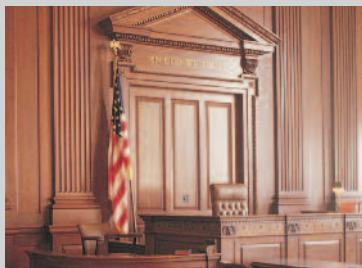
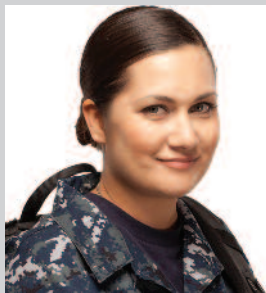


DRUG COURT REVIEW

VETERANS TREATMENT COURT ISSUE

Fostering a wider understanding of veterans treatment court programs and participants, identifying challenges faced and successes achieved

Winter 2018



**National Drug Court
Resource Center**



JUSTICE PROGRAMS OFFICE
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THE VETERANS TREATMENT COURT ISSUE

WINTER 2018

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Veterans treatment court programs provide assistance to offenders with a history of military service through alternative case processing, helping them access treatment, services, and often benefits they have earned.

FOREWARD

Vicky M. Wilkins¹

Welcome to the Veterans Treatment Court Edition of our inaugural issue of the *Drug Court Review*. It is my privilege to release this edition on the 10th anniversary of the Buffalo Veterans Treatment Court, which first opened its doors in 2008.

Since our founding nearly a century ago, the School of Public Affairs at American University has cultivated and enhanced careers in public service while producing transformational research that drives progress in policy, politics, and public administration. Our school has tackled complex issues with thoughtful research that educates, informs, and promotes change across a multitude of fields while seeking to bridge academic thought and policy planning.

This issue of *Drug Court Review* provides the treatment court field with insight into and research on veterans treatment courts and was created to address a knowledge gap in the field—a paucity of research on veterans treatment courts. The goal of this edition of the *Review* is to foster a wider understanding of veterans treatment courts, including the issues, challenges, and successes they have experienced. Through this journal, the treatment court field will have access to a variety of research, policy, and practice articles, compiled especially to bridge academic research and practice.

As the dean of the School of Public Affairs (SPA) at American University, I am often faced with the challenges experienced by students who have served and are serving in our uniformed services. SPA is proud to support veterans and service members through our Key Executive Leadership programs, which directly align with my personal goal of supporting our nation's military personnel. Through the Justice Programs Office (JPO), SPA's center on criminal justice research, policy, and practice that publishes the *Drug Court Review*, I am honored to support the furtherance of the treatment court movement that developed veterans treatment courts. These court programs provide assistance to offenders with a history of military service struggling with substance use and mental health disorders, helping them access treatment and the programs, benefits, and services they have earned while providing them with an alternative to jail.

JPO's inaugural issue highlights the importance of and need for future research about veterans treatment courts, as well as innovations in practice and policy to their benefit. I would like to thank the *Drug Court Review* Advisory Committee for their guidance and input on this issue. I would also like to express my gratitude to this issue's Editorial Team and JPO Director Kim Ball for creating a publication on such a timely and important topic.

¹ Dean of the School of Public Affairs at American University

Veterans can be motivated by encouragement from other veterans, veterans can be a support for each other, . . . incorporating military culture can be of value in a treatment court setting.

INTRODUCTION TO THE ISSUE ON VETERANS TREATMENT COURTS

Julie Marie Baldwin¹

At a time when the United States is engaged in its longest military conflict to date, social and scientific attention to the effects of military experience has increased in recent decades. Although these issues and relationships have been of interest historically, scientific research across multiple disciplines has increasingly focused on these issues and has been aided by advances in science, medicine, and technology.

Although the extant research on the link between military service and criminal behavior is broad and sometimes mixed, it indicates that complex relationships related to military training and service can exist across the numerous dimensions over the life-course. For example, issues often related to criminality, such as substance misuse, mental health issues, and homelessness, have been linked to certain military experience (Brown, 2011; Brown et al. 2013; Cavanaugh 2011; White, Mulvey, Fox, and Choate 2012; Wright, Carter, and Cullen 2005).

With the dissemination of study results on various indirect relationships to broad audiences in various formats, our societal awareness and understanding of this constellation of issues has grown. There is a general acceptance that relationships can exist between military service, trauma, mental health issues, substance-using behavior, housing instability, and utilization of treatment and services. This widespread recognition has contributed to responses from a variety of institutions.

The criminal justice system's most notable programmatic innovation in response to the intertwined challenges affecting veterans and military personnel is the veterans treatment court (VTC). The VTC is a type of treatment court (also referred to as specialized, specialty, or problem-solving court) that diverts² offenders with a record of US military service from the traditional criminal justice process to its program. Similar to other treatment court models (e.g., drug courts, mental health courts, co-occurring disorder courts), the VTC aims to increase participants' well-being and facilitate successful re-integration into society by addressing the underlying causes and correlates of criminal behavior, thereby also reducing recidivism and improving public safety. Treatment and service engagement and fulfillment of other requirements (e.g., vocational training, employment, physical medical attention, restitution, family re-unification) are mandated and monitored by the VTC.³

Although it has been described as "a hybrid of drug and mental health treatment courts" (Russell 2009: 365), the VTC model has key elements that make it unique (Baldwin and Brooke In Press; Baldwin and Drapela Forthcoming). What distinguishes the VTC from these treatment court models, as well as others (e.g., co-occurring disorder, prostitution, DUI/DWI, domestic violence, and gun courts),

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²This is not to say that VTCs are diversion courts. VTC participants have entered the program at various stages throughout and even after the criminal justice process (e.g., pre-plea, post-plea, post-conviction, post-sentencing) (Baldwin, 2003; Baldwin 2015; Cartwright 2011; Douds, Ahlin, Howard, and Stigerwalt In Press; Holbrooke and Anderson 2011; Justice Programs Office 2016).

³For early works providing detailed descriptions, see Baldwin (2013), Cartwright (2013), Cavanaugh (2011), Glassford (2013), Hawkins (2009), Holbrook and Anderson (2011), Russell (2009), and Totman (2013).

is its eligibility requirements, participating stakeholders, and programmatic elements. The VTC uses what is essentially an employment status (military service) as the primary qualifier for its target population instead of an offense type or extra-legal issue. Additionally, the US Department of Veterans Affairs joins the stakeholder table in the VTC. Finally, two hallmarks of these programs are their peer mentorship component (use of veteran peer mentors to support participants) and incorporation of subculture, obviously military subculture.

VTCs were created through judicial innovation—borne out of personal observations, not systematic evaluation or scientific inquiry. In the 2000s, judges were noting that a significant number of offenders appearing in their courtrooms had a history of military service. Additionally, these judges reported that many of these offenders also had mental health issues and/or substance-misusing behavior. Judicial initiative established the first VTC in 2004 in Anchorage Alaska (Smith 2012) and the model serving as the catalyst for widespread dissemination in Buffalo New York in 2008 (see Russell 2009). Recent reports indicate that there are between 300-500 VTCs in operation across the country (Flatley, Clark, Rosenthal, & Blue-Howells 2017; Justice Programs Office 2016; National Institute of Justice 2018).

Despite the growing popularity of VTCs, the body of VTC research is not fully developed but has been emerging in the wake of their rapid adoption. As multi-disciplinary research has and continues to discover the complexity of the role that military training and service can play in the lives of veterans, service members, and those with whom they are connected, VTC research must follow suit in taking a multi-disciplinary approach. Further, VTC research must be translational with researchers making concerted efforts to relate findings to practice, conduct evaluation science, disseminate findings to practitioners, and work with programs to empirically improve efficacy and impact.

This issue of the *Drug Court Review* focuses on various aspects of the VTC in effort to further develop our knowledge base and call attention to areas of needed consideration and more attention in the field. This issue is comprised of a set of articles addressing hot topics most reported by treatment court practitioners, lawyers, and judges, as well as VTC researchers. The issue begins with “Developing the Veterans Treatment Court.” This practice note by Judge Russell recounts the impetus and creation of one of the longest running VTCs in the country and highlights key elements of its structure and operation.

The next article was developed in response to national reports of challenges in the identification of potential VTC participants and is the first article published from the National Institute of Justice’s multi-site evaluation of VTCs. The research article “Identifying Those Who Served: Modeling Potential Participant Identification in Veterans Treatment Courts” examines the mechanisms, components, and processes of identification across eight VTCs. My co-authors, Dr. Hartley and Dr. Brooke, and I also identify challenges and successes of identification models across a variety of VTCs, offering several recommendations to improve identification practices and support further research.

The next three research articles address various aspects of the VTC experience from the roles of participant and mentor and grapple with issues of procedural justice, legitimacy, and legalizing treatment. Dr. Gallagher and Ms. Warner integrate work on PTSD risk and protective factors, criminogenic risk among veterans, and theories of justice in their research article, “Perceptions of Procedural Justice and Legal Legitimacy in Veterans Treatment Courts: Correlates with PTSD Risk Factors.” The work dis-

covers and discusses the importance of probable PTSD, military homecoming, and civilian reintegration on procedural justice and legitimacy, which may affect program outcomes.

Peer mentorship is then tackled by Dr. Lucas in “An Exploratory Study of Veterans Treatment Court Peer Mentors: Roles, Experiences, and Expectations.” While peer mentorship is used by the majority of VTCs across the country, many programs have reported challenges related to these components, such as defining mentor roles, achieving an adequate number of mentors, and understanding important criteria for matching. In this research article, Dr. Lucas obtains peer mentor perspectives and experiences and examines how mentors interpret and approach their role and its place within the VTC; the importance of and relationships between trust, friendship, and confidentiality; feelings of separation from the court treatment team; and the need for training and preparation.

Subsequently, the legalization of treatment within a mentor VTC is examined in “‘We Quell the Storm, and Ride the Thunder’: The Legalization of Treatment in Veterans Treatment Courts.” Dr. Sherman’s ethnography explores how treatment becomes formalized within the court process and what consequences, both positive and negative, may result. The coercive nature of legalizing treatment is discussed and is of interest to many working in VTCs, as well as other treatment courts.

Finally, Judge Pinski focuses on the role of the prosecutor and constitutionality of the prosecutorial veto in his legal commentary, “The Constitutionality of a Prosecutorial Veto in Veterans Treatment Courts.” He argues that the use of the unilateral prosecutorial veto in VTC enrollment threatens the constitutional rights of due process and equal protection. He holds that VTCs must safeguard these constitutional rights and discusses how programs can go about ensuring their protection.

When taken together, the articles reflect the complexity of VTC operations and their widespread effects. They also indicate the infancy of the current field of VTC research and call attention to new areas of inquiry, stressing the need for a multi-faceted approach. My hope is that this issue inspires its readers to respond with their own systematic examinations of VTCs and to strive to have their work impact policy and practice on the ground.

These are no small feats, and there is much work ahead of us. Not only are the effects of military experience far-reaching and veterans and service members will continue to return from our country’s longest engagement in history, but the full effects of this era’s veterans may not be seen until 2040 (Institute of Medicine 2010). Similar to drug courts, I believe VTCs have become a staple of our criminal justice system. They have changed the face of the criminal justice system in their aims to increase the well-being of veterans and service members and help them achieve successful reintegration into civilian society.

Wars and their effects are a continuing, permanent part of the personal and political landscapes that paradoxically demand incorporation and defy ready integration into an acceptable world view. The warrior’s image, his wounds, and the world he comes home to are a story that has been retold in Western culture at least from the time of Homer. The lessons of the Odyssey are the same as those of late-twentieth-century social science – wars may end, but they continue to reverberate in the lives of those who fought them and within the soldiers’ societies. (Modell and Haggerty 1991)

In closing, I would like to thank this issue's authors, reviewers, and board members for their contributions. Their commitment to advancing the VTC field through this issue of *Drug Court Review* was apparent throughout the process, and without their combined effort, this issue would not have happened. The board saw the need for the issue to focus on VTCs. The multidisciplinary reviewer panel supplied thorough and meaningful critiques, and I believe that even those articles that did not make it in this issue benefitted from their reviews. Finally, I cannot say enough about the patience and diligence of both the authors and the Justice Programs Office team. The time has finally come for them to see their hard work in print.

Julie Marie Baldwin, Editor-in-Chief

Julie Marie Baldwin, PhD, is the associate director for research of the Justice Programs Office at American University, a scholar in residence in the Department of Justice, Law & Criminology at American University, and a research professor in the Department of Criminology & Criminal Justice at Missouri State University. She specializes in translational and evaluation research with a focus on treatment courts; substance use and misuse; and subcultures including the military, law enforcement, and gangs. She currently has five projects focusing on veterans treatment courts funded by the National Institute of Justice, Bureau of Justice Assistance, and National Institute of Corrections. Some of her most recent work appears in *Criminal Justice Policy Review* and the *American Journal of Criminal Justice*.

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DEVELOPING THE VETERANS TREATMENT COURT

Robert T. Russell, Jr.¹

VALUE STATEMENT

This practice note details how the Buffalo Veterans Treatment Court was created. Readers gain insight into the development process and steps that were essential to this program's creation and implementation.

KEYWORDS

Veterans treatment court, veterans court, program development

The veterans treatment court (VTC) first began in Buffalo, New York, in January of 2008. Often, I am asked what inspired me to start the VTC. To answer that question, I must take us back to late 2006. I was presiding in our local mental health treatment court and there saw a Vietnam veteran who had been in treatment for several months. Before he came to court, the community's treatment provider apprised the court that while this veteran was compliant with his attendance at treatment, the provider did not think he was making progress. He did not appear invested in his treatment, and the provider reported that the veteran did not actively engage with his therapist, nor actively participate while in group counselling sessions. Understandably, this concerned us, and I intended to address these issues.

What happened in court that day motivated us to rethink our approach to working with veterans. What follows is a condensed version of the facts. The Vietnam veteran appeared in court, and his clothing was disheveled, his posture slumped, he made no direct eye contact, and his verbal responses to the court were mere grunts. Rather than proceeding, I asked my project director Hank Pirowski and an employee of our county government named Jack O'Connor to speak with the veteran in the hallway directly adjacent to the courtroom. Both Hank and Jack are veterans and both served in Vietnam—Hank as a marine and Jack in the Army. After 20 minutes the three of them re-entered the courtroom, and when the case was recalled, the veteran stood before me in an erect posture, at parade rest, and responded to me in a coherent fashion. He stated he would try harder to work with his treatment provider. I was astonished by this transformation. What struck me, and my team, was how he had responded to two other veterans. It suggested to us that veterans can be motivated by encouragement from other veterans, veterans can be a support for each other, and that incorporating military culture can be of value in a treatment court setting.

I asked Hank and Jack to remain after court to discuss how their conversation with the veteran participant led to the positive changes we saw in his attitude and demeanor. We discussed how to assist veterans—specifically those managing substance abuse or mental health disorders—in the justice system by incorporating military culture. We hoped to encourage our veterans to strive for stability, productivity, and a healthier, law-abiding lifestyle.

¹ Associate Judge of the Buffalo City Court; Acting Judge of Erie County Court; Presiding Judge of the Buffalo Veterans Treatment Court; Presiding Judge of the Buffalo Drug Treatment Court

The events of that day motivated us to seek ways to provide better support for military veterans in the justice system. Research at the time informed us that a significant number of veterans who had served in the recent conflicts in Iraq and Afghanistan were experiencing mental health symptoms. Some were self-medicating using drugs and alcohol, and further research educated us about the high number of veterans committing suicide daily, the number of homeless veterans, and the number of veterans who were unemployed. Also, at that time, we began to see in our local criminal courts young men and some women who had recently served in combat or war zones.

We planned for over a year. We assembled and held meetings with broad, diverse, and inclusive team of stakeholders involved in the criminal justice system, health care systems, veterans support systems, and community groups. At these meetings we discussed the idea of our local court creating a treatment court for military veterans, specifically to address their health care needs related to traumatic brain injury, substance use disorders, and mental health disorders. We sought to design a more responsive approach to working with veterans in the criminal justice system, which involved ensuring everyone on the court team became acquainted with military culture and gained an understanding of the signature injuries facing many of our veterans. It was also important to have a close working relationship with the US Department of Veterans Affairs (VA) and local community treatment providers.

During the planning period, we met with our local VA health care network. Jack O'Connor facilitated an invitation for me to speak to our local VA hospital advisory group, which was chaired by Michael S. Finegan, who at that time was the director of the VA Western New York Healthcare System and our local VA hospital. The advisory group was composed of veterans who were active in the veterans' community and/or the VA hospital network. Members included representatives from veterans' service organizations, such as Veterans of Foreign Wars of the United States, Vietnam Veterans of America, Disabled American Veterans Charity, The American Legion, AMVETS, etc. I asked the advisory group's members to assist us in designing a treatment court that would provide the best support for our veterans. The members of the advisory group said not only did they want to help, but they also wanted to volunteer. The VA's hospital director also agreed to assist us.

A major step in the design of the first VTC was the inclusion of volunteer veteran mentors and the VA, which agreed to supply the court with a VA healthcare worker. The healthcare worker acted as a liaison between the VA and the court and could assist a veteran participant in enrolling in the VA's healthcare network. This person also assisted with obtaining releases of confidentiality and scheduling treatment appointments for the veterans with the VA. The VA healthcare worker also provided the court with updated information on a veteran's progress with his or her treatment.

After several months of the Buffalo VTC's operation, under the leadership of US Secretary of Veterans Affairs James Peake and Deputy Undersecretary of Health Operations and Management William Feeley, the staff person assigned to the court, a Mrs. Donna Leigh, was granted permission to bring

... ensuring everyone on the court team became acquainted with military culture and gained an understanding of the signature injuries facing many of our veterans.

her VA computer to the VTC. The presence of the onsite computer allowed her to connect to the Buffalo VA healthcare network, and she became the inspiration for the VA's subsequent creation of the Veterans Justice Outreach Program (VJO) in 2009. The VJO specialist, as described on the VA's website, now provides outreach, assessment, and case management services to and on behalf of justice-involved veterans in local courts and jails, in addition to being a liaison with local justice system partners such as VTCs. In 2010, VA Secretary Eric Shinseki made the VJO specialist position a full-time dedicated position at every VA hospital facility located in the continental US and US territories.

Since then, the Buffalo VTC has worked closely with Justice for Vets, a division of the National Association of Drug Court Professionals, which assisted jurisdictions with the training and establishment of VTCs nationally. Justice for Vets was instrumental in assisting the VA in training the newly created VJO position. Additionally, Paul J. Hutter, the general counsel for the VA, and his successor, Will A. Gunn, were instrumental in guiding the VJO program for the VA. The VJO program continued to assist veterans under all subsequent secretaries of the VA and to this day.

When we started the Buffalo VTC, there were several unknowns. Locally and nationally, I could not find any information regarding how many veterans were arrested in any given year; this information was not being collected, asked of arrestees, nor reported. I could not find information about the numbers of veterans in existing drug treatment and mental health treatment courts, as these courts did not usually ask or record such information from their participants. Regardless of the numbers, we wanted to create a more therapeutic, culturally appropriate environment for our veterans. We wanted to provide the best opportunities for our veterans to regain stability, be successful, and to contribute in a positive way to their civilian life.

As VTCs are evaluated by researchers, the field is eager to learn what works well with this population and what are the areas for improvement. Do differences in veterans' experiences, such as combat or having disorders such as PTSD, affect how veterans fare in VTC? Does the era of our participants' service in the military factor into how they progress in the program?

Our veterans sacrifice to defend our country, and some have made the ultimate sacrifice by giving their lives. For those veterans who do return home and suffer from the invisible wounds of war, our communities and our justice system must prepare ourselves better to receive them and to provide them with needed support. When we encounter veterans in our courts suffering from mental health and substance use disorders, they should be seen in a VTC. VTCs provide structure, oversight, stability, restoration, and offer our veterans a new mission. A mission to achieve a productive, law abiding, and healthier civilian life.

A major step in the design . . . was the inclusion of volunteer veteran mentors and the VA, which agreed to supply the court with a VA healthcare worker.

AUTHOR BIO

Judge Robert T. Russell, Jr. is an associate judge for Buffalo City Court and serves by appointment as an Acting Erie County Court Judge. He created and presides over Buffalo's Drug Treatment Court since December 1995. He established and also began presiding over Buffalo's Mental Health Treatment Court in December 2002 and the Buffalo Veterans Treatment Court (the "first veterans treatment court") in 2008.

Judge Russell is the former chair of the board of directors of the National Association of Drug Court Professionals, Inc., and the former president of the New York State Association of Drug Treatment Court Professionals. He also served on the National Advisory Board of the Judges' Criminal Justice / Mental Health Leadership Initiative, which is co-coordinated by the Council of State Governments and the GAINS Center. He is a graduate of Howard University Law School in Washington, D.C.

Judge Russell is the recipient of several Awards of Merit from the American Bar Association, New York State Bar Association, and the Erie County Bar Association. He has been issued many community awards, including the Buffalo News 2009 Outstanding Citizen Award and the Leadership Buffalo 2010 Openness to Change Award. He has received the Vietnam Veterans of America Achievement Medal and the National Veterans of Foreign Wars of the United States' James E. Dan Zandt Citizenship Award. Judge Russell is also the recipient of the 2014 White House Advocates for Action Award, presented by the White House Office of National Drug Control Policy and the 2015 AMVETS American Veterans National Silver Helmet Award. His work in the drug treatment court field led to his induction into the National Association of Drug Court Professionals "Hall of Fame." He is also the recipient of the Leadership Award from the New York State Association of Drug Treatment Court Professionals and the Nancy D. Smith Memoriam Award from the National Alliance for the Mentally Ill.

IDENTIFYING THOSE WHO SERVED: MODELING POTENTIAL PARTICIPANT IDENTIFICATION IN VETERANS TREATMENT COURTS

Julie Marie Baldwin¹ Richard D. Hartley² Erika J. Brooke³

VALUE STATEMENT

This study enhances the operational knowledge of practitioners and researchers through the identification and assessment of the processes and mechanisms currently used to identify potential participants across multiple veterans treatment courts (VTCs). To inform VTC development, implementation, and research, strengths and challenges in the identification and referral of potential VTC participants are reviewed and potential recommendations provided. Ultimately, this study calls attention to the need to identify and develop efforts to increase the reliability and efficiency of identification processes and move initial identification and referral earlier in the criminal justice process.

ABSTRACT

Despite the rapid implementation of the veterans treatment court (VTC) concept by jurisdictions across the country, research evaluating their processes and operation is sparse. As such, this study is the first to focus on identification procedures to obtain pools of potential VTC program participants. Specifically, the study analyzes primary data from the National Institute of Justice's multi-site evaluation of VTCs to explore the identification procedures of eight VTCs, discerning a total of 13 identification models or referral chains. Specifically, two sets of identification agents (six initial identifiers, six VTC identifiers) employed varied mechanisms across eight direct and five indirect referral chains. Successes and challenges in the implementation of these mechanisms and models are identified and discussed to produce preliminary recommendations for a variety of VTC programs to consider. The unique VTC target population makes the identification of potential participants highly important yet equally challenging, arguably more so than for other types of specialized courts. These factors elevate the current study's timeliness and significance for the more than 400 operational VTC programs and their potential participants across the US.

KEYWORDS

Veterans treatment court, veterans court, process evaluation, offender identification, military history

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INTRODUCTION

With the implementation of more than 400 veterans treatment courts (VTCs) across the United States and their continued growth in popularity since the concept's emergence in the mid-2000s, the wide variability in VTC program structure, policies (including eligibility criteria), and participant characteristics has been documented over time (see Baldwin 2015, 2017; Holbrook and Anderson 2011; Johnson et al. 2016; Justice Programs Office 2016; McGuire, Clark, and Blue-Howells 2013; Timko et al. 2017). Additionally, VTC program operations have been generally described to provide context for several single-site studies focusing on various aspects of VTCs, such as efficacy (Erickson 2016), courtroom workgroups (Lucas and Hanrahan 2016), program outcomes (Hartley and Baldwin 2017; Knudsen and Wingefeld 2016), and theory (Baldwin and Rukus 2015; Huskey 2017). Leaving much of the inner-workings of VTCs unknown, the extant body of VTC literature—at the time of this writing—lacks process and implementation research, let alone the identification of any procedural models to investigate (Shannon et al. 2017).

To begin to understand the black box of VTC operations, research must focus on the initial processes of these programs, which begin with the identification of potential program participants. The process of identification creates a pool of potential participants who are then screened for program eligibility and admission. Early research revealed that a common concern among VTC personnel is the lack of protocol to identify and refer offenders with a history of military service to VTCs (Shannon et al. 2017). Given the rapid expansion of VTC programs, researchers have expressed the need for process evaluations of the identification, as well as selection, of program participants to better inform program planning and evaluation (Douds et al. 2017; Slattery et al. 2013).

The current study aims to provide insight into the early processes of VTCs, specifically the ways in which potential VTC participants are initially identified. As previously noted, identifying a pool of potential participants is the first procedural stage relevant to the operation of VTCs. To explore this initial procedure, process data collected in the National Institute of Justice's on-going multi-site evaluation of VTCs is initially deconstructed to determine the identification agents and mechanisms in eight VTCs operating in three states. Identification models, or referral chains, are then developed, and inter-court themes in agents, mechanisms, and referral pathways are discussed. These results are examined to assess procedural successes and challenges. Based on the discussed strengths and obstacles, preliminary recommendations for potential VTC participant identification processes are developed, and implications for the field are discussed.

