

**THE JUDGE IS A KEY COMPONENT
OF DRUG COURT**

**By Douglas B. Marlowe, J.D., Ph.D.,
David S. Festinger, Ph.D., and
Patricia A. Lee, M.S.
Treatment Research Institute,
University of Pennsylvania**

Drug courts are virtually defined by the fact that they are managed by the judge and require clients to attend frequent status hearings in court. The authors conducted the first scientifically rigorous studies to determine whether the judge is, in fact, a “key component” of drug court. The results indicated that “high-risk” clients who (1) had antisocial personality disorder (APD) or (2) had previously failed in drug abuse treatment performed substantially better in drug court when they were required to attend frequent status hearings before the judge. In contrast, “low-risk” offenders who did not have these characteristics performed better when they were monitored by their treatment case managers and were not required to attend routine court hearings. These findings were reproduced in several adult drug courts located in both rural and urban communities and serving both misdemeanor and felony offenders. The implications of these findings for drug court practice and drug policy are discussed, and important directions for future research in drug courts are proposed.

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Direct all correspondence to Douglas B. Marlowe, J.D., Ph.D., Treatment Research Institute, University of Pennsylvania, 600 Public Ledger Building, 150 South Independence Mall West, Philadelphia, PA 19106-3475; (215) 399-0980; (215) 399-0987 (fax); E-mail: Marlowe@Tresearch.org.

ARTICLE SUMMARIES

JUDGE'S ROLE IN DRUG COURT

[1] This research was undertaken to test whether the judge is an indispensable element to successful drug court outcomes.

RESEARCH DESIGN

[2] Drug court participants were randomly assigned to levels of jurisdictional review ranging from bi-weekly to as-needed, and progress was closely monitored to insure ethical standards.

STUDY MEASURES

[3] Participants completed baseline measures, such as the ASI; drug treatment measures, such as urinalysis, and follow-up measures, such as the ASI.

STUDY SITES

[4] The study sites were all in Delaware and initiated with a misdemeanor population and progressed to a felony population.

ORIGINAL STUDY FINDINGS

[5] Lower risk offenders performed better with less intensive judicial supervision, while higher risk offenders performed better with more intensive supervision.

STUDY REPLICATION: MISDEMEANOR POPULATION

[6] Participants with prior drug treatment history performed much better when assigned to bi-weekly hearings rather than as-needed.

STUDY REPLICATION: FELONY POPULATION

[7] Findings with felony clients were consistent with misdemeanor clients, with some caveats.

JUDGE IS KEY TO DRUG COURT

[8] More frequent hearings lead to greater success in high risk offender populations.

THE JUDGE IS A KEY COMPONENT OF DRUG COURT

Judicial status hearings are one of *the* defining components of drug court that clearly differentiates drug court from other interventions for drug-involved offenders (e.g., Marlowe, 2002; Marlowe, in press). Programs such as Treatment Accountability for Safer Communities (TASC) or intensive supervised probation (ISP), for example, may provide drug abuse treatment, case management, urinalyses, and sanctions and rewards; however, they are not judicially managed interventions and they do not involve frequent court appearances. It is surprising, therefore, that little research has focused on the role of the judge in drug court. Although it is true that drug court clients commonly credit their success in the program to their interactions with the judge (e.g., Cooper, 1997; Goldkamp et al., 2002; Harrell & Smith, 1997; Satel, 1998), until very recently there was *no* experimental evidence to indicate whether the judge is, in fact, necessary or helpful to drug court outcomes.

[1] In 1999, with funding from the National Institute on Drug Abuse (NIDA) and the Center for Substance Abuse Treatment (CSAT), the authors began a systematic program of research to determine whether judicial status hearings are an essential ingredient of drug court. More importantly, the authors were interested in identifying those types of clients who are most likely to benefit from on-going contact with the judge. According to the criminal justice theories of “Responsivity” and the “Risk Principle,” intensive interventions such as drug court are believed to be best suited for “high-risk” offenders who have more severe criminal propensities and drug-use histories, but may be ineffective or contraindicated for “low-risk” offenders (Andrews & Bonta, 1998; Gendreau, 1996; Hollin, 1999). The rationale for this is that low-risk offenders are less likely to be on a fixed antisocial trajectory and are more likely to “adjust course”

readily following a run-in with the law; therefore, intensive treatment and monitoring may offer little incremental benefit for these individuals at a substantial cost. High-risk offenders, on the other hand, are more likely to require intensive structure and monitoring to alter their entrenched negative behavioral patterns. Based upon a review of the literature concerning the greatest risk factors for failure in rehabilitative programs for offenders (e.g., Gendreau et al., 1996; Peters et al., 1999), it was hypothesized that judicial status hearings in drug court would have the greatest effects for subjects who are relatively younger, have an earlier age of onset of crime or drug use, have more severe drug problems, have antisocial personality disorder (APD), or have previously failed in drug treatment or a criminal diversion program.

