

Innovative Justice: Federal Reentry Drug Courts—How Should We Measure Success?¹

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TO BE INNOVATIVE is to introduce new, advanced, and original ideas—to be creative in thinking and approaching challenges.² In the context of perhaps the biggest current challenge in the criminal justice system, to innovate is to do something different than what has been done for decades when dealing with non-violent drug offenders; the historic approach has been to simply incarcerate, and to incarcerate for increasingly lengthy periods of time. In the late 1980s, however, during the height of the crack cocaine epidemic, state courts began to experiment with a different approach, and the first “drug court” was established in Miami, Florida.³

Drug courts are special court dockets featuring an interdisciplinary team and designed to bring treatment resources and techniques to bear in addressing issues confronting offenders suffering from substance abuse disorders. The drug court judge serves as the leader of the team, which usually includes representatives from the prosecutor’s office, the public defender’s office, a probation or community supervision officer, and a substance abuse and mental health treatment provider.⁴ Other

special court dockets, often referred to as “problem-solving courts,” have evolved from the drug court model. Problem-solving courts include juvenile drug courts, family drug courts, reentry courts, and veterans’ courts.⁵ Problem-solving courts are, like drug courts, designed to promote public safety and stabilize communities in order to resolve personal and social problems presented by individuals involved in the criminal justice system.⁶

Communities in the United States currently face levels of drug abuse and addiction, and corresponding incarceration rates, that are truly staggering. Opioids alone account for nearly 100 overdose deaths every day in the United States, and overdoses of all drugs claimed more lives in 2015 than car accidents and gun violence.⁷ In 2016 the federal system handled 67,742 criminal cases across ninety-four judicial districts.⁸ Drug crimes made up the single largest statistical category among all federal offenses in 2016, accounting for 31.6 percent.⁹ Offenses related to methamphet-

amine account for 30.8 percent of these cases, followed by marijuana (24.1 percent), powder cocaine (18.0 percent), heroine (13.1 percent), crack cocaine (7.1 percent), and “other” drugs (mostly prescription opioids) (6.9 percent).¹⁰ The population of federal offenders in 2016 was overwhelmingly male (86.2 percent), and their average age was 37.¹¹ Just below half of the overall federal offender population (46.7 percent) had not completed high school at the time of the commission of their offense.¹²

The vast majority of federal offenders in 2016 (97.3 percent) pleaded guilty. Of those convicted in the federal system that year, 87.5 percent received a sentence composed of prison only, while 7.3 percent received probation, and the remainder received some form of split sentence (a combination of prison and community supervision).¹³ Sentences for drug offenders varied based on the type of drug involved, the specific criminal conduct, and the criminal history of offenders. For the second consecutive year crack cocaine was not the most severely punished drug offense, being eclipsed by methamphetamine with an average length of imprisonment of 90 months.¹⁴ The average length of imprisonment for offenders in cases involving

¹ A version of this article is posted on the Duke Law Scholarship Depository of Duke University School of Law.

² Innovative, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/innovative> (last visited May 4, 2017).

³ Marlowe, et al., *Painting the Current Picture: A National Report on Drug Courts and Other Problem Solving Courts in the United States*, NAT’L DRUG COURT INST. AT 13 (2016).

⁴ *Id.*, at 11.

⁵ *Id.*, at 12.

⁶ Matthew G. Rowland, *Assessing the Case for Formal Recognition and Expansion of Federal Problem-Solving Courts*, Fed. Probation, December 2016, at 3.

⁷ Alice Park, *The Life of an Addict*, Time, Nov. 20, 2017.

⁸ This number is dwarfed by the total number of criminal cases per year handled by state courts. For instance, in 2010 state courts had 20.4 million incoming criminal cases. LaFountain, et al., *Examining the Work of State Courts: An Analysis of 2010 State Court Caseloads* (National Center for State Courts 2012), at 3.

⁹ U.S. Sentencing Comm’n, *Overview of Federal*

Criminal Cases, Fiscal Year 2016, p. 2.

¹⁰ *Id.*, at 5-7.

¹¹ *Id.*, at 3.

¹² U.S. Sentencing Comm’n, *2016 Sourcebook of Federal Sentencing Statistics*, Table 8.

¹³ U.S. Sentencing Comm’n, *Overview of Federal Criminal Cases, Fiscal Year 2016*, p. 4-5.

¹⁴ *Id.*, at 7.

crack cocaine was 84 months, and marijuana offenders had the lowest average terms at 28 months.¹⁵ The vast majority of these cases involved the manufacture, sale, or transportation of drugs, while a relatively small number (1,884 cases) involved simple possession.¹⁶ Weapons were involved in 17.6 percent of all federal drug offenses.¹⁷

Most federal offenders (81.3 percent) sentenced to imprisonment in 2016 were also sentenced to serve a period of supervised release after completion of their term of imprisonment.¹⁸ Supervised release can be characterized as a kind of post-release probation, with certain supervision conditions imposed on the releasee as part of the overall sentence. The average length of supervised release imposed was 47 months.¹⁹ A 2016 study which tracked federal offenders released in 2005 indicates that prior federal offenders recidivate at an alarming pace: 49.3 percent were rearrested within 8 years of their release from prison.²⁰ Recidivism in the state system has been reported to be significantly higher, as much as 68 percent within three years of release from prison.²¹

It is against this backdrop that drug courts and other problem-solving courts do their work. But are drug courts effective? Are they worth their cost in money and other resources? Studies indicate that the answers to these questions differ somewhat for the state and federal systems, with state drug courts generally achieving more positive numbers viewed from the metric of recidivism.

To be sure, there are some generally applicable, fundamental differences between state and federal drug courts—state programs are typically “front-end” oriented, diverting a defendant to the program before a final judicial disposition of his underlying charge while federal programs are mostly “back-end” oriented, and deal with defendants post-conviction and after release from a period

of incarceration. Federal programs therefore typically focus on the offender’s reentry into the community. Despite their differences, state and federal programs are most often evaluated on the same criteria: their effect on recidivism rates. But are metrics other than recidivism worth considering? Should the perceptions of those on the front lines—the participants and administrators of these programs—be considered regarding whether they are worthwhile?

