts throughout New York. Judge Joseph J. Traficanti Jr. was given the job of developing a set of tools to advance institutionalization, including training, management information systems and research. Our challenge in New York is ensuring quality control and making sure that all eligible offenders receive the drug court option. We also have some questions about how to achieve the goal that Judge Kaye articulated, which is not necessarily to continue to create more drug courts, but to take the components that work in drug court and build them into the DNA of courts across the state.

**Stringer:** Leadership for drug courts in Ohio comes from a slightly different direction – the state's treatment agency, where we've taken a broad look at how you connect treatment with the justice system. More than 40 percent of our clients have a court relationship. Recognizing this, over the last decade we've established 60 drug courts, 15 in-prison therapeutic communities and 20 diversion programs that are linked to the courts. Our goal is to improve our treatment system, and match up the right offenders with the right treatment.

**Hartmann:** What role, if any, has research played in helping you advance the case for drug courts?

**Raine:** In New York, drug court expansion has been built on a set of operating assumptions that seem to be backed by research. One is that treatment works. Another is coercion: the notion that judicial coercion works with addicted offenders and that they are more likely to succeed when ordered into treatment as opposed to when they seek it out voluntarily. Another idea is that early intervention works.

**Schwerner:** In Utah, we really haven't had to use research to sell drug courts. We've said, "They work and they probably save money." The important thing with elected officials is getting them in the door. The best two hours ever spent on Utah drug courts was the two hours the governor sat in the Salt Lake City drug court and asked questions about the program. He saw one of the defendants come up to the judge and say, "Thank you for saving my son's life" and he was hooked from then on.

**Burke:** To me, the question of what the evidence shows or doesn't show about drug courts is almost beside the point. In Hennepin County, where I serve as chief judge, our drug court is already to scale – we take everyone who is charged with a drug offense, one-third of all our felonies. My attitude in creating a drug court of that size was that there was compelling evidence that the system was completely broken. There is something liberating when the patient is critically ill. The doctor has some liberty to take risks because, absent something dramatic, they're going to die

anyway. Courts need to be honest in evaluating how broken (or critically ill) their present systems are.

**Boone:** Coming from a southern state, I should say that many people don't think that what they're doing is broken. Putting more people in prison, executing more people, doesn't really bother folks in the South. Still, they are concerned about the increasing costs of incarceration, and we should emphasize that drug courts are a cost-effective crime reduction strategy.

## What the Research Says

*The researchers around the table identified a number of components as essential to drug court success, such as early intervention, active judicial supervision and immediacy. By making investments in these areas (for example, working to guarantee that participants are enrolled in treatment on the same day as their first drug court appearance), state leaders can help improve drug court effectiveness. At the same time, researchers raised concerns about obstacles that might prevent courts from making these kinds of investments, citing, for example, the pressure on drug courts to schedule less frequent judicial status hearings to save on court costs or the failure of many drug courts to offer rewards for program compliance with sufficient regularity.*

**Hartmann:** I'd like researchers to pretend that your brother or sister has been given the job of carrying forward the drug court movement in a given state. And your sibling calls you and says, "Help me understand what we know about drug courts." What would you tell him?

**Roman:** I would tell my brother that what we know is very small and what we think we know is much bigger. We know that drug courts reduce recidivism and drug use among participants when they are in drug court, though we don't know how long the effect lasts. We know that people tend to respond to sanctions when they understand them, when they're proportionate and delivered with a high degree of certainty. However, there's also a lot about drug courts that we don't know, such as differences between pre- and post-plea drug courts and the effect of requiring participants to pay fees.

