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REENTRY COURTS: AN EMERGING USE OF JUDICIAL RESOURCES IN THE STRUGGLE TO REDUCE THE RECIDIVISM OF RELEASED OFFENDERS

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I. Introduction

In the current system of criminal justice in the United States, most courts have little involvement with offenders once they are sentenced to prison. Certainly, prison inmates can and do appeal their convictions, but the appeals are heard by separate appellate courts. After release from prison on parole, or under some other form of supervised release, the court's role in the affairs of the offender diminishes further. Parole officers are typically the agents of the criminal justice system who carry out the terms of the offender's sentence once released, providing supervision and ideally assisting the offender's transition back into the community. Parole officers accomplish this through working with offenders to help them avoid using drugs and alcohol, maintain curfews and daily schedules, abide by the law, and secure and maintain lawful employment. If an offender fails to follow the conditions of his or her supervision, it is the parole agent and parole board or other releasing authority who determines what sanctions shall be imposed in response to the violations.

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The judiciary has not always confined itself to the activities of the offender pre-incarceration. Prior to the 1970s, every state in the nation, the District of Columbia, and the Federal system featured an indeterminate sentencing model for sentencing individuals to prison.[1] Under the Model Penal Code, judges could resentence an inmate after being sent to prison upon a receipt of a petition from prison officials.[2] Beginning in the 1970s, indeterminate sentencing fell under attack from both liberal and conservative groups, and as a result, many states abolished parole and enacted determinate sentencing schemes and other "truth-in-sentencing" principles that required inmates serve a mandatory amount of time in prison prior to release.[3] As a result of this "get-tough-on-crime" approach, from 1980 to 2000, the prison industry exploded in America, with a seventy percent increase in the number of prisons and a quadrupling of the number of inmates.[4] While judges, parole boards, and prison officials had once shared responsibility for sentence length under indeterminate sentencing systems, many courts were left with little to no involvement in either the preparation for release or the transition of an inmate back into society.[5]

However, a new type of court that directly involves itself in the process of assisting offenders with the journey from prison back to the community is beginning to gain a foothold in the American judiciary. These courts, called reentry courts, are modeled after drug courts, which began with the first drug court in Miami in 1989.[6] Drug courts are formally called by different names depending on the jurisdiction; Wyoming, for example, refers to them as "Court Supervised Treatment Programs."[7] The traditional drug court model involves a judge managing a caseload of drug-involved or addicted offenders, requiring them to make regular court appearances in a non-adversarial setting, participate in drug treatment, and engage in other counseling as necessary.[8] The drug court model also typically involves a team consisting of the judge as the leader, supported

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[1] JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 341 (2005).

[2] MODEL PENAL CODE § 7.08(4) (1985).

[3] TRAVIS, *supra* note 1, at 341.

[4] Michael Hallett, *Reentry to What? Theorizing Prisoner Entry in the Jobless Future*, 20 CRITICAL CRIMINOLOGY 213, 214 (2012).

[5] Reginald A. Wilkinson, Gregory A. Bucholtz & Gregory M. Siegfried, *Prison Reform Through Offender Reentry: A Partnership Between Courts and Corrections*, 24 PACE L. REV. 609, 618 (2004).

[6] WEST HUDDLESTON & DOUGLAS B. MARLOWE, NAT'L DRUG CT. INST., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES 5, at fig.1 (2011), *available at* http://www.ndci.org/sites/default/files/nadcp/PCP%20Report%20FINAL.PDF. *See also* Eric J. Miller, *Embracing Addiction: Drug Courts and the False Promise of Judicial Interventionism*, 65 OHIO ST. L.J. 1480, 1488 (2004).

[7] WYO. STAT. ANN. § 7-13-1601 (2012).

[8] OFF. OF JUST. PROGRAMS, U.S. DEP'T OF JUST., REENTRY COURTS: MANAGING THE TRANSITION FROM PRISON TO COMMUNITY: A CALL FOR CONCEPT PAPERS 5 (1999) [hereinafter REENTRY COURTS].

by a prosecutor, a defense attorney, a member of law enforcement, a treatment provider, a probation and parole officer, or other community providers who all contribute to decisions involving the offender.[9] Offenders who participate in drug court programs are regularly tested for drug use, and the judge administers a predetermined set of graduated sanctions in proportion to the severity of any violations.[10] Those offenders who do not progress through the drug court program are placed back on the court's normal calendar for further action, which can result in a jail or prison sentence.[11]

Conversely, offenders who successfully complete the drug court program are offered incentives as they move through the program.[12] As an example, one judge permits participants who pass drug tests to draw a prize from a fishbowl, with prizes ranging from nominal rewards, such as a pencil or dollar, to rewards with higher value, such as a television.[13] For the successful participant, the drug court experience culminates with a celebratory graduation ceremony presided over by the judge, which may also include the drug court team and the offender's family, where the graduate often receives a certificate or t-shirt, and in some cases, a hug from the judge.[14]

Drug courts have consistently demonstrated the ability to reduce recidivism, with a reduction rate ranging from nine to twenty-six percent.[15] The success of the drug court model triggered its application to other areas with the creation of mental health courts, DUI courts, domestic violence courts, homeless courts, teen courts, tobacco courts, and family courts, among others.[16] These courts, including drug courts, have often been referred to as "problem-solving courts."[17] Reentry courts, the subject of this article, are extending the drug court model to both offenders

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[9] HUDDLESTON & MARLOWE, *supra* note 6, at 7; Miller, *supra* note 6, at 1491–93.

[10] REENTRY COURTS, *supra* note 8, at 5.

[11] *Id.* at 6.

[12] Miller, *supra* note 6, at 1498.

[13] *Id.*

[14] REENTRY COURTS, *supra* note 8, at 6; Miller, *supra* note 6, at 1498–99.

[15] U.S. GOV'T ACCOUNTABILITY OFF., ADULT DRUG COURTS: STUDIES SHOW COURTS REDUCE RECIDIVISM, BUT DOJ COULD ENHANCE FUTURE PERFORMANCE MEASURE REVISION EFFORTS 21–22 (2011), *available at* http://www.gao.gov/assets/590/586793.pdf; David B. Wilson, Ojmarrh Mitchell & Doris L. MacKenzie, *A Systematic Review of Drug Court Effects on Recidivism*, 2 J. EXPERIMENTAL CRIMINOLOGY 459, 479 (2006); Deborah Koetzle Shaffer, Reconsidering Drug Court Effectiveness: A Meta-Analytic Review 209 (June 26, 2006) (unpublished Ph.D. dissertation, University of Cincinnati), *available at* http://etd.ohiolink.edu/send-pdf.cgi/SHAFFER%20DEBORAH%20KOETZLE.pdf?ucin1152549096.