IDENTIFICATION PROCEDURES IN SPECIALIZED COURTS

Although a large body of evaluations and meta-analyses on drug courts generally indicates that drug courts reduce substance use and recidivism, Belenko and colleagues (2011) stressed for consumers to exercise caution when interpreting evaluation findings. A growing collection of studies suggest that the positive outcomes found for specialized courts might be due to targeting and admission procedures or selection bias rather than the intervention program (Belenko, Fabrikand, and Wolff 2011; Wolff, Fabrikant, and Belenko 2010). Eligibility procedures implemented by the court result in participation being offered to a select group of offenders who then self-select program admission. These eligibility and admission procedures directly influence the types of participants in a program, which then could affect program outcomes. Further, researchers have argued that early identification and prompt place-

... positive outcomes found for specialized courts might be due to targeting and admission procedures or selection bias rather than the intervention program.

ment into treatment are critical for drug court success (e.g., Cooper and Bartlett 1996; Granfield, Eby, and Brewster 1998). Therefore, it is not only vital to examine these procedures and account for them in outcome and impact evaluations but to also recognize that only those in a pool of potential participants are screened for program eligibility and admission.

However, few studies have explored the particular identification processes implemented by treatment court programs. For example, scholars have noted that, while a small number of studies have explored the referral to admission process within mental health courts and produced inconsistent findings, only one study focused on the initial identification and referral process (Frailing 2011; Luskin and

Ray 2015). Steadman and colleagues (2005) examined the referral and admission processes in seven mental health courts over three months. When exploring the referral process, the researchers found that referral agents were mostly similar across all courts with the majority of referrals coming from defense counsel and the judiciary. Participant demographics of individuals in the courts varied. While older White women were more likely to be referred, there were no significant demographic differences among clients accepted into the six mental health courts (Steadman et al. 2005).

Identification has been tangentially addressed in the limited literature on eligibility and admission screening in specialized courts. In their examination of drug court participants, Cooper and Bartlett (1996) indicated that early identification was important to their program success and that the identification processes varied between the 24 drug courts examined (Cooper and Bartlett 1996). However, the study focused more so on screening and other drug court operations than on identification. More recently, Wolff, Fabrikant, and Belenko (2010) deconstructed pathways in which clients were selected for and admitted into six different mental health courts. With their primary focus on eligibility screening and then admission, they did not specifically examine identification but did reference identification procedures by noting that referrals came from a variety of sources such as the court team, attorneys, arraignment courts, law enforcement officers, correctional officers, family members, and advocacy groups (Wolff, Fabrikant, and Belenko 2010).

The lack of research on identification processes may be related to specialized court programs' target populations. Traditionally, specialized court target populations are based on more observable characteristics, such as offense types. For example, in jurisdictions with operational drug courts or drug treatment diversion programs, the District or State Attorney's Office may automatically funnel drug cases to create a potential participant pool, which is then screened for program eligibility. This has also occurred for domestic violence cases for domestic violence courts, prostitution cases for prostitution courts, weapons offenses for gun courts, and sex offenses for sex offender courts. In these instances, identification procedures may be, in a sense, automated and initiated in early case processing based on offense type.

Conversely, VTCs generally target offenders with a history of military service, and this initial criterion is not routinely found in criminal justice data. Therefore, VTCs must develop procedures to identify

the military status of offenders for the generation of potential participant pools. Despite their attempts to identify clients in the earliest stages of criminal processing (Holbrook and Anderson 2011), national studies have revealed that the identification of potential participants remains a challenge for many VTCs (Baldwin 2015). A majority of VTCs have reported the absence of a set procedure for identification (nearly 90 percent) and an informal reliance on other agencies to identify military service and share this information (Baldwin 2013; Holbrook and Anderson 2011), resulting in identification frequently occurring throughout different phases of the criminal justice process both within and across programs (Baldwin 2015). While the majority of VTCs reported identification of military history during early phases of criminal justice processing (70 percent booking, 71 percent arraignment, 62 percent pretrial services interviews), approximately half of VTCs (49 percent) also indicated that identification also occurs at later stages, including probation violation or revocation reviews, sentencing, and post-sentencing while incarcerated or on probation (Baldwin 2015).

A recent study began to explore the identification process of potential VTC clients. In their statewide examination of VTCs in Pennsylvania, Douds and colleagues (2017) explored the common components of the VTC structure and operation to determine how they differed from the original drug court model. Though not a standardized process across Pennsylvania, five identifiers of possible VTC clients were discovered: 1) veterans justice outreach officer/specialist (VJO) 2) police and corrections 3) district attorney 4) defense counsel and 5) self. The authors also discovered that military service members' reluctance to self-identify their military status was a major barrier to the identification process, supporting earlier researchers' assertions of challenges facing research focused on VTCs and the relationships between military experience and crime or criminal justice system contact (e.g. Baldwin 2015, 2017).⁴

Component #3 of the 10 Key Components of VTCs holds that "eligible participants are [to be] identified early and promptly placed in the VTC program" (Russell 2009, 365). In the description of one of the earlier and most publicized VTCs, Judge Robert Russell noted that veterans were identified early and "...through evidence-based screening and assessments" (2009, 368). However, there was no elaboration on how veteran defendants were officially identified post-arrest.

THE CURRENT STUDY

The current study was executed because of the acknowledged potential impact of, but lack of, empirical knowledge on identification procedures within specialized courts. While similarities between

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VTCs and the general specialized court model have been identified, VTCs also feature distinct components that warrant further research focused on uncovering their unique function and operation (Baldwin and Brooke, in press; Douds et al. 2017; Shannon et al. 2017). VTC-specific research has drawn attention to the need for process evaluations of identification, as well as eligibility and admission, of potential program participants to inform programming (Douds et al. 2017; Slattery et al. 2013). For example, Baldwin (2015) called upon future research to examine why some veterans are identified late in the criminal justice process and, in response to those findings, suggest adjustments or the development of standardized identification procedures to increase earlier identification of potential VTC clients. Further, studies have discovered the concerns of VTC staff regarding the lack of systematic identification procedures and their recommendations to have them instituted (Baldwin 2015, 2016; Shannon et al. 2017).

This study is the first to focus on VTC identification processes, as well as examine them across several VTCs operating in multiple states. Using primarily qualitative data, this process evaluation deconstructs and models the identification processes in eight VTCs across three states. Specifically, to determine how potential VTC participants are identified across the eight programs, we first sought to discover the personnel key to identification and the mechanisms they employed for identification. Then, we constructed the referral pathways from initial identification to program identification, including how many stages or persons, as well as their roles, constitute the referral chain. Because the current study presents qualitative findings from a larger multi-site evaluation, inter-program similarities and differences in these processes were of interest. Therefore, the developed identification models are also examined in terms of variability and consistency across the eight VTC sites, and these methods' efficiency and reliability are assessed across our sites to identify program-specific successes and challenges. Finally, the study aimed to assess identification fidelity across programs by comparing the results to the procedures stipulated in program policy. Based on these results, recommendations to help fulfill the mission of these VTCs are presented and discussed. Such recommendations for policy and practice aim to increase the reliability and efficiency of the identification processes and move initial identification and referral earlier in the criminal justice process. Implications for VTC practice and future research are also reviewed.

Data Collection and Analysis

This study uses qualitative methods to analyze the identification processes that create pools of potential participants for eligibility and admission screening in eight VTCs. As previously stated, the current study's data were collected in an ongoing multi-site evaluation of VTCs funded by the National Institute of Justice (NIJ). As such, the site selection completed for the larger project and the data relevant to this study are briefly described in this subsection.⁵

Because of the highly diverse nature of VTCs discovered through national VTC studies conducted prior to the current study's design (see Baldwin 2013, 2015; Holbrook and Anderson 2011; Justice Programs Office 2016; McGuire, Clark, and Blue-Howells 2013), the VTC programs were chosen to

⁴For example, reasons behind not self-identifying include: 1) not all who have served in the US armed forces identify with the term "veteran" as various definitions exist objectively and subjectively, 2) potential loss or reduction of VA benefits resulting from various contacts with the criminal justice system, and 3) stigmatization (Baldwin 2015, 2017).

⁵As this article targets a general audience, individuals interested in particular research design elements are encouraged to contact the lead author.

provide an adequate sample with which to make comparisons based on key characteristics. When chosen in the design phase (early 2015), the sample of eight VTCs represented both large and small programs (caseloads ranged from 11 to 100; graduates ranged from 0-270), as well as newly started and well-established programs (1 to 6 years in operation at data collection start). The eight locations were also representative of urban, mixed, and rural settings with county veteran populations ranging from 8 percent to 25 percent and various racial and ethnic makeups ranging from 30 percent to 81 percent White, 6 percent to 38 percent Black, and 6 percent to 60 percent Hispanic. The programs and sites also varied in terms of structure, resources, access to VA hospitals and treatment providers, and proximity to military bases, in addition to other characteristics.

The qualitative data come from the first 18 months (July 2016-December 2017) of field observations, VTC team surveys, and personal queries to VTC team members across the previously described eight sites.⁶ The research team observed team meetings (staffings) and court sessions (dockets), completing semi-structured observation instruments and taking field notes. At each site, all staffing and court sessions were observed for the first 12 months and then once a month in months 13-18. The observation instruments included items and additional field notes related to the identification and referral of potential participants.

Also from July 2016-December 2017, a self-report survey was administered to all members of the eight VTC teams; as new members joined a VTC team, researchers provided them with the survey to independently complete. The team survey contained items addressing the identification policies and practices from initial identification to VTC contact. Additional items asked respondents to identify and describe strengths and weaknesses in the identification and referral processes, as well as any recommendations they were willing to provide. As of December 2017, 100 VTC team members across the eight programs completed the survey. Respondents included key VTC team roles including VJOs, court coordinators, case managers, probation officers, defense counsel, prosecuting attorneys, judges, treatment providers, and mentor coordinators.

Process data were deconstructed to ascertain how pools of potential VTC participants were created. In our initial analyses, we discerned three primary elements of the process of identification: 1) identifying agents, 2) identification mechanisms, and 3) referral chains. Beginning the process, identification agents were defined as those individuals who first discover the offenders' history of military service. In discerning who those initial identification agents were, we also determined the various mechanisms utilized by the initial identifying agents to obtain knowledge of offenders' military history.

Because our preliminary analyses revealed that the initial identifying agents were not associated with the VTC, we proceeded to examine whom the VTC-related identifying agents were and how they became aware of potential participants. After determining the VTC identifying agents, we proceeded to construct the different pathways that ultimately lead to identification by the VTC. Therefore, these referral chains represent different pathways of offender or case movement from initial identification to

⁶Informed consent was obtained from respondents, and the research protocol and instrumentation were approved by the appropriate university and federal entities. The Missouri State University Internal Review Board approved all research protocols (IRB-FY2016-83), including, but not limited to, consent forms, instrumentation, and recruitment materials and procedures, for the larger study of which the present is a component. NIJ's Human Subjects Protection Officer has approved MSU's privacy certificate concerning protection of data and other information. Given the involvement of the US Department of Veterans Affairs (VA), approved research protocols and the instruments related to the current study were also reviewed by the Veterans Health Administration's Research and Development Office.

VTC identification. VTC identification completes the referral chain because it is the point at which the offender/case is a part of the VTC program's potential participant pool that then undergoes the eligibility screening process. In sum, we distinguished referral chains that begin with the identifying agents and end with the first point of contact at the VTC.

These identification agents, mechanisms, and pathways were then assessed themselves and in conjunction with additional data for inter-program continuity, efficiency, and reliability. Results revealed both similarities and variability across the eight VTC programs. Incorporating additional information from field notes, official data, and subjects' responses, procedural strengths and weaknesses were discovered. Program characteristics were then used to contextualize these results for the development of preliminary recommendations aimed at improving the efficiency and reliability of VTC identification procedures for a variety of VTC programs.

To assess how closely practice matched policy, VTC policy manuals were analyzed to define the identification procedures for each program. The authors aimed to compare these policy results with those of the practice results to assess fidelity.

RESULTS

As previously noted, our analyses revealed numerous identifying agents, mechanisms, and pathways. Specifically, our deconstruction produced two types of primary identifiers: initial identifying agents and VTC identifying agents. A total of six initial identifying agents and six VTC identifying agents were discovered across the eight sites. Regarding how initial identification occurs, four general mechanisms were found to be employed by the six initial identifying agents at varying points in the criminal justice process. Beginning with the initial identification agent and ending with the VTC-related identifying agent, 13 referral chains were constructed. Inter-program continuity and dissimilarity are evident in these agent, mechanism, and pathway results.

It should also be noted that these findings constitute the primary identifying agents, identification methods, and referral pathways for the majority of potential VTC participants. A potential participant of any of the programs may be identified by someone or referred in a way not presented herein; as such, these results are representative of the typical identification agents, mechanisms, and referral chains that create the majority of potential participant pools in the eight VTC programs. However, these results are anticipated to be applicable to numerous VTCs due to the diversity of the eight programs and locations.

Initial Identifiers

Agents of initial identification begin the identification process by initially identifying offenders with a history of military service. The six initial identifying agents across all eight courts are listed in the first column of Table 1. With the exception of the agents of initial detention, all other initial identifiers recognized potential participants throughout various stages of criminal justice case processing; therefore, these results are not representative of when the identification process begins (addressed later).

The prevalence of these initial identifying agents across the eight sites and across the 13 referral chains (presented later) are both depicted in Table 1. Attorneys were initial identifying agents in all eight sites. Specifically, defense counsel served as the most prominent by acting as an initial identifier across all eight sites (100 percent); prosecuting attorneys contributed to initial identification in two

VTCs (25 percent). Completing initial identification in seven of the sites (88 percent), the judiciary and initial detention personnel (e.g., central magistrate office or jail) were the second most prevalent roles across sites. The offenders themselves comprised the last initial identifier category common among sites as they self-initiated the referral chains in half of the sites (50 percent). Less consistent were initiators across the 13 identification pathways with the most prevalent being those in the roles of initial detention for 38 percent of the models, followed by judges in 23 percent and attorneys in 15 percent of chains. While diversity is evident across sites, it is important to note that none of the sites had a single identifying agent; instead, multiple agents identified offenders' military history across various time points within each site.

VTC Identifiers

While initial identification agents are the first to recognize potential VTC candidates, VTC identifiers constitute the first point of identification by the VTC program. The lower portion of Table 1 displays the prevalence of the VTC identifiers across the eight sites and the 13 referral chains. Similar to the results for initial identification agents, a single VTC identifier was not evident in any of the sites, meaning that each site also had multiple VTC identifiers.

In 63 percent of sites, VTC coordinators and VJOs were each the first VTC team members to be notified of potential VTC participants. Other common VTC identifiers included the state or district attorney in more than a third of programs (38 percent) and their assistant state or district attorneys in a quarter of the sites (25 percent). Across referral chains, VTC coordinators were the most popular as they completed nearly a third of the referral chains (31 percent). State or district attorneys ended the identification paths in 23 percent of the models, followed by VJOs and assistant state or district attorneys who each did so in 15 percent of the referral chains.

The offenders themselves comprised the last initial identifier category common among sites as they self-initiated the referral chains in half of the sites (50 percent).

TABLE 1
Identifying Agent Types across Sites and Referral Chains

	VTC Sites n=13	Referral Models n=8
INITIAL IDENTIFIERS		
Attorney	8 (100.00%)	2 (15.38%)
Judge	7 (87.50%)	3 (23.07%)
Initial Detention	7 (87.50%)	5 (38.46%)
Offender	4 (50.00%)	1 (7.69%)
Probation	1 (12.50%)	1 (7.69%)
Treatment Provider	1 (12.50%)	1 (7.69%)
VTC IDENTIFIERS		
Coordinator	5 (62.50%)	4 (30.77%)
VJO	5 (62.50%)	2 (15.38%)
State or District Attorney	3 (37.50%)	3 (23.07%)
Assistant State or District Attorney	2 (25.00%)	2 (15.38%)
Judge	1 (12.50%)	1 (7.69%)
Probation/Parole	1 (12.50%)	1 (7.69%)

Referral Chains

Involving the identification agents (previously described) and identification mechanisms (next subsec-

tion), a total of 13 referral pathways (eight direct and five multi-stage) were constructed to illustrate the identification processes occurring across the eight sites, starting with an initial identifier and ending with a VTC identifier. A maximum of five and a minimum of three identification chains were operating within a single location, meaning that numerous referral chains were evident within each site.

Figure 1 displays the direct referral chains. Nearly all sites have a direct link from initial detention identification to the VJO (88 percent). The majority of VTCs also have a direct referral path from any attorney (as well as defense counsel more specifically) to the VTC coordinator (63 percent). Occurring in 38 percent of sites each, the following two direct links were third most prevalent: 1) judge to VTC coordinator and 2) defense counsel to the district or state attorney.

The remaining four direct referral pathways were only evident in one site each (Figure 1). In one site, non-VTC judges consistently contacted the VTC judge directly to notify him/her of potential offenders and cases for the VTC program. Initial detention agents in one site directly notified the prosecuting attorneys (i.e., assistant district attorneys, assistant state attorneys) on the VTC team. At one location, probation officers notified their chief probation and parole officer who was also a VTC team member. Finally, VA treatment providers in a site consistently notified the VJO of VA clients who had contact with the criminal justice system.

Figure 2 illustrates the five multi-stage referral chains evident across the sites. The majority of multi-stage pathways were initiated by those initial detention roles. Most multi-stage referral chains involved a single intermediary contact between the initial identifying agent and the VTC identifying agent, while the fifth pathway is comprised of four steps. More than a third of sites (38 percent) have a defense attorney as the intermediary before reaching the state attorney where VTC eligibility screening begins.

These two most popular multi-stage pathways only differ in their initial identification agents (judge v. offender). Conversely, the remaining two chains with a single intermediary are only prevalent in one court each (13 percent of sites). In both of these pathways, the initial identifying agent is in the role of initial detention, and the offender is the intermediary. These chains only vary in their VTC identifiers (VTC coordina-

FIGURE 1
Direct Referral Chains

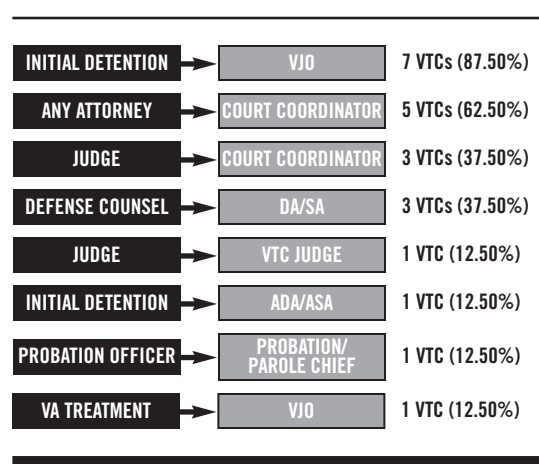
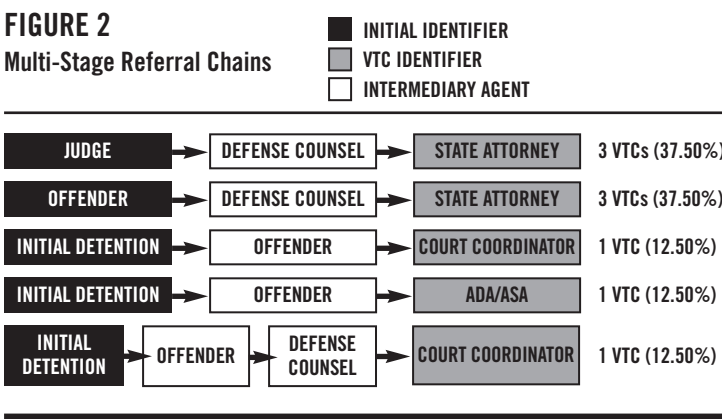


FIGURE 2
Multi-Stage Referral Chains



In 63 percent of sites, VTC coordinators and VJOs were each the first VTC team members to be notified of potential VTC participants.

tor v. prosecuting attorney). The last multi-stage referral chain involves two intermediaries, specifically the offender and defense counsel, both of which also served as intermediaries in the three-stage paths.

Although evident in only one site each, the last three referral chains warrant additional explanation. These three pathways begin with initial detention agents conducting initial identification by asking offenders whether they have a history of military service based on a form the agents must complete. After noting the offender response on the form, agents provide identified offenders with VTC information (either verbally or give them a VTC pamphlet) and instruct them to contact someone at the VTC. What the offender does next with the information is where the three paths diverge. As

seen in Figure 2, the offender then either contacts: 1) the VTC Coordinator, 2) the prosecuting attorney on the VTC team, or 3) his/her defense counsel (not affiliated with the VTC) who then contacts the VTC coordinator (four-stage process).

Identification Mechanisms

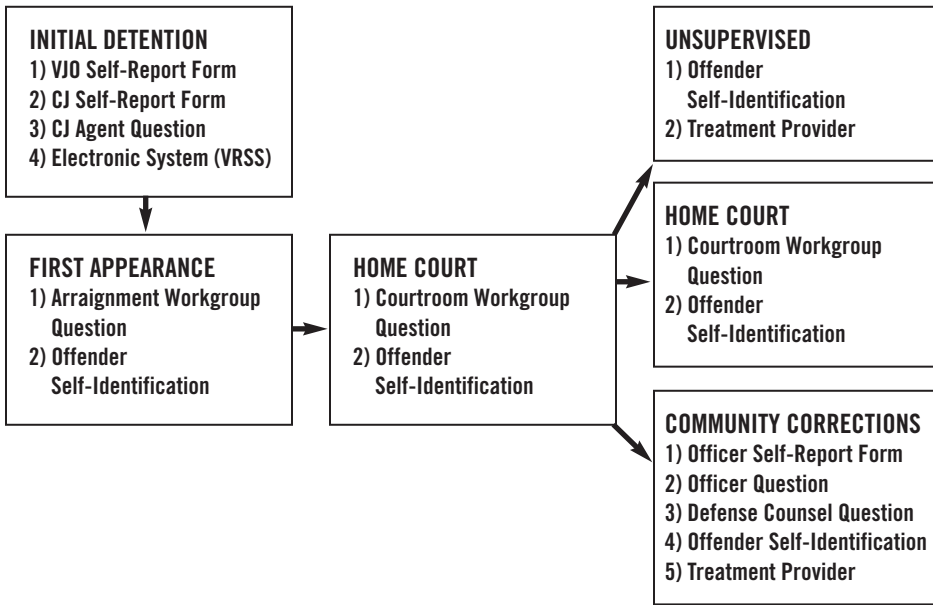
The initial identification agents were found to employ several mechanisms to obtain military history from offenders that then initiated the referral pathways. Similar to the previous results, multiple methods were used at each site. Across the eight sites, four general mechanisms were discerned: 1) verbal questions and prompts, 2) written questionnaires, 3) criminal justice agent paperwork, and 4) Veterans Reentry Search Service (an electronic database operated by the VA/DoD).⁷ Because identifying agents employed these mechanisms across various criminal justice phases, we developed Figure 3 to depict which mechanisms were in effect across the different phases of the criminal justice process. Specifically, the flow chart (Figure 3) chronologically illustrates the post-arrest criminal justice process with the identification mechanisms listed at each stage. The following results are reviewed in order of the initial identifiers' prevalence across the sites reported in Table 1.

Using a variety of mechanisms, attorneys acted as initial identifiers in all eight VTC sites (100 percent), and judges did so in the majority of locations (88 percent). Figure 3 outlines when attorney and judicial initial identification can occur, which is across a majority of stages from first appearance throughout the adjudication process. Attorneys and the judiciary asked offenders if they had a history of military service, while some offenders volunteered the information to defense counsel unprompted. In cases of continued contact, defense counsel also initially identified through solicited and unsolicited offender self-report post-sentencing during incarceration and probation. Additionally, one site maintained an iden-

Nearly all sites have a direct link from initial detention identification to the VJO.

⁷For more information on the Veterans Reentry Search Service (VRSS), please see the VRSS User Guide at <https://vrss.va.gov>.

FIGURE 3
Identification Mechanisms across the Criminal Justice Process



tification form in the courthouse, which offenders would pick up, complete, and submit to any attorney or the local bar association.

Initial detention agents were also primary initial identifiers across the majority of sites (88 percent), and they used self-report cards, questions, and an electronic database to obtain information on offenders' military history. At several jails, booking staff provided cards or self-report forms to offenders at initial detention that inquired about military history; offenders then indicated their military status on these cards/forms. Similarly, at several sites, booking staff verbally asked offenders about their veteran status. However, these self-report forms and questions were administered by both correctional staff and VJOs throughout incarceration periods while the case was being processed, as well as after sentencing. Additionally, some offenders mentioned their service history to correctional officers at initial detention and subsequent time points throughout incarceration. Finally, at two jails, booking agents submitted lists of booked offenders to an electronic database that cross-referenced those offenders with a VA database to flag those with military history (VRSS). These reports were then sent back to the jail and to the registered VJOs (see Baldwin 2016).

Probation officers and treatment providers were the least prevalent initial identifiers (13 percent of sites each). Typically, those in the roles of probation or treatment became aware of their clients' history of military service post-sentencing. During their administration of services and supervision, some probation officers and treatment providers asked about military service and experience, and offenders would also self-report these to probation and treatment unprompted.

The results above reveal diversity in who identifies offenders' history of military service (initial iden-

tifiers), how military history is identified (identification mechanisms), which member of the VTC becomes aware of potential candidates (VTC identifier), and how the VTC team member is notified (referral chain or pathway). Illustrating the actual identification practices transpiring across and within sites, these results alone do not equate to a lack of standardized identification procedures because set policies for identification were not investigated. Because we desired to assess implementation fidelity and discuss the previously presented findings in the context of fidelity successes and challenges, a thorough review of the eight VTCs' policy/procedure manuals was conducted to first discern sites' identification policies. The investigation concluded that procedures or policies related to potential participant identification by or referral to the VTCs were non-existent. Standard operating procedures most closely related to identification were policies on the eligibility and admission screening administered to the pool of potential VTC participant post-identification. The lack of identification-related policies precluded an assessment of implementation fidelity.

