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Front-Stage Stars and Backstage Producers: The Role of Judges in Problem-Solving Courts¹

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Abstract

In problem-solving courts judges are no longer neutral arbitrators in adversarial justice processes. Instead, judges directly engage with court participants. The movement towards problem-solving court models emerges from a collaborative therapeutic jurisprudence framework. While most scholars argue judges are the central courtroom actors within problem-solving courts, we find judges are the stars front-stage, but play a more supporting role backstage. We use Goffman's front-stage-backstage framework to analyze 350 hours of ethnographic fieldwork within five problem-solving courts. Problem-solving courts are collaborative organizations with shifting leadership, based on forum. Understanding how the roles of courtroom workgroup actors adapt under the new court model is foundational for effective implementation of these justice processes.

Introduction

Problem-solving courts are a “quiet revolution” in the criminal justice system (Berman & Feinblatt, 2005). Using a therapeutic jurisprudence framework, problem-solving courts strive to create a collaborative courtroom environment where offender rehabilitation is the primary goal in decision-making (Berman & Feinblatt, 2001, 2005; Boldt, 2002; Butts, 2001; Feinblatt & Denckla, 2001; Goldkamp, 2000; Orr et al., 2009; Rottman & Casey, 1999; Wolff, 2002). While many scholars discuss problem-solving courts as judge-led initiatives (see for example Miller & Johnson, 2009), we focus on how courtroom workgroup actors adapt to their roles in a problem-solving court setting. During court sessions, judges are the focal actors of the courtroom workgroup. They interact directly with participants and bear responsibility for decisions. Backstage, in day-to-day interactions with problem-solving court participants and in pre-court team meetings, probation officers (POs) take the lead. POs spend more time interacting with participants than any other courtroom workgroup actor and prepare weekly reports on each court participant. Based on their superior knowledge base and informational role, POs wield significant power behind the scenes in problem-solving courts. Yet, judges often overshadow POs and receive popular and scholarly attention within the problem-solving court movement.

Based on 350 hours of ethnographic fieldwork in five federal problem-solving courts in the United States, we examine the role of judges in problem-solving courts. In this paper, we first discuss the judges' roles in problem-solving courts. Next, we present a discussion of Goffman's front-stage, backstage framework while highlighting how previous scholars apply

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dramaturgy in criminal justice environments. We then discuss the methods and setting of our study before presenting our findings. We conclude with a discussion of study implications for the problem-solving court movement.

Judges in Problem-Solving Courts

In the traditional adversarial U.S. criminal justice system, the judges' role includes listening to the evidence and providing a ruling based upon the facts presented. Judges have an obligation as neutral arbitrators, impartial to the hearing (see for example the American Bar Association's *Model Code of Judicial Conduct*). However, therapeutic jurisprudence frames problem-solving courts and these courts embrace a non-adversarial approach to justice where all team members work collaboratively to eliminate issues, such as drug use, that are related to offending behaviors. Therapeutic jurisprudence changes judges' roles from neutral or passive to one where they are important rehabilitation components for offenders (Freiberg, 2011; Rottman & Casey, 1999; Hora & Stalcup, 2007; Winick & Wexler, 2001; Winick, 2001).

When providing an overview of problem solving courts, Berman and Feinblatt (2001) note these specialized courts rely on the use of active judicial authority to solve problems and change defendant behaviors. A key component of problem-solving courts is that they are generally judge-run programs in which a trial court judge uses previous court experience to creatively resolve legal conflicts (Miller & Johnson, 2009). For instance, judges in problem-solving courts stay involved in cases even after the adjudication process to closely supervise offender performance in treatment programming. Therefore, the judge acts as both supervisor and case manager charged with coordinating supervision and treatment services in order to promote rehabilitation and a reduction in recidivism. Miller and Johnson (2009) further clarify the role of judges in problem solving courts noting, "The judge is the courtroom leader who assumes responsibility for determining which social and personal problems will be addressed within the court and thus made public" (p. 79).