[16] Claire McCaskill, *Re-entry: Next Steps in Breaking the Cycle of Reoffending: A Call for Reentry Courts*, 20 FED. SENT'G REP. 308, 308–09 (2008); Stephen E. Vance, *Federal Reentry Court Program: A Summary of Recent Evaluations*, FED. PROBATION, Sept. 2011, at 64, 65.

[17] *See, e.g.*, Vance, *supra* note 16, at 64.

already in the community who are struggling with their probation or parole, and inmates who are released early from prison on parole or supervised release. This expansion raises the question of whether it is properly the province of the courts to shepherd ex-inmates as they reenter society and attempt to avoid returning to prison. In a newspaper article from 2011, Wyoming Supreme Court Justice Barton Voigt noted that Wyoming's judiciary was divided as to the effectiveness and appropriateness of drug courts.[18] Voigt commented that in 2009, Wyoming's district court judges passed a resolution objecting to court-supervised treatment, and in the article, the Justice posed a similar query: "Are courts the place to fix society?"[19]

While this article does not attempt to address the weighty question of whether courts can fix society, it does undertake an examination of the creation and evolution of reentry courts in the United States, including a discussion of Wyoming's version of reentry courts. In addition, the article will attempt to review the extant literature that delves into the efficacy of reentry courts, and further explore the arguments that are both in favor of and opposed to the use and expansion of reentry courts or similar problem-solving courts.

II. The Underpinnings of Reentry Courts: Drug Courts

In 1987, as a prosecutor in Dade County, Florida, former United States Attorney General Janet Reno was one of the original champions of the drug court model and worked in the nation's first drug court.[20] Following the creation of that original drug court in Miami, drug courts spread like wildfire around the nation, expanding to 2459 drug courts in operation as of December 31, 2009.[21] The growth of drug courts in the United States has been called a "national phenomenon."[22] In 1999, Reno and then-National Institute of Justice Director Jeremy Travis announced federal support for state and local jurisdictions interested in establishing pilot reentry courts, which would be modeled after drug courts.[23] Reno observed, "There is something magic about a judge. That black robe can make a difference."[24] Travis later wrote:

> Reentry courts offer numerous advantages over our current system of reentry supervision. Judges command the public's confidence and, by contrast, our parole system is held in low public esteem.

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[18] Holly Dabb, *Drug Courts May Hold the Answer*, Rock Springs Rocket-Miner, Oct. 1, 2011, *available at* http://www.wyomingnews.com/articles/2011/10/01/news/01top_10-01-11.txt.

[19] *Id.*

[20] Vance, *supra* note 16, at 64.

[21] Huddleston & Marlowe, *supra* note 6, at 1.

[22] *Id.* at 2.

[23] Vance, *supra* note 16, at 64.

[24] Editorial, *Reno's 'Reentry Courts'*, Christian Sci. Monitor, Aug. 16, 1999, at 8.

> Judges carry out their business in open courtrooms, not closed offices, so the public, former prisoners, family members, and others can benefit from the open articulation of reasons for the government's decisions. Judges have been trained in the law, with experience in applying legal standards to facts and making tough decisions after weighing advocates' competing proposals. As is now true in some experimental reentry courts, the judges that oversee reentry could be the same as those who impose sentences, keeping track of a prisoner's progress on meeting the goals of a reentry plan, and possibly granting early release to a prisoner who has made significant progress.[25]

In line with Reno's and Travis' recruitment of those interested in piloting a reentry court, in 1999, the U.S. Department of Justice, Office of Justice Programs (OJP), began a national reentry court initiative and started soliciting applications from interested jurisdictions.[26] In response to the OJP's call for volunteers, nine pilot sites were chosen in California, Colorado, Delaware, Florida, Iowa, Kentucky, New York, Ohio, and West Virginia.[27] Each of the pilot programs featured six core elements: 1) assessment and planning; 2) active oversight; 3) management of support services; 4) accountability to community; 5) graduated and parsimonious sanctions; and 6) rewards for success.[28]

While the OJP was not able to provide programmatic funding to the selected pilot sites, it did provide participants with travel and expenses to attend three technical assistance cluster meetings to discuss approaches and challenges to program implementation, along with on-going technical assistance as appropriate.[29] The OJP gave each pilot site the freedom to form its own reentry court model so long as it incorporated the proposed core elements.[30] A majority of the participants chose to grant the judicial branch of their state authority to administer the program, while several other jurisdictions utilized administrative law judges or parole boards as the supervising legal authority.[31] Each pilot site also had the discretion to target different offender populations; some focused on offenders with mental health disorders, others specialized in domestic violence

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[25] TRAVIS, *supra* note 1, at 350–51.

[26] REENTRY COURTS, *supra* note 8, at 10.

[27] Wilkinson et al., *supra* note 5, at 621.

[28] *Id.* at 622–23.

[29] REENTRY COURTS, *supra* note 8, at 10.

[30] CHRISTINE LINDQUIST, JENNIFER HARDISON & PAMELA K. LATTIMORE, RES. TRIANGLE INST., REENTRY COURTS PROCESS EVALUATION (PHASE I), FINAL REPORT 53–54 (2003), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/202472.pdf.

[31] *Id.*

offenders, and others selected all felony offenders originally sentenced to prison.[32] The pilot sites developed different methods for identifying participants, with most enrolling a few months from release.[33] West Virginia and Ohio, however, followed the reentry model recommended by the OJP, identifying offenders at the time of initial sentencing, which provided the opportunity for thorough and intensive reentry preparation during the incarceration period.[34]

III. Reentry Courts Build Social Capital

There is an expanding body of research that demonstrates the importance of social capital and social networks for individual success at reentry.[35] Social capital has been defined as "resources, which vary in terms of both quantity and quality, embedded in social networks that help individuals achieve goals that would otherwise be less attainable."[36] Sampson and Laub, in their "life course" theory of desistance from crime, have persuasively argued that the accumulation of social capital, such as useful reciprocal relationships, family and community ties, and supportive networks in a former offender's life, can contribute to inhibiting future criminal activity.[37] Their theory posits that a reservoir of social capital creates an environment conducive for the development and maintenance of informal social controls that encourage compliance with the law.[38]

A high level of social capital can also assist authority figures, such as police officers or teachers, in promoting adherence to laws and rules among social network members.[39] At the other end of the spectrum, an absence of social capital produces weak informal social controls, which leads to delinquency, criminality, and other aberrant behavior.[40] Members of deficient social networks are less likely to develop the social capital necessary to overcome adverse situations, and are more likely to gravitate towards social resources that promote criminal behavior, creating "negative human capital" or "criminal capital."[41]

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[32] *Id.* at 7; Wilkinson et al., *supra* note 5, at 623.