IMPLICATIONS FOR PRACTICE

Judicial status hearings are among the most costly and time-consuming elements of drug court (e.g., Cooper, 1997; Finigan, 1999) and some critics have argued that they divert scarce resources from the provision of “real” substance abuse treatment (e.g., Anderson, 2001; Hoffman, 2002). Judges and bailiffs cost money, which may then not be available to pay counselors’ salaries. Moreover, the time it takes clinicians to prepare monthly progress reports for the judge and to appear at court hearings is time taken away from the provision of formal counseling. Finally, some commentators have argued that the intrusion of the judge into the treatment process could be disruptive or even harmful. Clients may be hesitant, for example, to confide clinically important information to their counselors for fear that the information would be disclosed to the judge and used against them (e.g., Schottenfeld, 1989).

Proponents of drug court take the contrary position that drug-abusing offenders often fail to meet their obligations and may pose a continuing threat to public safety

if they are not closely monitored and do not face immediate and consistent consequences for their noncompliance in treatment (e.g., Hora et al., 1999; Meyer & Ritter, 2002). This may be *as* therapeutic or *more* therapeutic than “coddling” these individuals in treatment because it instills a sense of accountability and applies basic principles of behavior modification in the most effective manner (Satel, 1999). The fact is that, in our society, only judges have the authority to administer significant sanctions and rewards to offenders with consistency and certainty (Harrell & Roman, 2001; Marlowe & Kirby, 1999). Clinicians and probation or parole officers rarely have the power or inclination to do so (e.g., Goldkamp, 2000; Taxman 1999).

Extreme positions are rarely borne out by research, and neither of these positions can account for the fact that high-risk offenders generally respond better to intensive criminal justice interventions whereas low-risk offenders generally respond equivalently to various levels of supervision. It is most likely that *both* of these positions are partially correct but that they are referring to *different clients*. Some offenders might be expected to perform well in drug abuse treatment if they are left alone to develop a therapeutic alliance with their counselor and to focus on their recovery. Others, however, are likely to require consistent and intensive judicial supervision in order to succeed. If one could identify those client characteristics that reliably predict success with more frequent judicial contacts, this could enhance client outcomes in drug court, target program costs most efficiently, reduce unwarranted intrusions of criminal justice authorities into treatment, and reduce public safety risks from the most incorrigible types of drug offenders.

IMPLICATIONS FOR POLICY

Research of this kind is further needed to inform policymakers, funding sources, and the public about the efficacy of drug courts. Although substantial evidence

suggests that drug courts can increase treatment retention and improve outcomes for drug offenders (Belenko, 1998; Belenko, 1999; Belenko, 2001; Gudyish et al., 2001), the U.S. General Accounting Office (GAO, 2002) has rightly criticized the majority of drug court evaluations for using weak research designs, employing biased comparison samples, and failing to follow participants for an acceptable period of time following their graduation or termination from the program. Unfortunately, it is very difficult to conduct the type of randomized studies with no-treatment control conditions that are necessary to scientifically prove the efficacy of an intervention (Graebisch, 2000). An alternative approach, however, to assessing the efficacy of drug court is to evaluate the effects of manipulating its *core ingredients*. If it were demonstrated that judicial status hearings have a significant bearing on drug court outcomes – even if only for certain types of offenders – this would establish that drug courts have a unique mechanism of action. This would provide scientific support for the utility of drug courts and perhaps the only practicably obtainable evidence that the GAO and other stakeholders would be willing to accept.

Importantly, a major policy movement is afoot in this country to *dispense* with judicial monitoring of drug offenders. Proposition 200 in Arizona and Proposition 36 in California, for instance, provide for the statewide diversion of nonviolent drug-possession offenders to probation and community-based drug treatment. There are no provisions in these statutes for judicial status hearings and if an offender violates a drug-related condition of probation or is charged with a new drug-possession offense, the statutes essentially disenable judges from revoking probation or applying meaningful sanctions. Unless the state can make the difficult showing that the offender is a danger to public safety or is unamenable to drug treatment, the offender is usually entitled to a second, and then a third, opportunity at probation, albeit possibly with enhanced treatment conditions.

A comparable ballot initiative to Propositions 200 and 36 was recently passed in the District of Columbia, and the Hawaii state legislature recently enacted a similar law. Equivalent referenda were withdrawn from the 2002 elections in Florida and Michigan on technical, procedural grounds and are likely to be placed on the ballot again for the next elections. Unfortunately, in the absence of reliable data to guide policy decisions about judicial monitoring of drug offenders, future initiatives will continue to be subjected to uninformed popular vote (Marlowe, Elwork et al., in press). Empirically identifying which drug offenders require intensive judicial supervision would provide a more rational basis for assigning drug offenders either to the type of low-intensity interventions exemplified in Propositions 200 and 36 or to the higher-intensity intervention exemplified in drug court.

METHODS

Research Design

[2] The basic research design used in all of these studies was to randomly assign consenting drug court clients either to (1) attend judicial status hearings on a bi-weekly basis throughout their enrollment in drug court (“bi-weekly” condition) or (2) be monitored by their treatment case managers who petitioned the court for a status hearing in response to infractions (“as-needed” condition). These conditions reflect the extremes of contemporary drug court practice. The highest “dosage” of judicial status hearings generally used by drug courts is bi-weekly whereas the smallest “dosage” is on an as-needed basis, whenever there is a problem or need identified by the judge or by treatment personnel (NADCP, 1997). Apart from the schedule of status hearings, all participants were eligible for the same drug abuse treatment, case management, urinalyses, and sanctions and rewards, and all had the same opportunity to have their

criminal charges dropped contingent upon successful graduation from the program.