DISCUSSION AND RECOMMENDATIONS

Although implementation fidelity could not be incorporated into the following discussion of results due to the absence of identification policies, team survey data were analyzed to provide additional insight and context in the following discussion of results and recommendations. Data from three survey items directly related to potential participant identification and referral were analyzed, and responses to two potentially relevant items were examined. Providing a five-point Likert scale to the respondents, the first item prompted VTC team members to indicate their level of agreement with the following statement: "Potential program participants are quickly identified for eligibility screening." The second and third items were the following open-ended questions about the referral process: 1) "How do you think the referral process is working?" 2) "Are there barriers to the referral process?" Finally, the qualitative responses to two potentially relevant open-ended items were examined as they requested respondents to list program strengths and weaknesses.

In addition to our failed search for policy, several team members noted the lack of a well-defined procedure for identification and referral of potential VTC participants. Two examples include:

I feel there is no SOP [standard operating procedure] for the referral process. One needs to be created for it to be effective.

I think a spreadsheet or some type of document available to all would be helpful to track referrals as some get lost or confused with others.

As such, we recommend that VTC teams collaboratively outline how identification both currently occurs and could occur, as well as who the key personnel are and could also be. The team can then develop identification procedures and invite additional key personnel to the table to finalize them for dis-

Initial detention agents were also primary initial identifiers across the majority of sites (88 percent), and they used self-report cards, questions, and an electronic database to obtain information on offenders' military history.

semination and training. These efforts could increase early and efficient identification and lend to a further understanding of team roles and increased agency.

Our results indicate that identification was occurring across a variety of stages in the criminal justice process, but that most sites were identifying at initial detention, in addition to many other later stages. The responses from the team surveys appear to coincide with these findings. Overall, the majority of team members indicated that potential participants were quickly identified (58 percent). Approximately a third of team members neither agreed nor disagreed (18 percent) with that statement or did not know (13 percent) whether early identification was occurring, while a minority (8 percent) disagreed or strongly disagreed that early identification was happening. Open-ended responses centered around difficulties in early and prompt identification and referral, such as: “Identifying potential participants early is [an] issue,” “Barriers – attorneys do not refer to VTC promptly,” and “The only barrier is getting referrals in a timely manner.”

Early identification and referral is a best practice for specialized courts and is included as the third element in the 10 Key Components of VTCs. Arrest, booking, or initial detention are early stages in the criminal justice process where veteran arrestees could be efficiently and reliably identified and directly referred to a VTC program team member through set procedure. Despite a dearth of policy to guide practice in this study’s sites, early initial identifications were occurring across the majority of sites with a total of seven sites having initial identifiers at initial detention. Additionally, these seven early identification sites all shared the direct referral pathway to the VJO. However, our analyses indicated direct initial detention to VJO referral chains varied in their identification mechanisms, as well as their reliability and efficiency. Two of the seven pathways that originated by initial detention agents and were referred directly to VJOs (Figure 1) used an electronic identification mechanism at booking (previously described). Theoretically, an electronic identification system at booking is efficient (resource non-intensive) and reliable (not reliant on self-identification), as well as achieves identification early in the criminal justice process (at booking). In practice, however, several limitations were discovered.

While the technological innovation of the VRSS eliminates the problematic reliance on self-identification, the electronic system is not automated. Relying on human intervention, it requires staff to manually submit the jail intake lists to the VRSS. Although the eight sites have access to the system, three sites were mandated by their state to utilize the VRSS, and only two of the three mandated sites used the mechanism due to staffing shortages. Further, the frequency of running the lists varied in the two sites, and there were delays in uploading intake lists to the system. Because the initial detention period can be short, some identified offenders were no longer in jail when the VJO arrived for contact. Additionally, the results are not automatically sent to the VJOs or other eligible entities. VJOs must sign up to have the reports emailed to

Approximately a third of team members neither agreed nor disagreed (18 percent) with that statement or did not know (13 percent) whether early identification was occurring...

them, and when they do, jurisdiction-specific results are not disseminated. Instead, registered VJOs receive system-wide results; they must sift through them to locate those in their jurisdiction, which can be burdensome in large jurisdictions. However, VJOs can create a rule in Microsoft Outlook™ to limit results to their jurisdictions, but this process was reported to be complicated. These challenges have resulted in some VJOs not registering to receive these reports.

Overall, the VRSS is a beneficial mechanism that can be improved to increase efficiency and reliability, as well as publicized to increase its use. First, automating the system to run daily for all sites where available is recommended. In terms of its current construction, VJOs and other eligible entities should be trained on the system in terms of its purpose, how to sign up to receive reports, and how to create the jurisdiction-specific restrictions for reports. The information about the VRSS and instructions could be outlined in a one-page document or flyer and also recorded in a brief video with narration and screenshots. VJO leadership could directly distribute these materials to the VJOs. Additionally, discussions about which other key personnel (e.g., defense counsel, VTC coordinators) are eligible to employ the VRSS are encouraged. Eventually, reports could be converted from email distribution to populate into a database that could then be accessed in real time by VJOs and other key personnel. The recommended changes could be monitored and feedback solicited from those involved to further identify issues and resolutions for further modification. Ultimately, widespread adoption of the revised system and implementation monitoring are recommended.

Overall, the VRSS is a beneficial mechanism that can be improved to increase efficiency and reliability, as well as publicized to increase its use.

Of the seven sites with direct referral chains from initial detention to VJO (Figure 1), the remaining five sites that did not employ the VRSS used self-report cards and flyers at the jail and questions by criminal justice staff (Figure 3). One of these seven sites also used these methods in their direct referral from initial detention to the prosecuting attorney on the VTC team. Several issues were identified with these methods. First, this mechanism solely relies on self-report. As previously discussed, stigmatization, potential loss of benefits, and non-recognition of veteran status are threats to the reliability of self-identification. Additionally, these mechanisms require resources in terms of the cards themselves, as well as personnel for administration. Due to resource shortages and human error, card distribution and collection and agents' verbal inquiries may not be consistently implemented. Finally, the relay of information was found to be delayed as it relied on VJOs having to go to the jail to pick up the cards or staff sending the information to the VJOs or VTC state or district attorneys. For example, one site regularly relayed the identification information but did so every two weeks. Recommendations for these referral chains involve increasing the frequency of data transfer, ensuring the use of appropriate terminology to increase the reliability of identification (e.g., not employing the term "veteran" but asking whether one has "ever served in the US Armed Forces"), and revisions to VA benefit policies to potentially increase self-identification by offenders with a history of military service should be considered and empirically assessed by future research.

Also originating at initial detention, three indirect pathways were evident in one site (Figure 2). As the mechanism for identification was a question from the central magistrate soliciting offenders' self-report, these referral chains suffered from the limitations described above. Additionally, these three- and four-stage referral chains were then solely reliant on the self-identified offenders to complete or continue the link to VTC identification. Once the offender was identified in these processes, the information was not then relayed to any VTC team member, but required the offender to contact the appropriate entities. Specifically, these processes merely provided identified arrestees with information on the VTC program. This challenges efficiency as it relies on the veteran offender to read and keep this information upon release and then either contact someone from the VTC team to inquire about the program, in other words self-identification and self-referral, or discuss the option with his/her defense counsel who must then contact a VTC team member for referral or, at least, inquire about eligibility requirements at the VTC. Therefore, this process should be replaced by the direct referral chains that also begin at initial detention.

Originating post-initial detention, the following three direct pathways warrant discussion: 1) any attorney to VTC coordinator, 2) non-VTC judge to VTC coordinator, and 3) non-VTC judge to VTC judge. A strength of these pathways is the direct referral to VTC coordinators and VTC judges. These three pathways were evident in VTCs that either have been around longer or were in smaller jurisdictions. The older VTCs had more notoriety in their jurisdictions as legal actors unrelated to the VTC were aware of the VTC program and, as such, would ask offenders about their military history. Similarly, because the legal actors in a smaller jurisdiction knew the VTC program existed, they would ask offenders about their military status. As these pathways were initiated by questions from counsel and the judiciary, they are still subject to the reliability issues related to self-report and consistency of inquiry. A recommendation specific to these referral chains would be to employ appropriate language and continue to advertise the existence of their VTC programs within their jurisdictions. Additionally, newer VTCs and those in larger jurisdictions should advertise or promote their programs in an effort to increase initial identification agents. Potential advertising can include print media in the courthouse, local bar association, district or state attorneys' offices, public defenders' offices, and public places, as well as emails from court administration throughout the jurisdiction or some local news coverage.

Three referral chains ended with the state attorney, specifically, one direct (Figure 1) and two three-stage (Figure 2) pathways. The three-stage referral chain that was initiated by the offender was also primarily evident in sites where the VTC program was well-established and known, indicating that publicizing the program may also increase self-identification. The two pathways originating from defense counsel and the judiciary are, again, reliant on consistency of questioning, language employed, and offenders' self-report. These pathways are unique in that the state attorney constitutes the VTC identifier and the eligibility gatekeeper (see Baldwin and Hartley, forthcoming). While this may appear efficient, research has shown that this can produce lengthy delays in later eligibility and admissions screening (see Baldwin and Hartley, forthcoming). However, this is beyond the scope of the current study.

Finally, the last two referral chains yet to be discussed are both direct and each occur in separate single sites. The probation officer to probation/parole chief pathway occurs late in the criminal justice process as the identified offenders are already on probation. Because the chief probation/parole officer is a member of the VTC team and the jurisdiction is smaller, the probation officers are well aware of

the VTC program, which results in this identification pathway. However, if identification is initiated by probation, identification is occurring late in the criminal justice process. Further, probation identification may not occur at initial placement but later on under supervision. For example, a team member noted in the survey that “many vets slip through the cracks and are placed on probation. Would like to see a better process for allowing probation officers to identify a vet before he/she violates probation.” Conversely, referrals from VA treatment providers to the VJO occurred in a large jurisdiction throughout the criminal justice process from immediately after arrest through post-adjudication. This pathway may be attributed to the particular VJO being well-known and proactive within that VA site as other sites without this referral chain have noted that “the VA is not as engaged in the referral process as it should be.”

... newer VTCs and those in larger jurisdictions should advertise or promote their programs in an effort to increase initial identification agents.

Several findings have centered on the inconsistency of identification and also resulted in the recommendations of developing systematic identification procedures and increasing awareness of operational VTC programs. Relatedly, team members provided responses specific to these issues, such as the program “needs to be publicized more to ensure no veterans are left out,” “defense bar not really aware of the VTC,” and “lawyers from home court need to know more. It’s the luck of the draw in terms of whether you get an attorney that knows the program.” While increasing local knowledge of the program is recommended, the awareness effort must be continual and consistent as one team member noted a challenge to program awareness was turnover: “The barriers to referral process are uninformed defense lawyers, prosecutors, and judges in the other County Courts. Because of continuous turnover in those areas they have to constantly be educated on the vet court program.” While this study’s results indicate that the role of defense counsel constituted a primary identifier, every defense attorney at each site did not initially identify potential participants. Further, prosecuting attorneys were found to be initial identifiers in only two sites, and not all prosecutors at those two sites were initial identifiers. These findings further support our recommendation for the collaborative development of systematic identification procedures and efforts to increase awareness of VTC programs.

While the lack of program awareness is an issue in some locations, respondents also acknowledged a reluctance on the part of some defense counsel to refer potential participants because it reduces their caseloads or “business” as private defense attorneys. Other responses involved how well these programs are accepted by other courts in the jurisdiction. One respondent exemplified this by stating, “Referrals are sporadic, not all agencies provide them, in-fighting, turf protection, prevents timely referrals.” Another reported that the problem was “The court system itself. Any court of this nature is viewed as taking business from lawyers, thus there is some resistance in its growth.” These issues were reportedly tied to a “lack of referrals” and programs having a “hard time gaining new participants.” Even in a smaller jurisdiction where the VTC program was well known, a team member reported that the VTC “is extremely small. Attorneys, probation officers and specialty courts are not referring.”

LIMITATIONS

This study addresses the identification procedures occurring within eight VTCs. Although this is the first study to solely focus on VTC identification and employs multi-site data from VTC programs that vary on numerous characteristics operating in three different states, the national landscape of VTCs is highly diverse and ever changing. As such, these results are not intended to be generalizable to all VTCs nationally. However, the varied nature of the VTCs was chosen to explore a mix of different programs. The authors highly encourage readers to not only critically assess this study's findings and recommendations but to also consider them in conjunction with their own programs' characteristics and abilities.

Additionally, this study focuses on the current identification practices of eight jurisdictions with operational VTCs. The authors acknowledge that not all offenders with a history of military service want to be identified (see Baldwin 2015, 2017; Douds et al. 2017) and that this article neither addresses: 1) the ethics of the identification of military service among offenders by the criminal justice system or the VA, nor 2) these offenders' feelings, perceptions, or beliefs regarding VTCs or the identification of a history of military service by any entity, including the criminal justice system or VA.

CONCLUSION

The purpose of the VTC is to address the underlying causes and correlates of criminality among offenders with a history of military service through mandated treatment and supervision of compliance. This problem-solving and therapeutic jurisprudence approach has been shown to be effective as a response to prevent relapse and reduce recidivism for a wide range of criminogenic factors underlying involvement in crime (Shaffer 2011; Mitchell et al. 2012). Previous research (e.g., Belenko, Fabrikant, and Wolff 2011) has pointed out that success of specialized court programs might have more to do with who is selected for a treatment intervention than the intervention itself. Limited prior research (Luskin and Ray 2015; Steadman et al. 2005) also indicated that there is no single model or standard procedure for identification and referral of potential program participants. The current study also provides some support for the idea that multiple models of the identification and referral process exist for specialized court programs.

Providing insight into identification and referral processes for specialized courts, specifically VTCs, our results show that there is both variance and similarity in who the primary identifying agents are, the types of identification methods, and the referral pathways for potential participants. In line with results from national studies (e.g., Baldwin 2015; Holbrook and Anderson 2011), our analyses revealed that most sites were conducting initial identification early in the criminal justice process, but that it also continued to occur throughout the criminal justice process. Additionally, the current study identified several issues related to both identification and referral and revealed a heavy reliance on offenders to self-report military status. We proposed several recommendations to overcoming some of these obstacles that were exemplified by qualitative data from VTC team member survey responses.

Some of the issues and resultant recommendations were specific to various types of programs (e.g., smaller jurisdictions or more newly established programs), while others were more generally applicable to a wide variety of VTC programs and locations. For example, because of the VTC's unique target population, identification of potential participants is essential yet presents some equally apparent challenges. Many of the identification processes identified across the VTC programs in this study were re-

liant on self-reported military status from the arrested offender. This is likely a problem for most VTCs across the country; therefore, stakeholders and researchers should partner to identify evidence-based best practices to ameliorate barriers to identification of potential VTC participants in jurisdictions that have VTC programs. This study recommended the use and improvement of the VRSS, an electronic system that cross-references jail intake lists with the VA's database.

Finally, process-focused research is much needed yet lacking in the specialized court program literature. Although most evaluation research is focused on outcomes or impacts, process evaluations focused on identification and referral, such as the current study, are highly important as process and implementation may directly affect program success, more so than the intervention itself. A newly emerging body of research purports that the success of specialized courts might be linked to identification and admission procedures. Therefore, process evaluation research, such as the current study, is critical to truly understand the impact and outcomes of specialized court programs. The current study revealed that there are similarities and differences in identification models across the eight VTC programs studied, and these results must be accounted for in the later outcome and impact studies of the specific programs.

Researchers should continue to work closely with VTC and criminal justice practitioners to model and evaluate identification and referral procedures to not only inform outcome and impact studies but to also develop evidence-based best practices to aid VTCs in accomplishing their goals and fulfilling their missions. Ultimately, we desire for programs to develop set identification and referral procedures to create their potential participant pools. The development of these procedures and subsequent improvements to their efficiency and reliability should result from collaborative examination and implementation by VTC team members and additional key criminal justice personnel. Additionally, partnering with researchers to monitor implementation fidelity and identify procedural successes and challenges should occur and result in policy and procedure modifications to address weaknesses. Through these efforts, best practices for efficient and reliable identification procedures can be developed to capture programs' intended target populations, ensuring the future viability of this latest specialized court incarnation.

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... success of specialized court programs might have more to do with who is selected for a treatment intervention than the intervention itself.

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PERCEPTIONS OF PROCEDURAL JUSTICE AND LEGAL LEGITIMACY IN VETERANS TREATMENT COURTS: CORRELATES WITH PTSD RISK FACTORS

John M. Gallagher¹ Elise A. Warner²

VALUE STATEMENT

This explorative study begins integrating research on PTSD risk and protective factors, criminogenic risk among veterans, and important theories of justice. For researchers concerned with procedural justice and legal legitimacy, it begins mapping out the extension of these theories in veterans treatment courts (VTCs). For VTC practitioners and policy-makers, the findings point to veteran-specific sociological factors that correlate with increased and decreased trust in the court system. For clinicians, this study further analyzes the links between probable PTSD, criminal behaviors, and perceptions of justice.

ABSTRACT

As research into veterans treatment courts (VTCs) matures, it will be important to integrate lines of scholarship that have developed independently but come together in this novel context. In the present study, we examined how perceptions of justice interact with factors known to shape risk for PTSD as well as criminal justice involvement among veterans. These constructs are important to examine together because we know (1) risk of both PTSD and criminal justice involvement among veterans are shaped by a related set of pre-military, service-related, and post-military factors and (2) perceptions of procedural justice and legal legitimacy are associated with legal compliance generally and within problem-solving courts. In a sample of participants from two VTCs (N = 191), we found that combat was not associated with the perception of justice but that probable PTSD, military homecoming, and civilian reintegration had varying relationships with the two justice constructs. The veterans' perception of their military homecoming was the most consistent and potent correlate. These findings highlight the importance of assessing sociological as well as psychological factors to help understand how VTC participants perceive and respond to VTC team members and our larger justice system. Implications for research, practice, and policy are discussed.

KEYWORDS

Veterans treatment courts, posttraumatic stress disorder (PTSD), procedural justice, legal legitimacy, civilian reintegration, military homecoming

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INTRODUCTION

A challenge for researchers studying veterans treatment courts (VTCs) is to integrate disparate bodies of scholarship regarding veterans, posttraumatic stress disorder (PTSD), problem-solving courts, and criminogenic risk. This manuscript begins an exploration of one nexus, specifically, how perceptions of justice among VTC participants interact with common factors that shape risk for PTSD as well as arrests. We begin by reviewing the literatures on: (1) risk and protective factors for PTSD with an emphasis on military veterans; (2) correlates of criminal justice involvement among veterans that are closely tied to PTSD risk in the population; and (3) procedural justice and legal legitimacy.

These constructs are important to examine together because we know (1) risk of both PTSD and criminal justice involvement among veterans is shaped by a related set of pre-military, service-related, and post-military factors and (2) perceptions of procedural justice and legal legitimacy are associated with legal compliance generally and within problem-solving courts. Yet, attempts to integrate these different ways of understanding pathways to and desistance from criminal behavior have not been undertaken. Two key post-military factors—homecoming and civilian reintegration—are highlighted based on (1) their importance in shaping risk for PTSD and justice involvement among veterans and (2) logical connections between them and the relied upon normative theories of justice. Both procedural justice and legal legitimacy theories assume that how individuals have been treated by and are connected to the larger society affects their perceptions of judicial actors, the larger legal system, and, in turn, compliance.

Using a cross-sectional design with a convenience sample ($N = 191$) from two VTCs, we conducted exploratory analyses into the correlates of probable PTSD among participants and then if and how the presence of probable PTSD, exposure to combat, post-military homecoming, and civilian reintegration interact with participant perceptions of treatment by court staff (procedural justice) as well as the larger legal system (legal legitimacy) while controlling for recidivism risk and demographic factors. Such research can aid court administrators and clinicians as they make decisions on eligibility, court structure, assessment, and treatment. We end with a discussion of key findings, study limitations, and implications for research, practice, and policy.

REVIEW OF THE LITERATURE

PTSD Risk and Protective Factors

Research shows that trauma exposure is common, such that 61% of men and 51% of women in the United States experience at least one traumatic event in their lifetime (Kessler et al. 1995). However, based upon U.S. lifetime prevalence rates of 5.0% for men and 10.4% for women (Kessler et al. 1995), we know that most exposed individuals do not develop PTSD. Instead, development of PTSD depends on the interplay of several risk and protective factors.

Risk and protective factors can be categorized as pre-, peri-, and post-traumatic. For each, risk and protective factors can be thought of as two sides of the same coin. That is, saying an individual has a risk factor is typically the same as saying that individual lacks the corresponding protective factor. As an example, we can frame the lack of a post-event support system as a risk factor or the presence of such a system as a protective factor.

Various factors that are present prior to the exposure have been found to affect the likelihood of experiencing trauma and/or developing PTSD following exposure. The difficulty in separating how pre-traumatic characteristics increase the likelihood of (1) experiencing trauma and (2) developing PTSD as a response is worth bearing in mind. Pre-trauma risk factors include prior trauma—especially if experienced at a young age (Bremner et al. 1993; Davidson et al. 1991), a family history of psychiatric disorders (Bisson 2007), limited education (Bisson 2007), maladaptive personality traits (Breslau et al. 1998; Friedman and Rosenberg 1993; Schnurr, Friedman, and Rosenberg 1993), a history of behavioral or psychological problems (McFarlane 1989), minority status (Breslau et al. 1998), and identification as a female (Breslau et al. 1998). Pre-traumatic training and preparation have been shown to protect against the development of PTSD (Alvarez and Hunt 2005).

Characteristics of traumatic events have been found to influence the trajectory of posttraumatic stress symptoms. Specifically, risk of developing PTSD is increased if the event occurs at an early age (Bremner et al. 1993), by frequency of exposure (de Jong et al. 2001) and by the type of event (Kessler et al. 1995).

Finally, there are important post-event factors that affect the likelihood of developing PTSD. The risk is diminished by positive social supports—including help with physical activities, emotional support and someone to process the event with (Ozer, 2003), positively coping with—instead of avoiding—implications of the experience (Benotsch et al. 2000), and receipt of therapeutic interventions (Bisson 2007; Cahill 1997; McCleery and Harvey 2004).

Risk and Protective Factors: Military Contextualization

Combat veterans who served in Vietnam (Kulka et al. 1990), the Gulf War (Kang et al. 2003), and Iraq and Afghanistan (Hoge et al. 2004; Smith et al. 2009) have consistently experienced grossly elevated rates of PTSD when compared with the general public and non-combat veterans. Yet, with rates ranging from roughly 10% to 20%, it bears noting that the vast majority of individuals exposed to combat do not develop PTSD. Generally, the type of pre-, peri-, and post-traumatic factors that inform risk and resiliency in the civilian populations are also involved with members of the military and veterans. However, the shapes these factors take often follow the realities of military service.

The military contextualization is least distinct in pre-traumatic factors. There is broad agreement that family instability, adverse childhood experiences, and demographic factors affect risk of and path to PTSD among combat veterans (Fontana and Rosenheck 1994; King et al. 1999; Vogt et al. 2011). The military context emerges with pre-exposure training and preparation. Renshaw (2011) found associations between pre-deployment preparedness and threat perception as well as threat perception and PTSD.

When considering the events surrounding the trauma, the importance of the military context intensifies. Certain types of trauma members of the military are disproportionately exposed to are among those most likely to lead to PTSD. From general population studies, we know that exposure to combat follows only rape in risk for development of PTSD among men³ (Kessler et al. 1995). Further, there is evidence of differential risk secondary to types of combat-related trauma (Renshaw 2011). Among veterans, the baseline risk of combat in predicting PTSD is amplified by military sexual trauma.

³No female respondents in the data reported experiencing “direct combat experience in war” (Kessler et al. 1995).

Whereas sexual trauma is also the most potent type of trauma in predicting PTSD for women, female members of the military are at significantly elevated risk of sexual assault when compared with civilian women (Suris and Lind 2008). Research suggests that military sexual trauma is more predictive of PTSD than civilian sexual trauma (Suris et al. 2004).

Military and veteran realities affect post-traumatic factors in two broad ways. First, although interventions can reduce the likelihood of developing PTSD and successfully reduce symptoms, members of the military and veterans face unique barriers to receiving treatment. They include internal barriers such as stigma (Hoge et al. 2004) and external barriers including institutional failure to refer individuals who screened positive for a mental health condition (Milliken, Aucherlonie, and Hoge 2007).

Finally, as veterans transition from warriors to civilians, the importance of post-traumatic social supports takes on military-specific contours that are particularly relevant for the present study. Since Fontana and Rosenheck (1994) conducted their seminal work modeling the pathways to PTSD among Vietnam veterans, perception of homecoming has served as a key post-service construct. In broad terms, homecoming has been operationalized to capture how veterans feel the larger society and their families/smaller social networks welcomed them back. Although some of the early work (Johnson et al. 1997) was rooted in the negative way many Vietnam veterans were treated, the construct has helped understand PTSD risk in veterans of the Gulf War (King et al. 2006), as well as the wars in Iraq and Afghanistan (Vogt et al. 2011). As will be discussed, perception of treatment following military service raises questions regarding how veterans view society and its legal institutions.

Although not included as clearly and consistently in causal models of PTSD risk among combat veterans, research into reintegration problems among Iraq and Afghanistan combat veterans has helped understand risk for PTSD (Sayer et al. 2010) and difficulties tied to sub-clinical symptomology (Sayer, Carlson, and Frazier 2014). The construct draws heavily on work regarding community integration and focuses on social relationships, productivity, community participation, meaning in life, self-care, and leisure activities (Sayer et al. 2010). Of interest to the present study, many of these reintegration difficulties are tied to illegal, dangerous, and/or antisocial behaviors (Sayer et al. 2010).