To address these questions, in this article I will explore the development of drug courts and other problem-solving courts in the United States and examine the most common organizational and functional models of those courts. I will sample the literature regarding effectiveness of specialized courts, both in terms of their impact on recidivism and cost-effectiveness. Discussion of federal programs will include a more detailed look at the reentry drug court program in the United States District Court for the Western District of Oklahoma in which the author is directly involved—the Court Assisted Recovery Effort, or “CARE.”

To test the perceptions of those on the front lines of federal reentry programs, surveys were conducted of past federal drug court program participants and staff members regarding their perceptions about the benefits and drawbacks of the programs.²² The design and implementation of the surveys will be discussed. Survey data will be compiled and analyzed, and findings and conclusions discussed. Finally, information gleaned from the surveys will be advanced as an additional metric for consideration in the evaluation of the effectiveness of federal reentry courts and their place within our system of justice.

I. Background and Structure

The first drug court was born of necessity in Miami, Florida in the midst of the cocaine epidemic in 1989.²³ Such innovative programs were a judicial response to overcrowded court dockets and a seemingly

revolving courthouse door for non-violent offenders repeatedly prosecuted for drug-related offenses, or offenses fueled by drug addiction.²⁴

Since their inception, drug and other problem-solving courts have spread rapidly across the country. By the end of 2014, there were 3,057 drug courts in the United States throughout the state judicial systems—a 24 percent increase since 2009.²⁵ In the federal system, problem-solving courts, primarily in the form of drug reentry courts, got off to a slower start. The first such programs emerged in the federal courts in the early 2000s, and by 2008 there were reentry court programs in twenty-one federal districts.²⁶ By 2011 the number of federal drug courts had grown to forty-five.²⁷ Although federal reentry courts reflect significant variation from district to district, most are drug courts focused on offenders with high criminogenic risks and needs.²⁸ The archetype participant suffers from drug and/or alcohol abuse or addiction, is in need of mental health treatment, and often has experienced significant trauma.²⁹ Common challenges to reentry include lack of stable housing, minimal or no social support system, limited vocational experience, and transportation obstacles.

Although the structure of drug reentry courts varies, common characteristics mark most programs. The program team normally consists of representatives from the probation office, the prosecutor’s office, the public defender’s office, and a treatment specialist.³⁰ This group is usually led by a judge, who presides at monthly or bi-monthly court proceedings. The team works collaboratively to provide incentives for positive behavior, and

¹⁵ *Id.*; see also U.S. Sentencing Comm’n, *2016 Sourcebook of Federal Sentencing Statistics*, Figure J, p. 5-116.

¹⁶ *Id.*, at 5.

¹⁷ *Id.*, at 6.

¹⁸ *Id.*, at 5.

¹⁹ *Id.*

²⁰ U.S. Sentencing Comm’n, *Recidivism Among Federal Offenders: A Comprehensive Overview* (2016), p. 5.

²¹ Matthew G. Rowland, *Assessing the Case for Formal Recognition and Expansion of Federal Problem-Solving Courts*, Fed. Probation, December 2016, at 12.

²² It should be noted that the federal reentry programs that participated in the survey do not all share the same emphasis on substance abuse and addiction. Some of the programs *require* as an offender characteristic a serious history of substance abuse in order to participate in the program; others do not require such a characteristic, but neither do they disqualify such an offender from participation in the program.

²³ Marlowe, et al., *Painting the Current Picture: A National Report on Drug Courts and Other Problem Solving Courts in the United States*, NAT’L DRUG COURT INST., 2016, AT 13 (2016).

²⁴ National Association of Drug Court Professionals, National Drug Court Institute, *The Drug Court Judicial Benchbook*, (2017), at 1.

²⁵ Marlowe, et al., *Painting the Current Picture: A National Report on Drug Courts and Other Problem Solving Courts in the United States*, NAT’L DRUG COURT INST. AT 7 (2016).

²⁶ Comm. on Criminal Law of the Judicial Conference of the U.S., *Judge-Involved Supervision Programs in the Fed. System: Background and Research* (January 2017), at 1.

²⁷ Hon. Joan Gottschall & Molly Armour, *Second Chance: Establishing A Reentry Program in the Northern District of Illinois*, 5 DePaul J. for Soc. Just. 31 (2011), at 40.

²⁸ Hon. Laurel Beeler, *Federal Reentry Courts and Other New Models of Supervision*, Fed. Law., March 2013, at 56.

²⁹ *Id.*, at 56.

³⁰ *Id.*, at 57.

sanctions for violations of program rules and other negative behavior.³¹ These programs are typically voluntary. Normally, the main motivation and incentive for participation in the program is the prospect of reduction of the participants' remaining term of supervised release or probation.³²

Drug courts are thought to be most effective when they adhere to the ten "Key Components" established by the National Association of Drug Court Professionals ("NADCP") in 1997.³³

The Key Components are:

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

The Key Components were developed by a diverse group of drug court practitioners and experts, organized by the NADCP, and were intended to provide guidance for best practices, designs, and operations for adult drug courts.³⁴

The reentry drug court in the United States District Court for the Western District of Oklahoma—the Court Assisted Recovery Effort ("CARE")—substantially mirrors the common drug court structure and generally adheres to the Key Components. The CARE team is led by a district or magistrate judge,³⁵ and includes a representative from the district's United States Attorney's Office, Federal Public Defender's Office, United States Probation Office, and a treatment specialist under contract with the United States Probation Office. Participation is voluntary and is made up entirely of prior offenders on supervised release or probation. Participants in CARE must have a history of drug or alcohol addiction, but serious mental health issues and a substantial history of violent crime are disqualifying characteristics.³⁶

The CARE program holds court proceedings twice per month. The program is composed of four phases—participants in phases 1 and 2 are required to attend both monthly sessions, while those in phases 3 and 4 attend only the first session of each month.³⁷ Requirements such as attendance at twelve-step or similar addiction programs and performance of community service increase as a participant moves through the program phases, while frequency of drug testing often decreases with longer periods of confirmed sobriety. The CARE team holds a staff meeting prior to each court session, during which information regarding the status of each participant is exchanged, any violations of program rules or other misconduct are discussed, potential sanctions for violations are explored, and incentives for achievements are determined.