This is the strongest research design that could have been used for these studies. If, instead, drug court clients were simply followed naturally in the program and outcomes were compared between clients who saw the judge more often vs. less often, this would *not* have permitted any inference about the effects of judicial status hearings. It would be possible, for example, that the judge might have required more status hearings for those subjects who were performing poorly in the program, or might have reduced the required number of status hearings as a reward for those who were progressing favorably. This could lead to the paradoxical and wrong conclusion that status hearings bring about worse outcomes. The *only* way one could be confident in the true effects of judicial status hearings was to randomly assign participants to different schedules of hearings.

Human Subjects Protections and Ethical Safeguards

Needless to say, it was no small task to convince judges, prosecutors, and defense lawyers to vary the level of supervision of drug offenders on a random basis. The defense attorneys were understandably concerned that enhanced monitoring of their clients could lead to a greater detection of infractions and to harsher discipline, including termination from the program, conviction, or incarceration. The judges and prosecutors, on the other hand, were reluctant to permit some drug offenders to be relatively unsupervised, which could pose a threat to public safety. These concerns required a number of safeguards to be developed for the study.

The Institutional Review Boards (IRBs) of both the Treatment Research Institute and the Delaware State Department of Health and Social Services continuously monitored the studies for safety and ethical practices. In

addition, Single Project Assurances (SPAs) were obtained for all of the performance sites involved with the study. The SPAs provided assurances to the federal Office for Human Research Protections that all personnel connected with the study, regardless of their professional identity or employer, were made aware of and were bound by relevant ethical standards in the conduct of the research (45 CFR § 46). Finally, National Institutes of Health (NIH) Confidentiality Certificates were obtained, which shielded the research data from a court order or subpoena (42 CFR Part 2a; 42 U.S.C. § 2a(6)).

Monthly Steering Committee Meetings were established for the study that were regularly attended by the drug court judges, clerks of the court, and representatives of the attorney general, public defender, criminal defense bar, treatment programs, and the Delaware State Division of Substance Abuse and Mental Health. In these meetings, the study procedures were reviewed and any negative reactions that may have been experienced by research participants or by program staff were corrected. The presence of defense attorneys and clinicians ensured that the subjects' legal rights and treatment needs were continually addressed.

The drug court program staff understood that the research team could not report the results of preliminary data analyses to them during the course of the study because it might alter their behavior and confound the study. It was agreed, however, that the research team would regularly monitor the data and would inform the Steering Committee if participants in either one of the research conditions were performing unusually poorly relative to the other research condition or to non-research participants. The Steering Committee would then have the discretion to decide whether to continue with the study or to alter the research design.

Baseline Measures

[3] Participants received \$20 in the form of a check for completing a baseline research battery that took approximately 75 minutes. This battery included the Addiction Severity Index (ASI; McLellan, Kushner et al., 1992) that measures current (past 30 days) and lifetime drug problems, alcohol problems, legal problems, medical problems, family and social problems, employment problems, and psychiatric problems. “Composite scores” and “clinical factor scores” are calculated from the ASI, which are global indicators of problem-severity in each area. The composite scores are based exclusively on events occurring during the past 30 days, while the clinical factor scores are based on both 30-day and lifetime events. In addition, participants completed an Antisocial Personality Disorder (APD) Interview. This is a 30-item, true/false questionnaire that assessed whether each participant met official DSM-IV diagnostic criteria for APD.

During-Treatment Measures

Measures of during-treatment performance included participants’ attendance at scheduled counseling sessions, weekly urinalysis results, self-reported substance use and criminal activity, and graduation rates. The urine samples were collected on a random, weekly basis in the presence of a same-gender treatment staff person. The urinalyses were performed by the Medical Examiner’s Office or an independent laboratory using an Enzyme Multiple Immunoassay Test (EMIT) with Gas Chromatography Mass Spectrometry (GCMS) for confirmation of positive results on a five-panel screen for cannabis, opiates, amphetamines, cocaine, and PCP plus any additional substances specifically believed to be used by a client.

Participants also completed the Recent Treatment Survey (RTS) on a monthly basis during the first three

months of drug court. The RTS is an abbreviated version of the Treatment Services Review (TSR; McLellan, Alterman, et al., 1992) that assesses services received by participants in the same domains covered by the ASI. It also assesses participants' clinical status during treatment; for example, it inquires about the number of days each month that the participant used illicit drugs, used alcohol to intoxication, or engaged in illegal activity. Participants received a \$10 check for completing each of the three RTS assessments.

Follow-up Measures

A follow-up version of the ASI and a urine specimen were collected from participants at six months and 12 months post-admission to drug court, and the authors are also in the process of monitoring state criminal justice records for 24 months post-admission to assess rates of re-arrests, convictions, and incarcerations. The follow-up urinalyses were performed using a hand-held device, the Roche Test-Cup 5, for cannabis, opiates, amphetamines, cocaine and PCP, plus "QuickStiks" for benzodiazepines and barbiturates on a random "spot-check" basis to detect emerging drug-use trends in the population. Participants received a \$30 check for completing each of the six-month and 12-month assessments.

