

# “WE QUELL THE STORM, AND RIDE THE THUNDER”: THE LEGALIZATION OF TREATMENT IN VETERANS TREATMENT COURTS

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## VALUE STATEMENT

This ethnography provides clinicians, practitioners, and researchers insight into the experience of veterans treatment court (VTC) participants. By evaluating participant perceptions and how they might relate to compliance with the court vis-à-vis increased accountability, this study analyzes the utility of the formal and legal nature of treatment in VTCs, increasing understanding of how participants view this procedure. From a practitioner perspective, this can assist in determining how courts can adopt procedures to increase compliance with treatment plans and subsequently success.

## ABSTRACT

Recognizing that criminal behavior stems from multiple loci, veterans treatment courts (VTCs) utilize a therapeutic jurisprudential approach to simultaneously treat post-traumatic stress disorder (PTSD), substance use disorders, and criminality. This research constitutes an in-depth institutional ethnography of one Southern California VTC (SC-VTC), examining over three years of nonparticipant observation at 117 court sessions in the SC-VTC and 23 in-depth interviews with both current court participants, graduates, and a judge, exploring participants’ experiences with and perceptions of the SC-VTC. The study examines how the treatment process provides participants with accountability for their treatment, but also has potentially coercive elements in its application. Treatment becomes formalized and regimented with strict rules in the court process, which can have consequences, both positive and negative on participants, their perception of the court, and their progress within the court. While treatment may have coercive elements in its implementation, participants do not necessarily see that as an impediment to their progress. Rather, while treatment may be perceived as coercive, participants are complexly thankful for the accountability rules provided to their treatment plans, so long as they view the treatment as useful to their programmatic and personal progress.

## KEYWORDS

Veterans treatment courts, therapeutic jurisprudence, specialty courts

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## INTRODUCTION

*Come on man, its 18 months for the rest of your life, damn stubborn-ass marines, ya'll got to be so hard-headed, just try it out man.' And that was it, the beginning of my journey in Vet Court. Since then the quality of my life has changed immeasurably, I don't spend most of my days in a state of either rage or lethargy. People tell me I smile more. Don't get me wrong, I still have days where I don't sleep so well and my spiritual tank is running on empty with the little light flashing, but those days are farther and fewer between, and I have myself anchored in with a support system that works in order to get through the tough spots. The biggest change has been my own willingness to reach out and connect with people instead of bottling my emotions up till my mind tells me that nothing matters anymore and I end up doing something I'm sure to regret. It amazes me how much of a difference taking a few deep breaths makes when I find myself getting rattled. In AA they call it "stinking thinking," while the college educated folk call them, "cognitive distortions." Whatever words you choose, it was imperative for me to be able to recognize when certain patterns of thinking were keeping me trapped in a cycle of self-defeating behaviors.*

(Theo, Graduation Essay)

Theo was a participant in a veterans treatment court (VTC) program who was surly most days of the early stages but had one of the most noticeable transformations that I observed in the court. This quote highlights several important mechanisms that will be discussed with this research, primarily concerning what I call the "legalization of treatment." I define this as the process by which private therapeutic events and prescribed treatment are enveloped by the formal legal process as well as informal court processes, becoming public and legally-binding aspects of the VTC process.

In Theo's address to the court during his graduation speech, he highlighted the transformation he had gone through to get where he was. He placed emphasis on the treatment he received, specifically using language culled from AA self-help meetings, displaying how much the therapy had contributed to his current state of being. In addition to crediting treatment with making him a person he was happy with, he also discussed how he has connected to people, reaching out when he needs help, a typical goal of the treatment plan and a marker of programmatic success. Theo also explained how he did not want to enter the program at the time, but a case manager urged him to do so by attempting to get him to look at the bigger picture.

With my ethnographic research at one VTC in Southern California that serves as a mentor

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court, I found that the notion of treatment for mental health and/or substance abuse issues was often an instrumental part of the decision-making process for participants. That is, participants noted that they understood treatment would be an aspect of the program, and, to many, this was appealing. In fact, this treatment aspect undergirds the specialty court movement, stemming from practices of therapeutic jurisprudence. Therapeutic jurisprudence contends that the law is an agent that can both harm or help an individual going through a law-related system (Wexler and Winick 1991). Therapeutic jurisprudence recognizes the need to assist those involved with the law to navigate the law, and practitioners of therapeutic jurisprudence adjust their procedures accordingly to promote psychological well-being for their constituents. In the case of VTCs, therapeutic jurisprudence reaches participants of the court in two distinct manners. The first is that the judge and other members of the court generally treat participants humanely, recognizing law's influential reach on the psyche of the participant. This behavior is characterized by creating personal connections with participants, talking respectfully to participants, and, generally, promoting a sense of dignity for participants.

The second way therapeutic jurisprudence is represented in the VTC is through what I call the "legalization of treatment," the focus of this paper. I define this term to mean that treatment ordered by the court based upon recommendations of the treatment team is made legal, in that participants must comply with these orders to progress in the court. For the VTC, therapeutic practices are interwoven with the legal processes in the court, as well as the informal processes that encompass the public setting of the court. That is, the psychological improvement of the participant is paramount to a participant's success in the program, and it is monitored through legal and informal means. If participants do not comply with their treatment or put in an earnest effort in their own rehabilitation, they are sanctioned and sometimes held back in the program. To graduate, then, participants must show degrees of improvement in treatment aspects, including participatory efforts, kinds of treatment engaged in, and promise of continued treatment once the participant has exited the program. In fact, the entire program hinges on this very notion—in order to participate in the program, a participant must express that they are willing to change and undergo treatment. While, in a scathing review of therapeutic jurisprudence, Hoffman (2001) notes the potential danger in relegating judicial officials with no training in psychology to do more harm than good, I explore this concept of the treatment team and judicial deference with this research. Hoffman (2001) warns of the dangers of "state-coerced treatment," and I examine the mechanism by which treatment is coerced: by legalizing it and subsuming it into the legal purview of the court. I examine this concept by analyzing how participants perceive their treatment orders, especially as it relates to potential coercion.