[33] Lindquist et al., *supra* note 30, at 10–12.

[34] *Id.*

[35] Caitlin J. Taylor, *Tolerance of Minor Setbacks in a Challenging Reentry Experience: An Evaluation of a Federal Reentry Court*, 24 Crim. Just. Pol'y Rev. 49, 56 (2013).

[36] Michael D. Reisig, Kristy Holtfreter & Merry Morash, *Social Capital Among Women Offenders: Examining the Distribution of Social Networks and Resources*, 18 J. Contemp. Crim. Just. 167, 169 (2002).

[37] John H. Laub & Robert J. Sampson, *Turning Points in the Life Course: Why Change Matters to the Study of Crime*, 31 Criminology 301, 303–04 (1993).

[38] *Id.*

[39] Reisig et. al., *supra* note 36, at 169.

[40] *Id.*

[41] *Id.* at 181.

In the context of recovering from alcohol or drug addiction, social capital is sometimes referred to as recovery capital, and it is comprised of the conditions within an individual's family, professional, and social lives, such as family and job stability and support, which can increase an individual's capacity to overcome addiction to drugs and alcohol.[42] Research into reentry programs has documented the positive role that family members and other ex-offenders can play in helping participants gain access to pro-social resources, such as employment and healthy social outlets.[43] Most reentry courts require a minimum of twelve months participation in the program, which enables the reentry court team to offer support by facilitating the development of a support network that continues to benefit the offender after they graduate from the program, setting a stage for participants to build their social and recovery capital.[44] Further, it has been "widely recognized" that sustained change in an offender cannot be achieved in a short duration of time, and the recommended treatment process is eighteen months long.[45]

Incarceration, by contrast, depletes an individual's stock of social capital because it disrupts the relations from which the capital is built. Stable social relationships are created and recreated through time and investment, and the social ties that provide support must be actively nurtured to maintain their efficacy.[46] Prison, unfortunately, fosters an environment where social capital can depreciate as an individual's ties to social networks weaken and progressively recede.[47] Reentry courts, however, provide offenders with a team of community members who may not replace a family, but offer the potential to build social capital and begin a law-abiding and productive life.

Reentry courts should not be expected to do all the work in achieving sustained change in an offender, as it is hoped that the programs will empower offenders to desist from future criminality without the support of the reentry court team. In the context of youthful individuals, Boeck, Fleming, and Kemshall stated that:

> As such desistance, from a social capital perspective, means the ability to navigate complex social situations and being able, not only to avoid risks but also to take and negotiate important

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[42] Melissa Aubin, *The District of Oregon Reentry Court: An Evidence-Based Model*, 22 FED. SENT'G REP. 39, 41 (2009).

[43] *Id.*

[44] *Id.*

[45] Faye S. Taxman, *Supervision—Exploring the Dimensions of Effectiveness*, FED. PROBATION, Sept. 2002, at 14, 19.

[46] Paul S. Adler & Seok-Woo Kwon, *Social Capital: Prospects for a New Concept*, 27 ACAD. MGMT. REV. 17, 22 (2002). *See also* Pierre Bourdieu, *The Forms of Capital*, *in* HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 248 (John G. Richardson ed., 1986).

[47] Adler & Kwon, *supra* note 46, at 22.

> social risks, such as forming new networks and expanding the radius of trust, that allow young people to enhance their choice and outlook in life.[48]

IV. STUDIES OF REENTRY COURTS

As of December 2007, there were at least twenty-eight reentry courts in operation around the nation, and other reentry courts have been implemented since that time, including in Laramie County, Wyoming.[49] Given that reentry courts are a new development, little research has been conducted regarding their effectiveness at reducing recidivism, and some of the early results have been mixed.

An evaluation conducted in 2002 demonstrated a low re-arrest rate for the first sixty-six participants in the Ohio reentry program.[50] A study of the Harlem Parole Reentry Court program in New York found a positive impact on preventing new criminal behavior, but also identified a negative impact upon participant revocation rates.[51] The Harlem study suggested that a possible explanation for the higher revocation rates among reentry court participants, relative to the comparison group of non-reentry court parolees, was the "closer supervision of parolees, including more frequent employment check-ins, home visits, and urine analyses, all of which provide for a greater opportunity to catch parolees in the act of violating conditions of parole."[52]

Oregon established one of the first federal reentry court programs in 2005, and an evaluation of that program reached results similar to the Harlem reentry court study, in that the comparison group outperformed the reentry court group on "multiple, important dimensions."[53] As an example, "the comparison group underwent less monitoring and supervision and had fewer drug and mental health services and yet had more employment and fewer sanctions."[54]

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[48] Thilo Boeck, Jennie Fleming & Hazel Kemshall, *Social Capital, Resilience and Desistance: The Ability to be a Risk Navigator*, BRIT. J. COMMUNITY JUST., Autumn 2008, at 5, 20.

[49] HUDDLESTON & MARLOWE, *supra* note 6, at 19; E-mail from Kurt Zunker, Program Coordinator, Laramie Cnty. Drug & Reentry Court Program, to the author (Jan. 15, 2013) (on file with author).

[50] LINDQUIST et al., *supra* note 30, at 38–39.

[51] Zachary K. Hamilton, *Adapting to Bad News: Lessons From the Harlem Parole Reentry Court*, 50 J. OFFENDER REHABILITATION 385, 399 (2011).

[52] *Id.* at 400.

[53] Vance, *supra* note 16, at 66.

[54] *Id.* The study was conducted by the University of Oregon College of Education, and only 114 individuals were included in the study. The study authors advised that the study had several limitations, including the relatively small sample size and the fact that the comparison group had less contact with the legal system and were under less scrutiny than the treatment group.