Study Sites

[4] The first study was conducted in the urban city of Wilmington, Delaware. Because the study involved manipulating a core component of drug court and because questions remained about the feasibility and safety of the design, the research was initiated with a less severe misdemeanor population. Eligible charges for this misdemeanor drug court included possession or consumption of cannabis, possession of drug paraphernalia, and possession of hypodermic syringes. The drug court program was scheduled to be at least 14 weeks in length although most

clients required five to six months to satisfy the conditions for graduation. In order to graduate, a client must have, at a minimum, completed a standard regimen of eight weekly drug-education groups, provided 14 drug-free urine specimens, and paid a \$200 drug court fee.

Because the first study was implemented safely and effectively, the identical research design was extended to four new adult drug courts serving both misdemeanor and felony offenders in the state capital of Dover, Delaware and the rural farming community of Georgetown, Delaware. The misdemeanor programs in these jurisdictions were structured very similarly to the misdemeanor program in Wilmington and had comparable graduation criteria. The felony programs were scheduled to be a minimum of six months in length and most clients required nearer to 12 months to graduate. The minimum criteria for graduation from the felony programs included attending eight weekly psycho-educational group counseling sessions, providing 16 consecutive clean urine specimens, providing evidence of regular attendance at NA or AA groups, and payment of a \$200 drug court fee.

FINDINGS

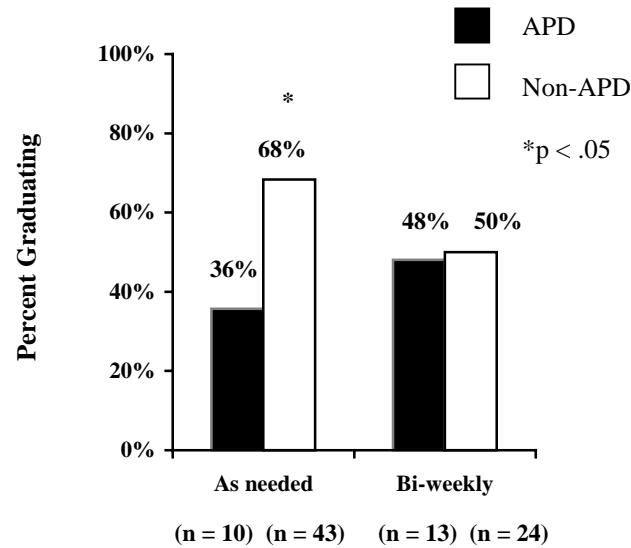
Original Study in Wilmington

[5] The results of the first study are detailed in two recent publications (Festinger et al., 2002; Marlowe, Festinger, Lee, et al., 2003) and the salient findings are briefly reviewed here. Contrary to the hypotheses, there were *no* main effects of status hearings on participants' counseling attendance, urinalysis results, self-reported drug use, self-reported alcohol intoxication, or self-reported criminal activity during the scheduled 14-week course of the drug court program (Marlowe, Festinger, Lee, et al., 2003). Moreover, there was *no* difference in graduation rates from the program (Festinger et al., 2002) or in urinalysis results, self-reported drug problems, self-reported alcohol problems,

or self-reported criminal activity at six months or 12 months post-admission (Marlowe et al., 2002).

As predicted, however, there were significant interaction effects depending upon participants' risk level. Participants who (1) met DSM-IV criteria for APD or (2) had a prior history of drug abuse treatment achieved more drug abstinence and/or were more likely to graduate successfully from the program when they were assigned to bi-weekly hearings, whereas participants without these risk factors performed more favorably when assigned to as-needed hearings (Festinger et al., 2002). Figure 1 illustrates the interaction effect for APD on graduation rates. Individuals without a diagnosis of APD were significantly more likely to graduate from the drug court when they were assigned to as-needed hearings (68%) as opposed to bi-weekly hearings (50%) ($p < .05$). Conversely, while not statistically significant, relatively more individuals who met APD criteria graduated when they were assigned to bi-weekly hearings (48%) as opposed to as-needed hearings (36%) ($p = .25$).

Figure 1. Interaction of antisocial personality disorder (APD) and frequency of judicial status hearings on graduation rates from misdemeanor drug court. Reprinted with permission from D. S. Festinger, D.B. Marlowe, P.A. Lee, K.C. Kirby, G. Bovasso, & A.T. McLellan (2002). Status hearings in drug court: When more is less and less is more. *Drug and Alcohol Dependence*, 68, 151-157. Copyright 2002 by D.S. Festinger, D.B. Marlowe, P.A. Lee, K.C. Kirby, G. Bovasso, A.T. McLellan, and Elsevier Press. Reprinted with permission from Elsevier.