To understand how the court process facilitates desistance strategies, this paper first takes a closer look at participants' perceptions of the treatment the VTC provides. My research reveals how treatment is negotiated within a participant-perceived "cookie-cutter" environment in terms of treatment orders, incentives, sanctions, and flexibility. Overall, this analysis regards the orienting research question of how treatment is enacted and consequently perceived in the court, and how it may affect programmatic and personal progress for participants within the court. I explore how perceptions of the treatment in the court has potential repercussions for participants and their continued compliance in the program. Specifically, I illuminate how treatment and the rigorous rules surrounding treatment becomes inherently legalized into the court process, or the "legalization of treatment." Finally, I explore how this legalization of treatment is perceived by participants with considerations for perceptions of the coercive

nature of treatment, as well as the accountability it provides participants to commit to their treatment plans and comply with the program.

## **COURTS, THERAPEUTIC JURISPRUDENCE, AND TREATMENT**

Though specialty courts in general (drug treatment courts, juvenile courts, mental health courts, etc.) have been the focus of much scholarship and evaluation, VTCs have yet to be investigated in much depth. The empirical work on VTCs is decidedly thin, restricted to descriptions of how these courts came to be part of the criminal justice system, how they work, and how prevalent they are becoming, with researchers now turning attention to theoretical considerations (Baldwin and Rukus 2015; Douds et al. 2017; Huskey 2017; Knudsen and Wingensfeld 2016). The need for research that theoretically examines these courts and specialized justice for veterans is clear. Thus, this research addresses the need for VTC evaluation by examining how treatment works in the court and in what ways the program may be considered successful.

VTCs generally follow a drug treatment court model, for which research and evaluation has provided ample support for their proliferation. Drug courts employ a model that facilitates drug treatment, provides community supervision, and substantiates the program with legal authority (Koetzle et al. 2015). The treatment provided in drug treatment courts more often than not produces positive program outcomes, such as reducing criminality and decreasing substance abuse (Gottfredson et al. 2005; Gottfredson, Najaka, and Kearley 2003; Peters and Murrin 2000). Meta-analyses suggest that drug courts effectively reduce recidivism by approximately 10 percent (Aos et al. 2001; Gutierrez and Bourgon 2012; Koetzle et al. 2015; Marlowe 2010; Shaffer 2011; Turner et al. 2002; Wilson, Mitchell, and MacKenzie 2006).

In addition to a drug treatment court framework, VTCs employ a dual-diagnosis treatment plan that incorporates substance use disorders and mental health components. Mental health treatment courts have witnessed positive program outcomes for those that are treated within the court over those that go through traditional court (Cosden et al. 2003; Fislser 2005; McNiel and Binder 2007; Moore and Hiday 2006). Participants in mental health treatment courts are more likely to be able to cope with their mental illnesses. Additionally, mental health treatment court participants are less likely to recommit crimes than their traditional court participant counterparts.

VTCs are one type within the growing movement of problem-solving specialty courts built to address the needs of a diverse population. Co-occurring disorder treatment generally includes programs that address both substance use and mental health issues. Co-occurring courts are just one of several diversion programs that aim to treat co-occurring disorders, and they offer success in terms of decreasing recidivism by way of rehabilitation (Frisman et al. 2006). However, these courts and their handling of treatment-oriented goals fall into a larger body of research concerning therapeutic jurisprudence more broadly, in which the question of treatment is understood through a participant's ability to make a choice regarding treatment. Research points to the improved success of treatment when a participant feels s/he has a choice in the matter (Winick 1994). Therapeutic jurisprudence concerns understanding the law's ability to harm or help those who are subject to it; its implications for specialty courts suggests that law can be wielded as a tool to help individuals (Winick and Wexler 2001).

Researchers have examined how therapeutic jurisprudence is implemented in the court setting, noting that problem-solving courts are an application of therapeutic jurisprudence in action (Winick and Wexler 2001). Typically, this research examines how the interactions between the judge, subsumed by the treatment process, especially, can act as a therapeutic agent to effect positive rehabilitative goals in participants (Casey and Rottman 2000; Hora, Schma, and Rosenthal 1999). Furthermore, research has examined the extent to which the decision to participate in specialty courts contains an element of coercion and how to avoid this perception by offering participants reminders of the voluntary nature (Winick and Wexler 2001).

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## THIS STUDY

This ethnographic study focuses on how treatment becomes legalized and, at the consequence of legal repercussions, is inherently coercive. The notion of coercion in treatment using “legal leverage” is not particularly novel, but its application to VTCs, and especially how participants perceive this legal leverage, is the current study’s new contribution to this literature. Legal leverage refers to the manner in which treatment becomes mandated for patients suffering from mental health issues, specifically in the context of community courts (Collins 2017; Lamberti et al. 2014; Lamberti, Weisman, and Faden 2004). The concern of this leverage is that it goes against treatment philosophies related to therapeutic jurisprudence philosophies. Furthermore, the ability of treatment courts to address structural and social issues and the potential overstep of the legal realm are of concern (McLeod 2012). This paper focuses on participant perceptions of this legal leverage. Where it builds on this socio-legal concept is in investigating the informal way treatment is legalized, beyond the court’s capacity to provide legal pressure to order treatment.

Considering the ample research in the drug treatment court and mental health court realm, this paper considers how one VTC—a VTC of potentially greater influence because of its mentor court status—provides treatment with a multi-issue focus and how participants perceive this treatment. This ethnography fills this void in research focused on VTCs, a fast-growing extension of the problem-solving court regime. With the focus on VTCs over traditional drug court and mental health courts, this research examines issues specific to the VTC context. For example, while the role of drug of choice on participant performance in drug court has been examined with mixed results (Bouffard and Richardson 2007; Listwan et al. 2003; Saum, Scarpitti, and Robbins 2001; Shaffer et al. 2011; Stoops et al. 2005), a more pertinent question for VTCs and other dual-diagnosis courts concerns the variation in participant needs within the program. While VTC participants’ drug of choice may differ, as in drug treatment courts, VTCs must also contemplate participant need for mental health services to address issues like post traumatic stress disorder (PTSD). Some participants may have relatively minor substance use issues but require substantial treatment for PTSD or traumatic brain injury, for example.

