



Procedural justice and the judge–probationer relationship in a co-occurring disorders court^{☆,☆☆}



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ABSTRACT

Although a considerable amount of research has been conducted on treatment-based courts, there is little quantitative evidence that describes the relationship between the judge and the probationer. The present study examines perceptions of the judge–probationer relationship (JPR), procedural justice, and outcome satisfaction within a co-occurring disorders court (CODC) in Orange County, California. Based on interview and survey data from a sample of probationers within the CODC ($n = 24$), this article argues that perceptions of procedural justice are linked to perceptions of relationship quality between the judge and probationer. Analysis of the data found that probationers in the CODC have very positive views of their relationships with the judge, and elements of relationship quality are significantly linked with perceptions of procedural justice. Procedural justice is also a predictor of satisfaction with outcome in this sample. The results show promise that procedural justice and the quality of the judge–probationer relationship can positively affect probationers with co-occurring disorders in specialty courts.

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1. Introduction

Specialty drug treatment courts (DTCs) and mental health courts (MHCs) have shown a lot of promise in reducing drug use and lowering crime/recidivism rates for offenders in court-based treatment programs (e.g. see Carey, Finnigan, Crumpton, & Waller, 2006; Gottfredson, Kearley, Najaka, & Rocha, 2007; McNeil & Binder, 2005; Moore & Hiday, 2006; Wales, Hiday, & Ray, 2010). Although previous literature has suggested that the judge is a “key component” in the operation of drug courts (Marlowe, Festinger, & Lee, 2004), the reasons why this is so have not been fully uncovered.

This study explores the relationship between the judge and the probationer within a drug court specifically designed for offenders with co-morbid substance abuse and mental health disorders and what the relationship means for probationer experiences within this court. Through a single-court case study of a U.S. co-occurring disorders court (CODC), this study uses interview and survey data to analyze the judge–probationer relationship using a procedural justice framework. The results add something new to the field because there are so few treatment courts within the United States with specific dockets for offenders with co-morbid disorders (see Peters, Kremling, Bekman, & Caudy, 2012), and we can likely assume that many of the existing

drug courts see a large number of offenders with co-morbid disorders pass through their doors every week.

2. Review of the literature

The U.S. has witnessed an expansion of court-based treatment programs (i.e. drug courts, mental health courts, etc.) in the last two decades, and over 2200 such courts are operating across the country with more than 200 in the planning stages (Bureau of Justice Assistance Drug Court Clearinghouse Project, 2011). Some well-established drug courts or mental health courts may provide specialized services for participants with co-morbid disorders. However there are very few court programs dedicated specifically to offenders with co-occurring disorders. In a national survey of treatment-based court programs, Peters et al. (2012) found only six freestanding court-based treatment programs for offenders with co-occurring disorders. The present study examines one of these courts, the Orange County Co-occurring Disorders Court.

2.1. Description of the Co-occurring Disorders Court

The Orange County Co-occurring Disorders Court (CODC) is a post-adjudicative probation program in Orange County, California, designed to manage individuals arrested for a drug-related offense who have been diagnosed with co-occurring substance abuse and mental health disorders. The advantages here are 1) that offenders avoid a criminal trial and 2) probation-based treatment can begin immediately. Since the defendants in this court plead guilty to the charges in order to enter the CODC probation program, they must also understand that the participation comes with a suspended sentence to state prison

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(average 16 months), and if they fail to comply during the program, probation can be revoked and the offender sent to prison.

At the time the present study was undertaken in 2008, the Orange County CODC had evaluated 292 defendants for participation in the program and admitted 112 (admission rate of 38.5%), and 40 had successfully completed probation and “graduated” from the CODC program (Orange County Superior Court Collaborative Courts Unit, 2008). Since its inception in 2002, the CODC had seen only five of the 40 graduates re-arrested¹ which represents a 12.5% recidivism rate. In other words the court has experienced a “success” rate of over 85% with probation graduates. Compared with national recidivism rates between 28% and 40% for drug court graduates (Wilson, Mitchell, & Mackenzie, 2006),² the Orange County CODC is a positive outlier and shows promise for possibly reducing reoffending in these populations.

2.2. Role of the judge in specialty courts

The judge has been considered by some scholars and practitioners to play a very important role within court-based treatment programs. For example, in a descriptive study of the Brooklyn MHC published by Fisler (2005), judicial monitoring is identified as an essential element of managing public safety risks of MHC participants who suffer from serious mental illness. The study argues that judicial supervision helps to build trusting relationships with court participants, which in turn encourages participant commitment to the treatment program and may potentially reduce the likelihood of program attrition and the commission of new offenses (Fisler, 2005, p.601). In the U.K. Mclvor (2009) used courtroom observations and interviews with 143 drug court participants and several drug court *sheriffs* (i.e. judges) in Scotland to evaluate how drug court sheriffs were involved with offenders. This study found participants generally viewed their interactions with the sheriffs as positive and personal, and over time participants felt more comfortable verbally engaging in communication with the sheriff about their progress and personal situations (Mclvor, 2009). Both sheriffs and participants found the dialogue valuable, which “encouraged increased compliance and supported offenders in their efforts to address their drug use and associated offending” (Mclvor, 2009, p.45).