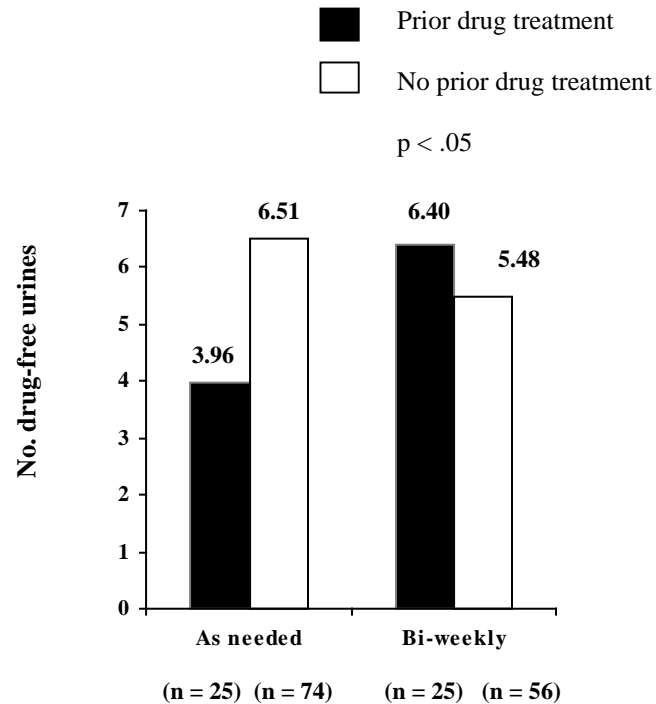


Although it is not depicted here, a comparable interaction effect was also found for APD diagnosis and urinalysis results. Participants with APD provided more drug-free urine samples during the first 14 weeks of drug court when assigned to bi-weekly hearings (mean \pm SD = 6.37 ± 5.67) as opposed to as-needed hearings (4.33 ± 4.95); conversely, non-APD individuals provided more drug-free urines when assigned to as-needed hearings (6.54 ± 4.92) as opposed to bi-weekly hearings (5.31 ± 5.20) ($p < .05$).

Figure 2 depicts the interaction effect for prior drug treatment history and urinalysis results. Participants with a prior drug treatment history provided more drug-free urine samples during the first 14 weeks of drug court when they were assigned to bi-weekly status hearings (6.40 ± 5.45) as opposed to as-needed hearings (3.96 ± 4.46); conversely, individuals without a prior history of drug treatment provided more drug-free urines when assigned to as-needed hearings

(6.51 ± 5.04) as opposed to bi-weekly hearings (5.48 ± 5.35) ($p < .05$).

Figure 2. Interaction of prior drug treatment history and frequency of judicial status hearings on urinalysis results during the first 14 weeks of misdemeanor drug court. Reprinted with permission from D.S. Festinger, D.B. Marlowe, P.A. Lee, K.C. Kirby, G. Bovasso, & A.T. McLellan (2002). Status hearings in drug court: When more is less and less is more. *Drug and Alcohol Dependence*, 68, 151-157. Copyright 2002 by D.S. Festinger, D.B. Marlowe, P.A. Lee, K.C. Kirby, G. Bovasso, A.T. McLellan, and Elsevier Press. Reprinted with permission from Elsevier.



It is, of course, possible that participants' prior drug treatment histories might have simply reflected the severity of their drug abuse problems. That is, individuals with more serious or longer-term drug problems may have been more likely to have been referred or mandated into treatment. In fact, individuals with a prior drug treatment history did have significantly higher baseline ASI drug clinical factor scores ($p < .05$), higher baseline ASI drug composite scores ($p = .07$), and more lifetime years of drug use ($p < .05$) than those without such a history. While this confirms that subjects with prior drug treatment histories did have more severe drug problems, it is important to note that these indices of drug severity did *not* interact with group assignment to predict any dependent measure of outcome. In addition, there was no relationship between APD diagnosis and previous drug treatment.

The results of this first study provided support for the Risk Principle in a drug court context. High risk offenders performed more favorably when they were provided with more intensive judicial supervision, and low risk offenders performed more favorably when they were provided with less intensive judicial supervision. The differential effects for the high-risk vs. low-risk offenders apparently "canceled each other out" in the main analyses for the sample as a whole, and would have been missed entirely if the analyses had not specifically tested for interaction effects.

Importantly, however, because this study was conducted in one jurisdiction with one drug court program and one judge, questions remained about the generalizability of the findings. It was conceivable, for example, that this particular drug court judge might have been unusually adept at handling more serious antisocial offenders. If so, the results might not be applicable to other drug courts. Therefore, the study was replicated in four new drug courts in rural and semi-urban communities.

**Replication Study in Dover and Georgetown:
Misdemeanor Clients**

[6] The results of the replication study with misdemeanor clients are detailed in a recent publication (Marlowe, Festinger & Lee, in press) and the salient findings are briefly reviewed here. As was previously found in Wilmington, there were *no* differences between the bi-weekly and as-needed participants on counseling sessions attended, urinalysis results, self-reported drug use, self-reported alcohol intoxication, or self-reported criminal activity during the first 14 weeks of the program, or in graduation rates from the program.

