Drug courts face obstacles on multiple levels. Three issues facing the Salt Lake County Third District Adult Felony Drug Court are examined: screening procedures, funding needs, and therapeutic jurisprudence. Sources used include a literature review of relevant issues and key informant interviews with selected individuals associated with the adult felony drug court program in the Salt Lake County Third District. Findings indicate that the Salt Lake County Third District Adult Felony Drug Court will likely benefit from 1) a screening emphasis on offenders with high criminogenic risks and high psychosocial needs, 2) continued funding from the State of Utah Legislature, and 3) a societal and institutional paradigm shift away from stigmatization regarding substance abuse and towards therapeutic jurisprudence.

INTRODUCTION

Drug courts are widely recognized as “the single most effective solution to the growing threat of substance abuse and addiction” (National Drug Court Institute [NDCI] n.d.). Nevertheless, there are numerous significant challenges facing the drug court program today. After briefly defining what a drug court is, I will address three of the issues which drug courts are currently facing: screening procedures, the need for legislative funding, and the advancement of therapeutic jurisprudence. An examination of these issues is important because they represent challenges facing the drug court program on several levels. If these challenges are properly addressed, the drug court program is likely to become more effective in rehabilitating substance abuse offenders. If these offenders can be rehabilitated, there should result an increase in public safety and a greater financial return on taxpayer dollars used to combat issues associated with the recidivism of substance abuse offenders.

WHAT IS A DRUG COURT?

The drug court program is intended to serve as an alternative to the seemingly ineffective strategies used to fight substance abuse related crimes, collectively known as “the war on drugs” (Hora, Schma, and Rosenthal, 1999; see also Cooper, 2007; Marlowe, 2007, August 23). The global phenomenon of drug court began in the United States in 1989 as a potential solution to the rising crime rates associated with substance abuse (NDCI, n.d.; see also Nolan Jr., 2001; Califano Jr., 2007). Drug courts combine the tools of the criminal justice system with the expertise of substance abuse treatment professionals. The abuse of drugs is perceived as a biopsychosocial disease which maintains that “biological, psychological, and social factors are deeply woven into the development of addiction” (Center for Substance Abuse Treatment, 1996). Drug treatment programs are utilized to help participants overcome their substance addictions. Criminal offenders who are admitted to drug court are constantly monitored by numerous agencies within the criminal justice system. Sanctions and rewards are administered by the judge (Manwaring, 2008, p. 9) and are based upon the individual’s performance as well as recommendations made by those agencies actively involved in tracking the participant’s program advancement. The ultimate goal of the drug court program is to provide participants with the ability to successfully manage their drug addictions and abstain from future recidivism.

The use of drug courts as a remedy to the growing threat of substance abuse has proliferated over the last two decades. Since the creation of the first drug court, over 2,000 additional courts have been instituted nationwide (Huddleston III, Marlowe, and Casebolt, 2008). The first drug court in Utah was implemented in 1996 (Fuchs, 2008a). As of August 2008, there were 33 active drug courts in Utah (BJA Drug
Court Clearinghouse Project, 2008). At any given time, over 70,000 participants are involved in drug court throughout the United States and its territories (Huddleston III, Marlowe, and Casebolt, 2008). Drug courts are being increasingly used nationwide to combat the pandemic of substance abuse related crime.

Notwithstanding the growing popularity of drug courts, the program is faced with challenges on several levels which threaten its sustenance and effectiveness. I have selected three issues which I believe represent the challenges faced by drug courts, namely the importance of screening participants for certain characteristics, the need for legislative funding, and the future of therapeutic jurisprudence.

**SCREENING**

**WHAT IS SCREENING?**
In order for drug courts to be most effective they must utilize a competent screening strategy. Drug court screening refers to the process used to determine eligibility for entrance into drug courts (Knight, Flynn, and Simpson, 2008; see also Peters and Peyton, 1998). There are many factors which drug courts take into consideration when determining who will be allowed to participate. These include internal factors such as prosecutorial practices and law enforcement strategies, and external variables such as the support of elected officials, overcrowding in jails, and public safety (Goldkamp, White, and Robinson, 2006). There is great importance attached to conducting screenings early on in the drug court process (Marlowe, Festinger, and Lee, 2004) and according to key analysts, they should typically take place soon after a participant is arrested (Knight et al., 2008; see also National Association of Drug Court Professionals [NADCP], 2004; Peters and Peyton, 1998).

Drug court screening takes place sequentially on two levels: legal requirements for program entry and the clinical status of the participant (Knight et al., 2008; see also Peters and Peyton, 1998). Legal screening is used to determine a participant’s legal eligibility and also evaluate risks to public safety. Clinical screening is used to determine the type of treatment needed by the individual participant, and to assess the participant’s readiness for treatment (Peters and Peyton, 1998, 3). Ideally, drug court screening should address four main issues: drug use severity, major mental health problems, motivation for treatment and criminal thinking patterns. (Knight et al., 2008).

**WHY IS IT IMPORTANT?**
The screening process is very important to success in drug court (Peters and Peyton, 1998). Accurate screening can increase cost effectiveness and lead to greater efficiency in treatment (Sheaser and Caster, 1999) as well as increase public safety and produce more satisfying drug court outcomes (Marlowe, Festinger, Lee, Dugosh, and Benasutti, 2006). Information gleaned from the screening process can assist the judicial role in approving vital decisions about treatment referrals (Knight et al., 2008). The screening process is important because it identifies the levels of need and risk which are directly associated with success in drug court (Schwermer, 2008; see also Marlowe, 2007, August 23).