Massachusetts created the Court Assisted Recovery Effort (C.A.R.E.) program in 2006, which targets offenders on federal supervised release or probation with significant drug abuse histories.[55] Participants in the C.A.R.E. program enroll voluntarily, and participants cannot be registered as sex offenders or have serious mental health problems.[56] An evaluation of the C.A.R.E. program compared participants with offenders on regular supervision on three measures: 1) the ability to remain sober; 2) the ability to remain employed; and 3) the ability to abide by the law.[57]

The study concluded that C.A.R.E. participants were more likely to successfully complete their supervision than the comparison group, forty-six percent compared to thirty-one percent, meaning they were more likely to avoid new criminal charges, maintain employment, and remain drug- and alcohol-free.[58] The authors of the Massachusetts study acknowledged that the small sample size, forty-six C.A.R.E. participants and sixty-eight comparison group members, meant that "a few cases in one direction or another might change the outcome of our analysis," and that the study did not answer the question of "why?" the C.A.R.E. participants were at least "marginally more successful" than the comparison group.[59]

The Western District of Michigan established the Accelerated Community Entry (ACE) program in 2005, which is geared toward high-risk offenders following release from prison, utilizing a multi-disciplinary approach to address the needs of the program participants.[60] Much like the other programs discussed herein, the sample groups included in an evaluation of the ACE program were small: 36 ACE participants and 121 comparison group members.[61] The study found statistically significant differences between the ACE participants and the comparison group; nearly forty percent of the ACE participants were re-arrested after twelve months compared to fifty-eight percent of the individuals who were non-participants.[62] Once again, the authors of the Michigan study cautioned,

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[55] *Id.* at 67.

[56] *Id.* at 67–68.

[57] *Id.* at 68. The study was conducted by the Northeastern University Department of Criminology and Criminal Justice. Given that C.A.R.E. participants are volunteers, not registered sex offenders, and free of mental health issues, the authors of the Massachusetts study took care to find a comparison group that would ensure the equivalence of the two groups.

[58] *Id.* at 69.

[59] *Id.*

[60] *Id.* at 69–70.

[61] *Id.* at 70. The study was conducted by researchers from the University of Cincinnati's Center for Criminal Justice Research.

[62] *Id.*

"while encouraging, these findings are considered preliminary due to the small sample size and one year follow-up period."[63]

In 2007, the Eastern District of Pennsylvania started the Supervision to Aid Reentry (STAR) program, which they designed for individuals who have been recently released into the Philadelphia area after conviction and imprisonment for a federal offense.[64] Eligible participants in the STAR program need not have a substance abuse problem, but they must rank as a medium to high risk for reoffending.[65] By the spring of 2010, the STAR program had more than one hundred participants in two separate reentry programs administered by U.S. Magistrate Judges.[66] In addition to the judges, the STAR program is also comprised of a reentry coordinator, the parole officer, and the federal prosecutor and defender, with the goal of helping participants secure educational and vocational training, employment, mentoring, counseling, mental and physical health care, legal services, and housing assistance.[67] As of 2011, participation in the STAR program "decreased the odds of supervision revocation by an impressive eighty two percent" and participants "were significantly more likely to be employed."[68]

The reentry court operating in Fort Wayne, Indiana, has also proven to be a cost-effective approach to offender reentry.[69] A study of that reentry court demonstrated a thirty percent reduction in recidivism among participants, which saved the city $1,753,787 during two years of operation.[70] Fort Wayne officials reported spending less than half the amount of money per reentry court participant than the annual cost of housing an inmate in prison.[71] In reviewing the limited amount of research about reentry courts, these models appear not only to have the capability of reducing recidivism and making the community a safer place, but also of providing an avenue for states to save money during a time when many are on the verge of bankruptcy.

V. CRITICISM OF DRUG AND REENTRY COURTS

While many of the studies referenced herein indicate that reentry courts reduce recidivism, the Harlem study found a negative impact upon participant

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[63] *Id.* at 71.

[64] Joan Gottschall & Molly Armour, *Second Chance: Establishing a Reentry Program in the Northern District of Illinois*, 5 DEPAUL J. FOR SOC. JUST. 31, 48 (2011).

[65] *Id.*

[66] *Id.*

[67] *Id.* at 49.

[68] *Id.* at 50–51.

[69] Erin McGrath, *Reentry Courts: Providing a Second Chance for Incarcerated Mothers and Their Children*, 50 FAM. CT. REV. 113, 122 (2012).

[70] *Id.*

[71] *Id.*

revocation rates, and the Oregon study revealed that the comparison group outperformed the reentry court group in several areas.[72] A review of fifty-five independent drug court studies published in 2006 found that recidivism rates for all offenses, including drug crimes, were lower on average for drug court participants than for the comparison groups; however, the authors noted most of the research designs involved were "generally weak."[73] Specifically, the authors found that only five of those fifty-five studies were constructed using random assignment methods, two of which were seriously degraded, and roughly half of the quasi-experimental designs made no attempt to statistically control for differences between drug court and comparison group participants.[74] Evaluations of drug and reentry courts also face an ethical dilemma; that is, how can one design a study that is both fairly administered and available to those who need it most, while still creating an effective control group for comparative purposes?[75]

Another critique of drug and reentry courts is that these programs are able to pick and choose who can participate, often excluding some people who are in dire need of treatment because they were charged with violent offenses.[76] For instance, in Michigan, criteria for acceptance to a drug court requires that the charged offense be non-violent, drug-related, and without any indicia of distribution or delivery of drugs.[77] This has created a situation where some courts only select participants who are viewed as likely to succeed in the program, a practice referred to as "skimming."[78] One Michigan prosecutor made the observation that there is nothing drug courts do that cannot be done through standard probation, stating, "what the drug courts turn out to be is intensive probation."[79]

While not a critique of reentry courts, some scholars have been critical of the lack of opportunities that American society provides to inmates upon release from prison.[80] To understand this criticism, it is helpful to start with the fact that only three percent of white males spend some time in prison during their lives, contrasted with twenty percent of black males.[81] Couple this with the fact that the highest concentrations of unemployment in the United States are found among black, urban males, and commentators have asserted that the hyper-incarceration

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[72] *Supra* notes 51, 53–54 and accompanying text.

[73] Wilson et al., *supra* note 15, at 479.