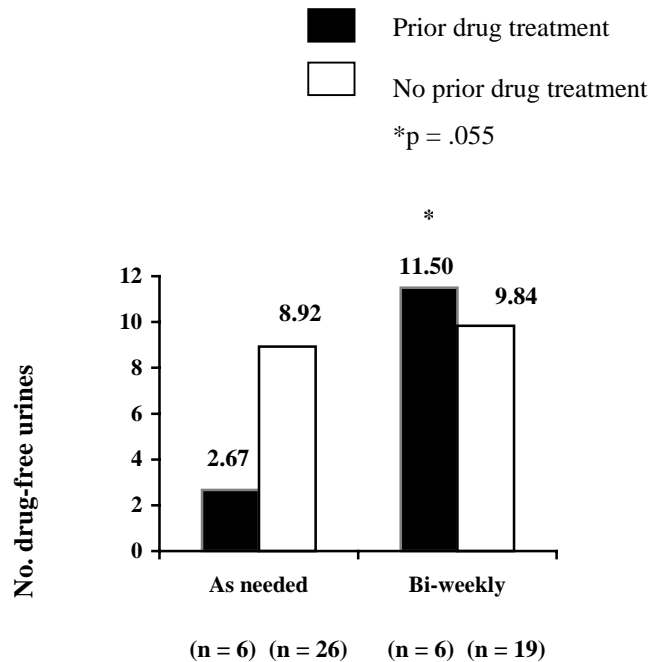
Importantly, the interaction effect was replicated from the previous study concerning participants' prior history of drug abuse treatment. As depicted in Figure 3, participants with a prior drug treatment history provided substantially more drug-free urine samples during the first 14 weeks of drug court when they were assigned to bi-weekly status hearings (11.50 ± 4.81) as opposed to as-needed hearings (2.67 ± 3.61) and this difference was marginally significant after statistically controlling for current criminal charges ($p = .055$).

In addition, there were substantial differences in graduation rates and termination rates for participants with prior drug treatment histories. Over 80 percent of participants with a prior drug treatment history graduated from the program when they were assigned to bi-weekly hearings, compared to less than 20 percent of those assigned to as-needed hearings ($p = .05$).

Because of the very large magnitude of these effects, statistical significance was reached after recruiting only a small number of participants with prior drug treatment histories (as-needed = 6, bi-weekly = 6). Such small numbers raise serious concerns about whether this study sample was

truly representative of the drug court population. It is possible that there might have been something unusual about these 12 individuals that was responsible for the differences that were detected. From a *scientific* standpoint, it would have been advisable to continue enrolling more drug court clients into the study and to check to be certain that the results remained the same over time with more subjects.

Figure 3. Replication study: Interaction of prior drug treatment history and frequency of judicial status hearings on urinalysis results during the first 14 weeks of misdemeanor drug court. Reprinted with permission from D.B. Marlowe, D.S. Festinger, & P.A. Lee (forthcoming 2003). The role of judicial status hearings in drug court: A controlled replication. *Offender Substance Abuse Report*, Volume 3, No. 3. Copyright 2003 by D.B. Marlowe, D.S. Festinger, P.A. Lee, and Civic Research Institute, Inc. Reprinted with permission from Civic Research Institute, Inc.



This course of action was not acceptable, however, from an *ethical* or *practical* standpoint. Given the serious legal repercussions to clients of failing in drug court, and the serious public safety concerns of having drug offenders continue to use drugs in the community, it was necessary to report these early findings to the Steering Committees and IRBs overseeing the study and to request their guidance about how to proceed. It was ultimately determined that the “risk/benefit ratio” had shifted for the study, meaning that the foreseeable risks to clients might have been higher than previously believed. This would require alterations to the consent form that would inform all current and future participants about the possible risks of being scheduled for as-needed hearings.

Although the risk appeared at present to be limited to *misdemeanor* participants with *prior drug treatment histories*, it was possible that it might have also extended to *felony* participants and to those with *APD*. Understandably, therefore, the judges and other program personnel were reluctant to continue randomly assigning clients to as-needed hearings. Given that the study had already yielded important and practical scientific information by replicating some of the previous findings from Wilmington, it was felt that the emerging ethical concerns overshadowed the remaining scientific questions. Therefore, recruitment was suspended indefinitely for the study and remedial procedures were instituted to assist the few negatively affected participants. Unfortunately, because it was necessary to stop the study prematurely, there was insufficient statistical power to follow up on other previous findings such as whether there was an interaction effect for misdemeanor participants with APD.

Replication Study in Dover and Georgetown: Felony Clients

[7] The results of the replication study with felony clients have not previously been published. The felony

participants were predominantly young adults (mean \pm SD = 28.99 ± 8.54 years of age), male (73%), Caucasian (57%) or African American (39%), single (80%), high school educated (11.89 ± 1.44 years), and employed (75%). Their most serious current criminal charges were possession or consumption of narcotics (61%), distribution or possession with intent to distribute drugs (36%), or possession of drug paraphernalia or hypodermic syringes (4%). Most of these individuals (87%) had been previously arrested, 29 percent had a prior criminal conviction, 21 percent had been previously incarcerated, and 23 percent met DSM-IV criteria for APD. They were represented by public defenders (54%), by private defense counsel (37%), or were pro se (9%).