**WHAT SHOULD BE SCREENED FOR?**
Drug court participants should be screened for characteristics which impact the likelihood of treatment completion and drug court graduation. Marlowe (2007) states that drug courts need to tailor their approaches to match the criminogenic risks and psychosocial needs of each offender. Criminogenic risks are defined as “those characteristics of offenders that make them more likely to relapse to drug misuse and less likely to succeed in rehabilitation, and thus more likely to recidivate;” psychosocial needs are defined as “those areas of dysfunction that, if ameliorated, can substantially reduce the likelihood of continued involvement in substance abuse, crime, or other misconduct” (p. 7-8). The emphasis of the drug court screening process should be focused on participants who exhibit these high-risk, high-needs characteristics.

A 2x2 matrix is used to classify participants in one of four demographic classifications (Marlowe, 2007). Although each quadrant is identified with a detailed plan of attack, the recommendations can be simplified as follows (Marlowe, 2006):

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<th>High Risk</th>
<th>Low Risk</th>
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<tr>
<td>High Needs</td>
<td>Accountability &amp; Treatment</td>
<td>Treatment</td>
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<td>Low Needs</td>
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The high-risk high-needs quadrant is characterized by a need for both accountability and treatment. Drug courts utilize both accountability and treatment simultaneously and are therefore a perfect match for participants demonstrating these characteristics (Schwermer, 2008; see also Marlowe, 2006; Marlowe et al. 2006).

The labels of high-risk and high-needs are not arbitrary designations, but rather are based upon the results of significant research (Taxman and Marlowe, 2006). High risk individuals can best be classified as such if the following attributes are implicated (Marlowe, 2007, August 23): involvement with substance abuse before age 14, criminal activity before age 16, rehabilitation before age 24, a criminal record which indicates recidivism, previous rehabilitation failures, and a concomitant diagnosis of antisocial personality behavior.
Accordingly, high needs individuals are best identified by factors such as: “compulsive addiction to drugs or alcohol, psychiatric pathology, emotional trauma, brain injury, chronic medical conditions and illiteracy.” Although potential drug court participants may exhibit extreme characteristics, for policy purposes the labels of high-risk and high-needs should be reserved for those individuals who meet scientifically proven criteria.

Drug court participants with high-risk, high-needs characteristics are most likely to benefit from drug court. A focus on the high-risk demographic is associated with a reduction in re-arrests (Fielding, Tye, Ogawa, Imam, and Long, 2002) and better performance in drug court (Marlowe et al., 2006). A further emphasis on the high-risk high-needs demographic results in lower levels of drug use (Marlowe, 2006, August 30) and higher rates of drug court graduation (Marlowe et al., 2006).

Furthermore, allocating resources to those who do not demonstrate sufficient need can actually impede the progress of drug court participants (Marlowe, Festinger, Foltz, Lee, and Patapis, 2005). As Dennis Fuchs (2008b), the first drug court judge in Utah states:

“Everything is pointing to the fact that to over-treat those who don’t need it is more harmful than it is beneficial. So if you start dealing with the wrong population and over-treating them, you’re actually hurting them and you’re wasting time, money, and effort.”

Rick Schwermer (2008), Assistant State Court Administrator and State Drug Court Coordinator in Utah also agrees that drug courts are not a good solution for low-risk low-needs offenders:

“If we’ve got an array of treatment options, treatment—slash—judicial options, use the lowest level and the cheapest forum that will solve your problems for that defendant... but don’t use drug court, your most expensive option short of incarceration with people that you could do something else with.”

Judge Constandinos Himonas (2008) of the Salt Lake County Third District Adult Felony Drug Court concurs: “There are far more cost-effective ways... of dealing with low-needs low-risk individuals that don’t involve the kind of detailed investment of resources [which drug courts offer].”

This perspective, which places emphasis on high-risk, high-needs individuals, is beginning to take shape as the predominant focus of drug court screening nationwide and in Utah.

**SALT LAKE COUNTY THIRD DISTRICT**

**CURRENT SCREENING POLICIES**

There are currently four categories of screening policies: national recommendations, State of Utah legislative mandates, State of Utah Judicial Council rulings, and Salt Lake County Third District prosecutorial policies. National recommendations and State of Utah Judicial Council rulings are particularly relevant to this matter because they address the issue of a clinical screening.

**NATIONAL RECOMMENDATIONS**

Although there is not a uniform set of policies which govern drug courts nationally, there is a call for all drug courts to screen for both “drug use severity and major mental health problems” (Knight, Flynn, and Simpson, 2008). Additionally, one of the key components of drug courts is to ensure that “eligible participants are identified early and promptly placed in the drug court program” (NADCP, 2004). Moreover, the prescribed order of legal and clinical screening is clearly specified (Peters and Peyton, 1998), thereby inferring that both are necessary components of the screening process.

**STATE OF UTAH JUDICIAL COUNCIL RULINGS**

The State of Utah Judicial Council (2008) has attempted to establish criteria for eligibility in drug court with its recent ruling, Rule 4-409. This ruling states that all assessments must be written and “include an assessment process that measures levels of addiction, criminality, and/or other appropriate criteria.”

**CURRENT REALITY**

The reality of the screening process in the Salt Lake County Third District Adult Felony Drug Court is much different than the one advocated by the policies previously mentioned in one significant way: clinical screening does not take place before participants are admitted into the drug court program. The institution of pre-admission clinical screening is an issue which impacts the future of the adult felony drug court program in the Salt Lake County Third District.