[74] *Id.*

[75] Candace McCoy, *Do Drug Courts Work? For What, Compared to What? Qualitative Results from a Natural Experiment*, 5 VICTIMS & OFFENDERS 64, 65 (2010).

[76] *See* Brian Frasier, *Do Drug Courts Really Work?*, MICH. LAW. WKLY., Oct. 12, 2009.

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] Hallett, *supra* note 4, at 221.

[81] *Id.*

of mostly impoverished and chronically unemployed minority citizens reflects not a rise in crime rates, but a "de facto shift toward the penal regulation of urban poverty."[82] Regarding this shift, scholar Loïc Wacquant commented:

> Faced with aggressive policing, severe courts, and the likelihood of brutally long prison sentences for drug offenses and recidivism, many shrink from getting or staying involved in the illegal commerce of the street and submit instead to the dictate of insecure employment. For some of those coming out of "the pen," the tight mesh of postcorrectional supervision increases pressure to opt for the "straight" life anchored in work, when available. On both counts, the criminal justice system acts in concordance with workfare to push its clientele onto the peripheral segments of the job market.[83]

Reentry programs have been created in response to the painful conclusion that recidivism was increasing rather than dropping, and that "getting tough" on offenders has achieved exactly that: making it more difficult for ex-offenders to return to a normal life.[84] This has led several scholars to pose the question: "reentry to what?"[85]

Another weakness of reentry courts, apart from drug courts, is that they are such a recent creation, at both the state and federal levels, and very little empirical research exists regarding whether they reduce recidivism.[86] The initial studies, many of which are discussed herein, should also be interpreted with caution as they suffer from limitations in the initial research design or small sample size.[87] Other scholars have warned against using recidivism alone as a metric for judging the success of reentry courts, cautioning that mixed results may fan the flames of populist tendencies that call for punitive legislation and retribution, rather than rehabilitation and reentry.[88] Suggested alternative measures to recidivism are the number of program graduates who are no longer addicted, or the amount of time a person is able to stay off drugs.[89]

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[82] *Id.* at 215–16.

[83] LOÏC J. D. WACQUANT, PRISONS OF POVERTY 80 (2009).

[84] Hallett, *supra* note 4, at 225.

[85] *Id.*

[86] Vance, *supra* note 16, at 72.

[87] *Id.*

[88] Edward E. Rhine & Anthony C. Thompson, *The Reentry Movement in Corrections: Resiliency, Fragility and Prospects*, 47 CRIM. L. BULL. 177, 192–93 (2011).

[89] McCoy, *supra* note 75, at 65.

Lastly, the effects of a drug or reentry court can be difficult to track over time.[90] Program graduates often move to other jurisdictions, change jobs, join new families, become sick, homeless, or otherwise unavailable for follow-up study.[91] This may account for one reason why recidivism is such a common measure in drug and reentry court studies: criminal arrest records provide some evidence of repeat offenses linked to ex-offenders over time.[92] Other outcomes—such as education obtained, drug-free babies born, jobs held, families reunited, life goals achieved—are not easily measured.[93]

VI. The Role of the Judge, Prosecutor, and Defense Attorney

As mentioned earlier, drug and reentry courts are different from traditional courts, and likewise, the roles fulfilled by the judges and attorneys who work in these courts vary from what is expected of them in a conventional court setting.[94] Reentry court teams use a non-adversarial approach when conducting business, with the judge as the team leader.[95] This non-adversarial approach calls for the prosecutor and defense counsel to work together to promote public safety while also protecting the due process rights of the participant.[96]

While there are several members who comprise a reentry court team, the judge is the unquestioned leader and is viewed as an authoritative figure that can "get things done."[97] Eric Miller refers to this clout as the "collateral institutional authority of the judge," which he describes as a form of authority not formalized by statute or common law, but originating from the constant interaction between the judge and the multitude of actors within the criminal or civil court systems.[98] Jeremy Travis also identified that a "reentry court judge is ideally equipped to leverage authority within the justice system and community, to configure the components required to address reentry barriers, and to foster a new relationship between the offender and the community."[99]

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[90] *Id.*

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] Laura Knollenberg & Valerie A. Martin, *Community Reentry Following Prison: A Process Evaluation of the Accelerated Community Entry Program*, FED. PROBATION, Sept. 2008, at 54, 55.

[95] Aubin, *supra* note 42.

[96] Knollenberg & Martin, *supra* note 94, at 55.

[97] Eric J. Miller, *The Therapeutic Effects of Managerial Reentry Courts*, 20 FED. SENT'G REP. 127, 129 (2007).

[98] *Id.* at 128.

[99] Aubin, *supra* note 42.

As the leader of the team, encouragement from the judge has been identified as a powerful motivational tool, and a number of surveys and studies have demonstrated that in the context of drug courts, program participants value and positively respond to encouragement from the judge.[100] Judges are also involved when a violation or new crime occurs: they may sign an arrest warrant, adjudicate a new violation, or sentence the participant to incarceration.[101] Some scholars have cautioned against judges becoming "personally invested in the success" to the point that they react to participant failure "personally" or "inappropriately," and have questioned whether reentry courts require judges to deviate too greatly from their traditional role and beyond their training and expertise.[102]

Prosecutors are also well aware of the expense of reentry and the revolving prison doors in the United States, and they have taken action to investigate the role of prosecutors in the reentry movement.[103] One example is a reentry survey that the American Prosecutors Research Initiative administered to 758 prosecutors from forty-seven states.[104] The results of the survey were mixed: an even fifty percent reported that prosecutors should be involved in the reentry process; some prosecutors expressed concerns over budget limitations and staff caseloads with regard to implementing reentry programs; while other respondents maintained that reentry efforts are not part of the job description, commenting: "I'm not a social worker," or "[t]hat's not my job."[105]

Yet at least one prosecutor, cognizant of the expense associated with incarceration versus the cost for offenders to participate in reentry programs, replied "that it would cost the office more if they did not participate in reentry."[106] Other prosecutors find the appeal of reentry courts not in the offender's individual rehabilitation, but in increased public safety and the ability of reentry initiatives to prevent future crime and recidivism.[107] While there may be some difference of opinion within the prosecution bar concerning their role in offender reentry, in 2005, the National District Attorney Association recognized the importance of the reentry movement in a resolution, proclaiming: "America's prosecutors should, where practicable, be participants in addressing this issue in an effort to reduce recidivism and ensure the safety of victims and the community."[108]

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[100] *Id.*

[101] *Id.*

[102] Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585, 605 (2006).