During the CARE court proceedings, participants are seated in the jury box, the presiding judge is at the bench, and CARE team members are seated at a table for counsel in the courtroom. Participants are called to the podium one by one, and the presiding judge and team members ask questions and invite comments regarding the participants' current status. Any matters of misconduct are

addressed at that time, and any sanction for such misconduct is imposed by the presiding judge. Almost always the sanction imposed has been previously discussed with the team and is the product of team consensus. Sanctions range from oral admonitions, writing requirements, and short-term jail sanctions, to termination from the program, with numerous intermediate sanction possibilities along the scale.³⁸ Incentives and rewards run the spectrum of de minimis value gift cards, oral praise, phase advancement, and, ultimately, graduation and potential reduction of the remaining term of supervised release.³⁹

Participation in CARE is voluntary, although some participants are motivated to enter the program in an attempt to avoid possible revocation of supervised release due to noncompliance while on standard supervision. The CARE program normally has between 10 and 15 participants, and is limited to no more than 15 participants by the controlling program document.⁴⁰ This small number of participants is typical of federal reentry courts, and is often a ground for criticism of such "back-end" programs, as they reach only a small segment of the target offender population and fail to achieve economies of scale.

II. Effectiveness of Drug Courts and Reentry Programs

The National Drug Court Institute ("NDCI"), in its 2016 report, declared "[t]he verdict is in: drug courts work..."⁴¹ The NDCI report reviews "[a]t least nine meta-analyses, systematic reviews, and multisite studies conducted by leading scientific organizations" in support of the conclusion that adult drug courts significantly reduce criminal recidivism—usually measured by rearrest rates over at least two years—by an average of approximately 8 percent to 14 percent.⁴² The report goes on to assert that the effects of drug courts lasted for at least three years after participants left the

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Marlowe, et al., *Painting the Current Picture: A National Report on Drug Courts and Other Problem Solving Courts in the United States*, NAT'L DRUG COURT INST. AT 14 (2016).

⁴² *Id.*, at 15. The NDCI report defines "meta-analysis" as an "advanced statistical procedure that yields a conservative and rigorous estimate of effects of an intervention...statistically averaging the effects of the intervention across...good-quality studies." *Id.*, at Note 1.

³¹ *Id.*

³² *Id.*

³³ Drug Cts. Program Off., U.S. Dep't of Just., *Defining Drug Courts: The Key Components* (1997).

³⁴ Drug Cts. Program Off., U.S. Dep't of Just., *Defining Drug Courts: The Key Components* (1997), p.3.

³⁵ The author has presided over the CARE program in the Western District of Oklahoma since 2012, with the indispensable assistance of Magistrate Judge Suzanne Mitchell and Magistrate Judge Shon Irwin, as well as USPO Katherine Fye, who also assisted in coordination with other probation offices for districts which participated in this study.

³⁶ CARE Program Governing Document (revised May 2015), on file with author.

³⁷ *Id.*

program, with one study finding that effects on recidivism lasted 14 years.⁴³ Moreover, citing a multisite evaluation, the NDCI report asserts drug courts reduce crime, significantly reduce illicit drug and alcohol use, improve participants' family relationships, and increase participants' access to financial and social services.⁴⁴ The report also asserts that drug courts are cost effective, claiming an average return on investment of about \$2-\$4 for every \$1 invested.⁴⁵

Despite the positive returns cited by the NDCI, other organizations have reached conflicting conclusions. For instance, the Drug Policy Alliance stated in 2014 that the available evidence shows drug courts "are no more effective than voluntary treatment, do not demonstrate costs savings, reduce criminal justice involvement, or improve public safety..."⁴⁶ Similarly, the Open Societies Foundation concluded drug courts have had no impact on incarceration rates and time in custody.⁴⁷ Moreover, a 2011 Government Accountability Office review of 260 drug court studies found that less than 20 percent of the studies employed sound social science principles.⁴⁸

The Committee on Criminal Law of the Judicial Conference of the United States in a 2017 report notes promising findings regarding the effectiveness of drug courts when they adhere to the Key Components, but observes that "[d]espite research finding that drug courts are generally effective, particularly when implemented with certain components, variations in how they determine eligibility, provide substance abuse treatment, supervise participants, and enforce compliance complicate evaluations of their effectiveness."⁴⁹ Citing a 2010 report of the Congressional Research Service, the Committee states that

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Rowland, *Assessing the Case for Formal Recognition and Expansion of Federal Problem-Solving Courts*, Fed. Probation, December 2016, at 3.

⁴⁷ *Id.* Rowland observes that the Open Societies Foundation relied on the same type of statistical analysis as the National Association of Drug Court Professionals to support the NADCP's positive conclusions.

⁴⁸ *Id.*, at 10-11.

⁴⁹ Comm. on Criminal Law of the Judicial Conference of the U.S., *Judge-Involved Supervision Programs in the Fed. System: Background and Research* (January 2017), at 4.

the findings of numerous drug court program evaluations have been as varied as the drug courts themselves.⁵⁰ The Committee further notes program "implementation challenges," such as taking advantage of economies of scale, continuing training for team members, and dependence on so-called "innovator judges" who provide dynamic leadership at the inception of drug court programs. In this regard, the Committee noted that although such judicial leadership is critical to success of a program early on, drug courts experience difficulties maintaining viability when the innovator judge moves on.⁵¹

In 2016 the Federal Judicial Center (FJC) released its report on the multi-year evaluation of five federal model reentry court programs; the study was conducted at the request of the Judicial Conference Committee on Criminal Law.

The participating volunteer federal districts

⁵⁰ *Id.*

⁵¹ *Id.*, at 5. The notion, however, that involvement of a judge is an essential ingredient for success is debatable, at least in back-end reentry drug court programs. The multi-year Federal Judicial Center study of reentry programs, discussed more *infra.*, found that the judge-involved programs performed no better than programs led by probation officers, nor did those offenders out-perform the group of offenders on standard supervision. Although not in the context of a drug court program, the author's experience in a judge-involved supervision program in the Western District of Oklahoma lends some support to the FJC findings.