Gary Dalton (2008), director of Salt Lake County Criminal Justice Services (CJS) states that clinical screenings were discontinued about two years ago because of strained relations with other drug court agencies. He states that CJS would recommend for or against certain participants after conducting clinical screenings, but often found that their recommendations differed from those of the District Attorney’s office and the Legal Defenders Association (LDA). Dalton describes the conflict as follows:

“We never had a problem with doing [clinical screenings.] We enjoyed the process... but we got in so many sidebar conversations and “fights” with our stakeholders that it wasn’t worth it. Every time we said this person probably shouldn’t be in drug court for whatever our screening proved out, LDA would throw a fit and say ‘No they should be in and they’ve go to,’ and so we spent more time fighting about the decisions we were making than making good decisions.”

Nisa Sisneros (2008), a Salt Lake County Legal Defense attorney takes a markedly different approach to drug court screening than CJS. She states, “If I could get everyone in the program, I would.” Sisneros recommends every defendant that she thinks “would technically qualify” for admission
because she doesn’t feel that enough of her clients would be
approved if she only advocates for those identified as high-
risk, high-needs.

Dalton (2008) describes the role which CJS played in the
discontinuation of pre-admission clinical screenings as a
result of this kind of philosophical difference:

We came to the conclusion of listen, who is the gate-keeper
with the courts? It’s the district attorney’s office; they have the
final say. They can either prosecute them or not. So we said,
‘Why don’t we turn this over to the district attorney’s office,’
and we did, and they’ve been doing the screening. Now, they
screen from the perspective of law and so they’re looking at
clients’ charges and cases…. And guess what, whether the
right people are getting in or out that dimension of argument
has gone away.

Dalton (2008) agrees with the decision to discontinue pre-
admission clinical screenings: “I personally think the decision
to move the screening was worth it. I have a happier staff, less
tension around here, and no one worried about fighting
over people.” However, he states that the Utah Division of
Substance Abuse and Mental Health has requested a “more
profound screening” and so he is currently in the process of
developing a way to “do a legal screening, a risk assessment,
and then the treatment screening so that all those elements
come together and line up.”

This absence of pre-admission clinical screenings ignores
the written ruling from the State of Utah Judicial Council for
the sake of alleviating inter-agency conflict. Schwermer
(2008), expresses frustration with a lack of uniformity by say-
ing:

I’m trying to talk about nuance of how to differentiate
between high-risk high-need people with sociopathic tenden-
cies versus high risk, high need without the sociopathy, and
that’s all well and good… but I can’t even get people to figure
out if they’re high-risk high-need in the first place. That’s the
difficulty and that’s what we tried to get at in as direct a way
as we could with [Rule 4-409].

Dalton (2008) is willing to focus on high-risk high-needs
offenders when, and if, pre-admission clinical screenings are
reinstated. His statement of intent is evidence of his strong
managerial skills and yet also suggests there is not widespread
inter-agency awareness of the data currently available regard-
ing high-risk, high-needs offenders: “If the feds or a national
study said these are the people that really benefit, this is evi-
dence-based, research driven, these are the people that bene-
fit from a drug court, I’d be open to looking at them.”. As
shown previously, this evidence already exists.

“HIGH-RISK, HIGH-NEEDS:” AN INVALID
ANALYSIS?

A focus on the high-risk, high-needs demographic is not
without its criticisms, however. A 2006 report by the
National Institute of Justice, examining the drug court pro-
gram in Clarke County, Nevada, pointed out a potential flaw
in the strategy: “Drug courts handling high-need, high-risk
offenders are likely to have lower graduation rates and higher
rearrest rates than those targeting minor or first-time offend-
ers, so court planners must ground their experiences in real-
ity” (Goldkamp et al., 2006). Certainly, a focus on the most
troubled criminal demographic group brings with it the
potential for a less than stellar report card, although the evi-
dence previously cited indicates that this is not always the
case. Where applicable, this type of analysis should raise a red
flag if the focus of the drug court program is the reputation
of the program itself. I would argue, however, that drug courts
were not designed to function as a flagship of the criminal jus-
tice system, but to mitigate the effects of substance abuse on
individuals and communities.

Drug court was not created to maintain a strictly prag-
matic or status quo approach to substance abuse. Judge
Herbert Klein, who helped design the nation’s first drug court
states that an innovative solution was needed at the time and
that “changing tactics required a fundamental shift in think-
ing: treating people as addicts, rather than criminals.” He
continues, “drug court is all about the belief in the redemp-
tion of human beings—reaching out to people and telling
them we care, and that we will help if we can” (Join Together,
1999). These statements from one of the founders of the drug
court movement indicate the importance of recognizing the
role of offender addiction in substance abuse crime.

Fuchs (2008b) agrees with Klein in substance, and
explains why the screening emphasis should remain focused
on the high-risk high-needs demographic:

Even if it leads to lower graduation rates and a little higher
recidivism, you’re still dealing with a population that would
have even much higher recidivism and much less either grad-
uation or success in drug treatment. These are the individuals
that we definitely should be spending our money on. This is
the most cost-effective population to deal with. The rest of
the population that have drug offenses should not be ignored,
but they could be dealt with in other ways.

Schwermer (2008) feels that uniformity on this issue is crucial,
and states, “I think that the most important thing we could do
right now is agree on and implement, and then most impor-
tantly, use the screening and assessment data that we get.”