[103] Patricia L. Fanflik & David R. Troutman, *Putting Them Away and Helping Them Out: The Prosecutor's Role in Offender Reentry*, PROSECUTOR, Mar.–Apr. 2007, at 26–27.

[104] *Id.*

[105] *Id.* at 27–28.

[106] *Id.* at 27.

[107] *Id.* at 29.

[108] *Id.* at 28.

While the judge and prosecutors must adjust their traditional roles within the criminal justice system as part of working in a reentry court, the shift in duties for the defense attorneys may be more significant. The non-adversarial approach utilized in a reentry court envisions defense counsel working with the team to promote public safety while also protecting the due process rights of the participant.[109] However, the team approach may require a defense attorney to counsel a participant to "disclose continued drug use (relapse) in order to foster honesty and reduce the barriers to effective drug treatment," which contrasts starkly with the traditional role performed by defense counsel.[110]

Additionally, the team approach may not always comport with a defense attorney's responsibility to provide the client with effective assistance of counsel and zealous representation. For example, the team may decide to sanction the participant for negative behavior, which conflicts with the defense attorney's objective of minimizing the criminal penalties that may befall a client.[111] Further, as a team player, the defense attorney in a reentry court is expected to ensure that the participant remains in the program until graduation, which requires the attorney to forego certain defense tactics such as filing motions to suppress evidence, actions which can delay the process or shield the participant from taking responsibility for noncompliance.[112]

VII. WYOMING'S DRUG & REENTRY COURTS

Wyoming's statutes do not use the term "reentry," and as mentioned earlier, the drug court programs in Wyoming are statutorily referred to as "Court Supervised Treatment Programs."[113] Wyoming started its first drug court in Uinta County in 1997.[114] As of January 2010, there were twenty-one drug courts operating in Wyoming, including fourteen that are exclusively adult drug court programs.[115] In 2002, Wyoming's drug courts were available only to non-violent offenders and non-drug traffickers, excluding many drug-addicted offenders.[116] The current

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[109] *Supra* note 96 and accompanying text.

[110] Mae C. Quinn, *Whose Team Am I on Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37, 53 (2001) (citing Peggy Fulton Hora, William G. Schma & John T.A. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 479 (1999)).

[111] *Id.* at 57.

[112] *Id.* at 53.

[113] *Supra* note 7 and accompanying text.

[114] Becky Orr, *Drug Court Programs a Success*, WYO. TRIB. EAGLE, Feb. 17, 2002, at A8.

[115] WYO. DRUG COURT ASS'N, http://wydca.org/Contacts.aspx (last visited May 8, 2013).

[116] Orr, *supra* note 114.

Wyoming statutes regarding drug courts contains no such limitations, and seek to achieve the legislative purpose of breaking "the cycle of substance abuse and the crimes committed as a result thereof."[117]

The legislative goals of the Wyoming drug courts are to reduce recidivism of program participants, strive for program retention and graduation of participants, strive for sobriety of program participants, and monitor the services provided to program participants.[118] Individuals may only participate in the state's drug court programs if they have been charged with an offense and have entered a plea of either guilty or nolo contendere, admitted to the crime, signed a consent decree if a juvenile, or are on parole.[119] A defendant in a criminal action or a respondent in a juvenile case may be referred for participation in a drug court program if a substance abuse assessment reveals the person is in need of treatment, the referring judge believes the program will benefit the person by addressing their substance abuse, or, in the case of a juvenile, if the referring judge has cause to believe that program participation will be in the best interests of the child.[120] Participation in a drug court program shall only be with the consent of the referring judge, the participant, the prosecuting attorney, and acceptance of the participant by the program team in accordance with a written agreement between the parties.[121]

The drug court program team consists of a judge; a prosecutor; an attorney specializing in criminal defense or, for juveniles, guardian ad litem work; a treatment provider; a probation and parole officer; the program coordinator; and other persons deemed necessary and helpful by the participating judge—much like the drug court models described earlier.[122] The participating judge may grant reasonable incentives to participants who are performing satisfactorily in the program, benefit from the program, and have not otherwise violated any term or condition of the program agreement.[123] Conversely, the judge may impose sanctions such as thirty days incarceration or, in the case of a juvenile, placement for thirty days in a detention facility, if he or she finds the participant is not performing satisfactorily or benefitting from the program, has engaged in conduct rendering the participant unsuitable for program continuation, has violated the terms of the participation agreement, or is otherwise unable to participate in the

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[117] WYO. STAT. ANN. § 7-13-1603(a) (2012).

[118] § 7-13-1603(b).

[119] *Id.* § 7-13-1607(a).

[120] § 7-13-1607(b)(i)–(iii).

[121] § 7-13-1607(c).

[122] *Id.* § 7-13-1609(a).

[123] *Id.* § 7-13-1608(a).

program.[124] Prior to expulsion from the program, a participant must be notified of the reasons for termination and afforded a hearing in front of the program team and judge.[125]

VIII. THE LARAMIE COUNTY ADULT DRUG COURT PROGRAM & REENTRY DRUG COURT PROGRAM

In 2001, four years after Uinta County piloted Wyoming's first drug court program, Laramie County's drug court became operational.[126] When the Laramie County drug court began, it accepted primarily felony probationers, but the program expanded and began accepting inmates paroling from Wyoming penal institutions in 2009, and shortly thereafter, the first parolee was accepted into the program.[127] The Laramie County drug and reentry court is located in downtown Cheyenne, the largest city in the state, and as of 2012, it services an estimated 94,483 county residents.[128]

Circuit Court Judge Denise Nau presides over the Laramie County Drug and Reentry Court, and she was the drug court judge at the time the program was initiated.[129] In 2002, Kurt Zunker was hired as the Laramie County drug court coordinator and has held that position ever since.[130] Both Judge Nau and Mr. Zunker point to the collaboration of the drug court team members as the driving force behind the success of drug courts. Judge Nau commented that: "Drug courts are one of the few positive things that happen in the criminal system. It's about helping them get food, jobs, housing, and counseling."[131] Zunker stated, "[e]very team member has an opportunity to provide insight based [on] their own professional perspective [on] what should be done to address both positive and negative behaviors."[132]

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[124] § 7-13-1608(b).

[125] § 7-13-1608(c).