Over a five-year period, the author met with offenders shortly after their release from prison, at the time of the commencement of their terms of supervised release. Information developed with the assistance of the United States Probation Office for the Western District of Oklahoma was conveyed to each offender in an informal setting; the information related to strategies for success on supervised release (prevention of recidivism). A follow-up letter was sent to each offender who remained in compliance with conditions of supervised release six months after the initial judicial meeting. At the end of the five-year period, 103 members of the experimental group (offenders who attended a judicial meeting) were compared to a control group of 40 offenders (offenders transferred into the district during the five-year period but who did not take part in a judicial meeting). The experimental group was also compared to offenders in cases handled by the other judges in the district who did not hold post-release judicial meetings. Although study limitations were noted, the experimental group experienced supervised release revocations at a rate slightly higher than the comparison groups. Thus, there was no demonstrable positive impact on revocation rates as a result of the experimental judge-involved program. John Williamson, *Five-Year Report on Judicial Meetings* (2017), on file with the author.

agreed to start, or restart, a reentry program in compliance with a model developed by the Administrative Office of the U.S. Courts' Probation and Pretrial Services Office.⁵² Among other features, each district's experimental program involved two variants: a reentry team led by a federal district or magistrate judge, and a reentry team without a judge member but led by a probation officer.⁵³ The comparison group (control group) was composed of offenders on standard post-conviction supervision.⁵⁴ Eligible participants were randomly assigned into one of the three groups.⁵⁵

The programs generally adhered to the common characteristics of problem-solving courts discussed above, except for the no-judge variant programs. Eligibility criteria eliminated offenders who had a violent or sex crime conviction; a Risk Predication Index score of 2 or lower; fewer than 24 months remaining on their term of supervision; a mental health condition which precluded effective participation; and a residence prohibitively distant from the location of program services.⁵⁶

The FJC report included the following findings:

- Participating districts had difficulty maintaining fidelity to the program model, although there was sufficient fidelity to justify analyses of the combined program sites;
- Among participants in the model programs, completion or graduation rates averaged between 50 percent and 60 percent.
- After 24 months post-release from prison, there was no statistically significant difference in the revocation rates between reentry program participants and offenders assigned to the standard supervision groups, nor was there a significant difference between judge-led groups and probation officer-led groups; and
- Based upon the lack of a statistically significant difference in outcomes for program participants and offenders in the standard supervision groups, the model reentry

⁵² David Rauma, *Evaluation of a Federal Reentry Program Model*, Federal Judicial Center (May 2016), at 4.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* Note that participants initially assigned to a reentry program group were able to refuse to participate in the program, and many did refuse—almost 60 percent.

⁵⁶ *Id.*, at 7.

programs were not cost effective.⁵⁷

The FJC study has received some criticism, as have other studies of the effectiveness of problem-solving courts. For instance, the reentry programs' failure to strictly adhere to all aspects of the model, and lack of incentives sufficient to attain more interest and involvement in the programs, have garnered criticism.⁵⁸ Still, the FJC study has no doubt taken some of the wind out of the sails of federal reentry programs. Independent studies of particular federal reentry programs have also produced mixed results.⁵⁹ But the focus of these studies, as with the FJC study, was the impact of the programs on revocation and recidivism rates. This is understandable—these metrics are readily subject to quantification and allow for straightforward comparisons between experimental and control groups. There are however, other metrics by which success can be evaluated; the FJC study itself points to a few—employment, sobriety, and quality of life.⁶⁰ Missing from this list, however, are important considerations regarding the *perceptions of value* by those directly involved in federal reentry drug courts and other reentry programs—the participants and program staff members.

III. Participant and Staff Member Surveys

The focus of the impact of federal reentry court programs on recidivism ignores the perceptions of value and effectiveness of these programs on the front lines: perceptions of participants that the court programs provide them with important tools to help sustain sobriety, improve decision-making, gain and maintain employment, and improve social relationships. These perceptions often in turn positively affect views regarding the fairness and effectiveness of the justice system. Such considerations form a part of what has been described as the building and improvement of

“social capital” which aids the reentry process.⁶¹

Moreover, the views of reentry court staff—judge, prosecutor, defense counsel, probation officer, service provider, and others—also deserve serious consideration in the evaluation of the effectiveness and value of reentry court programs. These programs are typically staffed by experienced criminal justice practitioners who have seen many rehabilitative initiatives come and go over the years, and who are uniquely qualified to judge the impact of reentry programs from a front-lines vantage point.

To get at these views and perceptions, a qualitative approach was employed using separate written surveys for past reentry court program participants, and program staff members (past and present).

A. Research Design

Surveys were sent to past drug reentry court participants no longer subject to federal supervision. This group included program graduates, participants who did not complete the program because their term of supervised release expired prior to graduation, and participants who withdrew or were terminated from the program. The limitation of surveyed individuals to those no longer subject to federal supervision was necessary to ensure that responses were not affected by an offender's desire to remain on good terms with his or her probation officer or fear that candid responses could impact potential action by the court. All survey responses were anonymous.

The past participant survey consisted of nine questions, with a tenth question inviting further, optional comments by the respondent. The questions included a 1-to-5 scale, with 1 corresponding to a “strongly disagree” response, and 5 corresponding to a “strongly agree” response. Past participants were asked the following questions:

1. The court program gave me tools I needed to support my sobriety.
2. The court program, for me, was better than regular supervision by the Probation Office.
3. The court program was not helpful because it put me with others who had more serious drug problems than I did.
4. The involvement of a judge is an important part of the program.
5. Being in the court program helped me

make the transition from prison back into the community.

6. The court program was not worth the time and effort involved for me to participate.
7. I am glad I took part in the program.
8. I would recommend the court program to others.
9. Because of the court program, I feel better about the criminal justice system.
10. Additional comments (optional).