In other research on problem solving court judges, Nolan (2001) suggests that judges act as advocates participating in the process by recruiting external resources, providing organizational support, lobbying, coordinating, fund-raising, or talking to the media. The role of a problem-solving court judge is no longer a passive role in the traditional sense. Instead, the drug court judge is the main actor in the program. As such, judges are generally more informal in this court setting than in a traditional court setting (Nolan, 2001). Despite the judges' key role, however, Nolan (2001) acknowledges the judge is not the only central role in a problem-solving court setting. In line with the therapeutic jurisprudence model, all members of the team play a key role in improving offender outcomes.

Similar to the present study, Shomade (2010) also explores the role of the judge in problem-solving courts by examining data collected from a mixed method case study of state-level drug courts in the southwest United States. Based on interviews and survey data, he provides a different view of the judge's role in problem solving courts. Specifically, he states that during team meetings, the judge acts as a collaborator who shares equal say in decisions regarding offender punishment with other members of the courtroom workgroup. In these settings, judges facilitate the meetings by freely interacting verbally with offenders, encouraging them to reach success benchmarks, and sanctioning them when they fail drug tests.

In addition to being an advocate for improved offender outcomes, there is also some evidence that the judge's role in problem-solving courts can have both positive and negative effects on therapeutic outcomes. Rottman (2000) argues that problem-solving courts allow judges the ability to become more sensitive to developing individual and systemic responses

to address offender issues when a court's caseload consists of a large proportion of similar cases. Furthermore, skill development among professionals operating within the therapeutic jurisprudence framework may be faster because of a common focus and collegial support among judges involved in a problem-solving court. Working in problem-solving court environments allows legal professionals to become better communicators with court participants and thus better able to assist participants with their rehabilitative goals. Yet, there may also be some negative effects on therapeutic outcomes associated with judge's roles in problem-solving courts. Rottman (2000) suggests that judges may become overly dependent upon treatment experts in specialized courts. He argues this shift in authority may be inconsistent with traditional understandings of legal procedures. Problems may also arise from problem-solving courts becoming too dependent upon a particular judge, creating problems when systems reassign judges to different courts. Lastly, judges involved in problem-solving courts often face more stress because of increased involvement, creating problems with burnout and fewer career advancement opportunities (Rottman, 2000).

The shifting role of judges in problem-solving courts also raises ethical concerns worth discussing. Some research suggests that the collaborative nature of problem-solving court decision-making may undermine public perception of judicial independence and impartiality (National Drug Court Institute, 2002). This idea largely emanates from the notion problem-solving court judges are advocates rather than impartial decision-makers. Since the therapeutic jurisprudence model incorporates a non-adversarial team approach to treatment, direct contact between judges and participants may create vulnerability as defense attorneys are supposed to share the responsibility of protecting the participants' rights with the judge who also makes sanctioning decisions. Therefore, the defense attorney faces a tough situation where s/he has to weigh the defendant's rights with the need to share information with the court team (Reisig, 2002).

Despite its' challenges, Berman (2000) suggests that many judges initially and continually advocate for problem-solving courts in response to overcrowded dockets and prisons. Additionally, Boldt and Singer (2006) posit that judges endorse problem-solving courts as a response to recent sentencing guidelines that sought to reduce judicial discretion. They argue in problem-solving court settings, judges work to find the most appropriate solution for case circumstances. In this type of system, judges and court teams view adversarial procedures as inappropriate or inadequate to solving the issue at hand.

Problem Solving Courts in an International Context

While first introduced in the U.S., more recently drug courts have emerged throughout the United Kingdom (UK). As discussed by McIvor (2009), several countries within the UK have been using a drug court model to address offenders' substance use and drug problems. Perhaps the most progressive in this area, the Scottish government began developing a national drug court model in 1999. Evaluations of the Scottish drug court model suggest it is effective in reducing recidivism among participants who complete the program (Eley Gallop, McIvor, Morgan & Yates, 2002; Hough, Clancy, McIvor, Barnsdale, Malloch, Eley & Yates, 2006; McIvor, 2004). Likewise, evaluations of the Scottish drug court system also find that drug courts are an effective tool that should continue within Scotland. However, these studies also stress the need to improve court retention rates as offenders who did not complete the drug court program are often reconvicted at a high rate (McIvor et al., 2006).