Even within drug courts, research suggests that drug treatment court programs may be under-specialized to deal with the variety of participants in the court (Dannerbeck et al. 2006). While findings suggest that coercion into drug treatment does not render programs ineffective (Farabee, Prendergast, and Anglin 1998), little work has been done to consider how program flexibility may alter perception of program experiences, and, ultimately, compliance with the program. This may be evident in a VTC setting, especially given the multi-issue (substance use and mental health) treatment and extreme variability amongst offenders. While research has considered how programs between drug treatment courts may differ, (Longshore et al. 2001; Turner et al. 2002; Wilson, Mitchell, and MacKenzie 2006), this paper will investigate the utility of within program differentiation, that is, the perception of individualized treatments for participants in the same court.

Focusing research on the VTC context facilitates an understanding of how the court and treatment team navigate multi-issue treatment with a goal of rehabilitating the participant. As such, how multi-issue treatment unfolds in a specialty court is explored, such as how the VTC takes a simultaneous “one-size-fits-all” approach in terms of general treatment but specifies and tailors a program to fit participants’ needs as they progress through the program. The court applies certain treatments and therapy to each participant along a baseline: most practices integrate both substance use and PTSD treatment with requirements that apply to every participant. Moreover, this will be explored through the eyes of the participants as they explain what works about the program and how treatment, particularly Veterans Affairs-related treatment and AA, works. How open should treatment be to negotiation between treatment providers, the court, and the participant? How does a participant perceive treatment within the court program? Moreover, how does the approach the court takes and its perceived “cookie-cutter” treatment plan and firm legal implementation affect legitimacy and subsequent compliance for participants?

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## METHODS

This project utilized a variety of methods of qualitative inquiry and was conducted in cooperation with the Collaborative Court system, part of the Superior Court for the county. First, this research employed an ethnographic case study approach consisting of both observations of court processes and semi-structured open-ended interviews with VTC participants and graduates to understand the VTC subculture and mechanisms of change. Additionally, content analysis techniques were used to examine participant essays and court-related documents.

### Understanding the SC-VTC Subculture and Mechanisms of Desistance

The SC-VTC typically had 30 participants and graduated approximately 87 participants between 2009-2017 (the period of eligibility for this research). Participants in this four-phase program (treat-



ment plan development, ongoing treatment, stabilization, and achievement/graduation) met for progress reports every week in phase one, every two weeks in phase two, every three weeks in phase three, and once a month in phase four. At the end of each phase, participants read their essays to the court that catalogued their treatment, motivations, and expectations as they moved onto the next phase of the program.

While focus on one VTC may limit the applicability of findings, the importance of this VTC should not be understated. The SC-VTC is a mentor court, providing a model for other VTCs to follow. In fact, during many of my observations, people from other jurisdictions visited and observed the SC-VTC's practices and process, not just nationally, but internationally as well. In addition, SC-VTC appeared to implement some best practice standards as published by the National Association of Drug Court Professionals (NADCP) (NADCP 2013). From an observational perspective, the SC-VTC served high-risk/high-need participants; had a committed, fair, and interactive judge; utilized substance use disorder treatment in a fair and complementary manner to other forms of services for participants; had frequent substance use testing; and had a team that worked together in a multidisciplinary fashion.

Court sessions for the SC-VTC were held once a week. I observed pre-court interactions in the lobby between participants, along with VTC proceedings, weekly for a total of 117 weeks. I observed VTC participants discussing their programmatic concerns, commenting on what they think is working with other participants, and often having uplifting conversations with their veteran mentors. Court sessions lasted approximately 45 to 90 minutes depending on the size of the calendar and whether there were promotions or graduations. After the VTC sessions, "second call" cases were heard which included evaluations of potential participants or problematic cases. Including the pre-court lobby observations and second call, sessions lasted closer to three to four hours each time.

Observations were written down regarding court procedures, dialogue in the court, and interactions within and between participants and VTC staff. Concepts of interest in observations include type of language employed by the judge, supportive statements from other participants, average time spent on each participant, and jokes made in court, among other indicators of interest. These observations provided a thick description of the court proceedings as I recorded exact language used in the court (quotes) as well as situational observations. Thick description allows a researcher to capture the nuances that emerge in everyday action, and thick description typically follows an analytic goal of providing context to theoretical constructs (Creswell and Creswell 2013; Geertz 1973; Holloway 1997; Ponterotto 2006; Schwandt 2015).

With these two methods of observation in mind, I analyzed the data through an iterative coding process. First, I coded the thick description observations for general themes pertaining to courtroom interactions. Then, I re-coded the observations more specifically for the themes. Because description of VTCs in the literature is under-developed, a simple categorization of court proceedings lays a foundation for a more nuanced description of participant experiences. These experiences and perceptions of the SC-VTC were examined by completing in-depth interviews with participants (and former participants) of the court. Overall, a modified grounded theory approach was used to discern the themes and theoretical approach to be examined more specifically with subsequent analyses (Abbott 2004; Charmaz 2014; Strauss and Corbin 1990)

Additionally, I conducted in-depth interviews with current SC-VTC program participants and graduates (Creswell and Creswell 2013; Patton 2015). I interviewed a total of 22 VTC participants

(13 program graduates and 9 current participants) and the SC-VTC judge. I then transcribed these interviews myself and using third-party transcription services. I selected participants for the interview based on a convenience sample (Robinson 2014), and I considered a specific approach to ensure participants did not feel coerced to participate. During VTC sessions, a court mentor facilitated my access to participants where I identified who I was, the research I was planning, and the process for the interviews. I approached participants before and after court in the lobby. I acknowledge that issues of selection bias may be evident in this research as not every participant was approached, nor did every participant agree to participate in the interview once approached. However, a wide range of experiences were captured in these interviews from participants who represented the VTC both demographically and by program phase. Interviews began with questions about the processes of VTC and generally covered topics about identity, programmatic fairness, and veteran communities among a variety of other topics. Questions were open-ended, generally exploring how veterans experience the SC-VTC, and interviews lasted between forty-five minutes and three hours.