These questions were designed to test attitudes regarding the value of the court programs in general, as well as beliefs regarding specific aspects of the programs. For instance, because the FJC study indicated that offenders on standard supervision fared as well as those in the model reentry programs, question number 2 sought to gauge whether participants felt the more intensive supervision afforded by the program was better suited to their needs than standard supervision.⁶² Similarly, the FJC study found that participants in probation officer-led programs had outcomes comparable to those in judge-led programs. Question number 4 targeted whether participants view the involvement of a judge as an important aspect of the court program. And question number 9 tested an important intangible effect—whether participation in the court program improves participants' perceptions of the criminal justice system.

The staff member survey consisted of ten questions, with an eleventh question inviting further, optional comments by the respondent. Like the past participant survey, the questions included a 1-to-5 scale, with 1 corresponding to a “strongly disagree” response, and 5 corresponding to a “strongly agree” response. As with the past participant survey, all responses were anonymous. Staff members were asked the following questions:

1. The court program effectively meets an important need in connection with the reintegration into the community of offenders with serious substance abuse issues.
2. The results achieved by the court program are not worth the cost in time, money, and other resources required to conduct the program.
3. As compared to my other professional activities, my work with the

⁵⁷ David Rauma, *Evaluation of a Federal Reentry Program Model*, Federal Judicial Center (May 2016), at p. 1-3, 30, 41.

⁵⁸ Matthew G. Rowland, *Assessing the Case of Formal Recognition and Expansion of Federal Problem-Solving Courts*, Fed. Probation, December 2016, at 3.

⁵⁹ Comm. on Criminal Law of the Judicial Conference of the U.S., *Judge-Involved Supervision Programs in the Fed. System: Background and Research* (January 2017), at 13-16.

⁶⁰ David Rauma, *Evaluation of a Federal Reentry Program Model*, Federal Judicial Center (May 2016), at p.3.

⁶¹ Daniel M. Fetsco, *Reentry Courts: An Emerging Use of Judicial Resources in the Struggle to Reduce the Recidivism of Released Offenders*, 13 WYO. L. REV. 591 (2013), at 596-597.

⁶² Noteworthy here is that most reentry court participants experience some period of standard supervision before being admitted into a reentry program, thus giving them a unique ground for comparison of the different levels of supervision.

court program is/was some of my most important professional work.

4. As compared to my other professional activities, my work with the court program is/was some of my most fulfilling professional work.
5. The concept of the court program should be expanded to address other offender populations beyond those with serious substance abuse issues.
6. The goals of the court program can be achieved just as effectively with standard supervision only.
7. The court program over-supervises its participants.
8. Over-supervision in the court program has unintended negative impact on participants.
9. The court program makes the community a safer place.
10. The court program improves the public perception of the criminal justice system.
11. Additional comments (optional).

Like the participant survey questions, the questions for program staff tested general attitudes and beliefs about the effectiveness and value of such programs, and also went to specific areas of interest. For example, question number 2 is directed at the perceived cost effectiveness of the programs; the FJC study concluded that the model reentry programs were not cost effective. Questions 3 and 4 explored staff members' subjective assessment of the relative importance and meaningfulness of their work in the programs as compared to their other professional duties. Questions 7 and 8 measured opinions regarding whether participants are over supervised. Question number 10 goes to beliefs about the effect of the programs on the public perception of the criminal justice system, and offers a direct comparison with question number 9 of the past participant survey.

B. Participating Reentry Court Programs

Reentry court programs in six federal districts participated in the research: Western District of Oklahoma (Oklahoma City and Lawton locations); District of Utah; District of Nevada; Eastern District of Virginia; District of New Jersey (Camden)⁶³; and the Northern

District of Alabama. Other than the District of New Jersey (Camden) as noted, all of the programs either expressly required a history of drug or alcohol addiction in order to participate or did not exclude participants based on that characteristic.

The reentry drug court in the Western District of Oklahoma was described in detail above. The court program in the District of Utah is modeled on traditional state drug courts, but, as with most other federal programs, is a "back-end," post-conviction program. The program is in its eleventh year and operates with a typical interdisciplinary team led by a presiding judge. The program is designed to take at least twelve months to complete all four phases, but the average time to completion is almost eighteen months. Participants are generally high-risk, high-needs offenders, with serious substance abuse issues.⁶⁴

The District of Nevada's Court Led Efforts at Recovery ("CLEAR") program is a cooperative effort between the district court, the Probation Office, the Federal Defender's Office, and the U.S. Attorney's Office. The goal of the program is to address substance dependency and recidivism, and to break the cycle of addiction and criminal behaviors. The program requires a documented history of substance abuse in order for an offender to participate. The program is voluntary and requires at least one year to complete. CLEAR adheres to the familiar drug court model, and serves a high-risk offender population. As with the other programs here, it is a post-conviction program for offenders serving a term of supervised release.

The program operated by the Eastern District of Virginia is known as "SCORE"—Second Chance Offender Rehabilitation Effort. The program consists of five phases, with a stated mission to "provide the means, opportunity, and inspiration for substance abusers to achieve and self-sustain a productive, more meaningful life for themselves." The first four phases of the program involve active substance abuse treatment among other requirements; the fifth, "transitional" phase involves support network meetings and random urinalysis testing.

The Court Assisted Reentry Effort

("CARE") in the Northern District of Alabama is a voluntary program for moderate to high-risk offenders serving terms of supervised release. Its team is composed of two judges, and two representatives each from the U.S. Attorney's Office, the Federal Public Defender's Office, and the Probation Office. The program length is two years—one year of regular CARE court appearances, and one year of standard supervision.

C. Implementation of the Research Design

Each participating district designated a coordinating United States Probation Officer ("USPO") tasked with identifying qualifying past participants and staff members to receive surveys. The requested number of survey packets for each group was mailed to the coordinating USPO. A survey packet included a consent form, the survey questions, and a self-addressed and stamped return envelope, all contained within a stamped mailing envelope which the coordinating USPO addressed using the recipient's last known mailing address. Completed surveys were returned directly to the Western District of Oklahoma and this author—the coordinating USPOs were not required to gather and return surveys.