The participants reported currently abusing cannabis (45%), alcohol (41%), cocaine (25%), opiates (21%), sedatives (11%), or hallucinogens (5%). Roughly one third (32%) had a prior history of drug abuse treatment. Based upon ASI cut-off scores for classifying the treatment needs of offenders (Lee et al., 2001), 35 percent of these participants produced “sub-threshold” drug composite scores similar to a non-substance using population (drug composite score $\leq .04$), 58 percent produced “moderate” drug composite scores similar to a national sample of substance abuse clients in outpatient treatment ($> .04$ and $\leq .24$), and 7 percent produced “severe” drug composite scores similar to a national sample of substance abuse clients in residential drug treatment ($> .24$). A check on randomization confirmed that each of these demographic, drug-use, and criminal-history variables was equally distributed in the two study conditions. Equivalent numbers of clients from the two counties were represented in the sample and outcomes did not differ between counties; therefore, the data were not nested by county in the analyses.

Several important cautions must be kept in mind before presenting the outcomes. First, as previously discussed, it was necessary to stop the study prematurely. As

a result, there were an insufficient number of participants to ensure that the study sample was representative of felony drug court clients generally. Second, there were relatively lower consent rates and greater attrition rates from the bi-weekly condition for the felony participants. In the previous studies, over 50 percent of misdemeanor clients consented to participate and less than 10 percent dropped out of the bi-weekly condition because of its onerous time demands (Marlowe, Festinger, Lee, et al., in press). In contrast, only 40 percent of felony clients consented to participate in this study and 28 percent dropped out of the bi-weekly condition. This may have been due to the fact that the felony programs were six to 12 months in length, compared to only four to six months for the misdemeanor programs. Understandably, the felony participants were often unwilling or unable to attend bi-weekly status hearings for such a long time, in part because the hearings interfered with their ability to maintain employment or education. Regardless of the reason, this raises further concerns about whether the sample was fairly representative of felony drug court clients.

With these caveats in mind, the results were consistent with what was found in the studies of misdemeanor participants. The study maintained excellent integrity of the experimental conditions. As can be seen in Table 1, participants in the bi-weekly condition were scheduled to attend significantly more judicial status hearings than participants in the as-needed condition and they actually attended significantly more status hearings ($p < .0001$). There were, however, *no* differences in counseling sessions attended, urinalysis results, self-reported drug use, self-reported alcohol intoxication, or self-reported criminal activity during the first 16 weeks of the program, or in graduation rates.

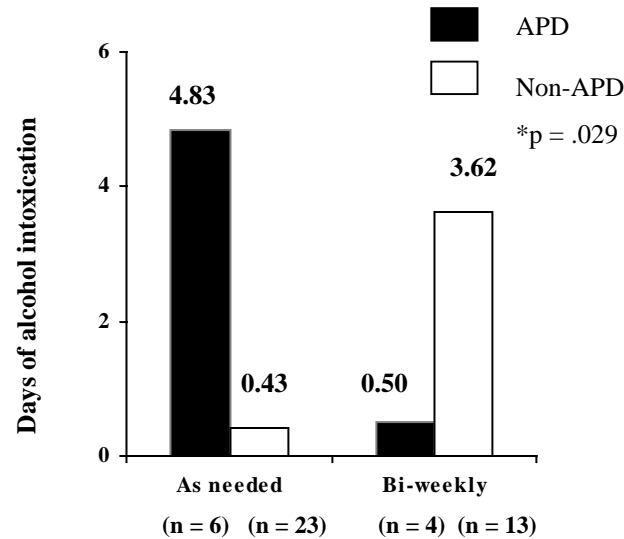
Table 1
Performance During the First 16 Weeks of Felony Drug Court, and Program Completion Status

| | As Needed | (n=33) | Bi-weekly | (n=23) |
|--|------------------|---------------|------------------|---------------|
| | <u>M (SD)</u> | <u>%</u> | <u>M (SD)</u> | <u>%</u> |
| Status hearings scheduled | 0.97 (1.36) | 46% | 4.39 (0.99)† | 100%† |
| Status hearings attended | 0.73 (1.10) | 42% | 3.83 (1.27)† | 100%† |
| Counseling sessions attended | 8.55 (8.82) | 91% | 7.09 (3.69) | 91% |
| Total drug-free urines provided | 7.85 (4.96) | 88% | 7.26 (5.45) | 78% |
| Consecutive drug-free urines provided | 5.73 (4.71) | | 4.74 (4.80) | |
| Self-reported days of illicit drug use | 2.76 (9.55) | 28% | 2.67 (4.35) | 39% |
| Self-reported days of alcohol intoxication | 1.34 (4.20) | 17% | 3.06 (5.43) | 33% |
| Self-reported days of illegal activity | 0.00 (0.00) | 0% | 0.83 (3.54) | 6% |
| Graduated | | 53% | | 35% |
| Terminated or absconded | | 25% | | 41% |
| Still enrolled in program | | 22% | | 24% |

% = proportion of participants who met any criterion on each variable (e.g., attended *any* status hearings). Alcohol intoxication = felt the effects of alcohol or had 5 drinks in one day. †p < .0001.