Finally, I collected sets of essays from participants. I typically asked for essays after conducting interviews with participants, and then followed up with participants to send me their essays. Participants did not always save copies of their essays, but I was able to collect five sets of essays that included promotional essays (those required to advance to the next stage of the program) and graduation essays. These essays were also coded thematically with specific attention to language used in essays, the narrative of the essay, and how participants viewed the VTC and treatment.

Participants were generally male, between the ages of 22-40, white, and had a high school education. The following table provides demographics for the participants of the court, broken down by active participants (collected at the end of my time in the VTC), those who had graduated from the VTC, and those who had terminated. The demographics demonstrate that participants are mostly divorced or single and almost half are parents. Most participants reported alcohol as their primary drug of choice with 6-10 years of non-alcohol drug use.

## RESULTS: LAW TO HELP, LAW TO HARM

### Courtroom Actors

*Look around the room, there's, imagine this, there's not a person in this room that does not want you to succeed including the district attorney. You can't do that in these courts necessarily. I mean it's very different; it's such an adversarial system. Not that they don't want them to succeed, I think there's people, I mean, it just depends. There's just such a different atmosphere within the collaborative courts where we're all there to see them succeed and do well. And it's not just about locking people up at all. It's more let's see what we can do to prevent*

*There's just such a different atmosphere within the collaborative courts where we're all there to see them succeed and do well . . . it's more let's see what we can do to prevent them from coming back, whatever that is necessary, whatever's needed.*



**TABLE 1**  
**SC VTC DEMOGRAPHICS**

	Active n=31%	Graduated n=87%	Terminated n=47%	Total n=165%
<b>GENDER</b>				
Male	96.77	96.55	91.49	95.15
Female	3.23	3.45	8.51	4.85
<b>AGE</b>				
18-21	0.00	4.60	4.26	3.64
22-30	35.48	62.07	53.19	54.55
31-40	35.48	16.09	23.40	21.82
41-50	25.81	3.45	4.26	7.88
51-60	0.00	8.05	6.38	6.06
61+	3.23	5.75	8.51	6.06
<b>ETHNICITY</b>				
White	61.29	51.72	70.21	58.79
Hispanic	22.58	36.78	25.53	30.91
Black	6.45	6.90	0.00	4.85
Asian	0.00	2.30	4.26	2.42
Other	9.68	2.30	0.00	3.03
<b>EDUCATION</b>				
HS/GED	58.06	45.98	59.57	52.12
Some College/Voc	35.48	41.38	25.53	35.76
College Degree	6.45	12.64	10.64	10.91
Other	0.00	0.00	4.26	1.21
<b>MARITAL STATUS</b>				
Divorced	32.26	18.39	27.66	23.64
Married	16.13	19.54	23.40	20.00
Separated	16.13	9.20	4.26	9.09
Single	35.48	52.87	42.55	46.67
Other	0.00	0.00	2.13	0.61
<b>PARENTS</b>				
Yes	48.39	22.99	10.64	24.24
No	51.61	77.01	89.36	75.76
<b>EMPLOYMENT</b>				
Employed	38.71	35.63	23.40	32.73
Unemployed	58.06	62.07	70.21	63.64
Unknown	3.23	2.30	6.38	3.64
<b>PRIMARY DRUG</b>				
Alcohol	54.84	70.11	40.43	58.79
Cocaine	0.00	1.15	0.00	0.61
Marijuana	12.90	6.90	17.02	10.91
Methamphetamine	19.35	10.34	17.02	13.94
Opiates	0.00	2.30	4.26	2.42
Heroin	9.68	0.00	10.64	4.85
LSD	0.00	0.00	2.13	0.61
Vocodin	0.00	0.00	2.13	0.61
Other	3.23	4.60	4.26	4.24
N/A	0.00	4.60	2.13	3.03
<b>YEARS OF DRUG USE</b>				
0-2	3.23	4.60	6.38	4.85
3-5	9.68	25.29	21.28	21.21
6-10	38.71	33.33	27.66	32.73
11-15	19.35	16.09	14.89	16.36
16-20	9.68	8.05	8.51	8.48
20+	12.90	8.05	8.51	9.09
Unknown	12.90	4.60	12.77	7.27

*them from coming back, whatever that is necessary, whatever's needed. (Judge, Interview)*

When I interviewed the judge about how he approaches the VTC, he explained that the nature of collaborative courts is to focus on the offender's needs to get them to a non-criminogenic state. This orientation is utilized by each court actor in a non-adversarial manner to reach common treatment goals, something not seen in traditional courts. The court team works as a close-knit workgroup, integral to the treatment aspect of the program.

As research has indicated, the courtroom workgroup must work together to achieve common goals. In a traditional courtroom, these goals are efficient case processing, as well as informally negotiating the outcomes of cases within the bounds of the law (Feeley 1992; Gebo, Stracuzzi, and Hurst 2006). Additionally, research points to the power of the judge in making key decisions in how the workgroup functions and what direction the court is to take (Harris and Jesilow 2000). In the VTC, the nature of the workgroup has shifted from adversarial practices to the treatment team working together to effectively rehabilitate participants with regard to public safety rather than only using incapacitation or deterrence-based punishment.

In this situation, judges relinquish some of the power previously held by their position to incorporate the workgroup more equally in the decision-making process. The judge alluded to this process in his interview when he stated "you better be willing to listen . . . and help them guide your decisions." He noted that, although he is the one to ultimately make the decisions as the judge, "you've got to listen to them,

and you've got to be open to their making suggestions to you, and frankly, if they thought I was doing something wrong I'd want them to tell me." This quote illustrates how the judge was aware of his position in the court relative to those he deemed "professionals." In particular, the judge purported that the US Department of Veterans Affairs (VA) and the veterans justice outreach specialist (VJO) were crucial in the process with regard to treatment because he needed to know "what's going on behind closed doors."