Research into PTSD consistently points to a complex mix of risk and protective factors that help explain why trauma-exposed individuals do or do not develop the condition. With both civilian and military populations, the research supports a diverse set of risk and protective constructs, spanning the life-course of exposed individuals. Many involve how individuals have been treated by and fit within social systems. In the next section, conceptually-similar research into factors that predict criminal justice involvement of veterans is explored.

Common Risks for PTSD and Justice-Involvement among Veterans

Discussions of possible connections between exposure to military combat and subsequent criminal behavior are not new. Nor are calls to recognize such past service and to reduce incarceration when

... perception of treatment following military service raises questions regarding how veterans view society and its legal institutions.

possible. Writing in the aftermath of World War I, Edith Abbott (1918), a pioneer in the emerging social work profession, wrote:

Now the importance of all this at the present time is the fact that every belligerent nation must be prepared for a grave increase in crime after the war and that the obligations upon society were never greater than they are today to see that every effort is made to save men convicted of minor offenses from the demoralization of a prison term. (38)

A century later, this assumption has been used to justify the creation and guide the objectives of VTCs (e.g. Russell 2009; Smee et al. 2013). Perhaps as an operationalization of the assumed link between combat itself and behavioral health conditions secondary to it, a sizeable minority of VTCs restrict eligibility to combat veterans (5.6%) or those with military-related mental health conditions (20.2%) (Flatley et al. 2017).

As such, it is important to consider the extent to which the perceived associations between combat, PTSD, and crime are supported empirically. The relationships between military service and criminal behavior have been researched in a number of different ways that shed light on various aspects of this complex topic. Research has compared rates of incarceration between veterans and non-veterans (Bronson et al. 2015), considered how risk of incarceration varies based upon era of military service (Greenberg, Rosenheck, and Desai 2007), evaluated the efficacy of military service as a life transition with the ability to support desistance from juvenile delinquency (Bouffard 2005; Criag and Connell 2015), and has reported on behavioral health (Blodgett et al. 2015) and socioeconomic (Tsai et al. 2014) correlates of justice-involved veterans. Although these approaches and traditions noted above are important, the present study is most informed by an approach that is closely tied to the discussion of military-specific risk and protective factors for PTSD in understanding risk of post-military criminal justice involvement.

Shortly after the formal development of PTSD in the *DSM-III*, Wilson and Zigelbaum (1983) conducted the first known attempt to explore correlations between pre-military personality characteristics, combat exposure, PTSD, homecoming, and criminal behavior. Their study was limited by a small convenience sample, and aspects of their findings have been contradicted by stronger subsequent research. However, the study is notable for drawing early attention to pre-military, military, clinical, and post-military factors—including homecoming. This conceptual approach has had an important and enduring legacy.

Fontana and Rosenheck (2005) built upon the work of Wilson and Zigelbaum (1983) with a sample of 1,117 male Vietnam veterans, 21% with PTSD. They evaluated the relationships between post-military antisocial behavior (including, but not exclusively, criminal behavior) and the following: childhood abuse and instability, pre-military antisocial behaviors, race, combat exposure, disciplinary action in the military, level of perceived support during homecoming, PTSD, and substance abuse. Combat exposure and war trauma were only related to post-military antisocial behavior when mediated through PTSD. War trauma and a lack of support during homecoming were significantly tied to PTSD. Even the mediated association between combat exposure and antisocial be-

War trauma and a lack of support during homecoming were significantly tied to PTSD.

havior was more modest (9% of total variance) than lifelong conduct disorder (28% of total variance) or being African American (14% of total variance). Taken together, this study stresses the complex interactions between military and non-military experiences in shaping risk for antisocial behavior among veterans.

Drawing upon a national sample of veterans who served during the Iraq and Afghanistan wars era, Elbogen et al. (2012) examined correlates of arrest. Among their sample of 1,388 veterans, 9% reported being arrested since deployment. They assessed PTSD, TBI, and irritability. They further included combat exposure, substance misuse, age, gender, witnessing parents fighting, and a history of prior arrests as variables. To the extent that combat had a relationship with arrest, it was mediated through PTSD with negative affect. Yet, non-combat factors—especially witnessing parents fighting, gender, and substance misuse—had stronger associations with arrest.

This line of research has limitations and needs on-going development. Yet, research conducted with combat-exposed veterans from the Vietnam War as well as the wars in Iraq and Afghanistan highlights the interplay of pre-military, service-related, clinical, and post-military factors in explaining veteran involvement in the criminal justice system. Additionally, the findings offer a caution to not focus on combat-related experiences or even subsequent PTSD alone when considering veteran involvement in the criminal justice system and should draw our attention to factors that affect both PTSD and criminogenic risk. To the extent that PTSD helps shape future behavior, the factors that contribute to PTSD risk should still be considered.

Perceptions of Justice

The primary mechanisms to reduce criminal recidivism used by the drug treatment and mental health courts on which VTCs are modeled are the provision of behavioral health services, close supervision, and the use of incentives and sanctions (Marlowe, Hardin, and Fox 2016). However, many of these older problem-solving courts have drawn upon normative theories of justice in attempts to further encourage prosocial attitudes and behaviors among court participants (McIvor 2009; Poythress et al. 2002; Rossman et al. 2013). In broad terms, normative theories of justice can be thought of as alternatives to instrumental or deterrence-based approaches to crime reduction. That is, they attempt to alter the norms of individuals so that laws and legal institutions seem fair, trustworthy, and worthy of compliance. There is a foundational focus on how individuals feel they have been treated by and are connected with the larger society (Tyler and Huo 2002) that raises potential connections with homecoming and civilian reintegration. Based on their importance within problem-solving courts and applied criminology more broadly, the present study examines two inter-related theories within the VTC context: procedural justice and legal legitimacy.

Procedural justice theory focuses on the extent to which individuals believe that agents of a legal system have treated them with respect, listened to and considered their perspectives, and provided evidence of trustworthy motives.

Procedural justice theory focuses on the extent to which individuals believe that agents of a legal system have treated them with respect, listened to and considered their perspectives, and provided evidence of trustworthy motives. Dating back to a series of laboratory experiments in the 1960s and 1970s (Thibaut and Walker 1975) through population-based surveys (Tyler 1990; Tyler and Huo 2002), perceptions of procedurally fair treatment have been shown to be positively associated with prosocial attitudes and behaviors. Further, these outcomes tend to exist even in the face of adverse decisions from legal actors (e.g. losing a court case, being arrested), supporting the relative superiority of normative over instrumental considerations.

Although the effect size tends to be smaller and many studies are limited by cross-sectional designs, the positive effects of procedural justice have been observed in applied criminal justice contexts. In a recent review of the available evidence, Nagin and Telep (2017) noted important limits and avenues for further research but summarized the available studies (one on domestic violence offenders and two focused on reducing gun violence with recently released prisoners) as supporting a negative association between perceived procedural justice and future crime. Blasko and Taxman (2018) reported on two distinct studies conducted with parolees and probationers. In each, higher levels of procedural justice were associated with fewer technical violations, self-reported criminal behavior, and official records of arrest. Within mental health courts, perceptions of procedural justice have been associated with higher rates of program completion (Dollaret al. 2018) and lower rates of criminal recidivism (Wales, Hiday, and Ray 2010). Finally, it has been shown to be associated with lower levels of criminal recidivism in drug courts (Gottfredson et al. 2007).

Scholars from diverse disciplines have long studied the factors that lead individuals to perceive societies' legal authorities as having—or not having—legitimacy. In contrast with the ability of elites to force compliance, legitimacy can be thought of as belief from the governed that a system is due such deference. From this perspective, people obey laws because they feel they should as opposed to fearing sanctions for not doing so. Although the work of Weber (1968) has been seen as foundational, it has also been critiqued as leaving important gaps—especially as regards the practical implications of legitimacy (Spencer 1970). The work of Jeremy Beetham has moved the definition and utility of legitimacy forward and shaped the measure of legitimacy used in the present study (Jackson et al. 2011).

In developing his social scientific theory of legitimacy, Beetham (1991) attempted to integrate what he described as the historically distinct treatments of the issue by legal scholars, moral philosophers, and social scientists. His conceptualization drew upon these three traditions and focused on (1) the existence of established rules, (2) the ability to justify these rules through shared beliefs, and (3) obligation to comply with these rules. Of particular importance to Beetham was how legitimacy could be used to predict compliance with laws and legal actors.

The normative theories of justice discussed in this section draw our attention to the potential power of how participants in courts perceive the treatment they receive by individuals within the court as well as the legitimacy of the larger legal system.

Beetham's work has informed applied theories of compliance (Bottoms 2002; Robinson and McNeill 2008; Sherman 1993). In a recent review of his seminal work (1991), Beetham (2013) described Tyler's theory of procedural justice as helping to operationalize his theory of legitimacy. A survey conducted with a national probability sample of adults in England and Wales found perceptions of legitimacy were associated with lower levels of self-reported criminal behavior (Jackson et al. 2012). A recent review of empirical studies has offered support for the connection between perceived legitimacy and criminal behavior among those currently or previously involved in the criminal justice system (Eisner and Nivette 2013). Murphy, Bradford, and Jackson (2015) found legitimacy played a mediating role between perceptions of procedural justice and legal compliance among previous tax offenders.

The normative theories of justice discussed in this section draw our attention to the potential power of how participants in courts perceive the treatment they receive by individuals within the court as well as the legitimacy of the larger legal system. Perceptions of both procedural justice and legal legitimacy have been shown to have positive associations with desistance from criminal behavior. However, these constructs have not been studied within the context of VTCs or with justice-involved veterans more generally.

SUMMARY AND RESEARCH QUESTIONS

The present study is informed by three discrete lines of research. First, we know that risk for PTSD is shaped by a complex mix of pre-, peri-, and post-traumatic factors and that exposure to combat, homecoming, and civilian reintegration are particularly important in predicting development of the condition among veterans. Second, risk for veteran criminality is shaped by many of the same risk factors that inform our understanding of PTSD—including post-military social factors. This body of research should caution us against focusing only on the clinical diagnosis at the expense of the common risk factors. Third, perceptions of procedural justice and legal legitimacy have been shown to predict legal compliance. If perceptions of procedural justice and legal legitimacy are associated with future criminal behavior among those participating in VTCs, we need to begin exploring veteran-specific factors that may shape these perceptions of justice. There is reason to believe that perceptions of procedural justice and legal legitimacy may be responsive to how veterans assess their past treatment by (homecoming) and current connection with (civilian reintegration) society.

Based on the above, the present study begins a synthesis of these disparate bodies of inquiry within the VTC context. Although the literatures summarized above informed the selection of variables, the study was approached in an exploratory manner. As such, two research questions were posed.

- 1) *Was probable PTSD associated with combat exposure, homecoming, civilian reintegration, demographic variables, and recidivism risk within this VTC sample?*
- 2) *Were perceptions of (a) procedural justice and (b) legal legitimacy associated with probable PTSD, combat exposure, homecoming, civilian reintegration, demographic variables, and recidivism risk within this VTC sample?*

METHODS

Study Settings and Participant Recruitment

The study drew participants from two urban VTCs in the US Southwest in 2016. Both courts hear misdemeanor-level cases but have otherwise liberal eligibility criteria. Each court accepts veterans regardless of military discharge type, eligibility for VA services, era of service, or combat exposure. Specific diagnoses, service-related or otherwise, are not required.

The study utilized a cross-sectional design and convenience sampling. Individuals were eligible if they had attended at least two prior sessions of the VTC and were not in the custody of jail or detention staff. All recruitment occurred within the two court buildings during VTC sessions. Outreach was conducted by the lead author as well as two research assistants who were military veterans. Approximately 80% of approached and eligible VTC participants agreed to complete the self-administered survey. Participants were provided \$10 gift cards in return for completing the roughly 20-minute survey. Memoranda of understanding were developed with each court, and the research was approved by two university institutional review boards.

Missing and Problematic Data

The approach to missing and questionable data had three phases. First, all 206 surveys were reviewed, and 15 were excluded due to response patterns that suggested the participants did not understand or take the survey seriously. Tests of difference were conducted (chi square, Fisher's exact and independent sample t-tests) to evaluate if the 15 excluded cases differed from the 191 on all variables except for legitimacy, procedural justice, homecoming and reintegration (because the multi-item scales had the most problematic responses in most cases). The excluded cases did not differ at a significant level on any variable.

The second phase focused on the final sample ($N = 191$) and the multi-item measures (perceived homecoming, civilian reintegration, procedural justice, and legal legitimacy). The overall rate of missing data for the 66 items across these four measures was under 1%. In order to capitalize on the correlations between items within scales as well as those across scales, the approach to item-level imputation developed by Little (1988) and described by Enders (2010) was utilized. This process called for the development of temporary scale means for all cases—including those with missing values on some scale items. A series of imputations were conducted—one each for perceived homecoming, civilian reintegration, procedural justice, and legal legitimacy. The expectation-maximization (EM) algorithm was used to impute missing values for all items on the respective scales, using the other scale items, the temporary scale means of the other scales, and other constructs from the larger study not used in this paper (e.g. veteran identity) in the imputation equations.⁴ Finally, the temporary scale mean variables were deleted and final scale scores were generated.

The third phase again focused on the final sample ($N = 191$), using the EM algorithm⁵ to impute quantitative variables (age at first arrest, total lifetime arrests, service years, and separation years). Im-

⁴As part of each imputation, the nature of the missing data was considered. Review of Little's MCAR tests (Little 1988) as well as univariate t-test comparisons (Enders 2010) supported that the data were likely missing at random. Additionally, the inclusion of the temporary scale means for the other measures buffers against the possibility of data missing not at random (Enders 2010).

⁵Little's MCAR test and univariate t-tests again suggested that the data were likely missing at least at the MAR level and auxiliary variables were again used to buffer against the possibility of MNAR data.

**TABLE 1: PERCEPTIONS OF JUSTICE
IN VETERANS TREATMENT COURTS**
Study Sample, Descriptive Statistics

CHARACTERISTICS	VALUE
GENDER, MALE	89.5%
AGE	
Median	44.0%
18 to 24	3.7%
25 to 34	26.2%
35 to 44	20.4%
45-54	21.5%
55 to 64	20.9%
65 and Above	7.3%
RACE/ETHNICITY	
African-American	19.4%
Asian/Pacific Islander	1.0%
Native American	3.1%
Hispanic	20.9%
White, non-Hispanic	49.2%
Multiracial or multiethnic	5.8%
Other	0.5%
CURRENT HOUSING STATUS	
Homeless (stress or emergency shelter)	9.4%
Transitional program	11.5%
Temporary with friend or family	13.6%
Private housing, in jeopardy	12.6%
Private housing, secure	52.9%
CURRENT EMPLOYMENT STATUS	
Full-time	9.4%
Part-time	11.0%
Retired	11.0%
Disabled	25.7%
Unemployed	25.1%
ERA(S) OF SERVICE	
September 2001 to Present	43.5%
August 1990 to August 2001 (includes Gulf War)	26.7%
May 1975 to July 1990	29.8%
Vietnam War Era (August 1964 to April 1975)	15.2%
YEARS OF MILITARY SERVICE	
Mean (SD)	5.73% (5.45)
<2	7.3%
2 to 4.9	51.6%
5 to 9.9	30.9%
10 and Above	9.9%
DEPLOYMENT TO COMBAT ZONE	44.5%
COMBAT EXPOSURE	45.5%
PROBABLE PTSD	64.4%
AGE AT FIRST ARREST	
13 and younger	7.0%
14 to 17	19.8%
18 to 29	43.3%
30 to 39	17.6%
40 to 49	5.3%
50 and Older	7.0%
TOTAL LIFETIME ARRESTS	
0	2.1%
1	19.4%
2 to 5	42.9%
6 to 10	16.8%
11 to 20	11.0%
21 and above	7.9%

putation was not conducted on probable PTSD and combat exposure due to the limits of SPSS in imputing categorical variables (Allison 2009). Although the four cases missing data on one or more of these two variables were left in the dataset, they were deleted listwise during analyses.

Sample Characteristics

The following descriptive summaries use the final sample (N = 191) after the imputation described above. Table 1 contains a detailed description based on demographics, socioeconomic status, military service, and arrest history. The sample data highlight the depth of diversity hidden by terms like “justice-involved veterans.” Participants in the sample varied greatly by age, race/ethnicity, socioeconomic status, military experiences, and past experiences with the criminal justice system. Unfortunately, the available data do not allow comparisons between the sample and the population of participants in the two VTCs. However, comparisons can be drawn with a national inventory of veterans engaged in VTCs and other problems solving courts (Clark, McGuire, and Blue-Howells 2014) on some variables of interest.

The basic demographics of the sample are somewhat consistent with available national data (Clark, McGuire, and Blue-Howells 2014). The mean age is the same as that from the national inventory. Although the sample in the present study is heavily male (89.5%), it is less so than that reported by Clark and colleagues (2014) in the national survey (96%). Finally, the racial and ethnic breakdown deviates from the national numbers which have a higher percentage of African Americans (31%) but a lower percentage of Hispanics (10%). This deviation is appropriate for cities in the Southwest.

Participants were asked about their employment and housing. Different approaches to categorization and assessment periods make comparisons between the study sample and the national reference groups difficult. However, the participants in this study can be categorized as experiencing lower rates of housing stability and workforce involvement than the general adult population in a way generally consistent with Clark and colleagues’ (2014) national VTC survey.

It is difficult to compare all service-related characteristics with the national data due to different question framing and

reporting. However, the data highlight the significant degree of service-related diversity that exists within the veteran community. Rates of deployment to combat zones and personal exposure to combat are consistent with national VTC characteristics (Clark, McGuire, and Blue-Howells 2014).

The probable PTSD rate presented above deserves comment for two reasons. First, although we have presented it alongside service-related variables, PTSD is not best thought of as a military factor. It is a behavioral health condition. Although many veterans who develop PTSD do so in response to traumatic events experienced while in the service, this is not universally true. In the national inventory, for example, 35% of the sample was assessed as having military-related PTSD and another 6% as having PTSD tied to a non-military event (Clark, McGuire, and Blue-Howells 2014). The present study is unable to disentangle these numbers. It is also important to note that the present study used a screening approach to identify instances of probable PTSD, whereas the national study used diagnoses established through clinical assessment or review of medical records. This likely contributes to the higher rate of positive cases in the present study.

Finally, we provide a summary of the age of first arrest and number of lifetime arrests for the sample. The national survey (Clark, McGuire, and Blue-Howells 2014) did not report such data, preventing comparisons. However, the participants in the present study reported a wide, relatively well-dispersed, range of responses for both variables.

Measures

Probable PTSD. For the present study, the four-item Primary Care PTSD Screen (PC-PTSD) was used. Although developed for primary care settings (Prins et al. 2003), it has been used successfully as a self-administered screening tool in prior research (Sayer et al. 2011). The PC-PTSD's validity was supported by high rates of prediction of PTSD diagnosis from historical records of participants and concurrent screening and evaluation. Subsequent research (Bliese et al. 2008) has supported the initial findings. Prins and colleagues (2003) suggest using positive responses to three of the four items as the cut-point for probable PTSD; we used this approach.

Although it is an effective instrument, the PC-PTSD only focuses on the preceding 30 days. However, some of the subjects had been participating in the VTC for several months. It is possible that this tool would fail to identify individuals with well-controlled PTSD. In response, respondents were also asked if they had been diagnosed with or treated for PTSD by a physician or other mental health professional during their time in the VTC. Either a positive screen on the PC-PTSD or a positive response to this question resulted in the individual being coded as "probable-PTSD." This two-tiered approach has been used previously (Smith et al. 2008).

Civilian reintegration difficulties. Post-military community integration was measured with the Military to Civilian Questionnaire (M2C-Q). This 16-item scale was developed by Sayer et al. (2011). All items focus on the preceding 30 days and are on a 1 (no difficulty) to 5 (extreme difficulty) scale. The scale was developed with Iraq and Afghanistan combat veterans and had a high degree of internal consistency ($\alpha = .95$); construct validity was established through correlations with reported global as-

... PTSD is not best thought of as a military factor. It is a behavioral health condition.

assessment of reintegration difficulties, probable PTSD, and overall mental health. An improvement the M2C-Q offers over past surveys is that it is not focused on the period right after military separation. This is especially important for the current study as participants have been out of the military for greatly varying periods of time. Further, it offers an important contrast with the next measure. Descriptive and psychometric values for the scale in the present study follow: mean: 2.97, standard deviation: 0.95, skew: -0.12, kurtosis: -0.39, and Cronbach's alpha: .92.

Perceived homecoming. The Deployment Risk and Resilience Inventory (DDRI) was developed with a sample of veterans from the Gulf War to capture a broad mix of pre-, peri-, and post-trauma risk and resiliency factors (King et al. 2006). The DDRI-2 was developed based on research with Iraq and Afghanistan veterans (Vogt et al. 2013). Although the DDRI-2 is a suite of 17 related scales, the developers indicate that individual scales can be used. For the present study, the 10-item post-deployment social support scale, which explores perceived homecoming, was used. The items are scored on a 1 (*strongly disagree*) to 5 (*strongly agree*) scale. Items focus on response from the public (e.g., "The American people made me feel at home when I returned") and immediate social circle (e.g., "My family and friends understand what I have been through in the Armed Forces"). This scale had strong internal consistency ($\alpha = .90$), and construct validity was supported through bivariate correlation with PTSD, depression, and anxiety (Vogt et al. 2012). Descriptive and psychometric values for the scale in the present study follow: mean: 3.54, standard deviation: 0.81, skew: -0.50, kurtosis: 0.30, and Cronbach's alpha: .90.

Combat exposure. Combat exposure was assessed through a single, dichotomous item. Participants were asked, "were you personally exposed to combat-related situations (including, but not limited to, receiving fire, taking part in offensive activities, or exposure to dead or seriously wounded comrades, enemy combatants or civilians)?" This item was developed by the lead author through consultation and pilot testing with university students who had served in the military.

Recidivism risk. The proxy score was used to measure relative recidivism risk among the individuals in the sample. Although its use was not evident in peer reviewed literature, applied usage of the proxy has been well described in technical and/or governmental reports (Davidson 2005; Wong 2009). Its primary use is as a screening instrument to identify individuals at higher risk of recidivism to target for full assessments. Validation studies have demonstrated that higher proxy scores predict higher rates and earlier onset of recidivism (Davidson 2005; Wong 2009).

Three items (current age, age at first arrest, and total lifetime arrests) were used to generate the score. The proxy was used in the present study for the same reasons that it is used in applied settings: solid predicative validity and its brevity. In applied settings, the raw proxy scores are divided into risk levels (typically high, medium, and low). For the present study, the raw score (2-8) was used to increase the variance of the measure. This approach is supported by a validation study in which each increase in score was significantly associated with higher and earlier rates of recidivism (Wong 2009). Descriptive values for the scale in the present study follow: mean: 4.97, standard deviation: .1.62, skew: -0.12, and kurtosis: -0.70.

Procedural justice. Procedural justice was evaluated using a 12-item scale. The first nine items are based⁶ on a scale used with Australian DUI offenders (Tyler et al. 2007) and focus on respectful treatment and the opportunity to be heard within the court context. It demonstrated solid internal consistency ($\alpha = .87$) in the Australian DUI sample. The final three items were created by the lead author

to explore procedural fairness from a veteran-centric perspective.⁷ They were developed with the same structure as the modified Tyler and colleagues (2007) items. An example item was, “the court has shown respect for my military service.” Respondents were prompted to think about the judge, lawyers, and other staff of the VTC as they considered all 12 items. The items are on a 1 to 5 Likert-type scale with higher scores indicating higher perceptions of procedural justice. Descriptive and psychometric values for the scale in the present study follow: mean: 4.26, standard deviation: 0.69, skew: -1.40, kurtosis: 3.31, and Cronbach’s alpha: .94.

Legal legitimacy. Legitimacy was measured through a scale developed for use in the European Social Survey (ESS).⁸ Beyond its use in the ESS (2011), it has been used in a national sample of US adults (Tyler and Jackson 2014) which offered further support for reliability and construct validity through significant multivariate associations with indicators of compliance, cooperation, engagement, and fair treatment. Although the original ESS legitimacy items are on a 1 to 11 response scale, the present study used the same 1 to 5 scale, focusing on agreement or disagreement with statements, used in the US survey. Higher scores indicate more positive assessments of the legitimacy of legal systems and actors. Although developed as a multi-dimensional scale, an overall score has been used by the developers (Jackson et al. 2011) as well as by Tyler and Jackson (2014). Descriptive and psychometric values for the scale in the present study follow: mean: 3.52, standard deviation: 0.67 skew: -0.33, kurtosis: 0.72, and Cronbach’s alpha: .95.

Data Analysis

Data analysis was conducted using SPSS, version 23. The data were analyzed in three steps. First, a series of bivariate correlations⁹ were conducted. Second, logistic regression was used to regress probable PTSD on demographic variables, combat exposure, homecoming, civilian reintegration, and recidivism risk. In the third step, each of the perception of justice constructs—procedural justice and legal legitimacy—was regressed on demographic variables, exposure to combat, probable PTSD, homecoming, civilian reintegration, and recidivism risk.

Using two study sites introduced the possibility that data would cluster based on site. To evaluate this possibility, a series of t-tests and chi square tests were conducted to determine if participants differed on any of the variables used in the present study based on site. The only significant difference was procedural justice ($t(189) = 4.28, p < .001$). Therefore, site was used as a control variable in the regression of procedural justice, but not during other analyses.