RECOMMENDATION

The Salt Lake County Third District Adult Felony Drug Court
should place its screening emphasis on high-risk, high-needs
offenders, and of necessity must first re-institute the practice of
pre-admission clinical screening. As previously demonstrated, there is a growing body of evidence testifying to the validity of a focus on high-risk, high-needs participants. If the Salt Lake County Third District Adult Felony Drug Court reinstates the practice of pre-admission screening and proceeds to focus on the high-risk, high-needs demographic, it will have a greater opportunity to present the legislature with data indicative of success. This type of data is crucial to the continued and increased funding of the drug court program.

THE ROLE OF FUNDING

The Utah State Legislature must continue to fund the drug court program at its current level if drug courts are to remain an effective solution to the plague of substance abuse. Drug courts have several sources from which to draw upon for funding. The drug court program in Utah views the Utah State Legislature as its funding focal point. The state legislature has been extremely supportive of the drug court program thus far, but future funding is in jeopardy due to the current economic recession and legislative priorities. Drug courts effectively combat the problems associated with substance abuse by reducing recidivism rates and yielding significant returns on tax-payer investments. Although concerns with the methodologies used to produce results have been questioned in the past, evolutions in drug court research render these concerns anachronistic. The Utah State Legislature should continue to fund the drug court program during the current economic recession because, regardless of jurisprudential philosophy, drug courts produce lower rates of recidivism than any other criminal justice program and yield significant financial returns on tax-payer investments.

SOURCES OF FUNDING

Drug courts have access to multiple sources of funding, three of which will be briefly examined here: federal grants, participant fees, and state legislatures. Federal grants are often used to implement new drug courts but usually come with time limitations (Reilly and Pierre-Lawson, 2008). Participant fees are funds paid by drug court participants in exchange for the opportunity to participate in the program. These fees serve as a tool to teach participants the value of accountability and responsibility (Reilly and Pierre-Lawson, 2008) and “get at the notion that if somebody gets something for free, whatever it is, they value it less” (Schwermer, 2008). However, the financial significance of participant fees is minimal at best. State legislatures are ultimately the source which must provide drug courts with ongoing funding when federal grants have expired in order to ensure long-term stability of the programs (Heck and Roussell, 2007; see also Reilly and Pierre-Lawson, 2008).

CURRENT FUNDING EMPHASIS

The Salt Lake County Third District Adult Felony Drug Court currently utilizes all three funding options, with an emphasis on legislative funding. Both Dalton (2008) and Schwermer (2008) state that federal grants have been virtually exhausted. Similarly, although participant fees continue to be a required part of drug court, they do not represent a significant enough dollar amount to fund the entire program. While participant fees could be increased, Schwermer is hesitant to use this as a funding option:

- My concern would be that the mounting fiscal pressure… on an individual either contributes to stress and ‘this isn’t worth it and I may as well use [drugs] and to hell with it,’ and/or ‘I gotta pay for this, so I gotta go boost a stereo or whatever to come up with my 30 bucks.’ And then they get arrested for that and that leads either the first or second or third time to them being kicked out of the drug court.

The state legislature is the remaining option which has become a funding focal point of the drug court program in Utah. Schwermer (2008) states that the legislature has “been very supportive,” especially when considering “five or six years ago [when] we had zero general funds going into drug courts.” Fuchs (2008) sees the relationship between drug courts and the legislature as very positive:

- Here in Utah, especially, we’ve been lucky. I think the legislature and the governor have been very supportive. Admittedly, there probably are not enough funds, but I think when you look at other states… we get a good amount of funds. I think there’s support for drug courts.

Judge Randall Skanchy (2008a) of the Salt Lake County Third District Adult Felony Drug Court expresses an almost identical appreciation for the current level of funding:

- I am impressed with the level of funding that we presently have in terms of the commitment that both the state and local governments have made to have it be successful. We certainly need more, there’s no question about that. But it’s so much more than where I came from that it’s a treat to be here in this courtroom.

IMPACT OF ECONOMIC RECESSION

Although the Utah State Legislature has been extremely supportive of drug courts, the reality of the current economic recession is a threat to continued funding. The United States is now in the midst of what former Chairman of the Federal Reserve, Alan Greenspan, calls a “once-in-a-century credit tsunami” (Smith, 2008, October 23) and which Robert Rubin, Secretary of the Treasury under President Clinton, refers to as a “perfect storm” (Thomas and Hirsch, 2008, p. 45). The complexities of the current financial crisis are too numerous to detail here, but Paul Krugman (2009), recipient of the 2008 Nobel Prize in Economics, states that all the signs “point to the worst recession in the United States, and in the world
as a whole, since the early 1980s. And many economists will be relieved if it’s only that bad.” While the economy in Utah has shown tremendous progress under the leadership of Governor Jon Huntsman, its economy is by no means immune from the current crisis. The Utah State Legislature recently addressed a record deficit in revenue of $1 billion (Executive Appropriations Committee, Utah Legislature 2009). Although the current federal economic stimulus bill gives the legislature unique access to additional funds, which softens the blow, the money is temporary and will not be available for continued shortfalls. The recession can be expected to impact funding for drug courts, as well as the reasons which lead people to need their services, namely drug use and related crime which is associated with unemployment.