This trend towards involving case managers in the legal process is not unique to VTCs, but is part of a larger movement that utilizes caseworkers in alternate jail diversion programs (Nolan 2003). In fact, Castellano (2009) discussed how this involvement now interweaves new locales of discretion as the case manager operates, in some ways, outside the context of the legal system and within his/her own set of rules and discretion. The role of the case manager is unique in the non-traditional court programs like the VTC as the case manager often increases connections for participants with resources in the community, evaluates treatment, helps manage caseloads in the program, and acts as a liaison between the court and treatment facilities (Ares, Rankin, and Sturz 1963; Castellano 2009). This aspect of the case manager is seen in the role of the VJO.

In the SC-VTC, the VJO<sup>2</sup> was responsible for between 20-50 participants enrolled in the program at a time. She was also tasked with helping connect the participant to community resources or residential treatment, as necessary. One primary VJO worked closely with the VA and the VTC to manage treatment. She was sometimes accompanied by a secondary VJO who shadowed the primary VJO and filled in for her when she was not in court. Every participant in the court is assigned to this VJO, and she built close relationships with the participants, identifying specific treatment needs and making recommendations to the judge and the rest of the treatment team based on her expertise and experience with the participants.

While the VJO was in charge of reporting treatment needs to the team and relaying progress or issues in treatment to the court, the probation officer was tasked with keeping an eye on participants in the criminal justice realm. From the probation officers, the team received updates on home compliance checks, overall compliance in the legal aspects of the program, and some life developments that the participant may be going through that could be positive to court progress or potentially impede court progress. In the SC-VTC, there were two probation officers with the occasional fill-in if the primary probation officer was absent.

**[The VJO] built close relationships with the participants, identifying specific treatment needs and making recommendations to the judge and the rest of the treatment team based on her expertise and experience with the participants.**

<sup>2</sup>The VJO that served this court for the duration of my research was a woman, and thus referred to as "she" throughout the paper. Additionally, the judge and probation officers for the majority of my research was a man (referred to as "he").

The judge acted as the legal enforcer, applying rules, incentives, and sanctions as necessary based on the treatment team's recommendations. He recognized that the VTC team members "were the ones that were actually interacting with them [the participants] regularly." This contributes to his ability to "put your ego aside when you walk in . . . because the whole goal is to try and help them." He also noted that although he maintains that you must listen to treatment providers and that he was ultimately making the decisions with their advice in mind. He rarely publicly went against what the treatment team recommended. He also offered words of encouragement to and attempted to make positive connections with the participants, a core component of NADCP best practices (National Association of Drug Court Professionals 2013).

. . . in the VTC, a participant's progress in therapy is brought into the public and legal realm and becomes subject to law, rules, and oversight by the court, as well as informal social control measures.

It is through this team, coupled with the mission statement of the VTC to rehabilitate offenders in terms of their substance use and mental health issues, that treatment is legalized. Treatment is brought into the legal sphere, a space traditionally held to administer the law in a determination of guilt or innocence and apply punishment for offenses. However, in the VTC, a participant's progress in therapy is brought into the public and legal realm and becomes subject to law, rules, and oversight by the court, as well as informal social control measures.

**Role of the VJO as a treatment liaison.** In the SC-VTC, the role of treatment was immediately clear upon entering the courtroom. When probation updated the judge on a participant's progress, the first information presented was whether the participant was in compliance with the program in terms of receiving any probation-related sanctions, abiding by the legal requirements, and engaging in positive progress. The judge then called on the VJO for updates on the participant's recent treatment efforts and progress. These reports can be brief, sometimes only noting whether there had been any negative behavior or if progress was being made smoothly.

However, these reports can also be personal in nature, where the VJO disclosed relatively sensitive topics in the court. For example, the VJO reported, "The report from his counselor is he's guarded . . . they really require some digging and pulling to get stuff out of him . . . he's showing up but he needs to step up [in how he engages with treatment]." This report was highly private in nature yet read freely in a public, open court proceeding. The VJO often publicly noted when participants were "battling demons" and particularly vulnerable, which may have furthered that vulnerability by making the private matters public. This vulnerability and open sharing of intense and emotional events in open court adds yet another layer to the manner in which treatment becomes a part of the legal process. This is not to criticize this process, as participants did not report perceiving this as shameful or embarrassing, but rather to discuss further how treatment and personal progress becomes more formalized and legalized in this VTC setting.

The role of the VJO is far reaching in the SC-VTC. The VJO was responsible for knowing what kind

of treatment the participant is engaging in, what happens in therapy sessions, what kind of progress or setbacks the participant may be undergoing, and how it all relates to the bigger picture of rehabilitation. For example, it was up to the VJO, in consultation with the entire VTC team, to determine whether setbacks are part of a larger pattern of negative behavior or whether the issue is simply a stumbling moment on an otherwise smooth path to recovery. Each of these decisions would yield very different repercussions for the participant, and it is of no small importance to the overall progress in the VTC. For example, Arvin was terminated from the program after repeated forgeries of his court card (cards that track self-help meetings like AA and NA) and other issues with honesty in the court. However, when Dan was suspected of forging a court card, he was given chances to stay in the program, as he was relatively early on in his treatment, and had not presented the depth of dishonesty problems that Arvin had displayed.

The weight of this relationship is evidenced in the court's "legalization of treatment." If the judge did less to incorporate the treatment and therapeutic aspects of the participant into their proceedings, the role of the VJO would be less prominent. However, the court took the treatment of the participant seriously, leveraging therapeutic aspects of the court against participant progress and setting therapeutic goals amongst the main objectives of the court.

### **Legalization of Treatment: Therapy in Court**

Therapy and treatment become a part of the court process through a variety of means. First, an expression of a willingness to be treated and acceptance of responsibility must be perceived by the court for a participant to be granted entry into the VTC program. If a participant did not express a desire to change or to take the steps necessary to facilitate a positive change, a participant may be barred from entry into the program. Therefore, acknowledgement and acceptance of treatment as a condition of program requirements and completion must have been undertaken in order for a participant to be eligible to enter the SC-VTC.

Second, once in the court, a participant must abide by treatment recommendations. If a participant did not follow the directions of his treatment provider, s/he may be sanctioned with legal repercussions such as jail, phase-restarts, essays, community service, additional groups/self-help meetings, or termination from the program. Additionally, participants must satisfy relatively subjective requirements in treatment progress to be allowed to advance to the next program phase. If a participant was not viewed as "therapeutically" ready to advance, s/he would not be allowed to do so upon recommendation from the treatment provider. Furthermore, a participant's potential graduation could also be impeded for these reasons.