**Marlowe:** I would tell my brother not to take the job.

**Hartmann:** Pretend he already took it.

**Marlowe:** I'm sort of being facetious, because in my opinion, drug courts are the only criminal justice intervention that's been implemented that can, in theory, apply appropriate principles of behavior modification. There's no room for debate: the application of certain, swift and appropriately modulated sanctions and rewards improves behavior over time. We also know that the judge is a critical component of drug courts, and that outcomes for the most severe offender populations are improved if they see the judge on a regular basis. The problem is what happens in practice: the drug courts I've seen give one reward for every 60 or 70 appropriate behaviors, and while the ratio is better with sanctions, most infractions still go undetected. As for judicial monitoring, the reality is that judges don't see clients often enough: in large jurisdictions handling thousands of cases, status hearings are being

held every six to eight weeks. My worry is that drug courts are very intensive, very expensive interventions, and as money gets tight, people are going to start picking at them. There's isn't a lot of good research out there that tells us what elements of drug courts you can't dispense with.

**Scwhermer:** Doug, are you suggesting that drug courts used to work better than they do now, or that the first studies of drug courts weren't any good?

**Marlowe:** What I'm saying is that a universal law of behavioral research applies here: all demonstration projects show extraordinary effects and all replication studies either don't show them or show a greatly reduced effect size. Partly that's due to a novelty effect – any time you do something new, you improve outcomes. But there are other issues as well. The first drug court judges were believers, and believers always do a better job than those who get assigned to drug court. Another issue is publication bias: you only hear about positive results because they're the only ones that get published or talked about.

**Taxman:** I would tell my brother that he should set up a screening system to get high-risk, high-stakes offenders involved in drug court, because that's where you're going to see your results. Most systems screen on legal criteria – the challenge is including behavioral issues like co-occurring mental health and substance abuse disorders, anti-social personalities and substance abuse dependency that are equally as important as arrest history in determining whether a participant will succeed in drug court.

**Burke:** If I understand you correctly, you're saying that the high-risk offender is most likely to respond effectively to drug court. However, most of the early drug courts took lower-level offenders. The design was flawed to begin with, and bringing it to scale is going to be incredibly difficult because inevitably it means working with a different group of people.

**Belenko:** The treatment field is ripe with examples of interventions that target low-risk offenders because it's politically expedient. It's a very difficult political issue – while there are examples of drug courts that target high-risk offenders, they are few and far between. It's a dilemma both politically and analytically to establish programs that will target the appropriate population.

**Columbel:** I don't agree with the idea that drug courts are only focused on low-end offenders. Early drug courts were focused on diversionary populations, but in the last eight years we've seen a great increase of offenders with decades of substance abuse problems and long rap sheets.

**Rempel:** I would highlight three points for my imaginary brother. First, immediacy: Across the board, participants do better when they are linked to treatment very soon after they enter the drug court. Having formalized screening and assessment systems that are able to rapidly process cases and get participants into treatment is critical.

**Hartmann:** One quick observation about immediacy: I sat in the Red Hook Community Justice Center in Brooklyn, New York some time ago, and I saw a young man get sentenced to treatment. A staff member got on the subway and took him to the treatment center, instead of calling and setting an appointment eight weeks later. That's a powerful example of what we mean about immediacy.

**Rempel:** That's right. It speaks to resource allocation – the time to spend money is early on in the process. If you have to save resources somewhere, it should be when a participant has been in a program for over a year and they can report to court less often. The second thing I would tell my brother is to read Doug Marlowe's study on judicial status hearings, which shows that they have a great impact on high-risk populations. Importantly, it's not just the hearing itself, but the quality of interaction that matters – judges with the longest and most direct connection with participants had the best results. My final point would be about graduation. In our study of six drug courts in New York, we found that while drug courts were effective, the entire impact came from graduates. In other words, there was no benefit to receiving large amounts of treatment and then failing. One implication is that it's important for drug courts to increase graduation rates, and in some instances that may mean toning down graduation requirements.

**Taxman:** Picking up on Mike's research on graduation, if you look at drug courts nationally, a large percentage of participants don't graduate. We haven't thought through the criminal justice consequences of failure.