⁶Without changing fundamental content, minor changes to the items were made for the present study. First, items were reframed from questions yielding very fair to very unfair responses to statements yielding strongly agree to strongly disagree responses. The original 1 to 5 scale is retained. Second, the original items asked about the “conference/court” as participants were assigned to one of these two conditions. For the VTC study the term “the court” is used. Finally, as the survey was administered to individuals still participating in the VTC, item verbs were changed from past to the present tense.

⁷Prior to merging the existing 9-item scale with the 3 new veteran-centric items, the following steps were taken to ensure they functioned as a cohesive scale. First, patterns of inter-item correlations were reviewed. All 12 items were positively and significantly correlated and a differential pattern did not exist with the 3 new items. Second, mean scores, skew and kurtosis were reviewed for the 12 items and differences did not emerge based on item origination. Alpha coefficients for the 9- and 12-item versions were reviewed and there was not a meaningful change. Finally, exploratory factor analysis was conducted and the 3 items did not load on a new or discrete factor.

⁸See Jackson et al. (2011) for its theoretical influences and development.

⁹The approach to selection of tests was to use Spearman’s rho on any test involving procedural justice due to the deviation from normalcy, Pearson’s r and point-biserial tests with the other ordinal-level measures based on normal distributions, and Phi coefficient when testing two dichotomous variables.

TABLE 2
PERCEPTIONS OF JUSTICE IN VETERANS TREATMENT COURTS
BIVARIATE CORRELATIONS

VARIABLE	1	2	3	4	5	6	7	8	9	10	11
1) AGE	1	-.02	.23**	-.18*	-.14*	-.20**	-.08	-.01	-.07	.10	-.49***
2) GENDER, FEMALE	—	1	-.04	-.09	.01	-.18	.04	.01	-.01	.07	-.20**
3) BLACK	—	—	1	-.25***	.09	.03	.01	.08	-.06	-.02	-.02
4) HISPANIC	—	—	—	1	.05	.01	-.06*	.10	.14*	.20**	.04
5) PROBABLE PTSD	—	—	—	—	1	.45***	.36***	-.34***	-.02	-.15*	.23**
6) COMBAT	—	—	—	—	—	1	.18*	-.16*	-.02	-.07	.10
7) REINTEGRATION	—	—	—	—	—	—	1	-.31**	-.02	-.17*	.18*
8) HOMECOMING	—	—	—	—	—	—	—	1	.21**	.40***	-.22**
9) PROCEDURAL JUSTICE	—	—	—	—	—	—	—	—	1	.42***	-.01
10) LEGITIMACY	—	—	—	—	—	—	—	—	—	1	-.15*
11) RECIDIVISM RISK	—	—	—	—	—	—	—	—	—	—	1

Note. * $p < .05$; ** $p < .01$; *** $p < .001$

RESULTS

To begin examining the relationships between constructs, a series of bivariate correlations was conducted. Full results are presented in Table 2. Here, some key results are highlighted. Regarding factors typically associated with PTSD, there were significant correlations between probable PTSD and combat exposure, perceived homecoming and civilian reintegration, but not gender, race, or ethnicity. Probable PTSD was associated with legitimacy but not procedural justice. The post-military variables had mixed results vis-à-vis the perceptions of justice. While homecoming was significantly associated with both variables, reintegration was associated with legitimacy but not procedural justice. Finally, race and ethnicity did not have the types of associations with the perception of justice variables that are typically found. Specifically, although being Black was not significantly associated with any of the measures, being Hispanic was associated with higher assessments of procedural justice and legitimacy.

Logistic regression was used to explore multivariate correlates of probable PTSD with this sample of VTC participants. As can be seen in

TABLE 3
PERCEPTIONS OF JUSTICE IN VETERANS TREATMENT COURTS
Logistic Regression of Probable PTSD (N = 187)

VARIABLE	β	SE	Wald χ^2	p	OR	95%CI
AGE	.00	.02	.00	.995	1.00	.96, 1.04
GENDER, FEMALE	.99	.66	2.18	.140	2.63	.73, 9.49
BLACK	.99	.53	3.48	.062	2.68	.95, 7.55
HISPANIC	1.05	.52	4.03	.045	2.85	1.03, 7.91
COMBAT	2.33	.47	24.95	<.001	10.28	4.12, 25.64
REINTEGRATION	.59	.22	7.29	.007	1.81	1.18, 2.77
HOMECOMING	-1.01	.32	10.30	.001	.36	.20, .67
CONSTANT	.25	2.10	.01	.904	—	—

Note. Model: $\chi^2(8) = 80.29, p < .001, R^2 = .35$ (Cox & Snell)

Table 3, the overall model was significant and the significant relationships probable PTSD had with combat exposure, homecoming, and civilian reintegration persisted in the multivariate analysis. However, recidivism risk was no longer significantly associated with probable PTSD, and individuals who identified as Hispanic now had a higher likelihood of screening positive.

In the final phase, two separate linear regression models examined the relationship between the two perception of justice constructs and probable PTSD, its risk factors, demographic variables, and recidivism risk. Each is reviewed in turn.

As can be seen in Table 4, the overall model for the regression of procedural justice was significant with a moderate effect size. The transition from bivariate to multivariate analyses did not alter many relationships between procedural justice and other variables. Perceived homecoming remained significantly associated, being Hispanic was no longer significant, and no previously non-significant variables became significant. The control variable—site—remained significantly associated with procedural justice.

Table 5 contains results of the regression of legal legitimacy. As with procedural justice, the overall model was significant. However, the use of multivariate analysis altered the patterns of associations found during bivariate analyses. Hispanic identity and homecoming were the only variables associated with legitimacy in bivariate and multivariate tests. Recidivism risk, probable PTSD, and civilian reintegration were no longer associated with legitimacy, while age became a significant correlate. That the static perception of initial homecoming remained significant while measures focused on recent clinical status (probable PTSD) and social support/functioning (reintegration) did not is noteworthy and will be explored in the discussion.

TABLE 4
PERCEPTIONS OF JUSTICE IN VETERANS TREATMENT COURTS
Regression of Procedural Justice (N = 187)

VARIABLE	b	SE	β	p
SITE	-.47	.10	-.32	<.001
AGE	.00	.00	-.00	.980
GENDER, FEMALE	.10	.17	.04	.558
BLACK	-.10	.13	-.06	.443
HISPANIC	.23	.13	.13	.073
COMBAT	.01	.11	.01	.956
PROBABLE PTSD	.04	.12	.03	.745
REINTEGRATION	.03	.06	.04	.617
HOMECOMING	.20	.07	.24	.003
RECIDIVISM RISK	.00	.04	.00	.998
CONSTANT	4.02	.52	—	—

Note. Model: $F(10, 176)=3.74, p<.001; \text{Adj. } R^2=.13$

TABLE 5
PERCEPTIONS OF JUSTICE IN VETERANS TREATMENT COURTS
Regression of Legal Legitimacy (N = 187)

VARIABLE	b	SE	β	p
AGE	.01	.00	.18	.029
GENDER	.24	.16	.11	.130
BLACK	-.06	.12	-.04	.602
HISPANIC	.33	.12	.20	.006
COMBAT	.08	.11	.06	.467
PROBABLE PTSD	-.03	.12	-.02	.810
REINTEGRATION	-.00	.05	-.00	.956
HOMECOMING	.33	.06	.40	<.001
RECIDIVISM RISK	.02	.04	.05	.545
CONSTANT	1.74	.48	—	—

Note. Model: $F(9, 177)=5.58, p<.001; \text{Adj. } R^2=.18$

DISCUSSION

Without minimizing its methodological limits, the results of the present study highlight the importance of integrating these and other discrete bodies of scholarship as researchers, policymakers, and practitioners strive to better understand this widely-disseminated but understudied VTC model. Despite drawing heavily on other problem-solving courts, VTCs are not merely drug or mental health courts for veterans. Although these results do not question the use of a treatment court model for veterans, they should remind us that the target population is not defined by diagnostic labels, but rather by shared experiences. The discussion begins with a review of key findings. Although this exploratory study did not specify and test hypotheses, points of convergence and divergence with past research are made when reviewing the findings. This is followed by a discussion of limitations and implications for research, practice, and policy.

Key Findings

Regarding the first research question, it can be said that the veterans in this sample were screened for probable PTSD in a way consistent with well-established research into risk and protective factors. Not surprisingly, exposure to combat had a positive and significant bivariate correlation of moderate magnitude with probable PTSD. Also consistent with past research is the significant and positive correlation between reintegration difficulties and probable PTSD as well as the significant negative relationship between homecoming and probable PTSD. All of these associations persisted in multivariate analyses. Although not surprising, the conformity with general research on risk for PTSD supports the utility of using this sample to explore the second research question—which we turn to now.

Although past research has not explored the relationships between PTSD, its risk factors, and perceptions of justice, many of the results from the present study are what would be expected when integrating the disparate research regarding (1) the relationships between PTSD, its risk factors, and criminal behavior with (2) research concerning normative theories of justice and criminal behavior. The bivariate results stayed particularly close to these expectations. Just as combat exposure does not

increase the risk for criminal justice involvement, it was not associated with either perception of justice variable in this sample. Probable PTSD and reintegration difficulties were negatively associated with legitimacy. Finally, homecoming was significantly associated with both perception of justice variables. Only the lack of significant associations between procedural justice and probable PTSD and reintegration difficulties stand out as unexpected.

The multivariate regressions of procedural justice and legal legitimacy offer a more complex picture. In neither model are probable PTSD or reintegration difficulties associated with the perception of justice measures. However, a significant, positive association between homecoming and the justice-related dependent variables remained even when controlling

Although these results do not question the use of a treatment court model for veterans, they should remind us that the target population is not defined by diagnostic labels, but rather by shared experiences.

for recidivism risk and key demographic factors. This is interesting. Unlike probable PTSD (which focuses on relatively recent symptoms or a diagnosis) or civilian reintegration (which focuses on recent social engagement and functioning), the homecoming construct is concerned with a past response from society in broad terms. This highlights the importance of not viewing the clinical label in isolation, but also considering how specific risk and protective factors that are associated with PTSD may be a common factor helping to explaining the relationship with attitudes regarding legal systems and, perhaps, future criminal behavior.

Finally, the functioning of race and ethnicity in this study stands out. Race and ethnicity have been shown to predict perceptions of legitimacy (Tyler and Jackson 2014), procedural justice (Atkin-Plunk, Peck, and Armstrong 2017), and perceptions of and experiences with the criminal justice system more broadly (Aplegate et al. 2008; Unnever 2008). Although African Americans (especially) and Hispanics typically hold more negative assessments of these constructs, in this sample, being Black was not associated with either of the measures of justice in bivariate or multivariate analyses, while being Hispanic had significant and positive associations with procedural justice in the bivariate test and with legal legitimacy in bivariate and multivariate analyses. Although the reasons for these findings are unclear and may not persist in other VTCs, it is interesting to consider in light of the efforts the US military has placed on accentuating military cohesion above racial and ethnic differences (Lundquist 2008).

... homecoming was significantly associated with ... perception of justice ... even when controlling for recidivism risk and key demographic factors.

Limitations

The present study has limitations to be mindful of as the findings and implications are weighed. The cross-sectional nature is perhaps the most obvious limitation. It precludes seeing if perceptions of procedural justice and legitimacy change in response to time in the VTC. Although eligible individuals opted into the study at a relatively high rate, the reliance on a convenience sample introduces the possibility of selection bias. Responses may have been affected by social desirability as well as recall problems (primarily for age at first arrest and total lifetime arrests which were used to develop the measure of recidivism risk). The use of a screening tool to identify cases of probable PTSD as opposed to identifying confirmed instances of PTSD via clinical assessment or review of records likely increased the number of people identified. The mean response to the procedural justice measure was quite high. The resultant non-normal distribution may have affected tests. This and/or a ceiling effect may help explain why procedural justice was associated with far fewer variables than was legitimacy. Finally, considering the diversity of VTCs, it is unclear how generalizable the findings of a study set in two misdemeanor-level VTCs in one region of the country are to VTCs across the country.

Implications

The findings of this exploratory study, as well as its limitations, suggest several avenues for future research. Incorporating multiple measurement points would allow exploration of the ability of VTCs to enhance participants' perceptions of procedural justice and legitimacy. Including these types of

constructs when conducting multi-site VTC research or at least in research set in more diverse VTCs—ideally without reliance on convenience sampling—will help inform if the present findings generalize to VTCs broadly, apply best to VTCs similar to those in the current study, or are best thought of as an artifact of an exploratory study. Drawing upon official arrest records would remove the potential for recall or social desirability affecting the measure of recidivism risk. Adding a follow-up measure of post-VTC recidivism would strengthen the analysis. While we know from past research that procedural justice and legitimacy are associated with recidivism (see Review of the Literature), they are far from the only factors. The skewed responses regarding procedural justice may be addressed in three ways.

Controlling for time in the VTC prior to administration and increasing the 1 to 5 response range may help. Third, it may prove useful to prompt respondents to consider this construct independently for different court actors. Although the current study prompted respondents to consider all together, research conducted in drug and mental health courts recently reported different mean scores and associations with other variables based on court role and suggested discrete assessment (Dollar et al. 2018). Finally, future research should explore if the unexpected findings regarding race and ethnicity exist in other VTCs.

There are potential implications for VTC treatment and policy—especially if the findings regarding the importance of perceived homecoming are replicated in future studies. From an assessment and treatment perspective, it suggests that greater attention should be paid to how the veteran feels he or she has been treated by society. This is not meant to suggest less attention on clinical factors and current social functioning. We know there are many, often interacting, pathways to criminal behavior. However, it should serve as a reminder that the relationships attorneys, judges, and clinicians attempt to establish with VTC participants can be negatively affected by perceptions of past treatment by others.

There may be benefits to broadening assessments to include sociological issues such as homecoming and legitimacy. While there is not a treatment per se for past experiences, this knowledge may help court staff and clinicians identify veterans with whom they will need to work harder to develop trust in both their own motives as well as the legitimacy of our larger legal system. For baseline setting, this can entail administering the measures of homecoming and legitimacy used in the present study. Additionally, there are a number of instruments that have been developed to help assess the quality of relationships between justice-involved individuals and the professionals charged with the complex mix of supervision and facilitating change through a therapeutic relationship. Most closely tied to the present study, Blasko and Taxman (2018) developed a measure of procedural justice for use in community correction settings. Additionally, an offender-oriented version of the Working Alliance Inventory has been developed (Tatman and Love 2010) as has an instrument developed to assess relationships within the context of court-mandated treatment (Skeem et al. 2007). When administered over time, such instruments can be used to evaluate if the attention many VTCs pay to recognizing

Incorporating multiple measurement points would allow exploration of the ability of VTCs to enhance participants' perceptions of procedural justice and legitimacy.

and respecting the past service of participants (Justice Programs Office 2016) can help improve trust and relationships despite negatively perceived homecomings and baseline assessments of legitimacy. This information should be of utility to court staff, clinicians and researchers.

When viewed alongside existing research that highlights the importance of PTSD risk factors—in addition to or even instead of PTSD itself—in predicting criminal justice involvement among veterans (Elgoben et al. 2012; Fontana and Rosenheck 2005; Wilson and Zigelbaum 1983) and illegal, aggressive, or dangerous behavior (Sayer et al. 2010), the current findings should encourage on-going review of eligibility criteria for VTCs. Specifically, the 20% of VTCs that require a service-related behavioral health diagnosis (Flatley et al. 2017) should consider if accepting individuals without a formal diagnosis who have negative perceptions of their homecoming experiences, current reintegration difficulties, or other risk factors would help meet their programmatic objectives.

Finally, from a broader social perspective, the role of military homecoming in assessments of justice highlights the importance of efforts to make veterans feel welcomed following their service to our country. In many ways, VTCs themselves can be thought of as an attempt to welcome veterans back to civilian communities. Yet, it would clearly be better if more veterans felt such efforts occurred earlier and outside of the criminal justice system.

While there is not a treatment per se for past experiences, this knowledge may help court staff and clinicians identify veterans with whom they will need to work harder to develop trust in both their own motives as well as the legitimacy of our larger legal system.

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AN EXPLORATORY STUDY OF VETERANS TREATMENT COURT PEER MENTORS: ROLES, EXPERIENCES, AND EXPECTATIONS

Paul A. Lucas¹

VALUE STATEMENT

To better understand and improve mentor programs in veterans treatment courts (VTCs), this study highlights issues and successes identified in a study of VTC peer mentor experiences that may serve as a foundation for future examinations of peer mentor/mentee relationships. Practitioners can use these findings to inform their VTC mentor policies and practices, as well as to develop research questions related to their own programs' use of veteran peer mentors and their impact on outcomes, such as treatment compliance and graduation in VTC.

ABSTRACT

In recent years, veterans treatment court (VTC) scholars have begun to unravel the complexities surrounding these new problem-solving courts and their effectiveness. Yet, surprisingly, research designed to better understand VTC peer mentors, who are considered a hallmark of VTCs, is absent from the existing literature. It is the purpose of this qualitative, exploratory study to address this gap within the literature in order to better understand the roles, experiences, and expectations of VTC peer mentors from differing geographic and military backgrounds. Findings include peer mentor perspectives concerning personal experiences, individualized methods regarding how each peer mentor approaches their role within the selected courts, the importance of building trust and friendship through the use of confidentiality, feelings of separation from the court treatment team, and issues with inadequate training in preparation for their roles as peer mentors. These findings are an initial and important first step toward better understanding VTC peer mentors in order to advance future research on their utilization and impact within VTCs.

KEYWORDS

Veterans treatment court, peer mentors, veteran mentors, problem-solving courts, courts

INTRODUCTION

Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), and Operation New Dawn (OND) are some of the recent conflicts fought by the United States (US) under the Global War on Terror. These and other conflicts and engagements have produced many injuries, both physical and mental. As such, it is estimated one in five service members who have returned will exhibit symptoms of post-traumatic stress disorder, suffer from traumatic brain injury, develop substance abuse issues, and/or be diagnosed with a mental illness such as major depression or anxiety (Hawkins 2010). Further, ballistic armor plating that protects vital parts of the body, such as the head and chest areas, and vehicular armor plating have been successful in reducing soldier deaths from improvised explosive devices (IEDs), increasing survivability, and enhancing individual emotional and psychological issues

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for returning service members (Berenson 2010). Belmont, Schoenfeld, and Goodman (2010) have estimated that the percentage of US military personnel killed in action due to gunshot wounds, blunt force trauma, and explosions has been reduced from 33% in prior military engagements to 4.6% of military deaths during OIF, OEF, and OND, with IEDs accounting for an overwhelming 75% of military injuries sustained in these conflicts.

This increase in survivability, while inherently good, has had a direct impact on returning military personnel as the decrease in military service members being killed in action has resulted in returning service members having to cope with severe emotional issues, (e.g., depression, hyper-vigilance, anxiety, irritability) that have developed as a result of their experiences (Freidman 2006). This has led to the labeling of traumatic brain injury and post-traumatic stress disorder as the signature wounds being suffered by veterans of OEF, OIF, and OND (Christy et al. 2012). These invisible wounds are taken home by returning service members and have resulted in increased contact with the criminal justice system (Elbogen et al. 2012). Veterans who are experiencing issues and are coming into contact with the criminal justice system have not gone unnoticed by those in the criminal justice system, and veterans treatment courts (VTCs) have been developed as a result (Russell 2009).

VTCs were developed to mirror the widely implemented drug court model, which has proven successful at lowering recidivism, reducing jail and prison populations, and increasing time-to-recidivism for graduates who come back into contact with the criminal justice system (Brown 2011; Heck, Rousell, and Culhane 2008; Shaffer 2011). While VTCs differ from drug courts in respect to eligibility (VTCs require participants be veterans), they follow similar operational methods.² However, while the drug court model has been largely effective, there should be concern that this success may be more difficult to achieve within the more complex VTC.

While the drug court model has been developed to deal with substance-abusing offenders, VTCs play host to a number of potential issues including co-occurring substance abuse and mental illness, driving under the influence, simple assault, disorderly conduct, and other charges. The fact that VTC eligibility requires only veteran status creates the potential for a wide range of issues being considered suitable for court involvement. Further, veterans may be hesitant to speak about their issues with non-veterans, which presents the unique challenge of making connections between those participating within the court and the court facilitators. Finally, there may be variations between service in different military branches (Army, Marines, Navy, Air Force, and Coast Guard), differing types of service requirements (active duty versus reserves/guard), differing military occupations (infantry, communications, artillery, military police), length of service, and combat involvement. It is no surprise, then, that VTCs differ from drug courts through their use of peer mentors to assist the VTC participants during their time within the court. These peer mentors are veterans themselves and are central to the VTC model given the unique experiences shared by many veterans.

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²See Lucas and Hanrahan (2016) for an overview of VTC utilization of therapeutic jurisprudence and effective intervention.

Veterans are a distinct population within the United States who share experiences that are unique to those of civilians. These experiences range from service within the military hierarchy to deployment and the accompanying stressors of extended tours of duty in foreign, and sometimes hostile, countries. VTC teams have noticed this and instituted peer mentorship programs. Peer mentors can assist with court requirements (e.g., drug and alcohol treatment, anger management, and mental health screenings) as well as lend support and motivation to the court participants while reporting the participants' progress and challenges to the court treatment team (Baldwin and Rukus 2015; Knudson and Wingfield 2015; McGuire et al. 2013). Peer mentors can come from a variety of sources, such as from the community as volunteers or may be provided by the Veterans Administration (VA).

While traditional volunteer peer mentors do not have specific requirements other than service within the armed forces, VA Peer Support Specialists have to meet certain requirements. These requirements have included being a veteran with a discharge status of other than dishonorable, being in recovery from a mental health condition for at least one year, and receiving training and certification by a VA- or State-approved not-for-profit organization (McGuire 2016). Regardless of whether the peer mentor is a community volunteer or VA Peer Support Specialist, his/her role is one of importance that needs to be studied and understood. While the peer mentor/court participant relationship within the VTC is an understudied topic, it is the focus of the present study.

If peer mentors are considered a critical component of VTCs given their absence in other problem-solving courts (McGuire et al. 2013), they must be researched to better understand their utility and effectiveness. However, there is minimal research available about VTCs due their relative newness, and much less is known regarding the operation and effectiveness of the mentors within these same courts. The current study examined peer mentors within three VTCs in Pennsylvania to answer the following research question: what are the roles, experiences, and expectations of peer mentors within the VTC? Developing a better understanding of peer mentorship and how its inclusion and use within these courts will provide a foundation for future research to focus on their effectiveness at assisting veterans who have come into contact with the criminal justice system.

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LITERATURE REVIEW

Drug Courts

Drug courts are considered the first model of problem-solving courts and were developed in the late 1980s as a direct response to criminal court dockets becoming inundated with drug offenders (DeMatteo, Filone, and LaDuke 2011). This influx of substance-abusing offenders can be attributed to the War on Drugs which had begun under President Richard Nixon in the late 1970s. The success of the drug court model can be credited to their specialized approach to handling eligible drug offenders

within the court; drug courts utilize community offender management to provide adequate treatment and rehabilitation while under court supervision (Heck, Rousell, and Culhane 2008). By combining judicial oversight (judge, prosecution, and defense) with law enforcement, treatment programs, and social service organizations, drug courts identify the needs of each offender and mandate treatment models accordingly (Marlowe et al. 2006). Drug courts implement specific components outlined in the United States Department of Justice publication *Defining Drug Courts: The Key Components* (1997). While these key components initially were created from information neither empirically researched nor supported (Gilbertson 2008), they have been shown to be largely effective by existing research.

The growth of drug courts in the US is the result of their success at lowering recidivism and relieving financial strain at the local and state levels. The success of the drug court model at lowering recidivism, decreasing jail and prison populations, and making the criminal justice system more cost-effective has increased the number of adult drug courts operating in the US. During the past two decades, adult drug courts have grown from 1 in 1988 to 1,438 in 2012 (National Drug Court Resource Center 2012). While drug courts operating in different jurisdictions and regions may approach their court functions dissimilarly, empirical research supports the effectiveness of the drug court model.

Carey, Mackin, and Finigan (2012) selected 69 evaluations of drug court processes for review based on adequate sample sizes and similar measurements of cost-effectiveness and recidivism. They found that the drug courts following the ten key components have significantly better outcomes, such as reduced recidivism and cost to the criminal justice system. Specifically, drug courts that work collaboratively as a team, provided structure and accountability, offered wraparound services, trained team members, and monitored performance outcomes were the most cost-effective. Further, investments in community treatment, community supervision, staff training, program evaluation, and management information systems brought lowered costs for both the criminal justice system and the taxpayer. Additional research has also confirmed the benefits of the drug court model, such as lower recidivism rates for life-course persistent drug abusers following program completion (Heck, Rousell, and Culhane 2008; Schroeder, Giordano, and Cernkovich 2007); significantly shorter mean jail time for re-offense and longer periods of criminal abstinence (Brown 2011); and greater cost-effectiveness than traditional sanctioning (Cissner et al. 2013). These positive outcomes for drug courts and the municipalities in which they exist have been linked to the successful implementation of court objectives under the ten key components of drug courts as well as the flexibility in tailoring treatment and court operations by varying jurisdictions (Hiller et al. 2010; Shaffer 2011; Zweig et al. 2012). With this validation, it is no wonder that local, state, and federal funding is available for the creation and operation of the drug court model, and the number of operational drug courts has grown rapidly since their inception.

Drug courts have been successful in assisting offenders with substance abuse issues since their start in the criminal justice system. The number of drug courts across the nation has grown steadily during the past two decades. As a result, jurisdictions with operating drug courts have seen recidivism rates for participants decrease and financial savings for both the criminal justice system and community members. These successes have not been ignored, and VTCs were created following the drug court model.