[126] Orr, *supra* note 114. The author chose the Laramie County program for several reasons, including proximity to the author and the fact that Laramie County has incorporated a reentry component into its operations, taking the additional step of including "reentry" as part of its title. Many of the drug court programs around the state have exhibited a willingness to accept parolees into their programs, particularly on a case-by-case basis, and the author would acknowledge their cooperation and the important work they perform.

[127] E-mail from Kurt Zunker, Program Coordinator, Laramie Cnty. Drug & Reentry Court Program, to the author (April 10, 2013) (on file with author).

[128] U.S. Census Bureau, *State & County Quickfacts, Laramie County, Wyoming*, CENSUS.GOV, http://quickfacts.census.gov/qfd/states/56/56021.html (last visited May 8, 2013).

[129] Interview with Cir. Ct. J. Denise Nau, in Cheyenne, Wyo. (Feb. 14, 2013).

[130] E-mail from Kurt Zunker, *supra* note 127.

[131] Interview with Judge Nau, *supra* note 129.

[132] E-mail from Kurt Zunker, *supra* note 127.

While every member of the team has input in the decision-making process, Judge Nau's vote can override an otherwise unanimous decision.[133] However, she rarely exercises this authority, acknowledging that the "ultimate decision is mine, but what's the point of voting as a team if I overrule them?"[134] When asked about the claim that drug court judges may become too vested in the success of the program participants and lose their impartiality, Judge Nau pointed out this is a risk that judges must "deal with anyway" in supervising offenders on traditional probation.[135] Yet drug court offers much more than traditional or intensive probation according to Judge Nau: "ISP works, but drug courts work better."[136] In discussing the history of the Laramie County drug court program, Judge Nau is proud of the early involvement of the Cheyenne Police Department. She claimed, "cooperation from the Cheyenne [Police Department] is amazing and their involvement is one thing that makes the program work."[137]

After two years as an officer with the Cheyenne Police Department, Nate Buseck was offered the job as the law enforcement member of the Laramie County drug court team.[138] The job was described to Buseck as an opportunity to take on more responsibilities, and he accepted.[139] Buseck's primary duty as the drug court officer was to perform home visits with the participants, for the purpose of ensuring only approved guests were present and to obtain a portable breath test sample.[140] However, the intent of his home visits was more than a simple compliance check; it was a chance for Buseck to "get to know" the participants and become familiar with where they lived.[141] Buseck regarded the home visits as a chance "to develop a certain amount of rapport with the client . . . ." He continued, "I feel the client may have begun to see me as more than just a person with a badge on."[142] When asked about the role of the judiciary in drug court programs, Buseck stated, "I believe we all have a responsibility to try and make our society a better place to live in. I am not surprised that courts began getting involved."[143] He also recognized the power that the court has to influence

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[133] Interview with Judge Nau, *supra* note 129.

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] E-mail from Nate Buseck, Law enforcement member of Cheyenne Drug Court, to the author (Feb. 26, 2013) (on file with author).

[139] *Id.*

[140] *Id.*

[141] *Id.*

[142] *Id.*

[143] *Id.*

program participants, stating, "I commend the courts for using their authority to cut through the 'red tape' as far as accountability and hold identified offenders, with a chemical dependency, to a specific and identified standard of behavior."[144]

T.J. Forwood, the prosecutor in the program, describes himself as the most "detached" member of the team.[145] However, he recognized that the program participants appreciate knowing that the "prosecutors are encouraging them."[146] When asked about the notion that some prosecutors are resistant to endorse the drug court model, considering participation to be "social work," Forwood estimated that he spends only two hours a week working in the drug court, which he considers a small price to pay given the potential savings that can be reaped from reductions in future recidivism.[147] Beyond that, Forwood believes the program is "tough, it's not a cakewalk. If I'm hesitant about what action to take with a defendant, I know drug court is a good option."[148] In response to the idea that some drug court programs "skim" or "cherry-pick" the lower risk offenders for participation, Forwood commented, "[i]n Wyoming, we're so small, we can't cherry-pick."[149]

For the last four years, Mitch Guthrie has been the defense attorney member of the Laramie County drug court team.[150] "It's not hard," Guthrie replied, when asked about the shift from traditional defense attorney to fulfilling his duties as a member of a drug court team.[151] According to Guthrie, part of the ease in working with the team is that "we've already figured out you're guilty."[152] However, determination of guilt does not dampen the team members' support for the participants. Even in moments of relapse, which do result in sanctions, Guthrie commented that: "Nobody's citing them for use, we have to support them."[153] Support of the team does not mean that they will tolerate continued violations, and Guthrie feels that "there does have to be accountability."[154] In further describing the team dynamic of the drug court model with respect to the participants, Guthrie stated, "[e]veryone on the team gets to know them

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[144] *Id.*

[145] Interview with T.J. Forwood, prosecutor, in Cheyenne, Wyo. (Feb. 25, 2013).

[146] *Id.*

[147] *Id.*

[148] *Id.*

[149] *Id.*

[150] Interview with Mitch Guthrie, defense attorney, in Cheyenne, Wyo. (Feb. 22, 2013).

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*

personally, everyone becomes a human being, and it's really sad when someone fails. You do things differently to people you know."[155]

In February of 2013, Allison Moore had just completed twenty-eight months as the probation and parole agent for the Laramie County drug court. [156] She cited the team approach to supporting the participants as a major strength of the program.[157] "Many offenders have only had what they consider to be negative interactions with law enforcement prior to their placement in drug court," Moore offered.[158] Moore also referenced the positive impact that police officers can have upon participants in the context of conducting home visits with participants, a function usually performed by probation and parole agents.[159] When asked about the sentiment that intensive supervision can deliver the same results as the drug court model, Moore commented: "Drug court goes beyond ISP. It is easy for offenders to forget the promises they made to the judge. Regular interaction with the judge is a big part of what keeps offenders reminded of where they've been and where they don't want to go back to."[160]

James Nelson is the treatment provider on the Laramie County reentry court team, and he feels that the team is the most "genuinely collaborative group I've ever been a part of."[161] Nelson related that the team members have "so many different perspectives" and supply him with a variety of input that he utilizes in providing treatment.[162] For example, Nelson explained how the information received from the officer's home visits can often enable him to "formulate a focused and specific treatment plan" for that individual.[163] Nelson is supportive of expanding the drug court model to higher risk offenders, and he recommends customizing treatment programs to specifically address each offender's "proclivities."[164] Nelson suggested a "heightened evaluation system on the way out," to provide community treatment providers with better information regarding the underlying reasons behind the offender's criminality.[165] Concerning the treatment of addicted offenders, Nelson feels that "more effort needs to be put into researching a person's history to determine their peculiar needs."[166]

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[155] *Id.*

[156] Interview with Allison Moore, probation and parole agent, in Cheyenne, Wyo. (Feb. 15, 2013).