**Boone:** I think I would tell my brother that we know something about public opinion. In Virginia, we've asked the public about the role they think judges should be playing. Do they just adjudicate or do they have some responsibility for the effectiveness of dispositions? And the public is saying yes, we hold these judges accountable for dispositions. So I think that if you can argue that what courts have done in the past does not work, it gives you more latitude to take some risks. Putting drug courts in this context might help sell them to the public.

**Hartmann:** What do administrators at the state level need to know about drug courts? Where are the holes in our knowledge base?

**Price:** The number one thing I need to know is, do I have a successful program? How can I quantify it or show that success to others? And how can I improve the program? I also need to know what data I should be collecting and how to analyze that data.

**Rempel:** Here is the bare bones data I think drug courts should be collecting. Get the arrest charges, criminal history, the date a participant entered drug court, what their status is – open, out on a warrant, graduated or failed – and when graduation or failure took place. To everyone in this group, that type of data collection might seem obvious. But it doesn't consistently occur. So my priority number one is to collect that information for everyone.

**Burke:** I think we need to know how to do a quick assessment of mental health issues. We had psychiatrists associated with the Veterans Administration conduct full-blown psychiatric exams of defendants, and they found that 41 percent had a major mental illness. Obviously, we can't afford to do this all the time.

**Taxman:** Another thing you should be collecting on drug court participants is their level of drug usage. It's important to distinguish between people who are drug users versus drug dependent, because the first group is probably not suitable for drug court. There are standard assessment tools in the public domain, such as the

one developed by Texas Christian University, that are well validated and deal with both criminal factors and substance abuse dependency.

**Burke:** You need accountability for the people who are doing the screening. In my experience, the level of sophistication of the screeners is all over the map.

**Taxman:** That's true, but the good news with using tools in the public domain is that they've been tested in the field and they can help reduce the number of errors or biases that counselors bring to an assessment.

**Marlowe:** Our discussion so far has focused on adult drug courts, but juvenile drug courts have spread quite rapidly in the last few years in the absence of any decent research or an effective treatment model for adolescents. The adolescent treatment field is in its infancy, and drug court programs are bringing kids who are not addicted into a very high level of social control. We don't know anything about their impacts.

**Hartmann:** Let's talk about cost-benefit analysis for a minute. John Roman, can you distill your 15 years of knowledge into four minutes?

**Roman:** Taking an economic lens can help policymakers decide what population drug courts should focus on. For example, it may be worth investing more in a younger population that is more likely to commit crimes that pose high costs to communities. But you have to be careful about the kinds of questions you ask: some populations that are most responsive to drug courts, like long-term heroin users, aren't likely to show great economic benefits. They're probably not committing a lot of costly crimes in their community. They're going to continue to need public resources, even after they leave the drug court. From a cost-benefit perspective, they might be a net loser to your program. Finally, let me mention my opinion of the movement to encourage individual courts to do cost-benefit analysis as part of their evaluation. I think it's a mistake, because drug courts with small sample sizes are very sensitive to outliers.

**Baron:** Just a quick observation. There is a lot of evidence from different social policy fields that small differences in the way a social intervention is administered and the population it's administered to can make an enormous amount of difference in its effect. For example, it matters a great deal that nurses, not paraprofessionals, make visits to poor families. In drug courts, it could be small differences in implementation that make all the difference in whether the intervention is going to work.

## The Relationship between Research and Practice

*The relationship between research and practice was a heated issue during the roundtable. Many of the scholars and policymakers at the table lamented that research had not played a particularly influential role to date in shaping drug court policy. Some policymakers felt that researchers did not understand the political, professional, fiscal and institutional pressures they faced. The key, participants agreed, was to balance the desire to "create an environment where people can take risks" with the need to collect objective, realistic information about drug courts.*

**Hartmann:** How important has research been to drug courts? What role should it play going forward?

**Rempel:** What I've heard today is that research has not been terribly influential in terms of the major statewide institutionalization movements that have occurred. I think the only type of research that's been mentioned as important in selling drug courts to the legislature is cost-benefit analysis.