This section describes the ways that treatment becomes legalized, particularly how treatment is utilized to sanction participants with a variety of consequences. In a setting where "doing well" means attempting to better oneself specifically through participation in treatment, how the prospect of positive reports and compliance are yielded by participants as incentives to do well in the program is also examined. These represent some of the less formal ways treatment becomes legalized. Finally, I discuss how the legalization of treatment is internalized by participants, instilling a sense of accountability for those involved with the court.

**Sanctions: Negative reports.** The SC-VTC sanctioning process generally follows two trajectories. First, negative reports were discussed by the treatment team in the public setting as updates for the

judge and may represent moments of informal sanctioning for the participant. Second, the sanction could be a formal sanction received for treatment-related issues. These formal sanctions ran the gamut of severity from added self-help meetings, journaling, increased treatment and therapy, essay-writing to reflect on problematic behavior to be shared with the court, overnight jail stays, and set-backs in phase advancements.

A negative report could include missing meetings or VJO's appraisal that the participant is not putting an acceptable amount of effort into his/her recovery and treatment goals. For example, the VJO was updating the judge on participant Lenny's progress following a positive test for methamphetamine and suggested that he "focus on his recovery efforts more specifically . . . He's still in recovery . . . he needs to get real serious on this recovery." In this case, the VJO reminded the participant, in public, that he was not progressing in his recovery goals. Recovery, in this instance, refers to the participant's sobriety; the VJO noted that this is an ongoing process that cannot be taken lightly. The VJO's words were not the only sanction for this relapse as the participant was also given a 72-hour jail stay for his interrupted sobriety and drug use. This example shows both the informal sanctioning that the court includes as part of the treatment process, as well as the formal sanctioning that utilizes the hammer of the law to punish treatment non-compliance. It is through this public display of sanctioning and the formal legal repercussions of jail that the coercive nature of the legalization of treatment is demonstrated.

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The judge did not take these sanctions and missteps in treatment lightly. With this particular exchange, the judge further drew out the aspect of treatment and recovery within this legal setting, attempting to get to the root of the issue.

*Judge - "The good news is you've come a long way . . . I see you hooking up with others . . . and then I see this . . . what's going on?"*

*Lenny - "I think there's fears" and refers to things he has been digging up in treatment.*

*Judge - "I got a feeling when you were out in the field, you didn't fear anything. Not that it's not scary . . . you've gone through a lot in your life . . . but you're being here and being an example to these warriors here . . . so now we're going to dig in." He went on to tell him it comes down to "persons places and things" and "these folks you're using with, they wouldn't be out there on the field carrying a rifle."*

*Lenny - "No, sir."*

*Judge - "You deserve to be here with these wonderful people. . . the sense of duty in you runs extraordinarily deep" and then sent Lenny back to the audience seating.*

This exchange exemplifies just how personal these discussions of treatment can get. It is worth remembering that these court progress hearings are public; they can be witnessed by anyone who wants to enter the court. Here, Lenny opened up to the judge as the judge brought up relatively personal issues Lenny may have been facing. Lenny was encouraged to explain his behavior as the judge and

treatment team worked towards finding the root of the issue of the relapse. The judge also tried to encourage Lenny by saying that he is capable and worthy of recovery, while suggesting he cut ties with problematic relationships and avoid situations that may lead to relapse. These suggestions represent some of the more informal ways in which treatment becomes a part of the legal process.

Sanctions were also given for a variety of reasons. If participants miss meetings, fail to provide proof of self-help, relapse, or have not been putting full effort into their treatment, they may be given a sanction that seeks to rectify or punish depending on the situation. The most common reason participants were sanctioned with regard to treatment was for missing meetings or being late to meetings. When participants were given a sanction, they are considered “out of compliance” for the week, and their names were removed from the compliance list. Only those on the compliance list were eligible for the weekly gift card drawings during the VTC hearings.

On rare occasions, participants were removed from the compliance list as the only consequence of their violation. For example, on one occasion, Theo (participant) missed a treatment appointment due to “sleep issues.” Sleep issues were a relatively common problem for the participants in the SC-VTC and were attributed to the PTSD and other trauma-related issues from their military service. When the VJO updated the judge on Theo’s situation, she described that his missed appointment was due to sleep issues. Missing an appointment would normally result in an additional sanction, either a stern discussion from the judge, community service, or essay writing. In this case, however, no additional punishment was recommended by the treatment team, nor was there clear public shaming by the court. Rather, the judge told Theo, “We’re all pulling for you” before giving him a return-to-court date and sending him back to the court audience. What is interesting about this case and the few other instances of this behavior is that the judge and treatment team exercise some discretion in sanctioning efforts even though treatment is legalized.

Legalization of treatment also includes taking medications as prescribed by a psychiatrist, as well as following medical-related orders from a physician. The judge sanctioned participants not only for missing therapeutic treatment or breaking therapeutic agreements, but also for failing to take medication or failing to attend physical health appointments. For example, Margot, one of the few female participants in the program, did not take her prescriptions. The VJO updated the judge and cautioned Margot that medications should not be “played around” with and these were doctor’s orders. The judge found Margot to be out of compliance and took her off of the in-compliance list and publicly admonished but did not formally sanction her.

**Incentives: Positive reports.** Treatment also became a part of the official court record through progress reviews conveyed to the judge by the participant, in answering questions the judge asks about treatment, and by the VJO through the formal treatment update. These reviews noted that treatment has been continuing as usual with nothing negative to report or contained glowing words of satisfaction in treatment progress. Additionally, when participants were in compliance with their treatment standards, they were on the compliance list, making them eligible to win weekly gift cards, movie tickets, and other potential incentives. When participants were called for being in compliance at the beginning of the progress hearing, the judge told them to “stand up and be recognized.” When each name was read, each participant stood up, and this was followed by applause at the end of the verbal list. At this point, all in the court could see that those who remained seated might be in trouble for the week. Often, the VTC mentors would look around and indicate their concern for their seated mentees.