The impact of the recession on funding requires no elaboration: a shortage of money available for government programs means different agencies must compete for shrinking available funds. Schwermer (2008) worries that current drug court participants would be harmed by a cut in funding:

One thing that concerns me is that as funding gets tighter, if it does get tighter in terms of treatment... we have issues of people that are already in the program. I mean, you can't just cut money to an existing program when you have what is essentially an 18-month treatment episode.... We've already started people in the chute.... You can not bring anybody else in the door and still need every bit of money you have, every bit of money you had the previous year to treat the folks that are already in the door.

The problem of substance abuse and related crime is likely to rise during an economic recession, not decline or merely hold steady. Although the link between crime and a poor economy is not irrefutable (Sealey, 2001), Richard Rosenfield, a sociologist at the University of Missouri-St. Louis, argues that “every recession since the late ’50s has been associated with an increase in crime” (Hauser and Baker, 2008). Arvanites and Defina (2006) find that macro-level economic conditions have a significant impact on crime. The relevance for drug courts between crime and the economy is illustrated by the finding that drug abuse is implicated in the crimes of 80 percent of those in prison (Califano, 1998). Based solely on anecdotal experience, Judge Himonas (2008) believes the portion of crime related to substance abuse in the Salt Lake County Third District is “easily in excess of 80 percent.” Similarly, Judges Hansen (2008), Henried (2008), and Skanchy (2008b) believe the number is between 80 and 90 percent. Substance abuse would likely have a similar impact on rising crime rates associated with economic recessions.

Another factor which must be considered during a recession is the issue of unemployment. As the United States began its second full year of economic recession (National Bureau of Economic Research, 2008), the U. S. Department of Labor indicated an unemployment rate of 8.1 percent and some analysts expect the number to reach double digits by the summer of 2009 (Irwin and Shin, 2009, March 7). Statistics which indicate high rates of unemployment are important because crime is positively correlated with unemployment (Grant II and Martinez, 1997). Furthermore, drug use prevents long-term participation in the labor force (Ginexi, Foss, and Scott, 2003). Since 1977, periods of recession in the United States have been met with negative employment growth (Recessions and Employment Change 2002). Moreover, employment during the 1990-91 and 2001 recessions did not hit its lowest point until after the recessions had ended (Langdon, Krantz, and Strople, 2004). This leads to a realistic fear of what economists term jobless growth, a precarious situation where employment growth does not immediately resume at the conclusion of a recession; since 1990, both U.S. recessions were followed by jobless growth (Schreft and Sing, 2003). Mark Knold (2008), chief economist for Utah’s Department of Workforce Services does not believe that Utah will be immune from the effects of the recession: “We believe that the employment situation will actually be down 1.5 percent for 2009 which would be a loss of 19,000 jobs. If that all holds true, that will be the worst economic environment we’ve had since 1954”.

History suggests that the current economic recession will probably be associated with, and followed by, periods of increased criminal activity. Drug courts seek to curb this tragedy by producing graduates who are both prepared to effectively manage their drug addictions and participate in the labor force.

Efficacy of Drug Courts

Drug courts are an effective solution to the problems associated with substance abuse. This is especially important when revisiting an anticipated rise in criminal activity associated with the current economic recession. Drug courts produce quantifiable results such as reduced recidivism rates and economic savings. Although there have been concerns with the research methodologies used by drug courts in the past, several different meta-analyses now show beyond a reasonable doubt that drug courts are a viable solution to the substance abuse crisis.

Drug courts are very successful in lowering the rate of drug related recidivism. A review of the latest literature by Huddleston III et al. (2008) shows that “drug courts significantly reduce crime rates an average of approximately 7 to 14 percentage points.” The most recent evaluation of the Salt Lake County Adult Felony Drug Court revealed a reduction in recidivism of approximately 10.1 percent (Van Vleet, Hickert, and Becker, 2005). Drug courts produce results that cannot be rivaled by any other program within the criminal justice system (Huddleston III et al., 2008).

The economic return on investments produced by drug courts is also impressive. Bhati, Roman, and Chalfin (2008) estimate that drug courts currently produce about $2.21 in benefit for every $1 in costs, for a net benefit to society of
about $624 million" (p. 56). The latest evaluation of the Salt Lake County Adult Felony Drug Court estimates that “for every dollar spent there is an approximately $4.29 return on investment,” and furthermore suggest that this amount is likely underestimated (Van Vleet et al., 2005, pp. 64, 72). Drug courts may actually entail higher up-front costs than the criminal justice alternative of probation, but they are certainly “more cost-effective in the long run because they [avoid] law enforcement efforts, judicial case-processing, and victimization resulting from future criminal activity” (Huddleston III et al., 2008, p. 6).

The results produced by drug courts have been questioned in the past because of suspect methodologies, namely a reliance on participant narratives and the further use of pseudoscience to exaggerate findings. The emotion associated with the personal stories of drug court participants often results in the use of participant narratives, referred to as storytelling. The concern with the use of storytelling is that the “narrative appears to triumph over traditional empirical findings as the most convincing determination of the program’s worthiness” (Nolan Jr., 2001, pp. 111-113, 127). Past research has also made use of methodology which did not meet universally accepted academic standards. In particular, before 2000, “only a handful of [drug courts] used the proper comparison groups” to quantify the recidivism rates which are so crucial to the drug court program’s claims to success (Hoffman, 2000, p. 1491). Concerns such as these have led a state court judge from Denver, Morris Hoffman (2000), to declare:

> We have succumbed to the lure of drug courts, to the lure of their federal dollars, to the lure of their hope, and to the lure of their popularity. Drug courts themselves have become a kind of institutional narcotic upon which the entire criminal justice system is becoming increasingly dependent…. It is time for all of us to take a much harder look at drug courts…. We should spend less time feeding the fanaticism of drug courts and more time in an honest debate about the deep moral and social issues inherent in drug use, drug abuse, and drug control (p. 1533-34).