**Marlowe:** Unfortunately, research has zero penetration into practice in the drug treatment field. We don't know how to explain what we're doing to practitioners. What goes on in the laboratories and what goes on in clinical practice are two completely different worlds.

**Burke:** What I'm hearing is frustration – researchers asking, “Why don't judges listen to me and why don't they read what I write?” And for the most part we haven't. I don't want to disabuse you of that. However, there's been no discussion of the complex nature of judging and I get the feeling that researchers don't really understand us. We went to law school because we didn't want to work for somebody and we went on the bench to get rid of our partners. We're a very independent group. And many of us are elected. For me, the risk of failure is “I've got to go back to private practice.” That's not something that I want to do. Our goal should be to create an environment where people can take risks.

**Hartmann:** Picking up on Kevin's point, I've been involved in the community policing conversation for the last 20 years, and key changes in policing didn't come until individual police chiefs said that the old system didn't work any more. They realized that you could double their resources and it wouldn't make any difference because what they were doing wasn't working. Researchers operate with a different need for evidence than people who are making decisions in the policy arena. Is it possible to bridge the two worlds? Is it possible to make research operate on the timeframes and the standards of evidence that policymakers employ? When do we know enough that it is okay to say, let's take this new practice to scale?

**Roman:** I don't think you can answer the questions practitioners want answered without the threat of finding answers that they won't like. The drug court industry has done itself a disservice by trying to tailor its evaluations to come to the conclusions that they want to come to. We've all read evaluations that are so positive that they are almost impossible to believe. That puts the courts in the situation of having to demonstrate a level of efficacy that's just not possible.

**Marlowe:** Picking up on John's point, the drug court field started out with these tremendous enthusiasms and expectations, and I think that has affected how we think about the type of outcome studies that need to be done. There is a sense that drug courts will change people's behavior forever. How long do you observe people after they complete drug court? Is a short-term effect an adequate basis for expanding drug courts? If you don't get an effect after three years, does that mean drug courts are not effective?

**Rossman:** There's a disconnect between research and practice. Researchers start with the assumption that an intervention does not work and try to disprove it so we

can feel confident that it does. Practitioners, however, want to start from the position that they're doing something that they already know works. Researchers and administrators have different missions and different constituencies. The challenge is how to use research to manage expectations and be accountable, but with enough flexibility to permit you to acknowledge that this is virgin territory.

**Heck:** Most judges I know see evaluation as sort of like a medical exam – you only get bad news. In Louisiana, we have worked to change that mentality with our judges through continual training and our annual conference.

**Hartmann:** Let's assume that the federal government funded one of the researchers around the table to help you take the next steps with drug court. What would you want from that person?

**Heck:** I would want outside objectivity. I would want someone to come in, validate our measures and say, "This is good data and this is good research." We don't have the option of having a randomized study. It's not politically feasible. Being an academic, I know that all research falls on a continuum. While we try to get as close to pure experimental design as possible, we would want someone to come in and say, "This is about as good as you are going to get, given political circumstances."

**Burke:** I've been intrigued by why the first generation of drug courts worked when they were all so different. There's a researcher at New York University named Tom Tyler who's found that people are more likely to obey the law when they have a sense that they are being listened to. I think what made drug courts work is that defendants felt that judges were listening to them, and that when defendants left they felt like they knew what they were supposed to do. This is not normally the case in state courts. I would encourage researchers to go beyond looking at program details such as how often drug treatment occurs or which type of treatment people receive to these broader questions of whether defendants feel listened to.

## Treatment

*Most roundtable participants agreed that treatment is an issue that requires more attention from drug court advocates. The problem is one of implementation – participants agreed that many successful treatment modalities were not being adopted by treatment professionals. This pointed to a role that drug court judges and court administrators could play: as "potent customers" of treatment services, they could potentially help shape the behavior of the field.*

**Hartmann:** What do administrators need to know about what works and what doesn't in the treatment arena?

**Rempel:** In the research field generally, and our own research into drug courts in New York in particular, methadone maintenance for heroin users is shown to be an effective treatment.