However, participants were immediately incentivized for their positive progress, both in adhering to program rules and by making satisfactory progress in treatment with the informal recognition given to the participant by the court, as well as the more tangible rewards in the form of gift cards and other incentives, sometimes called “fishbowl rewards” (Petry and Bohn 2003; Staton and Lurigio 2015).

Positive treatment reports usually took the form of the VJO commending the participant on progress made in treatment or for staying steady in court progress. Praise was reported to the judge both in the team meetings and publicly when the participant was standing before the judge. For example, the VJO applauded Nicolas when he faced difficult issues head-on, stating that he was “Combat[ing] his own personal demons . . . doing it exceptionally.” In another instance, both the VJO and, in rare form, the probation officer commented that Theo had turned a new leaf in his treatment. The probation officer remarked that Theo “had some turn-around with his treatment which is real positive,” and the VJO noted, “He’s here for himself now, not swimming upstream the way he was before.”

To summarize, positive treatment reports are lauded in the court, and participants seem to have some understanding about what to do in their treatment. At some point, participants seem to recognize that they cannot just participate by warming a chair. Dexter (graduate) stated that to satisfy treatment requirements in the eyes of the VJO all one needs to do is be “genuine and engaged, that’s about all she’s going to ask.” Overall, incentivizing positive engagement in treatment adds to the overall legalization of treatment by providing legally sanctioned “bonuses” for compliant behavior. These incentives are displayed in the formal process of the court, legalizing treatment in the public record of participant interactions with the court.

## Accountability

One of the most oft-echoed treatment-related positive consequences that participants described in the interviews and in their promotion, sanction, and graduation essays was that the court afforded them the accountability they needed to make it through treatment. Even though, as highlighted in the above section, participants recognized their need for treatment (sometimes at the risk of their own lives), they also recognized that they needed a mechanism to keep them in treatment. That mechanism is the legalization of the treatment.

When I asked participants what the court did well, many pointed to accountability in treatment. For example, Cal (participant) said, “I see it with a few others that are having difficulties scheduling and showing up. They hold people accountable to be a member of society again.” Alejandro (graduate) echoed this by noting that if “you’re not doing what you’re supposed to do, they’re going to hold you accountable.” Jake (graduate) noted that the VTC was an asset because it “kept me in line, kept me accountable towards being on my A-Game.” As these participants and graduates indicated, the court

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builds in accountability to the program. Because participants desire to “keep their nose clean,” “stay off the radar” of the court, keep a low profile so as not to create problems and prolong their stay in the program, they have an extra incentive to maintain their treatment. Since the treatment itself becomes subsumed into the legal processes of the court, repeated missed treatment meetings or ineffective participation in treatment could lead to overnight jail stays or being held back in phase promotions. To keep this from happening, the participants viewed the solution as simple in theory—make treatment an accepted part of their lives. While this may be perceived as an internalization of potentially coercive legal processes, participants do not seem to perceive it as such, especially when positive change is noted in their lives.

The overall goal of the program is to reintegrate offenders into a non-criminogenic lifestyle by treating the root of the criminal offending, which the SC-VTC believed to be mental health issues and substance abuse problems. Therefore, to successfully reintegrate and be ready to live a life outside the court, a participant is expected to continue treatment. Connor (participant) discussed how his “PTSD is about as under control as it will ever be” and that “just having so much time sober, learning how to live almost two years sober” has led him to be “pretty confident in [his] sobriety at this point.” He described being ready to graduate now although he did not feel confident earlier in his program. To Connor, graduating the program meant continuing treatment on his own, and the time he spent in the program helped him get used to the idea of continued treatment and sobriety. Participants recognized this as getting rid of the safety net provided to them. Many participants noted that they think they will be ready to continue their treatment and be on their own when they graduate, but that does not mean participants did not show some fear for this point in their recovery.

In fact, sometimes this fear became so entrenched in a participant’s psyche that s/he committed what the VTC calls “self-sabotage.” Although self-sabotage is not particularly a new concept for drug or mental health treatment (Matthews, Dwyer, and Snoek 2017; Washton 1988), the notion of self-sabotaging was addressed numerous times in the SC-VTC’s operation, most often in reference to substance abuse issues. For example, when participants were showing some problematic behavior but had not fully suffered a relapse or diluted test, the VTC team (primarily the judge and VJO) would raise the issue that they feared some self-sabotaging behavior was showing, addressing this concern publicly in the VTC progress hearings. When something more catastrophic to a participant’s treatment occurred like a diluted urinalysis or through a relapse, the judge often mentioned that these moments of suspected “self-sabotage” reflected a cry for help and were usually committed out of fear of leaving the VTC’s jurisdiction, and thus, reducing their legal accountability to stay sober and in treatment. This sentiment was echoed by participants in interviews, reflecting on the behavior of some of the other participants in the SC-VTC.

Connor (the participant who expressed confidence in leaving the program and being ready to graduate and contribute to treatment goals) spent at least another year in the program after some stumbling. After getting through his rough patch, he later joked with the court that he did not feel ready and that he had gotten too comfortable, which was a mistake he did not plan to make again. When asked what was holding him back, he replied “I just like it here.” The VTC team put together an action plan for him to build a net outside of the VTC and reinvest in his treatment so he would be more comfortable with leaving the court behind. The court attempted to build this extended safety net for participants once they graduated the program by increasing ties to treatment, the VA, and other people in the participants’ lives such as family and friends.

## Perceptions of Individualization: One Size Doesn't Fit All

The SC-VTC offered a more individualized treatment approach than most specialty courts because of its capacity for dual-diagnosis. However, some participants suggested that there was a deeper need for individualization. This usually arose in two different ways. First, some participants felt that they or other participants do not need substance abuse treatment if they do not have a problem with alcohol or other substances. Second, some participants felt that certain groups or other forms of treatment are effective for them. These issues are where treatment may cross the boundaries of the positives of providing accountability into a more coercive realm as perceived by participants.