Veterans Treatment Courts

While empirical evidence on the effectiveness of VTCs is scant given their relative newness, existing research has looked extensively at how drug abuse and mental illness can relate to crime. As a result, there is little argument that a causal link between substance abuse, mental illness, and criminal behavior exists (Pinals 2010). However, veterans returning home and entering the criminal justice system have not been researched in great detail (Christy et al. 2012). It is estimated that one in eight service members returning home from duty has post-traumatic stress disorder and that 20% of all frontline troops suffer from traumatic brain injuries with less than half seeking help for these disorders (Cartwright 2011; White et al. 2012).

One reason attributed to veterans choosing not to seek mental health services is the stigma associated with service members who seek such care and the negative outcomes attached to seeking mental health services, such as being denied for promotion. This negative view continues to impact service members once they leave the military and, for some of the veterans who do seek care, they may choose to avoid VA services altogether to further distance themselves from the stigma of having a mental disorder (Adamson et al. 2008). It has been suggested that the avoidance of the stigma of mental health treatment may lead to drug and alcohol abuse through self-medication or an increased likelihood for engagement in sensation-seeking behavior (Cavanaugh 2010). While their overall numbers have been shown to differ across service eras and recruitment criteria, justice-involved veterans have been predicted to steadily increase in the coming years due to the recent-era conflicts and the nature of having an all-volunteer force (Greenberg and Rosenheck 2009). While a definitive relationship between these injuries, the avoidance of mental health services, and crime has yet to emerge, the criminal justice system has recognized increased numbers of veterans coming into contact with the criminal justice system (Russell 2009). As a result, VTCs have been used increasingly to assist with this population.

VTCs were created following the successful drug court model. As previously discussed, drug courts accept individuals with substance abuse histories as their main diagnoses. While it is not rare to have participants in drug courts with co-occurring diseases, substance-abusing behavior is given precedence over the other when accepting new participants. However, VTCs do not exclude either diagnosis and will accept participants who may suffer from one or multiple diagnoses as long as they have served in the armed forces (Russell 2009).

While preliminary evaluations have shown positive results, especially for graduates (Hartley and Baldwin 2016), VTCs are moving forward into the unknown due to the fact that they are dealing with a population of veterans whom little is known about and who may be suffering from co-occurring diagnoses (Brummett 2013). VTCs do not focus on one type of offense or condition, but rather accept participants who may be experiencing drug abuse or mental illness separately, co-occurring, or not at all. While a necessity, this may create additional obstacles and impede successful outcomes due to the VTC having to manage multiple diagnoses and offenses where other courts (e.g., drug and mental health courts) focus on specific charges or diagnoses. Further, an essential component of VTC, and one that has not been researched to date, is the appointment of mentors to the individual participants. The use of peer mentors may assist VTCs with better understanding the diverse population of justice-involved veterans with varying issues, diagnoses, and backgrounds. These mentors are modeled after other peer support programs, such as Alcoholics Anonymous (AA), which have used sponsors to assist with support, motivation, abstinence, and recovery from substance abuse.

Alcoholics Anonymous Sponsorship Effectiveness

Similar to VTCs, having a sponsor is one of the key components of AA (Alcoholics Anonymous 2010). It is a relationship that is considered extremely personal and one of equals. Interactions are to be comfortable (outside of crisis), confidential, and meaningful. Within these interactions the sponsor is expected to be a reliable, consistent contributor of knowledge to the mentee, be understanding and unbiased, and assist with the facilitation of prosocial networks (Alcoholics Anonymous 2010). Research looking specifically at the effectiveness of AA mentorship has shown positive results, establishing its importance in facilitating positive life changes.

Abstinence is one of the main goals of AA and has been empirically researched as a result. Research has shown that sponsorship is a significant factor when predicting both current and future abstinence (Kaskutas, Bond, and Humphreys 2002; McKellar, Stewart, and Humphreys 2003). Further, research has indicated that AA sponsorship aids in agreement with the program (Witbrodt et al. 2012), future completion of AA steps (Gomes and Hart 2009), positive relationships in the mentee's life (Subbaraman, Kaskutas, and Zemore 2011), and attendance within the program (Tonigan and Rice 2010). While mentorship within AA is proven to be effective, the success of the program may not translate directly to VTCs given the participants' involvement within the criminal justice system and the inclusion of court-required updates on the progress of the court participants.

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Mentorship within VTC

While sponsorship shows positive results within AA, it may prove to be a more difficult relationship within VTCs. Sponsors in AA are advised to be confidential when working with the mentee. However, given that the VTC participant is being supervised by a judicial court complete with judge, prosecution and defense attorneys, probation officers, and treatment providers, keeping information pertaining to the participants confidential may violate court policies. Mentors may have to inform the court of details of their interactions with VTC participants as the mentor (i.e., sponsor) may also be under the oath of the court. These circumstances may invoke lack of trust or paranoia when dealing with court mentors if they are seen as working for "the other side." If a lack of trust develops, any positive effects of the relationship may become void with negative effects, such as drug abuse and non-reporting, becoming pronounced. The potential for mistrust becomes problematic given the hallmark use of mentors within the VTC model.

McGuire et al. (2013) conducted a national survey of Veterans Justice Outreach Specialists (VJOs). VJOs were created by the VA to assist veterans involved with the criminal justice system and are involved with VTC programs across the country. These specialists are responsible for assisting the VA with identifying veterans who have become involved with the criminal justice system and linking these veterans with appropriate services to assist with their rehabilitation. They also serve as an essential team member within the VTC model. Of the VJOs surveyed by McGuire and colleagues (2013), 55% reported that their VTC had a mentor program with an additional 21% of courts reporting their VTC

had a mentorship program in development. The VTCs reported a total of 851 active mentors at the time of analysis with each VTC averaging nine mentors.

The high number of VTCs utilizing peer mentorship can be equated to military camaraderie and the experiencing of unique situations many in the civilian sector do not and cannot fully understand. Mentors within VTCs are volunteers who understand what being in the military entails as well as the very unique experiences that come with serving in the armed forces. Similarly to AA sponsors who are recovering addicts themselves, VTC mentors are an essential part of the VTC model given their ability to bridge the gap with a population of veterans who may feel alone given their backgrounds in the military, enhancing their use and necessity within the court.

The use of peer mentors is further reinforced by the findings of a survey of active military members and veterans who, when asked whether they believe peer mentors are beneficial, 90% responded that they are beneficial in some way (Rieckhoff, Schleifer, and McCarthy 2012). However, the respondents were speaking about mentorship in a general, non-VTC model which, while showing the potential use of military camaraderie to assist those in general need, does not address the mentor/mentee utility and effectiveness in VTCs.

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METHODS

Site and Sample Selection

As there exists no empirical examination of the roles, experiences, and expectations of peer mentors within VTCs, this study aims to explore these elements. The current study is an exploratory qualitative examination involving interviews with peer mentors within three VTC programs in Pennsylvania. Pennsylvania has 18 active VTCs—second largest number within a single US state (Baldwin 2013)—with the first becoming operational in 2009 and the most recent addition being added in 2015. Pennsylvania also contains the fourth highest population of veterans in the US, numbering 1.03 million, with 12% having a service-related disability and approximately 5,000 under some form of criminal justice supervision (Reed, Nash, and Griffith 2014; United States Census Bureau 2012; United States Department of Veterans Affairs 2010).

Using purposive sampling, three counties with operational VTCs were selected based on their location (rural, suburban, and urban). Geographic location was used to explore any differences in training of mentors, approaches to mentoring, or differing resources that may vary based on court location. In Pennsylvania, rural and urban counties are designated once their total population is divided by the square mileage for each respective county. A county is designated rural if the population is 284 residents or less per square mile, with the remaining counties exceeding 284 considered urban (The Center for Rural Pennsylvania 2016). The designations given to the VTCs within the current study are as follows: 1) rural (209 residents per square mile); 2) suburban (233 residents per square mile); and 3) urban (351 residents per square mile). For this study, the counties under study were kept confidential at the request of the selected sites.

The current study employed maximum variation sampling to identify mentors who would be contacted for inclusion within the study. Maximum variation sampling yields findings that are representative of the entire range of variation within the sample and allows the researcher to document both the uniqueness between cases as well as important shared patterns whose importance stem from their emergence from heterogeneity (Maxwell 2013; Patton 1990). When using small qualitative samples, heterogeneity can be an issue due to differences between the participants. Maximum variation sampling reduces this limitation; differences between participants will be identified, which is useful for exploratory studies such as this one, and, as Patton (1990) states, “Any common patterns that emerge from great variation are of particular interest and value in capturing the core experiences and central, shared aspects or impacts...” (172). For the purpose of this study, variation between participants was determined by identifying different geographic regions, branches of service, and lengths of service. Geographic location was determined by the population size the courts serve. Military branch served as the second dimension and used the Air Force, Army, Coast Guard, Marine Corps, and Navy as potential selection criteria. Lastly, length of service was chosen by whether the peer mentors continuously served in the military up to 48 months or more than 48 months. The dimensions of branch of service and military service length were chosen due to the impact these dimensions have on various outcomes for veterans of the military and the limitations of current research incorrectly treating branch of service and service length as unidimensional. These dimensions impact the military occupation role within the different branches; rank obtained; training received; number, frequency, and type of deployments; risk of combat; and veterans benefits available. All of which can influence the peer mentors’ perceived roles, expectations, and experiences when dealing with other veterans within the VTC.

The above dimensions separated the sample, and five peer mentors from each court were purposively selected for inclusion within the study once they were deemed to meet the above criteria. The rural court had a total of nine mentors, with the sample representing 56% of mentors within the court. The suburban court had 11 mentors, with the sample representing 45% of the mentors within the court. The urban court had 16 mentors, with the sample representing 31% of the mentors within the court. The selected individuals formed an initial sample size of 15 mentors (n=15).

Table 1 provides the age and gender breakdown of the sample—a total of fifteen (n=15) peer mentors chosen based on differing court location, service branch, and service length. The ages for the study sample ranged from 55-69 years old with an average age of 62 years old. The impact that age and gender have on the sample will be discussed briefly in the summary of findings below and in more depth within the discussion section.

Military service branch for each court location sampled is presented in Table 2. Five participants (n=5) served in the Army, four (n=4) served in the Air Force, five (n=5) served in the Navy, and one (n=1) served in the Coast Guard. In terms of service length, seven (n=7) served four years or less, and eight (n=8) served more than four years. Eleven participants (n=11) were within the enlisted ranks (E-1 through E-9), and four (n=4) were officers (O-1 through O-6) upon their discharge from the military. The entirety of the sample (n=15) was discharged honorably from the military.

TABLE 1
AGE OF PEER MENTORS

AGE	Male		Female	
	n	%	n	%
50-60	3	20	2	13.3
61-69	10	66.7	—	—

TABLE 2
SAMPLE CHARACTERISTICS

	MALE		FEMALE	
	N	%	N	%
SERVICE BRANCH AND LOCATION				
ARMY				
Rural	4	26.6	–	–
Suburban	1	6.7	–	–
AIR FORCE				
Rural	–	–	1	6.7
Suburban	2	13.3	–	–
Urban	–	–	1	6.7
NAVY				
Suburban	2	13.7	–	–
Urban	3	20	–	–
COAST GUARD				
Urban	1	6.7	–	–
LENGTH OF MILITARY SERVICE				
Four years or less	7	46.7	–	–
More than four years	6	40	2	13.3
RANK AT TIME OF DISCHARGE				
E1 - E9	11	73.4	–	–
O-1 - O-6	2	13.3	2	13.3

Data Collection and Analysis

Data were collected through face-to-face semi-structured interviews. Participants were asked identical questions in an open-ended format, and the interviews were audio recorded. Interviews were conducted at local veterans resource centers tied directly to each of the VTCs within the study. Follow-up phone calls and emails were utilized to clarify any responses that the researcher was unclear about or to request additional information.

Transcriptions of interview recordings were completed by the researcher and input into NVivo. NVivo is a computer-aided qualitative data analysis software (CAQ-DAS) that assists in identifying important concepts and themes within data. Important themes that emerged from the interviews with peer mentors were identified and coded in order to begin to understand their roles and perceived responsibilities when mentoring VTC participants. While interviewing 15 mentors could permit the researcher to achieve an information saturation point, additional mentors could have been chosen if saturation had not been reached after the initial interviews were completed. Saturation was deemed to occur when the information retrieved became redundant with no new themes emerging.

RESULTS

The primary data were used to answer the study's primary research question: what are the roles, experiences, and expectations of peer mentors within the VTC? The specific themes that emerged from the interviews provide insight into the understudied area of VTC peer mentorship with a focus on the following: roles and success; confidentiality, trust, and friendship; military branch, rank, and matching; and issues and challenges. Court location, branch of service, and service length are represented by the following when presenting direct quotes: RC (rural county), SC (suburban county), and UC (urban county); AR (Army), NA (Navy), AF (Air Force), and CG (Coast Guard); and 4L (four years or less) and 4M (more than four years).

Roles

When discussing their roles as peer mentors, the individual experiences shared between the mentors and mentees were imperative to understanding the challenges experienced by the VTC participants. Eleven (n=11) peer mentors mentioned personal experience directly. This experience comes from their personal struggles with addiction as well as their time being counselors for others trying to maintain sobriety.

I feel that in order to have a positive impact on these guys is whether or not you can relate to them. Not just relating to military service,

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which is important enough, but relating to them and being able to say that I have been there before. I have been sober for quite some time now, and it is not easy and it will always be something I have to monitor and think about. They respect that. They see that it can be done and that not all is lost. There will be good days and bad ones, but hey, I get it. (Mentor #15 - UC NA 4L)

I have, really, been on both sides of the law and I have struggled with my inner demons. More importantly I made it through, you know? Once, I guess you could say I found my way, I was able to become a counselor myself. How can you really mentor someone when you don't really know what it is that they wake up with every day? How can you look them in the eye and tell them how to approach a new way of thinking when you have never thought that way? I wear my scars with pride and use them to help some of my guys. (Mentor #10 - SC NA 4L)

Peer mentors (n=13) also believed that being a positive role model for their mentees was important in guiding their behaviors. When asked about what being a positive role model encompassed, responses included being there for fellow veterans and understanding the challenges they are facing.

I view it as being a shepherd. You are there to just make sure, not live their lives or make decisions for them, but if they start straying a little bit, you have to keep them in line. It is kind of like parenting. (Mentor #7 - SC AF 4M)

My role is strictly advisory, one that does not carry as much weight as the court orders and things like that. Strictly, I do not know any more of the law than anyone else. My role is more of a common sense role of an older guy that's been around and can help these guys not feel so alone. (Mentor #3 - RC AR 4M)

Also recognized was the importance of not providing constant advice to the mentees and that being a sounding board was more important than having all of the answers all of the time. As one mentor (RC AF 4M) stated, "I think that is probably, it is a sounding board, and as I have learned more, that is the most important thing a mentor can do." Other peer mentors felt similarly.

I don't really pry unless they want to talk about something or if they are really concerned about something. If that is the case, they will let me know and we can move ahead, hopefully, in a good direction. Most of the time I just let them take the lead. I am there as a sounding board. (Mentor #3 - RC AR 4M)

Some of these guys have been through an awful lot for their age. It makes you think about it, really, what they have seen, what they have been through. It is a shame that they have to go through these situations alone with nobody to vent to. These guys can vent on me. I may not have the best answers, but I will listen. (Mentor #6 SC NA 4L)

The importance of being a sounding board and someone the mentee can vent to also allows the mentors to better understand the struggles the mentees are going through and relay that information back to the court. Ten (n=10) mentors explicitly stated that this information allows them to become liaisons between the mentee and the VTC team.

The longer I have done this you see gaps, there are a lot of people on the team, but you can start identifying the cracks in between them. It is a shame that some of the men and women cannot

These guys can vent on me. I may not have the best answers, but I will listen.

get backup help when they have been clean but may be struggling with staying clean. So I think the mentor needs to help the mentee understand what is going on and let the other people in the court know what they are going through. (Mentor #5 RC AF 4M)

I am a real big fan of trying to, I have a real strong belief that, these guys were at their best when they were in the military and you try to get them back to that. Making that reconnection to the service, to what they were like when they were in the service, the values and details, reconnect them with that and then help them connect to the court team and what they are trying to do. Bring both sides together. (Mentor #9 SC AR 4M)

It isn't about graduating but rather taking to heart changing their lives and getting on a more positive track for the future.

The peer mentors believe that personally understanding what the mentees are experiencing and effectively listening to their thoughts permit them a more thorough understanding of the current issues each mentee faces, which they then relay to the court. These important themes lead directly to what the peer mentors feel constitute success when dealing with their mentees.

Program Success

Interview responses relating to what the peer mentors consider success within the court ranged from the standard court requirement of graduation to more in-depth quality of life factors that entail post-graduation growth and understanding.

Success is when they look you in the eye and you see clarity, a plan of action. Not that they did not have one before, but they are doing it themselves and staying clean and sober, going to treatment. That will get them to graduation and lead them to success. Getting out of the court and back to normal. A positive transformation. (Mentor #14 UC NA 4L)

Other peer mentors (n=10) included post-graduation success as including quality of life changes ranging from staying clean and law abiding to having positive interactions with family, as stated by (Mentor #11 UC NA 4M): “It isn't about graduating but rather taking to heart changing their lives and getting on a more positive track for the future.” Additional interviewees had similar responses.

Well, you know the programs benchmark will be graduation. That is the programs benchmark. My benchmark is a little different from that. I would like to see them continue in a positive way to turn their lives around. More than just graduation, and I am sure the court wants to see them do well into the future, but they have to show it works, and that is through graduation. You do not receive a coin and get better all of a sudden. (Mentor #11 UC NA 4M)

The court looks at graduation as success, their measuring stick, and it is a good one to show that the court works. This is good because if the court doesn't look like it works, then what are we doing? But to me, and this is my personal feeling toward the veterans in the court, is if they are happy and their lives are fulfilling. Are they good husbands or boyfriends, do they look after their kids, are they honest with themselves and others. A lot of it comes back to military ideals, respect for self and others. That is what I gauge my success on. (Mentor #10 SC NA 4L)

Confidentiality

Contrary to other court actors, such as the treatment and probation team members who must report all interactions and updates on the participants to the full VTC team, a large majority of peer mentors (n=13) stated that keeping interactions with their mentees completely confidential and not reporting them to the court was necessary in order to build a positive and open relationship.

... we have a meeting every time we go to court in the judge's chambers and we review each client going through there for about half an hour to an hour. They ask what we talked about and I tell them I can't really tell you, but I can give the general scope. The biggest thing would be sharing personal experiences. The shit we've seen, we know that we are on the same team, we know where each one is coming from and keep it between us. (Mentor #1 RC AR 4L)

Confidentiality is key to our relationship. If I have to go and run back to the court and tell the judge every little thing, that will destroy what I am trying to do, I cannot do my job as a mentor when always having to tell the court about personal issues that the veteran felt comfortable telling me about, which is not very easy for some of these guys. (Mentor #14 UC NA 4L)

Within keeping this confidentiality the peer mentors also saw themselves as being separate from the VTC team and their supervision mandates.

No, I don't tell the court everything. They will get that from their reports from probation and from the VA and the group sessions. The court is getting reports from everyone on the treatment team. We are not on the treatment team, we are adjunct to that. The only thing I am required to report is if I have information that the veteran is going to harm themselves or another person, that is when confidentiality goes out the window. But anything else stays with me and the veteran. (Mentor #13 UC CG 4L)

If they tell you after the fact, that they went drinking or something, and it didn't show up on one of their urine tests, you keep that confidential and work with them. You do not run to the probation officer or someone else. That would be counterproductive. You address the issue and talk it through with them. (Mentor #11 UC NA 4M)

While many respondents were adamant that they were keeping confidentiality due to the relationship building between themselves and their mentee, it may also be due to the mentors feeling disconnected from the VTC team as a whole. As two study participants responded:

No, but I think we may start getting there. That was actually a communication that I had with the judge. I got the sense that we are over here and the treatment team is over there and there is, I don't want to say friction, but a definite disconnect. (Mentor #11 UC NA 4M)

We are not on the treatment team, we are adjunct to that. The only thing I am required to report is if I have information that the veteran is going to harm themselves or another person, that is when confidentiality goes out the window.

My expectations were that I would be more involved with the veteran's process in the court system. And my expectations now I can see how the court leaves the mentor out of everything that is going on with the veteran. And I understand there are some issues with privacy but you do not know what is going on with the court and the veteran himself. I have no idea what is discussed there [in the pre-court meeting]. I don't know. No one has ever actually told me why the mentor is not involved with the veteran pre-court discussion every two weeks. They discuss everything prior to the court hearing. Then they come out and of course the veteran goes through his little thing, but you never know how he is making out, what progress he is making. (Mentor #8 SC AF 4M)

I got the sense that we are over here and the treatment team is over there and there is, I don't want to say friction, but a definite disconnect.

However, other mentors stated that, while the mentors are left out of the pre-court treatment team meetings and they feel separate from the treatment team, the court may have good reason for operating in this manner.

I am thinking that it is probably a good thing that you are not there [in the pre-court meeting] so that the veteran feels that you are kind of on his side and not talking about him with the court and probation and the rest. But on the other hand, I think they should have a meeting with the mentors sometimes to say hey, keep a watch on your veteran, they are the trained professionals, I am not, but maybe I am missing something and they can tell me what they think and a heads up. It is a double-edged sword there. You do not want to alienate the veteran so he comes and talks to you but you also want to know what is going on behind the scenes and how he is doing. (Mentor #10 SC NA 4L)

I try to keep everything confidential and not report anything back to the court unless I have to. I think this way helps to keep an even keel between the court, mentor, and veteran within the court. This is probably why we do not have a lot of contact with the treatment team, they do not want to damage the relationship between us [the mentor and mentee]. (Mentor #15 UC NA 4L)

Trust. While it is unclear if the perceived mentor/treatment team disconnect is the product of necessity or one which needs to be addressed, the mentors (n=12) are in agreement that confidentiality, and their approach to it, is the main path toward building trust with their mentees. According to the sample, building trust is not easily done and, in some cases, it is never fully established. One mentor (Mentor #5 RC AF 4M) felt that building trust was difficult due to the mentees having spent "...so much of their life lying and covering things up and they throw what they think is most acceptable out to the court and me. You can't tell what is the truth and what isn't." Others, such as (Mentor #1 RC AR 4L), mentioned that trust is not built in every case.

Everything we talk about is not being relayed back, I want to get the trust and that is pretty hard to get. It is not there off the bat. I don't, I am trying to think now, I think that only two out of the six [mentees], that the trust level developed overtime pretty well. (Mentor #1 RC AR 4L)

The lack of trust seems to be present from the beginning of court participation with the potential

mentees not fully understanding the approach that the mentors take. Further, some courts do not specifically order a mentor/mentee pairing. These issues contribute to many participants not engaging the mentor services.

They are offered our services, and I was surprised because I thought they would all accept them. Maybe pride and privacy are the two things that make them afraid that we will get too close to them in their personal lives. (Mentor #4 RC AR 4L)

We are not probation, we are not going to be spying on them, we are not going to be asking them for urine tests. That we are there to help them and be on their side as veterans. I think more would sign up for it if they knew that beforehand. (Mentor #14 UC NA 4L)

However, it seems that the mentors interviewed were adamant about not telling the court information regarding their mentees and that building trust was their top priority.

The hardest part is getting close to the guys at the beginning. They don't trust us, they think we are probation officers and they are afraid that we are going to tell others what they tell us. It all stays confidential. If I have a problem, I will call [the mentor coordinator]. But I am not telling the judge or anyone else. I don't even have numbers for the probation officer or lawyers, but I would never tell them anything negative anyway. (Mentor #2 RC AR 4L)

Additionally, according to nine (n=9) of the study participants, the court will not ask the mentors to violate their trust between themselves and their mentees.

She has to understand that she can trust me and if she tells me something I am not going to run to the judge, probation or anyone else. That is a huge part of being a mentor and what we do. Whatever you say to your mentor stays between you two and the court will never ask you about the kind of conversations you have. (Mentor #12 UC AF 4M)

As difficult as gaining trust is, the challenge does not end there as the mentors must continue nurturing their relationship while keeping their mentees in compliance with court requirements.

I would say that it is pretty high. But you have to work at that, right? I have a personality that, and it comes from having kids, you have to nurture your relationships. I always say, what happens when you do not? You will shut them down. A lot of these guys have very low self-esteem. You have to build that relationship with them so that they entrust you. Just build it and nurture it. (Mentor #7 SC AF 4M)

I think as long as you let them know that you are there and that your ear is open all the time to anything they have to say, good or bad, I think the trust comes natural. I feel like he knows, at least I hope he knows, that he can call me anytime he wants. If he needs an ear to chew on, he calls. I feel that the trust is there. It is just a matter of keeping it and not losing it. (Mentor #6 SC NA 4L)

Friendship. The process of building trust through confidentiality, as stated by VTC mentors, is one of nurturing and providing assistance by acting as a sounding board and confidant. This process, unsurprisingly, led some of the study

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sample (n=6) to become close friends with their mentees. One mentor (Mentor #4 RC AR 4L) stated, “With my veteran, I feel that we have become sort of good friends. I see other mentors and their relationships becoming like that as well.” This friendship can carry over even after the mentees graduate from the VTC.

The one guy that I was involved with, he graduated but I think it is the kind of thing, at least with him, that he needs an ongoing friend. Another guy got booted from court for a new charge and he and I have maintained contact regularly, not as intense as when he was in the program, but we exchange texts once a week and we probably see each other once a month. (Mentor #9 SC AR 4M)

I have gotten close to some of my guys. I have summer plans with one of them and I think we are both looking forward to it. I would have no problem having one of these guys living next to me or being a close neighbor. We develop respect for each other and the friendship, well I guess that just comes naturally after that. (Mentor #13 UC CG 4L)

Other mentors (n=5) gave insight into why the mentor/mentee relationship becomes a friendship, such as military background and camaraderie.