**Raine:** A quick question on the issue of methadone. When I was a public defender and saw people on methadone come through, I remember thinking that this was not a population for whom methadone was working very well. I mean, they were only seeing me because they were doing other drugs and getting involved in

crime. When we say that “methadone works,” have we done field tests to confirm that it does?

**Taxman:** Val, your personal observations are correct: the way we distributed methadone was in many cases counterproductive. The good news is that there are new regulations in place to change that.

**Marlowe:** In addition to methadone, there are probably 12 to 14 types of drug abuse treatment interventions that have absolute, indisputable proof of efficacy. The problem is that these interventions aren’t being delivered in treatment programs.

**Heck:** Doug, if they’re not being implemented, how do you know they’re effective?

**Marlowe:** It’s because they’ve been proven effective in a number of controlled, clinical trials – the same criteria the FDA would use to say a medication is effective.

**Hartmann:** So why aren’t they getting out to treatment professionals in the field?

**Marlowe:** There are a number of reasons. First, if you want to get tenure at the University of Pennsylvania, you publish in refereed journals that practitioners don’t read and you talk to other researchers about your work at conferences that treatment professionals don’t attend. Second, the treatment field is in many respects impenetrable to new knowledge. It talks a different language and has a different set of values. Finally, the kinds of interventions that we’re talking about are hard to do well. They are hard to implement and take a lot of training.

**Levy:** As a drug treatment professional myself, I can say it’s frustrating as hell to try to make people change.

**Taxman:** Part of the reason for this intransigence is that treatment models that work are structured interventions, which is a big change from established models that involve counseling and therapy. Structured models are threatening to practitioner discretion. More research needs to be done in terms of thinking about how we help professionals understand that there’s a lot of room for professional judgment, even within structured interventions.

**Hartmann:** The point that’s coming to the fore is that courts don’t get to invent the treatment options that are available.

**Marlowe:** Yes, but judges make pretty potent customers. If anyone is going to hold the treatment system accountable, it’s the court system.

**Roman:** I agree. The judge is the best positioned person to hold treatment accountable, but I find that judges often don’t feel like they are educated customers. Treatment in general is a black box that judges and courts are reluctant to open.

**Boone:** I agree with John. When I worked at the Supreme Court in Virginia, I suggested that we try to measure treatment impacts in drug court. The response I got was, “Well, treatment is like electricity. Nobody asks why electricity works if you turn on the light and it works.” Thank goodness one person had pity on me and said, “Yeah, but if the light only turned on two times out of 10 somebody would start asking how it works.”

**Taxman:** There are some resources out there for courts that want to better understand the treatment field. Several years ago, the Center for Substance Abuse and Treatment created regional centers, called Addiction Treatment Technology Centers,

to help improve treatment services. They've been underutilized so far, particularly in the criminal justice field, as a way of helping to transform treatment.

**Stringer:** I'm feeling a little bit out of melody over here. I'm the only person at the table who works in a state division of treatment services. While I understand what people are saying about needing accountability from treatment, this goes both ways. We do about 15,000 assessments for drug courts every year. What our system can do is give the judge that takes risks with clients some assurance and some predictability that there is a net beneath them. Negotiating these relationships respectfully is hard – it's easy to offend people on both sides.

**Freeman-Wilson:** One thing that strikes me about our conversation is that we can't underestimate the political implications of the issues we're talking about. We've mentioned some small "p" political issues, such as "how do you get into a treatment field that is closed to outsiders?" and "should drug courts use methadone?" And we've talked about some large "p" political questions, like "how do I sell my governor, my state representative, on taking higher-level offenders?" Even as we think about the research that needs to get done, we need to look at how to address political issues as well.