In interviews, several participants raised the notion that not every person in the VTC had an issue with alcohol (as well as other drugs), yet they often had to go to AA or other substance-specific self-help meetings. For example, some may have had issues linked to PTSD but did not believe they also had substance abuse issues. As Victor (participant) pointed out, “Some of the guys here don’t even have alcohol-related cases and it’s like whoa shit, it’s like okay. So why are you guys in AA classes? It’s like I don’t know. It makes no sense to me.” Here, the implication becomes clear that while participants may not truly understand other people’s treatment needs, the perception is that sometimes certain treatment is not needed for all participants. There is also the question of how to mitigate this notion of unnecessary treatment, especially if this process is viewed as going against NADCP standards on which many treatment courts rely. Again, while this paper does not investigate the court’s actual compliance to best practice standards, the perception of the process by participants of the court is key.

Participants also emphasized the desire to exercise choice of treatment. At times, especially in the first phase, participants had a perception of having little say in their own treatment. As Max (current participant) described in a conversation he had when he did not agree with the treatment plan:

*And they also have a very persuasive way of saying I think you should go to this group. Um, basically I’m volun-told to go this group. This group is really good for you, you should go to this group. You don’t think you should go to this group? I think you should go to this group. Nah I really think you should go to this group. It’s kinda like our arm’s twisted into going to these groups. But they have, being mindful that I know that that’s their job.*

While some participants felt that their treatment was on track with what their expectations were, others, like Max, expressed a desire for more input into their treatment plans. Max explained how the court leverages its authority to send participants to new groups and treatment they may not otherwise go to, even if they do not want that particular treatment. Max called this being “volun-told” to participate in new treatment. VJOs and the treatment team can suggest that a participant try a new group, and the legal order of a participant to follow the orders of the treatment team explicitly enforces the suggestion.

This notion of not having enough of a say in the treatment plan can recall notions of coercion as it relates to treatment. Even if participants feel that they have a choice in entering the court, coercion must be more closely investigated in participant perceptions of the actual treatment they are “volun-

At times, especially in the first phase, participants had a perception of having little say in their own treatment.

told” to complete. By mandating the kinds of treatment participants have to get without input from the participant, the process is not only at once legalized, but may also be undermined if a participant does not believe in the necessity of the treatment, which could affect future compliance.

## DISCUSSION

Most participants recognized that there was a need for treatment due to their mental state or substance abuse issues. While some participants decided to enter the program for the treatment aspect it provided, other participants did not recognize the need for treatment until later in their program. This recognition could come from noticing that things in their lives had changed for the better. Once a participant was able to link the treatment with some of the positive progress in their lives, the importance of treatment became clearer to them, and often, there was a deeper investment in the treatment. This did not seem to be the case for every participant as some participants indicated that they “jumped through the hoops” of the VTC just to get through the program. However, for the majority of participants interviewed, treatment was an important step in the right direction to reclaim their lives.

While participants recognized the importance of treatment and committed to treatment regimes in the program, there are some issues that come from situating treatment in the legal realm. One issue is that the court has limited flexibility in individualizing program requirements for participants. If the court varied the treatment requirements too much between participants, it could potentially be perceived as unfair and hurt the court’s image of equality. However, several participants indicated that increased individualization was desired and that the VTC program sometimes felt “cookie-cutter” in its approach. Participants did not see this as a particularly harmful problem, but they did note that individualization could be approached in at least two different ways.

One issue of individualization stems from assigning treatment to someone who may not think they have an issue with that particular set of problems. Participants identified that sending someone who does not have substance abuse issues to participate in AA meetings or other substance-abuse-related

treatment may take the spot of someone else who may need those resources. While participants noted that sobriety is important in the program to both avoid negative influences in their lives that could be associated with drinking and to have clear heads while completing the program, they also recognized that not everyone there has a severe substance-abuse-related issue. However, in accordance to NADCP standards, it is not necessarily assumed that the court is *actually* prescribing treatment unnecessarily, but rather that it is perceived this way, sometimes, by participants. To attend to this issue, communication and explanation between treatment providers, the court, and the participants seems to be key in helping participants to feel that they are able to negotiate their treatments and are active participants in the design of their own treatment regimens.

Once a participant was able to link the treatment with some of the positive progress in their lives, the importance of treatment became clearer to them, and often, there was a deeper investment in the treatment.

The second problem that participants identified is a greater need to have a say in their own treatment plans. Some participants suggested that they were skeptical that a treatment or therapy would be useful for them but often did not have much flexibility in what they could or could not do, at least until later stages in the program. It is in these early stages of the program that participants seem to be most unsure of the treatment and may negatively perceive its institution in their program. This issue, however, appears to be mitigated once participants both accept their program and gain trust in the court. That is, if a participant does not agree with a treatment plan, they may be more likely to comply when they have a deeper sense of trust in the court. This trust signifies that a participant is willing to put faith in the court's decisions regarding treatment, because the court knows what is best for the participant. This issue of trust is something that bears further research. By identifying what contributes to participant trust in the VTC, courts can perhaps increase compliance (both initial and long-lasting) for program participants in the face of potentially disputed treatment.

Future research should investigate how courts may be able to supply additional room for individualization in treatment to better meet participant needs. For some potential participants, this inability to control one's treatment could potentially have harsh consequences and contribute to participants leaving the program. If the court is unable to impress upon the participant the importance of treatment and that each component of the treatment has the participant's best interests in mind, this could become a point of contention for participants, leading to programmatic failure or early self-termination from the program.

In particular, this issue of perception of coercing treatment for those that do not need it did not come up often in the interviews but could have contributed to program terminations or in the initial decision to not enter the VTC. Future research should attempt to reach this population as coercion of treatment is a logical extension of the legalization of treatment. While participants may have had issues with aspects of the treatment, it did not seem to be enough to justify dropping out of the program for the participants who made it through the program.

While this research comprises the experiences of participants in a single VTC (albeit a mentor court with wider reaching influence than a typical VTC), the results are worthwhile of further investigation. Participant commitment to the program seems to depend partially on perception of treatment and need for treatment. A deeper exploration into what contributes to participant acceptance and accountability with regards to treatment could yield beneficial conclusions for the continued success of VTCs and other problem-solving courts.

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