A significant number of past participant surveys were returned by the Postal Service as undeliverable due to incorrect addresses. This was not unexpected in light of the lack of stable housing experienced by many in the offender population, and because the surveyed group included only those no longer subject to federal supervision. The United States Probation Office does not formally attempt to maintain current addresses for prior offenders no longer subject to active federal supervision. In some cases where particularly large numbers of undeliverable surveys were returned, coordinating USPOs were allowed to attempt a second mailing if more up-to-date address information could be obtained.⁶⁵

Completed surveys were organized by district and group (i.e., past participant or staff member), and the survey results are set forth in the next section. Overall survey results, and district-specific results, were shared with each participating district.

⁶³ The District of New Jersey (Camden) is a reentry program but is not a drug court, as it excludes offenders with a history of drug or alcohol addiction. Thus, some survey questions were inapplicable to respondents from that district. Further, that district currently has no past participants who are no

longer on federal supervision, so it only participated in the staff member survey. For these reasons, the survey results for this program are not included in the analysis of results for the remaining districts, but are reported separately herein.

⁶⁴ Program descriptions are on file with the author.

⁶⁵ For example, of the 50 past participant surveys mailed in the Western District of Oklahoma, 18 were returned by the Postal Service as undeliverable, and 9 responses were received, for a response rate of 18 percent when considering the total number mailed.

D. Survey Results⁶⁶

1. Participant survey

Responses were received from past participants in all five judicial districts surveyed. A total of 23 responses were received out of 125 surveys mailed, for a response rate of 18 percent. As previously noted, a large number of surveys were returned as undeliverable—28 across all participating districts. As shown with respect to response scores from the individual judicial districts, *infra*, response scores were fairly consistent across all the surveyed districts.

The average scores on the participant survey were:

1. The court program gave me tools I needed to support my sobriety.

Average Score: 4.36 (1=strongly disagree – 5=strongly agree)

2. The court program, for me, was better than regular supervision by the Probation Office.

Average Score: 4.57 (1=strongly disagree – 5=strongly agree)

3. The court program was not helpful because it put me with others who had more serious drug problems than I did.

Average score: 1.58 (1=strongly disagree – 5=strongly agree)

4. The involvement of a judge is an important part of the program.

Average score: 4.91 (1=strongly disagree – 5=strongly agree)

5. Being in the court program helped me make the transition from prison back into the community.

Average score 4.32 (1=strongly disagree – 5=strongly agree)

6. The court program was not worth the time and effort involved for me to participate.

Average score: 1.16 (1=strongly disagree – 5=strongly agree)

7. I am glad I took part in the program.

Average score: 4.75 (1=strongly disagree – 5=strongly agree)

8. I would recommend the court program to others.

Average score: 4.77 (1=strongly disagree – 5=strongly agree)

9. Because of the court program, I feel better about the criminal justice system.

Average score: 4.06 (1=strongly disagree – 5=strongly agree)

1.1 Individual comments

Individual comments from the participant survey responses were overwhelmingly positive. A sampling follows:

“The biggest thing I learned from Drug Court was that their [sic] are people who care and not just their [sic] to punish you.”

“I’ve spent over 20 yrs in state & federal prison, due to my alcohol & drug abuse—it has always been a revolving door for me since entering youth corrections at the age of 17.... If it weren’t for this program I’d be in prison, or dead.... The weekly drug court sessions, and UAs really keep you focused. But it also gives you so many resources, to begin a life in the community, as a normal person! I got ID, a bank account, a home, a truck, a dog, a great paying job....I got a LIFE!”

“After being released from prison, I was headed back down the same path of alcohol & drugs. After finally agreeing to participate in the [court] program, I was able to begin to learn how to stay sober...[The court program] saved my life—LITERALLY.”

“I incorage [sic] others to participate in this life changing program.”

“The program changed my life. If it warnt [sic] for the program I would have been back in prison.”

“Being accountable taught me to respect myself and made me want to do the right thing. The praise and encouragement of the court team helped me become a stronger person. This program has changed my life....I’m very grateful.”

“The program was an excellent program that made many tools available for my long-term recovery....I credit this program for saving my life.”

“It has helped me to become the man I am today. Responsible, hard working, honest.”

“The drug program gave me my life back. It is a very good program and should be continued.”

“The key to the program is interacting

with the judge, DA, and the P.O. It made me feel like they actauly [sic] wanted me to succeed instead of thinking that their [sic] out to get me.”

“Yes, I would definetely [sic] reccomend [sic] this program to everyone. But, I also feel that the individual has to want to change in order for anything to work. I witnessed individuals just go through the motions and waste the judge and panel members time.”

“I would like to add that the program saved my life, it was a tough program but everything they had available to me helped me break free from years and years of pain.... My [court] team treated me like a human being, not like a criminal. ...I’ve been out of [the program] for almost 2 yrs and have been sober for 3!”

“This program works better than any re-hab out there because this program has what no other re-hab has and that is a judge involved in the program and has the power to send you to jail....”

“I am grateful I was part of [the program]. It was hard and nerve wrecking at times but it was well worth the effort.”

2. Staff member survey

Responses were received from past and present program staff members in all five judicial districts surveyed.⁶⁷ A total of 54 responses were received; the response rate of the various districts ranged from 60 percent to 87 percent. Again, response scores across the participating judicial districts were fairly consistent. The average scores on the staff member survey were:

1. The court program effectively meets an important need in connection with the reintegration into the community of offenders with serious substance abuse issues.

Average Score: 4.34 (1=strongly disagree – 5=strongly agree)

2. The results achieved by the court program are not worth the cost in time, money, and other resources required to conduct the program.

Average Score: 1.82 (1=strongly disagree – 5=strongly agree)

3. As compared to my other professional

⁶⁶ Completed surveys, and question-score tabulations, are on file with the author.

⁶⁷ As previously noted, staff member survey responses from the District of New Jersey, Camden, are reported separately, *infra*.

activities, my work with the court program is/was some of my most important professional work.

Average Score: 4.10 (1=strongly disagree – 5=strongly agree)

4. As compared to my other professional activities, my work with the court program is/was some of my most fulfilling professional work.

Average Score: 4.13 (1=strongly disagree – 5=strongly agree)

5. The concept of the court program should be expanded to address other offender populations beyond those with serious substance abuse issues.