The concerns of Judge Hoffman and other skeptics are genuine and must be openly acknowledged; however, while flaws have plagued previous drug court studies, the conscientious efforts of drug court researchers over the last decade have, to a large extent, nullified many of these fears. Additionally, success can legitimately be measured by participant narratives because substance abuse is considered a biopsychosocial disease by the drug court program (Center for Substance Abuse Treatment, 1996) and is therefore subject to therapeutic milestones such as storytelling (Nolan Jr., 2001). A lack of sound methodology was recognized years ago by drug court researchers (Belenko, 1998; see also Hora, Schma and Rosenthal, 1999) and serious efforts have since been made to produce valid research (Marlowe, Heck, Huddleston III, & Casebolt, 2006). The subsequent use of meta-analyses, “in which scientists statistically average the effects of the program over numerous research studies” definitively show that drug courts produce comparatively low rates of recidivism and are cost-effective (Huddleston III, Marlowe, & Casebolt, 2008, p. 6). Therefore, while Hoffman and other skeptics are correct that design flaws have plagued previous drug court research, those same flaws have acted as catalysts to produce the current evolutions in drug court research which now yield scientifically valid results testifying to the efficacy of the drug court program.

**Recommendation**

The Utah State Legislature should continue to fund the drug court program at no less than its present level. The drug court program in Utah relies on the Utah State Legislature as its funding focal point. The current economic recession is likely to be accompanied by an increase in crime associated with substance abuse and related issues of unemployment. The drug court program deals with substance abuse more effectively than any other criminal justice program and does so while yielding a significant financial return on tax-payer dollars. Judge Henriod (2008) offers three reasons why the legislature should continue funding the drug court program at its current level during the recession:

Number one, public safety, because we’re cutting down on the number of crimes that are committed. Two, we’re reducing the impact on our prisons, jails, and our probation/parole officers. Number three, which fits together, in the time of economic downturn when people are losing their jobs and having reduced income, they’re going to be committing more crimes and so we have to pay even more attention to them.

The Utah State Legislature has been extremely supportive of the drug court program thus far. Schwermer (2008) strongly believes that drug courts have proven their worth and hopes the legislature agrees by continuing to fund the program at its current level:

> Of course this year will be a bit of litmus test. This year there are going to be cuts everywhere. And I would say if we can simply avoid being cut in drug court that will speak volumes, because everything else is getting cut…. If we can do that, this [legislative] session will be a success as far as I’m concerned.

Funding is critical to the success of the drug court program, but even with funding, drug courts could not exist outside the framework of therapeutic jurisprudence.

**The Advancement of Therapeutic Jurisprudence**

**Relevance to Substance Abuse**

Therapeutic jurisprudence is a lens with which to view substance abuse that allows for the vision necessary to curb the problem. Problem-solving courts “are the most tangible manifestation of therapeutic jurisprudence” (Schwermer, 1999, p. 1), and drug courts comprise the majority of all problem-solv-
ing courts. While there are criticisms of therapeutic jurisprudence, the strengths of this approach to justice outweigh its weaknesses. A barrier to the success of drug courts is found in the well-intentioned but harmful emphasis on the use of stigma as a deterrent of crime. A shift in society's attitude towards substance abuse accompanied by an adoption of therapeutic jurisprudence by the criminal justice system will do much to curb the negative effects of substance abuse.

**WHAT IS THERAPEUTIC JURISPRUDENCE?**

The term therapeutic jurisprudence first appeared in publication nearly two decades ago (Wexler, 1992). Wexler and Winick (2003) define therapeutic jurisprudence as "a multidisciplinary approach that seeks to bring insights from the behavioral sciences—psychology, social work, criminology, and the like—into the world of law practice." Winick (1997) elaborates further and identifies it as "the study of the role of law as a therapeutic agent" (p. 85). Therapeutic jurisprudence represents a radical departure from the traditional views of criminal justice. Whereas crime has typically been viewed by the criminal justice system with a focus on past behavior and related consequences, therapeutic jurisprudence emphasizes "immediate and future behavior" (Schwermer, 1999, p. 1). Instead of formulating and implementing law based solely on precedent or logic, therapeutic jurisprudence gives validity to experience (Freckelton, 2007) and interprets the law with input from the social sciences (Hora, Schma, and Rosenthal, 1999). The term therapeutic jurisprudence itself may be new, but as Wexler (1995) observes, "scholars, researchers, and practitioners were playing with these insights before therapeutic jurisprudence was explicated" (p. 36).

**DRUG COURTS IN CONTEXT**

Therapeutic jurisprudence is the "jurisprudential foundation" of drug courts (Hora, Schma, and Rosenthal, 1999, p. 440). This paradigm has spread rapidly to various areas of the legal field and "has now evolved into a general approach to practicing law" (Wexler and Winick, 2003). The most evident manifestation of therapeutic jurisprudence is the concept of problem-solving courts—also known as specialty courts. Problem-solving courts approach crime from a non-traditional perspective as "a participant in the therapeutic processes imposed on defendants" (Schwermer, 1999, p. 1). While there are numerous types of specialty courts, none is more widely used than drug courts (Huddleston III et al., 2008).