Finally in a third study, courtroom observations and outcomes³ of MHC participants in the Washoe County, Nevada MHC were analysed against a comparison group of offenders in a recent U.S. study (Frailing, 2010). The study found that personal interactions between the judge and court participants help to create a perception of a therapeutic environment in the court (Frailing, 2010). The study also concluded that through such personal interactions in which praise and encouragement are offered, and where offenders are given the opportunity to engage directly with the decision maker, participants in this court viewed the program as “a therapeutic environment” (Frailing, 2010, p.212). Few studies have been published regarding the judge–probationer relationship; this paper will discuss this type of relationship through a procedural justice framework.

2.3. Procedural justice

There is a large body of existing literature that suggests that if people feel they are treated fairly by authorities with *procedural justice*, they will be more accepting of and satisfied with an authority’s decision

and rules, regardless of the outcome. Fair decision making and interpersonal treatment are the two primary elements of procedural justice identified by Tyler (2009). Tyler also states that participants who have the opportunity to present their arguments and take part in the decision making process are usually more accepting of the outcome, whatever the outcome may be (1990, p.163). Research in the area of procedural justice has also found a link between procedural justice and compliance with the law (see Jackson et al., 2012; Tyler, 1990; Tyler, 2009). If demonstrated in this setting, this would be important within the context of a treatment-based court, since it should increase the chances of success. In a study of probationers in the Baltimore City DTC, Gottfredson et al. (2007) found perceptions of procedural justice as a mediating factor in decreasing the variety of drugs used and type of crimes committed by 157 probationers; however these study participants were not diagnosed with co-morbid substance abuse and mental health disorders.

Several studies have specifically focused on persons with mental illness within mandated treatment settings (Cascardi, Poythress, & Hall, 2000; Pruitt, Pierce, McGillicuddy, Welton, & Castrianno, 1993; Watson & Angell, 2007). Perceptions of procedural justice by participants of treatment-based courts are of great interest, since high levels of procedural justice may be linked to greater program compliance and lower rates of recidivism (Gottfredson et al., 2007; Mclvor, 2009), although more research is needed in this area, especially with regard to offenders with co-morbid disorders. However, only two studies to date have examined the perceived importance of procedural justice in a mental health court context.

Wales et al. (2010) used qualitative and quantitative data from the District of Columbia’s Mental Health Diversion Court to examine procedural justice and the judge’s role in reducing recidivism for court participants with mental illness. This study concluded that the judge engages in “collaborative, respectful, and individualized negotiation” with participants to reinforce positive social norms, and participants reported overwhelmingly positive experiences with the judge (Wales et al., 2010, p.270). Ratings of procedural justice were also found to be high among these participants, even with the “small dose” of judge–participant interaction observed by the researchers (Wales et al., 2010, p.270). However, this study did not discuss recidivism or other outcomes specifically, but hypothesized that the role the judge plays will have independent effects within this program.

Poythress, Petrila, McGaha, and Boothroyd (2002) sampled 121 defendants in the Broward County Mental Health Court and compared their opinions of perceived procedural justice in the court with a sample of 101 defendants from another, non-mental health court in Florida.⁴ The Broward County sample reported higher levels of procedural justice than the traditional court sample on all items of the procedural justice scale used in this study; for example *perception of fairness* and *respectful treatment by the judge* were high in the Broward sample (means of 6.57 and 6.55 on a 7-pt. Likert scale), whereas the comparison group had means for the same items at or below 4.28 and 3.78, respectively (Poythress et al., 2002, p. 527). The study also reported that outcome satisfaction among the study sample was explained best by aspects of procedural justice, in particular if participants felt 1) they had been given voice, 2) were provided fairness, and 3) felt treated respectfully/ as a good person. These findings suggest that the non-adversarial nature of the mental health court may have contributed to the higher ratings of satisfaction and procedural justice among the experimental group.

These findings when taken together suggest that procedural justice may show great promise in producing higher levels of satisfaction and other positive effects for offenders referred to a mental health court.

¹ The time period evaluated here was after the probationer’s graduation until 2008. The researcher did not have access to further data on how long each graduate was in the community before re-arrest.

² Although recidivism rates vary greatly by region, state and county due to differing drug court requirements, a recent meta-analysis of 55 drug court evaluations estimates that the recidivism rates for drug court participants falls between 28 and 40% (Wilson et al., 2006). The majority of studies in this meta-analysis had a maximum follow up of 12 months or less (46%).

³ Outcome measures include number of new arrests, days in jail, psychiatric hospitalization (Frailing, 2010).

⁴ The comparison sample was identified as “(a)...charged with a nonviolent misdemeanor, ordinance violation, or criminal traffic offense, and (b) currently has, or previously has had, mental health problems” (Poythress et al., 2002, p. 522). Further the authors matched the experimental and comparison samples on specific demographic variables and “current mental status.”

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