Average Score: 4.08 (1=strongly disagree – 5=strongly agree)

6. The goals of the court program can be achieved just as effectively with standard supervision only.

Average Score: 1.62 (1=strongly disagree – 5=strongly agree)

7. The court program over-supervises its participants.

Average Score: 1.70 (1=strongly disagree – 5=strongly agree)

8. Over-supervision in the court program has unintended negative impact on participants.

Average Score: 1.84 (1=strongly disagree – 5=strongly agree)

9. The court program makes the community a safer place.

Average Score: 4.12 (1=strongly disagree – 5=strongly agree)

10. The court program improves the public perception of the criminal justice system.

Average Score: 4.17 (1=strongly disagree – 5=strongly agree)

2.1 Staff individual comments

Individual comments from the staff member survey responses were substantially positive, although some critical comments were made. A sampling follows:

“...([W]orking) one-on-one with people coming out of prison has been my most rewarding work as a judge....The “cost” is nothing because the work is priceless.”

“Over supervision is a problem. Most can’t do it all. Work, test, treatment, community service.”

“One measure of success is complete sobriety and no recidivism. And that should always be our goal. But there are

other more nuanced measures of success that should not be overlooked when considering what reentry programs are about and whether they are effective. Our drug court program helps people who have lived through a lot of trauma learn how to trust again, even if in a limited way. They learn how to see themselves as more than victims and as more than a collection of their worst actions.”

“I think that reentry courts should be expanded and improved. The staff needs regular training...the right staff member is key to having a good program.”

“Our program suffered from consistency issues; consistency in who was accepted into the program (high vs low risk) & consistency in following the guidelines of the program.”

“It is an expensive program in money and other resources, but lives were saved – I am convinced – and certainly lives were improved and it is difficult to put a price on those results.”

“My involvement in this program is one of the proudest achievements of my life as a lawyer.”

“The level of care & dedication to the participants is unsurpassed by any other agency staff I have worked with...I am immensely grateful for the time I had as a part of this amazing team & program!!!”

“Courts that do not have any programs like this are missing the boat and the reason we do what we do.”

“I believe the costs associated with having a high risk reentry court are worth it; however, I believe we could more efficiently achieve the same results with fewer reentry court team members.”

“...([B]ecause) participation is voluntary, few eligible supervisees enroll.”

“This program fills a niche not available through regular supervision.”

“We have strong success while participants are in the program. However, post-graduation we struggle.”

“I am in recovery (28 years) and understand that not all will get recovery, but the value of the 40-50 percent who do succeed is well worth the cost and effort. I also note that the drug court experience has a positive effect on the people who work there, they like seeing sick people get well, they are so used to seeing bad news, we love what we are doing.”

3. District-by-district response scores

3.1. Participant survey

a) District of Utah

Question#	Average Score
1	4.75
2	5.00
3	1.25
4	5.00
5	5.00
6	1.00
7	5.00
8	5.00
9	5.00

b) Northern District of Alabama

Question#	Average Score
1	4.00
2	5.00
3	1.00
4	5.00
5	4.00
6	1.50
7	4.00
8	4.50
9	3.50

c) Western District of Oklahoma

Question#	Average Score
1	4.55
2	4.55
3	2.33
4	4.55
5	4.28
6	1.33
7	4.77
8	4.88
9	4.50

d) Eastern District of Virginia

Question#	Average Score
1	4.50
2	4.33
3	1.33
4	5.00
5	4.33
6	1.00
7	5.00
8	5.00
9	3.83

e) District of Nevada

Question#	Average Score
1	4.00
2	4.00
3	2.00
4	5.00
5	4.00
6	1.00
7	5.00
8	4.50
9	3.50

3.2. Staff survey*a) District of Utah*

Question#	Average Score
1	4.08
2	2.33
3	3.75
4	3.75
5	3.83
6	1.58
7	2.00
8	2.25
9	3.91
10	4.08

b) Northern District of Alabama

Question#	Average Score
1	4.00
2	1.50
3	3.83
4	4.16
5	4.40
6	1.83
7	1.50
8	2.00
9	4.16
10	4.16

c) Western District of Oklahoma

Question#	Average Score
1	4.71
2	1.85
3	4.33
4	4.33
5	4.04
6	1.80
7	1.90
8	1.90
9	4.00
10	4.40

d) Eastern District of Virginia

Question#	Average Score
1	4.44
2	2.44
3	4.11
4	4.11
5	3.67
6	1.89
7	1.44
8	1.89
9	4.22
10	4.22

e) District of Nevada

Question#	Average Score
1	4.50
2	1.00
3	4.50
4	4.33
5	4.50
6	1.00
7	1.66
8	1.16
9	4.33
10	4.00

f) District of New Jersey (Camden)⁶⁸

Question#	Average Score
1	N/A
2	1.83
3	4.00
4	4.16
5	N/A
6	2.16
7	1.83
8	2.50
9	3.50
10	3.16

E. Discussion

The importance of a judge to the success of drug courts, and specifically, drug reentry courts, has been the subject of some debate. As mentioned, the FJC study found that participants in probation officer-led programs fared about the same as those in judge-led programs. But Question No. 4 of the participant survey testing attitudes regarding the involvement of judges in reentry programs generated the strongest positive response of any survey question—a 4.91 “strongly agree” average response that judges are an important aspect of the programs. This response is even more significant in light of the fact that

offenders’ typical experience involving a judge has, presumably, not been very positive from their perspective, especially in the federal system in which the trial judge determines all criminal sentences.

Three participant questions go to the issue of whether the court programs are more, or less, effective than standard supervision: Question Nos. 2, 6, and 7. Significantly, average responses to each of these questions strongly suggest that program participants believe the more intense supervision of the reentry programs over standard supervision was beneficial for them. Question No. 2 directly asks whether participants believed the court program, for them, was better than regular supervision by the probation office. The average response was 4.57. Similarly, Question No. 6 tests whether the program was worth the time and effort required to participate. That question, stated negatively, generated the strongest level of disagreement in the participant survey, 1.16. And Question No. 7, which simply states, “I’m glad I took part in the program,” had an average score of 4.75, an indication of strong agreement. Thus, despite the more intense level of supervision involved with the reentry court programs, participants strongly believe that it was better than standard supervision, it was worth the extra time and effort required of them, and they are glad they participated.