We are not as disconnected from their lives as the treatment team is. I mean no disrespect there, but they look at them on paper, are they checking the boxes or not. I help my veteran with jobs and personal decisions with his girlfriend and other stuff on top of what he is doing with the court. It is all connected but I see my veteran in a different way, something deeper than if he is just staying clean or not. We are in this together. (Mentor #15 UC NA 4L)

Military Branch and Rank

When asked if there were any issues that arose from different military branches or ranks between mentor and mentee, fourteen (n=14) mentors stated that they have not experienced any issue outside of the normal joking that takes place. For example, “No, just the normal joking between the military branches. You will always have the joking, but a vet is a vet” (Mentor #11 UC NA 4M). “No. I am the only officer and rank has never come up. As far as branch goes, just the normal type of kidding” (Mentor #12 UC AF 4M). “No, never had that. Never had that problem. I think we treat it as a veteran, no matter what service, no matter what rank. A veteran, is a veteran, is a veteran” (Mentor #3 RC AR 4M). “No, so far I have been matched with infantry, like me. I do not see that as making any difference” (Mentor #2 RC AR 4L).

Matching. Whether the mentors believed that branch of service presents an issue or not, the majority of study participants (n=12) agreed that matching mentors and mentees based not only on branch of service and combat, but also on general background was imperative.

I would focus on the matching between mentors and mentees with those who are similar. You want to be careful who you put them with, if they are really religious, you have to put them with someone similar to enhance their chances of bonding. (Mentor #9 SC AR 4M)

It is all connected but I see my veteran in a different way, something deeper than if he is just staying clean or not. We are in this together.

Matching is important, a key role of being a mentor is knowing what they are going through, something most veterans can understand and reiterate to the mentees. It is a struggle, but I have had some bad times. It is important to have a veteran. It would be the best, if possible, a women veteran mentor with a women veteran mentee. We just do not have that many female mentors. It would be great even, like my current guy is a Navy vet, and I am an Army vet...I have been working in the field a long time so I understand the Navy, but that is not always the case. He should have a Navy guy, can't do that, but that would be perfect. (Mentor #3 RC AR 4M)

Matching based on combat experience also was seen as necessary for success as well. I get the impression, in my mind I think they should stick someone who was in actual combat with other young guys who have been in combat. I have never experienced that but for me to be a mentor for someone like that, I really don't have any advice or words to share with them about their experiences. (Mentor #6 SC NA 4L)

It is finding that balance with each one of these guys and what they need. This is where you can choose who you want to work with in the beginning. When you are in a platoon of 17 and you are the only one that comes back, and you are 23 years old? Oh my God! There is not a lot that I can help with there, I can help with the other stuff. You have to know what your limits are and what you are capable of. The match from the beginning is what we try to get right every time. (Mentor #7 SC AF 4M)

Issues and Challenges

When coding the interview responses three main themes presented themselves through what the mentors saw as specific issues and challenges they face: age, time availability, and inadequate training prior to becoming a peer mentor.

Age. Age presented as a challenge to eight (n=8) of the interviewees. Responses included having to become familiar with new social media platforms, how these platforms are no substitute for face-to-face meetings, and their thoughts on how the mentees are exposed to much more than they were at their age.

Trying to understand them is pretty hard. So far my guys are in their early twenties, so it is a completely different culture with Instagram and Facebook that I don't do. I have had to familiarize myself with these things, something I had no idea about before. (Mentor #2 RC AR 4L)

Difference in age was surprising to me. I didn't text much before, maybe a little with the wife and kids, but now that is the main way that I communicate with my guys. It was slow going with him at first, maybe just getting to know one another, but as soon as he texted me the first time it is pretty constant. It is no replacement for face-to-face meetings, you can learn a lot about a man from looking at him, watching his eyes, but the texting is the contact that is most frequent. (Mentor #14 UC NA 4L)

... it is a completely different culture with Instagram and Facebook that I don't do. I have had to familiarize myself with these things ...

As discussed at the beginning of this chapter, the age of the peer mentors within the study sample was 55-69 with an average age of 62 years old. All but one (n=14) were married at the time of data collection. This age and life experience gap between the mentors and their mentees presented itself as a parenting role to some in the sample (n=6), which was not necessarily seen as a negative aspect.

My age had more to do with him than anything else. Never feel the mom issue with the girls, but it felt like I was giving him mom advice which is not necessarily bad, but I felt I came across that way to him. (Mentor #5 RC AF 4M)

These guys are younger than my kids. I like to think that I can be a positive factor in their life. Be there to answer their questions just like I would with my kids but with a different relationship. (Mentor #6 SC NA 4L)

Time. The time commitment needed to be an effective peer mentor was described by the mentors as having a direct impact on recruiting new, younger peer mentors, meeting their court obligations, and one that can fluctuate with each mentee.

Yes. Time is a large obstacle. There are a lot of people who would like to do it, but cannot due to the time commitment. We have had younger guys come in [to the training] but never finished due to the time it took [to be a peer mentor]. (Mentor #12 UC AF 4M)

A lot went through it and many did not become mentors due to the time commitment recommendations. They have jobs and are trying to make, trying to advance through life. At a young age you don't have time to take off of work or tell your boss you can't make it in. I understand that. (Mentor #3 RC AR 4M)

Court obligations, such as participating in the weekly and monthly VTC hearings, presented a unique challenge to eight (n=8) of the study sample.

In my case the fact that I work fulltime, time is a large issue. It is always a time thing for me and getting to the court meetings. With anything I do, I belong to a lot of things, I am juggling a lot of the time. (Mentor #3 RC AR 4M)

I want to be at court and stand with my veteran. That is a large part of what we do; we have their backs when they stand in front of the court. We represent them, if they need us to, but I can't always make it. I am retired but have appointments for my health and family members that I have to go to. I can't be in two places at once and sometimes I have to choose [which to attend]. (Mentor #15 UC NA 4L)

The mentors also find it difficult to meet face-to-face with their veterans due to the time commitment which can also hinder the mentees' availability as mentioned by (Mentor #12 UC AF 4M) and (Mentor #4 RC AR 4L), respectively: "Of course time is a challenge. Another issue is that the participant does not find time to meet but the judge takes care of that," and "Well, the thing is it takes time and you have to have time to dedicate to it. It is hard for some of these guys to find time to meet with work and other commitments." The time commitment varies across different VTC mentees and, according to the study sample, largely depends on the level of need presented by the individual mentee.

The other thing I have to admit, those that have a difficult mentee spend much more time than those of us who don't. I am also aware of that. Again, when you are in the judge's chambers prior to, you hear the mentors talk about the mentees, I can see that in many ways they are spending much more time with their mentees than I do, because they have to. I personally think, especially

for those mentees that are alcoholics or drug users, man, the best mentors are the ones that are clean and sober and have been there before, but also have the amount of time to spend with them as well. (Mentor #3 RC AR 4M)

Training. The training received by the peer mentors within the study sample was largely seen as inadequate, leaving them to proceed in their roles through what they believed to be the right thing to do. Some mentors also had difficulty with understanding what role the VA plays and if they are doing all that they can.

They didn't really know what we would be doing. But I sort of left thinking that we would be figuring it out as we go. It was, they were just figuring out what mentors needed to know about the program. Some of it was overkill, in my opinion, but I remember leaving and thinking that it didn't feel quite right. (Mentor #5 RC AF 4M)

We found that the VA was just trying to push people through to say, "yep, there is another one complete," for the sake of a number. We want a measure of success of how many individuals do we put back into society as productive citizens and never in the court system again. If that is what the VA is doing, and I don't know much of what they do there, then it isn't going to work. (Mentor #7 SC AF 4M)

The primary suggestion on how to enhance the training and make it more beneficial to future peer mentors was to include previous mentors and mentees who can speak to the training group and discuss their experiences, both positive and negative.

Training the mentor, by people that have mentored before and have mentored with success and failure stories. The structure of the training peppered with examples. The training should include stuff like who contacts who and some basic things like, my first young fella didn't always show up for court and he would text me and say my car broke, who do I tell? What is the best way to pass information? That goes back to having a good point of contact for each situation. There will always be new situations, but to include some in the training would be great. (Mentor #5 RC AF 4M)

One thing they could do is bring back one of these individual participants and have him give his side of the story. You know, sometimes we can help these guys and sometimes we cannot. To have a good success story would help a lot for the newer mentors and for us as well. Just integrate it into the training, bring them back that has a success story and show that the program does work. (Mentor #4 RC AR 4L)

DISCUSSION

When discussing their roles as peer mentors within the selected courts, having shared experiences with their mentees was imperative. Sharing personal experiences with their mentees allowed the mentors to become positive role models within the lives of their mentees by creating a social bond built on mutual respect and understanding. Additionally, the approach the mentors agreed was best suited for their roles was simply being a sounding board; the mentees could speak their minds and express their feelings, whether positive or

To have a good success story would help a lot for the newer mentors and for us as well. Just integrate it into the training . . .

negative, while the mentor listened without providing detailed guidance, advice, or directives. Previous research about the relationship between mentor and mentee support this approach as, when providing positive feedback and building their relationship with the mentees, peer mentors are found to be just as effective as traditional treatment providers in providing positive outcomes for the mentees (Clarke et al. 2000; Klein, Cnaan, and Whitecraft 1998).

Additionally, mentors with similar experiences to that of their mentees have been shown to have positive results that fit within the goals of both court mandated treatment requirements and with increasing the mentee's quality of life. When mentors have experienced, and successfully overcome, similar negative circumstances as those they mentor, previous research shows reduced inpatient services and improved relationships with their individual providers, whether that be mental health or substance abuse services, and also fewer re-hospitalizations than those with mentors without shared experiences (Chinman et al. 2014; Min et al. 2007; Sledge et al. 2011). Committing to treatment services and maintaining an ongoing, positive relationship with their peer mentor are shown to create a number of quality of life enhancements such as improved satisfaction with life situations, finances, and overall life problems (Felton et al. 1995); improved social functioning and reduction in life stressors (Klein, Cnaan, and Whitecraft 1998); improvement in mental functioning and a decrease in number of days homeless (Van Vugt et al. 2012); and increased levels of empowerment and hopefulness for recovery and the future (Chinman et al. 2014).

The approach taken by the peer mentors and the positive effect this approach has produced in previous research has direct benefits to the veteran population. First, by improving quality of life and increasing satisfaction with life situations and interactions, veterans and their families can begin to heal through the veteran's positive reintegration back into their families (Walsh et al. 2014). Additionally, increased engagement with treatment providers can decrease issues of self-medication and lack of treatment engagement, which are key barriers to effectively treating justice-involved veterans (Hawkins 2010). Last, decreasing the number of homeless days experienced by veterans is imperative as veterans experience a higher risk of being homeless compared to the civilian population and currently represent 10%, over 160,000 individuals, of the overall homeless population (Hammett et al. 2015; Tsai, Mares, and Rosenheck 2012). The particular approaches taken by peer mentors, at least within this study sample, have the potential to positively impact the veterans they mentor.

Confidentiality was seen as an important part of the mentor/mentee relationship. This confidentiality differs from that of the court treatment team which is required to discuss personal details regarding each individual veteran, including his/her involvement in treatment, urinalysis test results, relapses, and program involvement. While information sharing was the status quo for the VTC team, the mentors were adamant that they would not violate their mentees' trust outside of them hurting themselves or someone else. The mentors stated that having to tell the court anything about their interactions with their mentee would not only hinder their effectiveness at providing support to their

Sharing personal experiences with their mentees allowed the mentors to become positive role models within the lives of their mentees by creating a social bond built on mutual respect and understanding.

veterans, but also would decrease the effectiveness of future mentors and fewer court participants would want to accept mentor services if they believed mentors would tell the court about their conversations, a barrier that was mentioned as being difficult to overcome. Keeping strict confidentiality between mentor and mentee has been shown to have positive benefits for those being mentored, and it is a highly coveted trait according to AA mentees (Stevens and Jason 2015). However, while keeping all shared information confidential strengthened the mentor/mentee bond, it also distanced the mentors from the VTC team.

The mentors stated that they did not feel as connected to the court as the treatment team was. Many were not able to sit in during the pre-court sessions and were not updated about their mentees' progress by the court treatment team. There was a general feeling that while the treatment team worked directly with and for the court, the mentors were solely there for their mentee. Interestingly, while some of the mentors spoke of the need for greater cohesion between the court, treatment team, and mentors, they understood why the court may want to keep them separate; in order to have the mentors build trust through confidentiality, the court should not expose them to situations in which they may violate the trust, whether in actuality or perceptually. These feelings of separation from the court and the reasoning behind them need further examination for both clarification and utility in order to assess its impact on the mentors themselves. Regardless, the positive impact that confidentiality has on building trust and friendship, as noted by the peer mentors, cannot be overlooked.

Mentors within the study developed friendships which went beyond the mentor/mentee relationship and, in some cases, lasted well after the mentee's involvement with the VTC. This friendship can allow the mentee to form positive community contacts with not only their mentor, but also with the many groups the mentor may be a part of, such as military and veterans groups. Previous research (e.g., Koenen et al. 2003) has shown that veterans returning home who had community contact which was positive exhibited lower rates of post-traumatic stress disorder than those veterans returning home to what they perceived as a negative community reception (e.g., the lack of support for returning Vietnam veterans). Becoming involved with their mentors allows the mentee to strengthen their social bonds and enhance their treatment outcomes (Koenen et al. 2003). Furthermore, as the positive social support increases, the risk for, and symptoms of, post-traumatic stress disorder decrease (King, et al. 1998). These outcomes are the result of positive social bonds impacting how an individual processes thoughts and feelings, particularly fear, anxiety, and mistrust (Charuvastra and Cloitre 2008). The power of creating positive social bonds through the development of trust and friendship between mentor and mentee seems to be vital to VTC mentors and mentees; it enhances positive outcomes and decreases those which are classified as being anti-social.

The majority of mentors, when asked if military branch and rank had any impact on the relationship with their mentees, responded that they have not experienced any issues at all. This parallels the feelings of camaraderie that military service creates in those who have served. In this sense, prior military service functioned as the only connection that was needed to begin the mentor/mentee relationship. It seems that this underlying sense of respect and dedication to other

... while the treatment team worked directly with and for the court, the mentors were solely there for their mentee.

veterans is unique within VTCs as it may differ from relationships formed by sponsors within AA. While the respondents did not mention any detrimental issue regarding military branch and rank and that a veteran is a veteran, when matching mentor and mentee there was agreement that the most appropriate way to do so was through similar military and personal background.

Many of the mentors had gone through difficult times themselves, and there were numerous comments regarding their (the current mentors) need for a VTC prior to their creation. The mentors related their struggles directly back to their military service. Their inability to adapt to civilian life upon their release from the military created a deeper understanding of what their mentees were experiencing. While being a veteran is a primary requirement in order to be a mentor within the selected VTCs, the fact that they were able to relate to their mentees and, more specifically their struggles, was imperative to appropriately guiding their veterans toward VTC graduation and increasing quality of life, which needs further exploration. Combat also was mentioned as a factor on which mentors and mentees should be matched in order to get the most out of the pairing. While mentor responses on matching may seem contradictory to their statements regarding not having an issue between differing military branch and rank, they are not; the mentors understood that to help a veteran you need to be a veteran, bottom line. However, to enhance their assistance of the veteran in the best way possible, matching on personal and military experience are factors that may increase positive outcomes according to the study sample.

Three issues and challenges that the peer mentors perceived within their roles were the age differences between themselves and their mentees, time availability, and inadequate training prior to becoming a peer mentor. Age was frequently brought up by the mentors and, as noted above, the average age for the mentors within the study sample was 62 years of age. While this study cannot determine the impact that age has on the mentor/mentee relationship, it does provide insight into how these relationships may evolve; having an older peer mentor may be beneficial to the mentee given the combined experiences within military service, readjustment to civilian life, and overcoming their own personal issues. These experiences allow the peer mentors to relate to the mentees and their individual issues more personally and on a deeper level. On the contrary, the age gap also may create distance between the pair if the mentee perceives the mentor to be out of touch with what is going on now, whether factual or not. Likewise, having a younger mentor may allow for the mentee to feel that s/he has more in common with the mentor when in fact the mentor may be less stable, not as experienced, and/or not have as much time for their mentees.

When speaking about time, the mentors stated that their mentees found it challenging to find time to meet face-to-face. While meeting face-to-face was still a goal for many of the mentors as they can see how someone is doing much better in person, they understood that the time constraints had to do with being young, starting a family, and/or employment requirements. These constraints also affected the recruitment of younger mentors into the courts; many younger veterans who were interested in becoming a mentor decided not to do so after attending mentor training due to the time commitments and their already hectic schedules, according to the mentors. It seems that age and time are important interactions within the selected VTCs, and, while intriguing, their impact should be studied further before any conclusions are drawn.

The issue of inadequate training was mentioned by the majority of peer mentors within the study. This was surprising given that utilizing peer mentors is a unique function of VTCs and considered

one of their hallmarks. This led many of the mentors to approach their roles and responsibilities with what they personally believed to be the right thing to do. Furthermore, while separating peer mentors from the treatment team may be the court's attempt at promoting confidentiality and mentor/mentee cohesion, allowing the mentors to operate individually based on what they feel they should be doing may expose mentees to inadequate mentoring services. While the mentors could find little of what they liked about the training, there was no shortage of suggestions on what to implement to make the training more effective, such as:

- Bringing in past mentors and mentees to discuss what worked and did not work for them
- Allowing better access to and knowledge about current treatment options
- Explaining what the mentees experience when they go to the VA for various types of treatment
- Establishing a proper chain of contact in case an emergency occurs
- Providing better guidance to the mentors about what the court expects from them and whether they are accomplishing their goals as peer mentors

FUTURE RESEARCH

The importance and uniqueness of the use of peer mentors within VTCs are considered essential to the success of the participants (Russell 2009). To the best of the researcher's knowledge, this study is the first to qualitatively examine peer mentors within VTCs, making the exploratory findings essential to informing future research. The perceived disconnect from the VTC team (courtroom workgroup and treatment team) was a consistent source of contention and frustration within this study's sample. While the majority of the peer mentors interviewed felt that the disconnect may be due to issues relating to building a strong bond between themselves and the participants, further research needs to be conducted in order to uncover if this also is found within other courts and, if so, the impact it may have on participant outcomes.

Also, the lack of existing literature that empirically assesses the effects of differing military training within and between different branches needs to be addressed in order to understand dissimilarities between specializations in the military and how best to match justice-involved veterans with peer mentors in a VTC. Future research should also examine and control for differences between active and reserve status in order to determine if there are any differences between the two. In addition, while there were female VTC peer mentors within the study, there was no mention of female mentees. The influence of peer mentoring on female VTC participants is in need of further exploration in order to uncover information on those relationships. In regards to the mentors themselves, while they mentioned their experiences with substance use and abuse, there was no mention of their direct involvement with the criminal justice system. Justice system involvement and navigation are important experiences that should be included within future research on peer mentors.

Finally, future research should utilize the findings of this exploratory study to create variables that will further unravel the use of peer mentors within VTCs. While this study was an important first step, which followed the practice of good research by exploring the topic qualitatively, it cannot provide definitive and generalizable results as this exploratory analysis purposively choose participants from pre-selected courts from rural, suburban, and urban areas using maximum-variation sampling. While not a direct limitation as the purpose of exploratory qualitative analysis is not to generalize its findings,

but rather begin to build information toward better understanding an understudied phenomenon, future research should focus on the quantification of these findings. As such, future research should focus on formulating strong variables to study quantitatively and on a larger scale before any definitive conclusions are drawn.

CONCLUSION

The current study expands upon the VTC literature and the peer mentors within them. The use of peer mentors is unique to VTCs and is labeled as a hallmark of these programs. The above findings are an initial and important first step to better understanding their roles and experiences so that researchers can begin to unravel their utility and effectiveness. It is vital to continue to understand these courts in order to assure and enhance their effectiveness in working with justice-involved veterans. While VTCs mirror the successful drug court model, given their focus on individuals who are experiencing problems across a varied spectrum of drug, alcohol, mental health, and social issues, more research needs to be conducted before they can be claimed a success. This study was an initial and important first step toward this goal.

The current research's findings suggest that while the interviewees' approaches to mentoring were validated through previous research on mentor/mentee relationships and align with positive outcomes, this may not always be the case. An overwhelming number of interviewees stated that the training offered by the courts was inadequate and lacking any real description or guidance for the peer mentors, possibly impacting the delivery and consistency of services. Future research should use these findings to advise forthcoming research in order to definitively answer these questions and further advance the empirical literature about VTCs.

The perceived disconnect from the VTC team (courtroom workgroup and treatment team) was a consistent source of contention and frustration within this study's sample.

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

*Nicole M. Sherman*¹

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

[The VTC team members] 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 . . . promoting a sense of dignity for participants.

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 Wingefeld 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; Fisler 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).

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.

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?

... 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.

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%
GENDER				
Male	96.77	96.55	91.49	95.15
Female	3.23	3.45	8.51	4.85
AGE				
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
ETHNICITY				
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
EDUCATION				
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
MARITAL STATUS				
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
PARENTS				
Yes	48.39	22.99	10.64	24.24
No	51.61	77.01	89.36	75.76
EMPLOYMENT				
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
PRIMARY DRUG				
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
YEARS OF DRUG USE				
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 VJO² 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.

²The 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.

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

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.

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-

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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 regiments.

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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THE CONSTITUTIONALITY OF A PROSECUTORIAL VETO IN VETERANS TREATMENT COURTS

*Gregory G. Pinski*¹

VALUE STATEMENT

This legal commentary discusses the constitutional implications of the prosecutorial veto in veterans treatment courts, and includes practical guidance for judges and attorneys in avoiding potential constitutional violations.

ABSTRACT

Veterans treatment courts (VTCs) must safeguard constitutional rights, including fundamental due process and equal protection rights. To protect those fundamental rights, VTCs must adopt written policies and procedures about their court's target population, implement objective eligibility and enrollment criteria, and eliminate subjective influences, including any prosecutorial vetoes, from enrollment decisions. VTCs must also maintain fidelity to constitutional separation of powers. When VTC prosecutors exercise a unilateral veto over a defendant's enrollment in the program, these important constitutional rights are threatened. As treatment court jurisprudence develops, courts affirm that while a prosecutor retains discretion on pre-plea or pre-adjudication plea agreements, prosecutors may not unconstitutionally infringe on the judiciary's discretionary power to impose a lawful sentence, including a VTC sentence for eligible defendants.

KEYWORDS

Veterans treatment court, prosecutor, prosecutorial veto, separation of powers, judicial branch, executive branch, due process, equal protection, gatekeeper

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INTRODUCTION

A prosecutor is a key member of a veterans treatment court (VTC) team (National Association of Drug Court Professionals (NADCP) 2015). A recent nationwide survey of 99 VTCs revealed that 88 percent of responding VTCs had a prosecutor assigned to their VTC (Justice Programs Office 2016). Prosecutors perform many functions in the administration and operation of a VTC. In some VTCs, these functions include prosecutors serving as a de facto gatekeeper on a veteran's participation in VTC. When this gatekeeping function becomes a veto on a veteran's participation in VTC, it can violate a veteran's equal protection and due process rights and unconstitutionally infringe on the executive branch-judicial branch separation of powers. By implementing written policies and procedures on a VTC's target population, using objective eligibility and enrollment criteria, defining team member

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roles, and maintaining fidelity to constitutional separation of powers, a prosecutorial veto is unnecessary, and VTCs ensure a veteran's constitutional rights are protected.

NADCP BEST PRACTICE STANDARDS

A VTC cannot properly function without a multidisciplinary team, including a judge, program coordinator, prosecutor, defense counsel, treatment providers, supervision officer, and law enforcement officer (NADCP 2015). VTC teams ideally discuss the enrollment of potential veterans at pre-court staff meetings (NADCP 2015). When sharing information about a potential veteran participant, team members should share specific data relating to a participant's eligibility for VTC (NADCP 2015). Likewise, the communication of all team members' "relevant insights, observations, and recommendations based on their professional knowledge, training, and experience" is critically important (NADCP 2015, 38).

To facilitate this team communication about potential veteran participants, VTCs must adopt objective written eligibility and exclusion criteria and ensure all team members, especially judges and prosecutors, understand those criteria (NADCP 2013). A VTC cannot "apply subjective criteria or personal impressions to determine participants' suitability for the program" (NADCP 2013, 5). Including informal or subjective enrollment criteria or allowing a prosecutor or other team member to serve as a gatekeeper heightens the likelihood that otherwise eligible veterans will be rejected from a VTC (NADCP 2013). It is clear that "[r]emoving subjective eligibility restrictions and applying evidence-based selection criteria significantly increases the effectiveness and cost-effectiveness of Drug Courts by allowing them to serve the most appropriate population" (NADCP 2013, 6).

Fidelity to the best practice standards is jeopardized when a prosecutor usurps a gatekeeping function, exercising unfettered veto power over a veteran defendant's suitability or participation in the VTC program. Such suitability determinations have the "potential to exclude individuals from Drug Courts for reasons that are empirically invalid" and "should be avoided" (NADCP 2013, 6). Utilization of a prosecutorial veto undermines the goal that treatment courts "serve every drug-addicted person in the criminal justice system who meets evidence-based eligibility criteria for the programs" (NADCP 2015, 52). The emphasis in enrollment decisions must be on objective criteria, not a prosecutor's individual preferences. For instance, if a veteran is found guilty of possession of illegal drugs, has a diagnosed substance use disorder, and meets a high risk/high need standard, it is inappropriate for a prosecutor to usurp a judge's authority to allow that veteran entry into a VTC.