**STRENGTHS AND WEAKNESSES**

The rapid proliferation of drug courts signifies that those within the criminal justice system recognize the ineffectiveness of traditional approaches to substance abuse (Hora, Schma, and Rosenthal, 1999). Nevertheless, the paradigm of therapeutic jurisprudence as embodied in drug courts entails both strengths and weaknesses. While there are numerous analyses of therapeutic jurisprudence in general (Freckelton, 2008), I will limit my discussion to a selection of those which are directly relevant to drug courts.

**STRENGTHS**

The advantages inherent in therapeutic jurisprudence contribute to the success of drug courts. Schwermer (1999) identifies four strengths of therapeutic jurisprudence as they apply to problem-solving courts. First, empirical evidences of success within the drug court program demonstrate that therapeutic jurisprudence "work[s]." (While this statement was made at a time when drug court research was largely unreliable, the use of meta-analyses previously referred to make it a valid point today.) Second, the collaboration of numerous entities within the criminal justice system results in mutually beneficial relationships. Third, offenders are held accountable for their actions as the court "demands respect and gets compliance." Finally, the positive outcomes of participants in problem-solving courts create a fertile ground for developing a relationship of trust and confidence between the public and the judiciary. The strengths associated with therapeutic jurisprudence enable drug courts to be successful.

**WEAKNESSES**

Notwithstanding the strengths of therapeutic jurisprudence, the approach also contains a number of weaknesses. Schwermer (1999) identifies three concerns from the perspective of the courts. First, there is a loss of judicial neutrality as a consequence of the active participation by the judicial role. Second, the rules regarding judicial conduct do not consider the unique nature of problem-solving courts. Consequently, drug court judicial rules "arguably violat[e] ethical rules on an almost daily basis" such as engaging in ex-parte communications and exhibiting bias. Lastly, the organization, administration, and resources of the court are strained due to the frequent and relatively long-term needs of the offenders. These weaknesses associated with therapeutic jurisprudence act as a potential barrier to the long-term success of drug courts.

**STRENGTHS OUTWEIGH WEAKNESSES**

Schwermer (1999) acknowledges that while there are deficiencies in the therapeutic approach to jurisprudence, “it is clear that the upside to supporting therapeutic jurisprudence initiatives is still greater than the downside” (p. 4). While the principles inherent in therapeutic jurisprudence run counter to some traditional views regarding justice, the paradigm allows for the imposition of punishment for substance abuse while seeking at the same time to mitigate its negative effects on both society and the offender. The result of its application in regards to drug courts is a significantly reduced rate of criminal recidivism. Although there are potential drawbacks to the adoption of therapeutic jurisprudence, the strengths ulti-
mately outweigh the weaknesses and provide the framework necessary for the continued success of drug courts.

Each of the weaknesses previously mentioned loses a portion of validity upon further examination. For example, while judicial neutrality is lost during certain drug court processes it is also held firmly intact during times of critical importance. If a participant is ultimately unable to comply with the demands of the program, the judge returns immediately to his or her traditionally unbiased role to administer a final sanction—or sentence. Additionally, the absence of judicial guidelines for specialty courts is not an indication that they cannot fit in the current schema, but rather a sign that the net of services offered by the courts can be expanded. Engaging in ex-parte communications and selectively exhibiting bias are tools of an unconventional approach to substance abuse crimes which should be considered if there is to be any significant progress in the effort to eliminate the ills associated with substance abuse. The dispasionate tradition of the judicial role within the U.S. court system maintains a strong enough hold to ensure that sanctions can be administered without bias—even if there have been technical violations of ethical standards which do not take into consideration the nuance of substance abuse crime. Furthermore, the resources used to deal with the long-term needs of substance abuse offenders are likely more cost-effective than using repeated prison terms to address habitual substance abuse crimes (United States Government Accountability Office, 2005). In reality, these particular arguments against therapeutic jurisprudence are not as compelling as they initially appear. Ultimately, the strengths associated with a therapeutic approach to jurisprudence outweigh the weaknesses.

**THE STIGMA BARRIER**

Although drug courts maintain the ability to act and not be acted upon in relation to therapeutic jurisprudence (Schwermer 1999), the danger of societal stigmatization from without the courts presents a significant barrier to success. Even if drug court participants graduate and continue to abstain from future recidivism, they are still impacted by societal stigma in relation to substance abuse. This fact is apparent to those who are able to observe substance abuse offenders over a long period of time. Not only does societal stigmatization harm substance abusers, but it also impacts family members who are blamed for the onset of the substance abuse and consequently shunned (Corrigan and Watson, 2006). Stigma diminishes the positive outcomes of the drug court program.

Regardless of the progress made by substance abuse offenders during their drug court tenures, they will still face discrimination upon their exit from the program in areas such as “public housing, welfare, education benefits, [and] voting rights” (Cooper, 2007, p. 245-251). Due to the financial strains associated with substance abuse, few drug court graduates have the resources necessary to find appropriate housing. The stigma associated with substance abuse extends all the way into policy discussions, which often makes housing typically available through government programs inaccessible to many of those who complete drug court. Additionally, drug court graduates with felony criminal records are “prohibited for life from receiving cash assistance and food stamps.” This impacts all those who participate in adult felony drug courts, most of whom have serious financial strains. Furthermore, various statutes which prevent felons from voting do not make allowance for drug court graduates. These “punitive repercussions” of substance abuse could be termed as “lifetime sanctions” which far outlast most punishments doled out by the criminal justice system. Drug court participants overcome tremendous obstacles by completing the drug court process, and yet as a result of stigma they often find that society does not recognize or appreciate their progress.