Two questions test beliefs about whether the reentry programs provide meaningful and effective tools and assistance for reintegration into the community. Question No. 1 goes to the effectiveness of the program in helping participants maintain sobriety. The average score was 4.36, indicating strong agreement that the programs provide needed tools to remain free of substance abuse. Likewise, Question No. 5, asking whether being in the program helped with the transition from prison to the community, garnered strong agreement at 4.32.

The notion that reentry programs over-supervise participants, leading to poor outcomes for lower risk offenders, is addressed by several questions in the participant survey. Question Nos. 2, 3, 6, and 7 all shed light on this issue from the participants’ perspective, but the most direct of these is Question No. 3, which stated “The court program was not helpful because it put me with others who had more serious drug problems than I did.” The average response (1.58) indicates moderately strong disagreement, 1.42 points below the neutral response point of 3.00. Average

⁶⁸ The staff member survey scores for the District of New Jersey (Camden) were not included in the overall average for participating districts because participants with serious substance abuse problems are disqualified from taking part in its reentry program.

responses to the other questions in this group strongly suggest program participants do not believe they were over-supervised.

Finally, two questions test whether the programs positively impacted the participants' perceptions of the criminal justice system, one directly and one indirectly. Question No. 8, with an average score of 4.77, reflects strong agreement that past participants would recommend the program to others, and Question No. 9 reflects moderately strong agreement (4.06) that the program has improved how they view the criminal justice system.

Results of the staff member survey correspond significantly to results of the past participant survey in several respects. For instance, program staff express moderately strong agreement that the programs effectively help offenders reintegrate into the community (Question No. 1, average score of 4.34), moderately strong disagreement that the programs are not worth their cost (Question No. 2, 1.82), and closely similar agreement that the programs improve perceptions of the criminal justice system (Question No. 10, 4.17). Likewise, staff responses reflect the opinion that participants are not over-supervised (*see* Question Nos. 7 and 8), and that the programs are superior to standard supervision at addressing issues of the target offender population (*see* Question No. 6).

Noteworthy in the staff member responses is how their level of satisfaction with the work they do in connection with reentry programs compares with that of their other professional duties. In Question No. 3, reentry court staff members expressed moderately strong agreement (average score of 4.10) that their work with the court program is some of their most important professional work, and in Question No. 4, they similarly expressed agreement (4.13) that such work is some of their most fulfilling professional work.

The optional comments from both surveyed groups, as sampled above, were positive, with those of the past participants overwhelmingly positive.

This study, while informative, was limited in several important respects. The sample size of the past participant group is particularly small; only 23 responses were received. The respondents in this group may also reflect a degree of self-selection. Although surveys were sent to past participants who failed to complete the programs as well as those who

graduated, common sense suggests that past participants who graduated were presumably more likely to respond, and more likely to hold positive views of the programs. Some validation of the participant responses, however, can be gleaned from the staff member survey responses; the staff members responded at a much higher rate, and presumably those respondents were somewhat less susceptible to problems of self-selection.

Future studies of this kind would benefit from efforts to simplify and enhance the process of obtaining feedback from past program participants. For instance, programs could conduct "exit interviews" of participants upon graduation or termination from the program. This technique, of course, is not without potential problems—past participants would likely provide negative views immediately following termination from the program as a result of the court's recent action. A better approach would be a concerted effort to maintain accurate contact information for past participants after their terms of supervised release expire. Such a database would substantially mitigate a major obstacle encountered in the present study: the low response rate from past participants as a result of numerous survey packets being returned by the Postal Service as undeliverable.

Despite the flaws of the study, it does reflect the views and perceptions of those most closely involved in federal reentry courts—the participants and program staff members—regarding whether such programs are effective and worthwhile. Significantly, participants in these "back-end" federal reentry courts have already been convicted of at least one serious offense, and typically have already completed a term of imprisonment, by the time they experience the reentry program. Many have been exposed to standard post-release supervision by the United States Probation Office for a period of time prior to their participation in the reentry program, and have also participated in drug abuse monitoring and treatment. They are not criminal justice "rookies," yet their survey responses lend strong support for federal drug reentry courts.

The same can be said for the views of court program staff. Reentry court teams typically have decades of combined criminal justice experience, and have seen numerous rehabilitative programs come and go. These professionals,

like the court program participants, voice strong support for federal reentry courts.

IV. Conclusion

The perceptions and beliefs revealed in this study—those of the people on the front lines of federal reentry drug courts—provide significant insight regarding the perceived effectiveness and positive impact of reentry courts. The voices which speak through the surveys in this study deserve to be heard in the ongoing debate concerning whether such programs should be continued, funded, and even expanded. Federal reentry courts represent one of the most significant and innovative efforts within the federal system to address the epidemic of drug abuse within the offender population and assist offenders to reintegrate into their communities. The perceptions and beliefs about the success and effectiveness of these programs held by those on the front lines should be among the metrics used to measure their worth, and should inform policy-makers when considering whether such programs should be encouraged, and formally funded, in the federal system.

The views of those on the front lines are also valuable for refining the methods and practices of currently operating federal reentry courts. For example, over-supervision of participants, although not revealed by this study as a substantial concern (average staff member response of 1.84 that over-supervision led to negative consequences), clearly should be considered by reentry courts as an area where improvement is needed. Reentry programs should consider alternative tracks for participants with significantly different risk prediction scores, tailoring the level of supervision to avoid over-supervising relatively low-risk participants.

Similarly, reentry programs that are probation officer-led, or that are considering evolving to such an approach, should be informed by the exceptionally strong participant agreement that the involvement of a judge is an important part of the reentry program (average score of 4.91). It is beyond debate that committed and effective participation by the U.S. Probation Office is essential to the success of a federal reentry court, but the coordinated and complementary contributions of probation officers *and* judges as members of the reentry court team provide an important dynamic for success.