PROSECUTOR ROLES AND RESPONSIBILITIES IN VTC

The roles and responsibilities of a treatment court prosecutor differ from a prosecutor's traditional roles and responsibilities in the criminal justice system (Koozmin 2016).

In a traditional court of law, the prosecutor is obligated to seek justice by convicting those who have violated the law. In [treatment] courts, prosecutors are expected to use a therapeutic

...VTCs must adopt objective written eligibility and exclusion criteria and ensure all team members, especially judges and prosecutors, understand those criteria.

approach, with a willingness to work with others on the [treatment] court team, and support the mission and goals of problem-solving courts. (Koozmin 2016, 1)

In the early days of treatment courts, prosecutors were afforded gatekeeper status. Prosecutors unilaterally determined who participated in drug treatment courts and the conditions of that participation (Koozmin 2016).

While many prosecutors continue to perform a gatekeeping function or veto, this is not a role that is contemplated by evidence-based best practice standards. The National Drug Court Institute (NDCI) identifies the following nine core competencies of a treatment court prosecutor (2010, 11-14):

- 1) Participates fully as a drug court team member, committing him or herself to the program mission and goals and works as a full partner to ensure their success.
- 2) The prosecutor, while in drug court, participates as a team member, operating in a non-adversarial manner, promoting a sense of a unified team member.
- 3) As part of the drug court team, in appropriate non-court settings (i.e. staffing), the prosecutor advocates for effective incentives and sanctions for program compliance or lack thereof.
- 4) Ensures community safety concerns by maintaining eligibility standards while participating in a non-adversarial environment which focuses on the benefits of therapeutic program outcomes.
- 5) Monitors offender progress to define parameters of behavior that allow continued program participation and suggest effective incentives and sanctions for program compliance.
- 6) Is knowledgeable about addiction, alcoholism and pharmacology generally and applies that knowledge to respond to compliance in a therapeutically appropriate manner.
- 7) Is knowledgeable of gender, age and cultural issues that may impact the offender's success.
- 8) Contributes to the team's efforts in community education and local resource acquisition.
- 9) Contributes to education of peers, colleagues and judiciary in the efficacy of drug courts.

However, a prosecutor's veto power over a veteran's participation in VTC undermines the integrity of NDCI's core competencies two and four. Core competency two requires a prosecutor to function as a team member and participate equally with other team members in reaching decisions. When a prosecutor uses his or her veto power, the prosecutor disrupts the non-adversarial balance inherent in a VTC.

Core competency four requires prosecutors to address community safety concerns through eligibility standards. For instance, if a VTC excludes sex offenders, then the exclusion must be due to an eligibility standard, and all sex offenders are to be excluded. This core competency requires that enrollment decisions are made based on objective eligibility standards, not the unilateral whims of prosecutors or other team members. While prosecutors may argue that a veto is necessary to protect public safety, the veto must be accomplished through objective written enrollment criteria, not individualized decisions. Prosecutors should be directly involved in formulating objective eligibility criteria that is "evidence-

...a prosecutor's veto power over a veteran's participation in VTC undermines the integrity of NDCI's core competencies two and four.

based in order to target the ideal population that will maximize cost savings and public safety outcomes, while maintaining consistency among the participant population” (Koozmin 2016, 2). Through the collaborative nature of a VTC, prosecutors can fulfill their public safety obligation by regularly participating in staffing and conducting legal screenings of potential veteran participants, as well as demonstrating why a particular veteran is not an ideal participant if the prosecutor objects to a candidate (Koozmin 2016). A prosecutor’s objection to enrolling a particular participant, however, must be based on a legal disqualifier, clearly outlined in the eligibility criteria, and not subjective determinations or an outright veto that threatens evidence-based best practices and core competencies (Koozmin 2016).

Entry into VTC

VTCs enroll eligible veterans at multiple points in the criminal case disposition process, including on a pre-plea diversionary sentence, post-plea or post-adjudication sentence, or probation violation disposition (Justice Programs Office 2016). American University’s survey of 109 VTC programs revealed that most were post-plea, post-adjudication, and/or probation violation options, while pre-plea was the least common and evident in only 38 percent of VTCs (Justice Programs Office 2016, 13).

A VTC’s structure impacts a prosecutor’s veto over a veteran’s enrollment in the program. While all decisions should be made using objective written eligibility criteria, a prosecutor is afforded broad discretion on charging decisions and plea agreements under constitutional separation of powers (*In re Ellis* 2004; *United States v. Banuelos-Rodriguez* 2000). In a constitutional system, the executive branch decides what criminal charges to file and whom to charge with crimes, and the judicial branch is not involved in such decisions (*Manduley v. Superior Ct.* 2001). On the other hand, once charges are filed, the judicial branch has authority over the criminal justice process and, subject to legislative guidelines, imposes sentence on a convicted defendant (*Manduley v. Superior Ct.* 2001). The prosecution has no involvement in the judicial branch’s sentencing function. As one court explained, while plea agreements affecting sentencing powers of courts generally fall within the discretion of the court, plea bargains involving charging decisions are primarily within the discretion of the prosecutor (*United States v. Robertson*, 1995).

In a VTC, prosecutors possess broad discretion on whether to allow a veteran’s pre-plea or pre-adjudication diversion into a VTC program. No judge can force a prosecutor into a pre-plea or pre-adjudication diversion agreement where a prosecutor objects. In that respect, a prosecutor has a de facto veto over such a diversionary arrangement. After a defendant is found guilty, however, separation of powers dictates that the judicial branch has exclusive jurisdiction over sentencing a defendant. If a prosecutor vetoes a court’s legally imposed sentence,

While all decisions should be made using objective written eligibility criteria, a prosecutor is afforded broad discretion on charging decisions and plea agreements under constitutional separation of powers.

whether VTC or otherwise, constitutional separation of powers issues are implicated. As one court emphasized, “It is the court’s duty to impose the sentence, not the prosecution’s” (*Mower v. State* 1988).

LEGAL CHALLENGES TO THE PROSECUTORIAL VETO

Before treatment courts, courts routinely addressed analogous separation of powers cases involving a prosecutor’s express or de facto veto over a judge’s sentencing power. These cases continued with the inception of treatment courts. Most courts considering the issue have held that a prosecutorial veto violates separation of powers, but other courts in specific, limited instances have reached a contrary holding.

Separation of Powers Doctrine

Former United States Supreme Court Chief Justice Warren Burger explained the separation of powers doctrine as:

The Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial. The declared purpose of separating and dividing the powers of government, of course, was to diffuse power the better to secure liberty. [These words] echo the famous warning of Montesquieu, quoted by James Madison in the Federalist No. 47, that ‘there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates...’ (Bowsher v. Synar 1986)

In applying these separation of powers principles to criminal law, the legislature prescribes statutes and penalties (*United States v. Grayson* 1978). The executive investigates, indicts, and files cases to the court and jury (*United States v. Grayson* 1978). The judiciary imposes a sentence by applying the sentencing statutes to the facts in each case (*United States v. Grayson* 1978). Sentencing is a quintessential judicial function (*United States v. Grayson* 1978).

Determining whether a statute or practice violates the separation of powers doctrine requires analyzing whether the scheme grants powers to one government branch that are reserved to another branch (*Jose Gubiensio-Ortiz v. Kanahale* 1988). This analysis also requires considering whether the scheme “prevents [the affected branch] from accomplishing its constitutionally assigned functions” and, if so, whether the impairment is justified by an “overriding need to promote objectives within the constitutional authority of [the infringing] branch” (*Nixon v. Administrator of Gen. Svcs.* 1977).

A prosecutorial veto disrupts the interplay between these elementary governmental powers. As the Pennsylvania Supreme Court emphasized, “A prosecutorial veto power, immune from judicial review and serving no legitimate interest, derogates both the fairness and the appearance of fairness which are essential to the administration of criminal justice” (*Commonwealth v. Wharton* 1981). When prosecutors veto a judge’s lawful sentence, the appearance of justice is eviscerated, particularly involving a VTC sentence.

Courts Holding the Prosecutorial Veto Unconstitutional

In an early case, the California Supreme Court considered whether a prosecutor could veto a judge’s sentencing decision diverting a defendant into a treatment program (*People v. On Tai Ho* 1974). In *People v. On Tai Ho*, a statute required prosecutorial consent to a diversionary treatment program sen-

tence. The court's analysis on the separation of powers doctrine, as it relates to treatment programs, is instructive and persuasive.

By the time the case goes through the probation investigation and report...and reaches the hearing mandated...the prosecutorial die has long since been cast. The case is "before the court" for disposition, and disposition is a function of the judicial power no matter what the outcome...

[W]hen the jurisdiction of a court has been properly invoked by the filing of a criminal charge, the disposition of that charge becomes a judicial responsibility. It is true that acquittal or sentencing is the typical choice open to the court, but in appropriate cases it is not the only termination. With the development of more sophisticated responses to the wide range of antisocial behavior traditionally subsumed under the heading of "crime," alternative means of disposition have been confided to the judiciary...In turn, civil commitment to the narcotics addict rehabilitation program is a disposition which may be viewed as a specialized form of probation...it too is an exercise of the judicial power...

In other words, the district attorney may screen for eligibility, the probation department may investigate the facts, but it is the court who makes the decision. (People v. On Tai Ho, 1974)

Because the diversionary program gave the prosecutor an absolute veto, the California Supreme Court determined it violated separation of powers by impermissibly infringing on the court's sentencing power. The court severed the prosecutorial consent language from the statute.

In *Sledge v. Superior Court* (1974), a companion case to *People v. On Tai Ho* (1974), the defendant challenged the constitutionality of a statute affording a prosecutor the power to disqualify a defendant from a diversionary program. Although the prosecutor's role was performed after charges were filed, the court concluded that the statute did not violate the separation of powers doctrine because the statute did not involve the exercise of broad discretionary powers. Rather, the prosecutor simply applied specific legislatively-prescribed criteria, making the de facto veto automatic rather than discretionary. The court concluded this limited and ministerial prosecutorial function did not constitute an exercise of judicial authority (*Sledge v. Superior Ct.* 1974).

Taken together, *People v. On Tai Ho* (1974) and *Sledge v. Superior Court* (1974) hold that if a prosecutor can usurp judicial discretion and authority by issuing a veto over a judicial decision, then the exercise of that veto power is unconstitutional. If, however, a prosecutor is exercising broad discretion before charges are filed or engaging in a ministerial function after charges are filed, then the separation of powers doctrine is not implicated.

Since *People v. On Tai Ho* (1974) and *Sledge v. Superior Court* (1974), many courts have examined the prosecutorial veto in non-drug treatment court contexts. The Minnesota Supreme Court determined a statute giving prosecutors sole authority to seek an exception to a mandatory minimum sentence acted akin to the prosecutorial veto in *People v. On Tai Ho* (1974) and violated separation of powers by infringing upon the judge's sentencing power (*State v. Olson* 1982). The court held that the final disposition of a criminal case is ultimately a matter for the presiding judge, not the prosecutor. As the court stated in *State v. Olson*, once the legislature has defined the range of punishments for a particular offense, it cannot "condition the imposition of the sentence by the court upon the prior approval of the prosecutor" (1982). Similarly, the Arizona Court of Appeals determined a statute giving prosecutors sole power to make an alternative sentencing recommendation was analogous to the pros-

ecutorial veto in *People v. On Tai Ho* (1974) and violated separation of powers by infringing on the judicial function of deciding the sentence (*State v. Jones* 1984).

With the expansion of treatment courts, these separation of powers principles precluding a prosecutorial veto from interfering with a judge's sentencing power have been applied to treatment court programs. In *Stromberg v. Second Judicial District Court* (2009), the Nevada Supreme Court determined that prosecutorial consent was not required for a court to sentence a defendant into a treatment program. In *Comai v. State* (2007), the Indiana Court of Appeals determined it was properly within a judge's discretion whether to allow someone to enter a drug treatment court, even though the prosecutor incorrectly claimed to possess veto power.

In *State v. Easley* (2014), the most prominent and applicable case to treatment courts to date, the Idaho Supreme Court directly confronted whether a prosecutorial veto over participation in a post-adjudication mental health treatment court violated separation of powers. The court plainly held the prosecutorial veto was unconstitutional:

The post-judgment prosecutorial veto violates the Separation of Powers doctrine. Whatever authority prosecutors have as 'judicial officers,' that authority does not extend to determining sentencing when a defendant has been adjudicated guilty of a violation. That is the court's authority. It cannot be contracted away... Diversion in the pre-judgment process remains collaborative. But the post-judgment authority to sentence is the prerogative of the courts within the bounds of existing law and constitutional standards. The courts cannot contract or bargain away this authority. And, the prosecutor cannot veto this judicial function. (State v. Easley 2014)

These cases clarify that the legislative branch decides what constitutes a crime and the range of potential sentences. The executive branch enforces the laws enacted by the legislative branch. The judicial branch interprets the laws. In the criminal context, the judicial branch's role in interpreting the laws involves determining the sentence. This judicial power may not be encroached by the other branches of government, including an executive branch prosecutor.

Courts Holding the Prosecutorial Veto Constitutional

In varying limited contexts, other courts have reached the contrary conclusion that a prosecutorial veto does not violate the separation of powers doctrine. In *State v. Taylor* (2000), the Louisiana Supreme Court rejected a separation of powers challenge to a statute allowing a prosecutor to initiate the screening process for treatment court when a judge could ultimately decide whether a defendant could enter the treatment court program. The statute at issue provided only for pretrial diversion. In that context, the court's holding follows separation of powers principles and a prosecutor's treatment court roles and responsibilities. Since *State v. Taylor* (2000) was decided, the Louisiana legislature enacted a 2014

In the criminal context, the judicial branch's role in interpreting the laws involves determining the sentence. This judicial power may not be encroached by the other branches of government, including an executive branch prosecutor.

VTC statute, which allows a prosecutor to refer participants to VTC but expressly provides that “the judge shall make the final determination of eligibility” (La. Rev. Stat. Ann. § 13:5366 2017). Although *State v. Taylor* (2000) is not overruled in Louisiana, the practical effect of the opinion is unclear given the subsequent statutory mandate on a judicial eligibility determination.

In *Woodward v. Morrisey* (1999), the Oklahoma Court of Criminal Appeals found no separation of powers violation with a statute that gave the prosecutor veto power over drug court admission. The court explained that the governing statute required a participant to enter a plea agreement for the drug court. Since no defendant has a constitutional right to a plea agreement and the prosecutor decides how and when to prosecute a defendant, separation of powers was not implicated. *Woodward v. Morrisey* (1999) also supports the distinction between pre-adjudication and post-adjudication cases because it recognizes the court has no authority to force the prosecutor to extend a plea agreement to a defendant, and in Oklahoma, a participant cannot enter the treatment program except through a plea agreement (Okla. Stat. Ann. § 471.6 2017).

In *C.D.C. v. State* (2001), the Alabama Court of Criminal Appeals determined there was no due process violation for a prosecutor’s veto over admission into a drug court. The court found this decision was solely within the prosecutor’s discretion and not subject to appellate review. The reasoning was based upon a statute that allowed entry into drug court solely for deferred prosecution cases. Similarly, this supports the distinction between pre-adjudication and post-adjudication cases.

In two treatment court cases, the Washington Court of Appeals similarly found no separation of powers violation involving a prosecutor’s veto in *State v. Diluzio* (2004) and *State v. Waldenburg* (2013). In *State v. Waldenburg* (2013), the Washington Court of Appeals considered a treatment court’s local eligibility criteria requiring prosecutorial approval for enrollment. The court upheld the local rule requirement because “it is within the prosecutor’s discretion whether to remove a charged offender from the regular course of prosecution and punishment and to refer him instead to drug court” (*State v. Waldenburg* 2013). Similarly, in *State v. Diluzio* (2004), the court specifically examined and rejected *People v. On Tai Ho* (1974), holding the veto was permissible because it related to an initial eligibility determination instead of ultimate entry. Although the court’s rationale may seem like a distinction without a difference, the court emphasized that the prosecutor determined the defendant did not meet the initial eligibility criteria for the Spokane Drug Court and properly exercised the veto power.

However, the statute underlying those cases was repealed and replaced in 2015, and the current version of Washington’s treatment court statute appears to abrogate these decisions. Washington Revised Code Section 2.30.030(8) (2017) expressly provides that “Nothing in this section prohibits a district or municipal court from ordering treatment or other conditions of sentence or probation following a conviction, with the consent of either the prosecutor or defendant.” The statute also places discretion in the therapeutic court judge to decline a participant and enumerates objective eligibility and enrollment criteria (Wash. Rev. Code § 2.30.030 2017). A fair conclusion is this statutory revision likely changes the prosecutorial veto previously recognized as constitutional in Washington.

VTC-SPECIFIC STATE STATUTES

Model Veterans Treatment Court Act

On July 20, 2017, the National Conference of Commissioners on Uniform State Laws Uniform Law Commission passed the Model Veterans Treatment Court Act. Under this proposed legislation, which

is recommended for enactment in all states, the Uniform Law Commission considered and adopted the New Jersey approach whereby a veteran's participation in a VTC is subject to prosecution and court approval for a pretrial diversion but approved solely by the court in all other cases. In its comment to the Act, the Commission noted the following:

Requiring the approval of the prosecutor to allow [a pre-trial diversion] entry into the veterans treatment court allows the state to ensure that crimes or defendants the state feels are inappropriate for therapeutic diversion are prosecuted in the normal course.” (National Conference of Commissioners on Uniform State Laws 2017, 13).

The Model Veterans Treatment Court Act (2017, 11-12) requires that prosecutors and judges consider eligibility and enrollment factors listed below in determining whether admission to a VTC is in the interests of justice and of benefit to the veteran and the community:

- 1) The nature and circumstances of the offense charged;
- 2) Special characteristics or circumstances of the defendant;
- 3) The defendant's criminal history and whether the defendant previously participated in a veterans treatment court or a similar program;
- 4) Whether the defendant's needs exceed treatment resources available to the veterans treatment court;
- 5) The impact on the community of the defendant's participation and treatment in the veterans treatment court;
- 6) Recommendations of any law-enforcement agency involved in investigating or arresting the defendant;
- 7) Special characteristics or circumstances of the victim or alleged victim;
- 8) Subject to subsection (c), a recommendation of the victim or alleged victim;
- 9) Provision for and the likelihood of obtaining restitution from the defendant over the course of participation in the veterans treatment court;
- 10) Mitigating circumstances;
- 11) Other circumstances reasonably related to the defendant's case.

In the event that a domestic violence offense is the basis for a veteran's participation in VTC (subsection c), the court and the prosecutor “shall seek the recommendation of the victim or alleged victim of the offense (National Conference of Commissioners on Uniform State Laws 2017, 11-12).

Selected State VTC Statutes

New Jersey separation of powers and limitation on prosecutorial veto. In 2012, New Jersey amended its treatment court statute to, inter alia, expressly eliminate a prosecutor's veto over drug treatment court participation (N.J. Stat. Ann. § 2C:35-14 2017). The New Jersey Attorney General issued a memorandum to county prosecutors explaining the new law and the prosecutor's role:

The...elimination of prosecutorial control over the decision to sentence certain defendants to special probation does not mean that prosecutors can now stand back as idle spectators to the Drug Court admissions process. To the contrary, now more than ever, prosecutors will be expected to carefully review cases and articulate their concerns when they believe that a particular defendant's

participation in Drug Court poses a safety risk or is otherwise inappropriate. Prosecutors, in other words, will continue to exert considerable influence as gatekeepers, not by wielding de facto veto power, but rather through the strength of their case-specific arguments, and the credibility that they earn with Drug Court Judges through their own active involvements in all aspects of the program. (Chiesa 2012, 2)

The New Jersey approach does not strip the prosecution of all influence. Rather, as the New Jersey Attorney General explains to local prosecutors, if a prosecutor does not believe a treatment court sentence is appropriate, the prosecutor should present sentencing arguments and advocate for an alternative sentence. Like any other sentence, the prosecutor is free to zealously advocate for a particular outcome, with the ultimate sentence committed to the sound discretion of the court (Chiesa 2012). New Jersey's approach fully follows the separation of powers doctrine and the prosecutor's VTC roles and responsibilities.

Other state statutes limiting a prosecutorial veto. Similar to the Model Veterans Treatment Court Act previously reviewed, many states enacting VTC legislation have limited prosecutorial objections to a veteran's entry into a VTC.² For example, Arizona simply requires a court to notify a prosecutor of a referral to a VTC (Ariz. Rev. Stat. § 22-601(C) 2017). Georgia allows a court to refer any criminal case to a VTC and only requires prosecutorial consent if the referral is prior to entry of a sentence (Ga. Code Ann. § 15-1-17(2) 2017). Illinois allowed a prosecutorial veto over a veteran's participation in VTC, but a legislative amendment effective January 1, 2018, expressly eliminated that prosecutorial veto (730 Ill. Comp. Stat. 167/20 2018). Michigan allows a prosecutorial veto if a veteran is referred to a VTC under a delayed sentence, deferred entry of judgment, or deviation from sentencing guidelines (Mich. Comp. Laws § 600.1205(2) 2017). Washington expressly provides that a prosecutor cannot prevent a court from imposing a treatment program as a sentencing condition (Wash. Rev. Code § 2.30.030(8) 2017).

Other states with VTC statutes do not provide for a prosecutorial veto (Colo. Rev. Stat. § 13-5-144 2017; Ind. Code Ann. § 33-23-16-10 2017; Me. Rev. Stat. Ann. § 433 2017; Mo. Rev. Stat. § 478.008 2017; R.I. Gen. Laws § 8-8-1.1 2017; S.C. Code Ann. § 14-29-10 2017; Tenn. Code Ann. § 16-6-101 2017; Utah Code Ann. § 78A-5-301 2017). These statutes, along with the Model Veterans Treatment Court Act, are fully consistent with the separation of powers doctrine and a prosecutor's VTC roles and responsibilities.

State statutes preserving a prosecutorial veto. Some states with VTC statutes have preserved a form of prosecutorial veto. Nevada allows a prosecutorial veto if a defendant is referred to a VTC and the underlying offense involved the use or threatened use of force or violence (Nev. Rev. Stat. § 176A.290(2) 2017). Florida provides that entry into a VTC must be based upon a sentencing court's assessment of a defendant's:

[C]riminal history, military service, substance abuse treatment needs, mental health treatment needs, amenability to the services of the program, the recommendations of the state attorney and victim, if any, and the defendant's agreement to enter the program" (Fla. Stat. Ann. § 394.47891 2017; italics added for emphasis).

Texas expressly requires prosecutorial consent to a veteran's participation in VTC (Tex. Govt. Code Ann. § 124.002 2017).

² Many states have generalized treatment court legislation. This article does not broadly analyze state treatment court statutes. This analysis is confined to veterans treatment court legislation.

Other states provide conflicting eligibility requirements. On the one hand, Mississippi’s statute requires “the attorney representing the state must consent to the defendant’s participation in the program” but also provides “[t]he court having jurisdiction over a person . . . shall have the final determination about whether the person may participate in the Veterans Treatment Court program” (Miss. Code Ann. § 9-25-1 2017). Louisiana also provides conflicting eligibility requirements. In one subpart of its statute, Louisiana expressly requires prosecutor approval before a veteran is eligible for VTC but in a later section provides that the “judge shall make the final determination of eligibility” (La. Rev. Stat. Ann. § 13:5366 2017). These statutes have not been challenged on separation of powers grounds.

RECOMMENDATIONS

Prosecutors play a crucial role in VTCs. Prosecutors perform a quasi-gatekeeper role, ensuring that a veteran convicted of a statutorily ineligible offense is not enrolled in a VTC. They must make recommendations to a sentencing court under statutory correctional and sentencing policies, including reasons supporting and opposing a veteran’s entry into a VTC. Prosecutors must ensure courts impose mandatory minimum sentences and argue whether an exception applies in a particular case.

As a treatment court team member, prosecutors must attend staff meetings and court hearings to facilitate information sharing, monitoring of participant compliance, and advocate for sanctions and incentives (Koozmin 2016). These roles and responsibilities are crucial to the success of a VTC. One comprehensive study revealed a 34 percent greater cost savings and 15 percent increase in graduation rates when prosecutors attended staff meetings (Carey, Finigan, and Pukstas 2008). In any VTC, a prosecutor must always advocate “on behalf of public safety, victim interests, and holding participants accountable for meeting their obligations in the program” (National Association of Drug Court Professionals 2015, 40). Each of these prosecutorial functions follows VTC best practices and a VTC prosecutor’s core competencies.

VTC judges and prosecutors must collaborate with other team members to adopt written objective eligibility and enrollment criteria. For instance, if a VTC adopts a written requirement that sex offenders are ineligible for a VTC program, then a prosecutor need not veto such an offender because the team has agreed upon the objective criteria rejecting that veteran. The adoption of evidence-based, objective eligibility and enrollment criteria and elimination of prosecutorial veto power also shields VTCs and prosecutors from equal protection, due process, discrimination, and other constitutional challenges (Cook v. Butler 2015; Krauel v. Florida 2008; People v. Webb 2011).

Treatment court best practices make clear that treatment courts are:

first and foremost courts, and the fundamental principles of due process and equal protection apply to their operations. Drug courts have an affirmative legal and ethical obligation to provide equal access to their services and equivalent treatment for all citizens. (National Association of Drug Court Professionals 2015, 12)

Utilization of a prosecutorial veto not only undermines the fundamental goals of all treatment courts and VTC best practices, but it clearly violates constitutional separation of powers when utilized during the post-plea, post-adjudication, or probation revocation stage of proceedings. Eliminating such veto power from VTC legislation and a court’s policies and procedures safeguards the constitutional separation of powers and furthers the underlying VTC principles of fairness and equality.

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