## Race

*The issue of drug courts and race also emerged as a significant issue at the roundtable. For some, it is an issue of effectiveness: many drug courts struggle to address the unique issues posed by African-American participants, particularly young men. At the same time, several participants felt that drug courts have the potential to help build a sense of hope among minority populations, and in the process build confidence in the fairness of the criminal justice system.*

**Hartmann:** What is the impact of race on drug courts?

**Price:** In Missouri, our most difficult people to treat are young African-American males. We need to know more about how to work with this population – I can't go to the legislature asking for more money unless we can say we know what to do with our biggest problem. I want to go home with some hope that we know how to treat young urban males who get in trouble with drugs.

**Freeman-Wilson:** As a former judge in Gary, Indiana, I can tell you that there are at least two populations here. When I was a judge, much to my staff's dismay, I would refer to the first population as "piss-poor wannabe drug dealers." These are young men who have been raised well, come from intact homes, but who are hangers-on and emulators. They would be the last person to use any type of substance other than marijuana. This group does not need drug court. There's another demographic, however, of people who have been using since they were kids. They are totally different from the first group, and may in fact benefit from treatment interventions. The key is to distinguish and understand that the group is not monolithic.

**Taxman:** For the 16-to 22-year-old African-American male, what the literature says is to focus on positive reinforcers. This tends to be a population that didn't do well in school and has a lot of other failures. Unfortunately, in the criminal justice

arena, it's hard for people to congratulate offenders for small stuff that we think they should be doing anyway.

**Burke:** To pick up on Faye's research, my experience in dealing with this population is that they don't have a sense of hope. If there is anything a judge can do, it's to convey to a young person that they can be something. This population doesn't need any more sticks – they need to build a sense of hope.

**Belenko:** There are a number of strength-based interventions or family-focused interventions that have been studied extensively in clinical trials. Multi-systemic therapy is one example. Another is mentoring. The good news is that there is a lot of literature about successful interventions with this population.

**Stringer:** This is not just a drug court issue, it's a correctional issue. Part of the dialogue has to be with the correctional system. In Ohio, we've started the process: our director of corrections is working with us to identify candidates for judicial release who can be treated in their communities.

**Burke:** I want to raise some other issues regarding race. There's a lot of complicated stuff going on out there on the streets. Young people are forced to make the choice: do I go to treatment or become a snitch, or can I do both? There's also the issue of constitutional rights: should defendants be forced to choose between treatment and their right to challenge racial profiling? Though we need to be careful about how we approach this issue, I think there is potential to positively impact communities of color and their distrust of the justice system. This is a population that has no confidence in the justice system's fairness. The potential here is to show that courts are a place where people are treated with respect and in a positive manner.

**Raine:** I'm in agreement with Judge Burke. If people feel they are treated fairly in the system, because of the drug court experience, then we've done really well.

## Measuring Success

*The roundtable concluded with a discussion of how to measure success with drug courts. Some participants offered concrete measures, such as a decline in the use of incarceration or positive impacts on individual drug court participants. Others suggested more sweeping targets, such as changing the culture of the courthouse to support problem-solving or building public support for treatment of addicted offenders.*

**Hartmann:** Each of us is in some manner involved in this enterprise of drug courts. How will we measure success five or six years down the road?

**Schwermer:** I would use a few standards. The first is, are there sufficient resources to meet demand? The second thing I would look at is the extent to which drug courts have been mainstreamed. Are drug courts part of a standard judicial curriculum? Has a body of case law developed around due process and equal protection concerns? Finally, some impact questions. Have we changed the composition of our prisons? Have we diverted addicts, allowing us to use the resource of prison more effectively?

**Burke:** Picking up on Rick's point, I was told once that in 1963, New York State had 85,000 inpatient psychiatric beds and 15,000 prison beds. By the early 1990s it

had completely reversed itself. When I went back to Minnesota I discovered that it was true there as well.

**Roman:** Let me offer a concrete example of how we can change correctional practice. Birmingham, Alabama ran a program called “Breaking the Cycle” which used some drug court principles less intensively over a broader population. The results of the program were such that they actually had a new jail planned in Birmingham that they didn’t need to build.