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] *Id.*

[161] Interview with James Nelson, treatment provider, in Cheyenne, Wyo. (Mar. 7, 2013).

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] *Id.*

When Troy Houston entered Wyoming prison in 2009, he had no desire to seek help with his drug dependency issues.[167] Before his conviction for drug dealing, Houston had developed an addiction to marijuana and easy money, estimating that at times, he made as much as $2000 to $3000 a day selling drugs.[168] Once he was locked up, casework staff at the prison approached Houston about participating in an intensive, residential substance abuse treatment program.[169] Although he entered the program defiant, Houston quickly changed his attitude and became an active participant, and upon completion of the program, he was granted parole and required to complete the Laramie County reentry court program.[170]

Even though he was a convicted drug dealer, which would disqualify him from participating in many drug courts around the nation, the Laramie County program accepted Houston.[171] Once again, he entered the program with skepticism, but he again overcame his apprehension and put forth his best efforts to complete the program, doing so without one solitary violation.[172] The relative ease with which he seemed to complete these programs would make one wonder if Houston would have succeeded regardless of what type of rehabilitative program he was required to complete. However, when asked this question, Houston disagreed, claiming that: "Drug court gave me the stability and structure to succeed, along with encouragement from the team, and I was helped by being able to help others."[173] Houston indicated that both the intensive residential program and the drug court help him address the issues underlying his addiction, which were problems with his family that he was "drowning out" with marijuana and money.[174]

When Houston left prison to enter the drug court program, he had become estranged from his family and stated, "I was scared. I didn't know anyone. But the drug court loaned me money to get into a house, gave me bus tokens, books, Kurt [Zunker] offered me food, and they got my identification and social security set up."[175] Not long after his release, Houston found an outlet for his newfound sobriety and law-abiding lifestyle: poetry.[176] While staying busy reading and educating himself as much as possible about why he had landed in prison, Houston began to write spiritual and inspirational poetry.[177] In hopes of being

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[167] Interview with Troy Houston, in Cheyenne, Wyo. (Feb. 15, 2013).

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] *Id.*

[177] *Id.*

published, Houston entered a poetry contest and several weeks later, received a letter that one of his poems had been selected for publication.[178] Since that time, Houston has been published several more times, he is working on starting his own greeting card company, and days after being interviewed for this article, he sent the author the following poem:

> Drug Court was good for me,
> it helped to set me free.
> Not talking about my conviction,
> I was under the thumb of addiction!
> Before drug court my life was sad,
> didn't realize the problems I had.
> They helped me through one day at a time,
> to face the reason I did my crime.[179]

When asked about weaknesses associated with reentry courts, several of the team members cited the lack of funding as a significant challenge. Moore commented: "I think the biggest struggle for drug courts is the same struggle many programs have: funding." With regard to funding, Judge Nau expressed concern over the practice of making funding contingent upon meeting numerical measures, such as a reduction in recidivism rates. "Tying funding to numbers doesn't work," Nau commented. She further added, "[w]e need to take the high risk people. But if our funding is based on numbers, we'll take the easy cases too, and we're still doing the right thing taking lower risk offenders."

IX. CONCLUSION

Whether the courts are the place to solve society's problems is not a question this article could hope to answer, nor does it attempt to do so. However, the institutional leverage and acumen possessed by the judiciary is perhaps unparalleled in society, and that power can effect great change. Randall T. Shepard, a renowned jurist and former Chief Justice of the Indiana Supreme Court, while acknowledging some of the judicial resistance to entering the reentry arena, made an undeniably compelling argument in favor of looking at the role of the judiciary in new way:

> The debate about reforming sentencing laws often leads some to fear that violent criminals will be put out on the street. Without intervention, however, Indiana's prisons will soon become so crowded that officials will have no choice but to take the path other jurisdictions have felt compelled to adopt: releasing offenders—including those who may pose a danger to

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[178] *Id.*

[179] Original poem composed by Troy Houston, dated Feb. 22, 2013.

> the public in the absence of some support network. Some argue that judicial intervention into this arena tears down the walls of separation of powers. I disagree. Judges muster their wisdom and talent to help them shape the future of sentencing. Combining risk-assessment tools with diversion programs ensures that those who have a significant chance of rehabilitation will receive the help they need and that prisons can be reserved for those criminals who pose the greatest danger to society.[180]

As a society, we must also place recidivism statistics in the proper context. Recidivism is a useful measure of our efforts to curb future reoffending, but it is a fickle source of data, subject to manipulation and fabrication like any other measurement of social phenomena. As Rhine and Thompson argued, relying solely upon recidivism data to gauge success "sets the stage for failure in what might otherwise be promising, if only partially successful reentry initiatives."[181]

Wyoming is such a small state that it cannot muster anywhere near enough qualified participants to match the numbers of some of the reentry court programs discussed in this article. Troy Houston, however, is an example of someone who became equipped with the social capital to lead a law-abiding, healthy, and productive life. Judge Nau, while giving credit to Kurt Zunker for this observation, remarked about the inability to measure the benefit of the "drug-free babies" that have been born because drug-addicted women regained their sobriety in the program.[182] Zunker further added, "[c]ourts have been an agent for change in a whole host of social issues and they do have the ability to have a positive effect on their communities. If they weren't, why do people go to the courts to seek relief either civilly or criminally?"[183]

Reentry courts, drug courts, and other problem-solving courts will not break the cycle of addiction for every participant, but for many individuals who are starting over with little to no social capital, the drug court model can and does offer the opportunity to build a productive life again. This could not be accomplished without the support from the myriad of team members who are committed to helping the participants succeed, not only for the welfare of the ex-offender but also for benefit of their shared community.

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[180] Randall T. Shepard, *The Great Recession as a Catalyst for More Effective Sentencing*, 23 FED. SENT'G REP. 146, 148–49 (2010).

[181] Rhine & Thompson, *supra* note 88, at 192–93.

[182] Interview with Judge Nau, *supra* note 129.

[183] E-mail from Kurt Zunker, *supra* note 127.