Because of the small number of participants, it was not possible to evaluate many of the potential interaction effects. For most of the analyses, there were too few participants who had APD or a prior drug treatment history *and* were assigned to bi-weekly status hearings *and* remained in the study long enough to provide outcome data. Figure 4 depicts one of the few interaction analyses that could be fairly evaluated that produced significant results. Consistent with the previous findings, participants with APD reported engaging in more alcohol intoxication during the first three months of drug court when they were assigned to as-needed hearings (4.83 ± 8.54 days of intoxication) as opposed to bi-weekly hearings (0.50 ± 1.00); conversely, non-APD participants reported more alcohol intoxication when assigned to bi-weekly hearings (3.62 ± 6.19 days) as opposed to as-needed hearings (0.43 ± 1.31) ($p = .029$). Again, because of the small number of participants for this analysis, as well as the large number of statistical comparisons that were performed and the potential unreliability of self-report data, this finding should be viewed as *preliminary* and must be replicated in future studies.

Figure 4. Interaction of antisocial personality disorder (APD) and frequency of judicial status hearings on self-reported alcohol intoxication during the first 3 months of felony drug court.



DISCUSSION

[8] The results of this program of research provide compelling evidence that the judge *is* a key component of drug court -- for a subset of offenders. Similar patterns of results were obtained in randomized, controlled studies conducted in different drug courts located in urban and rural jurisdictions and serving both misdemeanor and felony offenders. In each case, consistent with Responsivity Theory and the Risk Principle, frequent status hearings were associated with improved outcomes for high-risk drug offenders, but were associated with equivalent or worse outcomes for low-risk offenders.

It bears repeating, however, that the small number of participants in the replication studies raise serious questions about whether the samples were fairly representative of drug court clients generally. Because the results were reproduced in sequential experimental studies, and because they are supported by previously validated criminal justice theories

(i.e., Responsivity and the Risk Principle), one is justified in placing greater confidence in the reliability of the findings. Nevertheless, it is essential that other researchers replicate this work in new settings with a larger number of participants.

This research has obvious implications for drug court practice and drug policy. Judicial status hearings are expensive and time consuming and should be targeted to clients who would be expected to benefit most from them. For low risk clients, the data suggest that it might be appropriate and cost-effective to maintain relatively non-porous boundaries between treatment providers and criminal justice personnel, giving these clients an opportunity to focus on their recovery in a safe and discreet clinical setting. Such an approach, however, would appear to be contraindicated for high-risk clients who are likely to “fall through the cracks” or to exploit gaps in communication (Marlowe, in press).

The findings also raise questions about whether high-risk offenders could reasonably be expected to succeed in the type of low-intensity diversionary intervention exemplified in Proposition 36 or Proposition 200. In the absence of ongoing judicial supervision, high-risk offenders in the present studies were substantially more likely to use illicit drugs, to use alcohol to intoxication, and to be terminated from the drug court program. At least in these studies, poorly performing clients could be readily brought in for status hearings. Under Proposition 36 or 200, such individuals would be entitled to several formal violation-of-probation (v.o.p.) hearings and limited responses would be available from the bench. At a minimum, it would appear that some mechanism should be in place in these statutes to permit poorly responding individuals to be readily transferred into a more intensive judicially managed program.

The variables of APD and drug treatment history were the most robust indicators of risk-level in these studies. This is consistent with prior research indicating that APD is

often associated with worse outcomes in drug abuse treatment (e.g., Alterman & Cacciola, 1991; Marlowe et al., 1997; Woody et al., 1985). It is more difficult, however, to interpret the influence of prior drug treatment history. It remains an open question whether this reflects the severity of subjects' drug problems, past negative experiences with drug treatment, or some other unknown influence. Arguably, individuals with a prior drug treatment history that wind up in drug court may have already failed at one or more experiences with standard treatment. Such individuals may require a more intensive and structured intervention in order to show improvement. It is also possible that prior negative experiences with treatment might have made these clients less willing to revisit standard treatment interventions. Enhanced supervision by the judge may have been required to get them to give treatment a "second chance." Further research is needed to get a definitive handle on the nature of this interaction effect.

Regardless, the findings underscore the importance of assessing APD and drug treatment history at the point of clients' entry into drug court. It might be most effective and cost-effective to prospectively assign drug court clients to different schedules of court hearings depending upon their risk level and clinical needs. Moreover, from the standpoint of research or evaluation efforts, it would appear essential to measure these traits as potential predictors of outcomes, and to determine whether they may be significantly interacting with various drug court interventions.

Perhaps the most important finding from these studies is that researchers and drug court professionals can work collaboratively to answer questions of practical relevance to the drug court field using rigorous scientific methods. It is possible to experimentally manipulate the core ingredients of drug court without offending clients' sensibilities or running afoul of their due process rights. With sufficient planning and foresight, researchers and

practitioners can work jointly to anticipate ethical quandaries, to safeguard clients' rights of confidentiality and autonomy, and to identify and correct any negative reactions that might be experienced by clients or staff during the course of the project. Where indicated, the study can be stopped prematurely and remedial measures can be instituted to ameliorate any short-term harm caused by the research interventions.

Without such controlled experimental research, there is *no* way to be confident in the effectiveness of drug court programs or to insure that drug courts aren't causing undue harm to a certain segment of clients. One can always take steps to avoid or reduce anticipated harm from a research study. It is far more difficult to avoid unforeseen harm from an unstudied intervention.

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