**Rempel:** One area I’m interested in is attitudinal changes among judges and attorneys. Have drug court practices like judges speaking directly to defendants and collaborative relationships between attorneys and treatment providers filtered throughout the state court systems more widely? Has it led to institutional change?

**Belenko:** Like Mike, I want to offer a broad view of success. I think we need to look at the political and public opinion context of drug courts. Can we measure the changes in public opinion and media coverage around treatment interventions for offenders? Can we build better systems for educating the media, the public and elected officials about addiction and crime? Elected officials often make assumptions about what the public thinks about criminal justice, and they’re often not consistent with what people really think.

**Rempel:** I think it would be valuable to know if there is an impact in areas of income, employment and life outcomes for participants.

**Taxman:** I would look at system-level integration efforts. Have you changed how justice system and treatment actors work together, not just on drug court cases but on the larger number of people who are under criminal justice supervision?

**Stringer:** I would like to see state sentencing laws reflect the success of drug courts by mandating court-supervised treatment for first-time offenders and parole violators. I’d also like to see active alumni associations, where recovered addicts participate over the long haul.

**Raine:** Five years down the line, I’d like to see other kinds of traditional courtrooms incorporate some of the active ingredients of drug courts. One indicator of success might be the number of people who have the option of being linked to treatment. My second goal would be to institutionalize problem-solving ingredients into the various educational systems that impact criminal justice, whether it’s law schools or training for new assistant district attorneys, defenders, probation and court officers.

**Freeman-Wilson:** We’re only hitting four to eight percent of the eligible population now. We won’t really be a successful institution until a large number of folks are able to access drug court. I don’t know if it’s 60 percent, but I do know it’s more than 10 percent.

**Taxman:** I take a slightly different position: we should only use drug courts for the people who need it most. We don’t have a good picture of whether that is five percent or 20 percent or 50 percent. My guess is that it probably under 10 percent, because if you target high-risk cases, there is a small percentage of people who need the structure and oversight of drug courts. There is probably a larger population of people who need other types of treatment intervention than drug court.

**Roman:** What would a person who's not involved in drug courts call a success? They might say it's a success if drug courts were to pop up everywhere, in almost every large community. They might also look to see if the drug court model was being applied to other populations. The reality is that all this has already happened.

## Conclusion

*By the end of the day, roundtable participants agreed that research can play a number of important roles in guiding drug court growth. First, by providing state policymakers with good, reliable information about drug court outcomes, research can help build a case for the model.*

*Equally important, by identifying characteristics of drug courts that promote program success - such as immediacy, frequent court appearances for high-risk offenders and an environment in which drug court participants feel they are being treated respectfully - research can be used to improve day-to-day operations. The challenge for the field going forward involves opening up lines of communication between researchers and practitioners - a shared responsibility for both groups.*

### **Center for Court Innovation**

The winner of an Innovations in American Government Award from the Ford Foundation and Harvard's John F. Kennedy School of Government, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how courts and criminal justice agencies can aid victims, change the behavior of offenders and strengthen communities.

In New York, the Center functions as the State Court System's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's problem-solving courts include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts and others.

Nationally, the Center disseminates the lessons learned from its experiments in New York, helping courts across the country launch their own problem-solving innovations. The Center contributes to the national conversation about justice through a variety of written products, including original research, journal articles and white papers like this one. The Center also provides hands-on technical assistance, advising court and criminal justice planners throughout the country. Current areas of interest include community prosecution, court technology, drug courts, domestic violence courts, mental health courts and research/evaluation.

**For more information, call 212 397 3050 or e-mail [info@courtinnovation.org](mailto:info@courtinnovation.org).**

**Center for Court Innovation**

520 Eighth Avenue, 18th Floor  
New York, New York 10018  
212 397 3050 Fax 212 397 0985  
[www.courtinnovation.org](http://www.courtinnovation.org)

C E N T E R

F O R

C O U R T

I N N O V A T I O N

A Public/Private Partnership with the  
New York State Unified Court System