Although stigma and related discrimination may serve a legitimate purpose as a deterrent to substance abuse, the negative consequences of this kind of societal control should be considered as well (Ahern, Stuber, and Galea, 2006). Luoma, Twohig, Waltz, Hayes, Roger, Padilla, and Fisher (2006) call for an examination of institutional policies to determine “the possibility of their contributing to stigma towards clients.” The unique nature of drug courts, grounded in the bedrock of therapeutic jurisprudence, allows drug offenders to face their addictions in the open—with the support the criminal justice system, particularly the judiciary. While there remains controversy as to whether or not drug users should be considered victims of a disease (Schaler, 2000), the fact that they are victims of stigma is not open to the same kind of debate. Although well-intentioned, an over-reliance on stigma as a deterrent to crime serves not to protect society—but to harm it.

**A DRAMATIC SHIFT IN AMERICA’S ATTITUDE TOWARDS SUBSTANCE ABUSE**

The plague of substance abuse will not be curbed without support from the criminal justice system—and society in general. Ret. Gen. Barry R. McCaffrey, Director of the Office of National Drug Control Policy from 1996-2001, states that “drug and alcohol addiction is the single most significant problem facing America” (Corkery, 2002). This is a noteworthy statement, especially when considering that it was made less than a year after 9-11. Whether or not the American public agrees with his assessment, a recent Zogby International (2008) poll found that “three in four likely voters believe the U.S. war on drugs is failing.” If this country’s response to substance abuse is to be successful, there must be an effective strategy implemented by the criminal justice system and a corresponding willingness by society to replace stigmatization with support. America has an opportunity to make a contribution to the restorative goals of therapeutic jurisprudence by
recognizing that those struggling with substance abuse are more likely to get better with support than stigmatization.

In short, there must be a “dramatic shift in our nation’s attitude toward drug and alcohol abuse and addiction” (Califano, 2007, p. 177). Therapeutic jurisprudence can lead to this kind of change, although Schwermer (2008) advises that it “needs to become something that isn’t unique and separate and special.” Rather, the principles of therapeutic jurisprudence must be adopted by both society and the criminal justice system alike if the benefits are to be fully realized. The stigma associated with substance abuse is deeply embedded in the psyche of American society and will require effort to eradicate. Nonetheless, it can be done. As Freckelton (2008) observes:

Although it may be uncomfortable and sometimes even painful to do this, we must be brave enough to open our eyes to knowledge and to dare to see the world clearly, as it is, rather than as we might wish it to be (p. 198-199).

Wexler and Winick (2003), the cofounders of therapeutic jurisprudence, believe that both society in general and the legal profession are prepared for this kind of change. Without such a paradigm shift—accompanied by action—the problem of substance abuse is not likely to get better. The “war on drugs” is unlikely to achieve its goals without a corresponding “war on stigma.” Unfortunately, by declaring a war on drug use there results an inferred war on drug users, thereby exacerbating stigmatization. Drug courts seek to address the issue of substance abuse while at the same time preserving the innate worth of substance abusers as individuals. The lure of therapeutic jurisprudence and drug courts is that communities damaged by substance abuse can once again be made whole—without the unnecessary use of stigma.

**CONCLUSION**

Drug courts are an effective solution to the substance abuse problems facing U.S. society. However, they must address several issues in order to maintain their viability and further mitigate the negative consequences of substance abuse. Specifically, I suggest that the Salt Lake County Third District Adult Felony Drug Court should examine three issues which represent those faced on many levels: drug court screening, legislative funding, and the advancement of therapeutic jurisprudence.

The Salt Lake County Third District Adult Felony Drug Court should focus its screening emphasis on offenders with high criminogenic risks and high psychosocial needs. Of necessity, there must first be a return to pre-admission clinical screenings which conform to Rule 4-409 of the State of Utah Judicial Council. If the practice of pre-admission clinical screenings is reinstituted and there is a subsequent screening emphasis focused on high-risk high-needs offenders, the Salt Lake County Third District Adult Felony Drug Court is likely to become an increasingly viable solution to the threat of substance abuse and will be able to continue presenting evidence of such to the Utah State Legislature.

The Utah State Legislature is the current funding focal point of the drug court program in Utah and should continue to fund the program at its current level. The legislature has been very supportive of drug courts up to this point. Sustained funding will enable the drug court program to continue producing benefits which are especially critical during a time of economic recession. These benefits include lower rates of drug offender criminal recidivism and substantial financial returns on tax-payer investments.

Even with funding, however, drug courts cannot exist outside of the framework of therapeutic jurisprudence. Drug courts subscribe to the paradigm of therapeutic jurisprudence which intertwines the fields of law and therapy. Although there are disadvantages inherent in this approach, the strengths ultimately outweigh the weaknesses. A significant barrier to the success of drug courts is an over-reliance on stigma as a deterrent of crime. Although it may be difficult, our society must dramatically change its approach to substance abuse in order to reap the full benefits offered by the paradigm of therapeutic jurisprudence.

In conclusion, the drug court program is the best criminal justice option currently available to address the issues associated with substance abuse. The Salt Lake County Third District Adult Felony Drug Court will likely benefit from a screening emphasis on high-risk, high-needs offenders, sustained funding from the State of Utah Legislature, and a societal and institutional paradigm shift away from stigma and towards therapeutic jurisprudence.

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