In more recent years, the British government has also begun establishing a drug court program. As Bean (2002) points out, British adoption of the American drug court system is possible, but three drug court practices hinder adoption. These include 1) the loss of judicial oversight once the offender receives sentencing, 2) the therapeutic jurisprudence "team approach," and 3) the use of multiple graduated sanctions and rewards. Despite these

challenges, England and Wales in 2005 operated a pilot drug court with the hopes of establishing a clear plan for future implementation (Matrix Knowledge Group, 2008). The findings from this pilot became the basis for several other drug courts implemented throughout Britain. Although this is still a relatively new development, preliminary studies of these drug courts illustrate positive effects on offender outcomes (Home Office, 2011). Though the underlying legal system present differences, the problem-solving court models are strikingly similar in the US and UK systems.

Front-Stage and Backstage

As highlighted throughout literature on problem-solving courts and the roles various actors play, judges often fill a leadership role in both front- and backstage contexts (Nolan, 2001). While acknowledging that a collaborative approach is necessary, court teams often consider the judge the ultimate decision maker with power to both organize and facilitate all court processes. In this way, Winick (2002) refers to the problem-solving court as a “therapeutic drama” (pp.1060) and Nolan (2001) refers to “therapeutic theater” (pp. 61-89) in which the judge plays a leading role in both the front-stage and backstage - directing the court session, coordinating the roles of the other actors while motivating and inspiring them to successfully fulfill those roles.

In the *Presentation of Self in Everyday Life*, Goffman (1959) discusses a framework he calls dramaturgy, a sociological perspective of social interaction. Goffman (1959) argues that life is a stage and everyone is a performer acting out a role. Individuals act out multiple roles, which change depending on the intended audience. Social interactions take place in what Goffman (1959) refer to as the front- and backstage. The backstage is where actors prepare for their performance and act as their authentic self, often stepping out of character. Actors engage in this informal performance without worry that one will disrupt the script and without fear regarding the perception of one's character because backstage, others cannot see or judge the performance. The front-stage, on the other hand, is where the viewable performance occurs. Actors take on the behaviors, appearances and props necessary to fulfill their expected and presented role (Goffman, 1959).

Several researchers apply Goffman's (1959) front-stage-backstage framework to criminal justice system settings. In the context of policing, prior scholarship examines the unique nature of policing, comparing the front- and backstage actions of police officers as street-level workers. Primarily, this research examines the culture of policing in which officers stage performances even when they are backstage and hidden from public scrutiny. Scholars argue this is due to the bureaucratic nature of policing, in that they must act in accordance with organizational norms even when they are technically backstage (Cancino & Enriquez, 2004; Pogrebin & Poole, 1988; Waddington, 1999).

Other research applies Goffman's (1959) dramaturgical perspective quite differently, focusing instead on organizational factors within courts such as decision-making, restorative justice practices, specialty courts and organizational reform (Bynum & Paternoster, 1984; Dignan et al., 2007; Miller & Johnson, 2009; Rose, Diamond & Baker, 2010; Thomas, Mike, Blakemore & Aylward, 1991). For example, Miller and Johnson (2009) use three years of observation data to describe front- and backstage within problem-solving courts. In their description, the backstage action is particularly important, as it is where courtroom workgroups (e.g. judge, prosecutor, defense attorney, probation officer and sometimes others) privately discuss participants' progress and setbacks as well as current procedures and strategies. While the actual court session is open to the public, only those actors involved in the problem-solving court are privy to backstage preparations for front-stage court sessions. Miller and Johnson discuss the backstage of the problem solving court as, “A new form of delivering criminal justice, anchored by the rule of law and by a PSC work

group” (2009, p.173). They argue judges play a central role within problem-solving courts, maintaining power in both the back and front-stage performances, often leading both the court sessions and the behind the scenes conversations. Despite the judges' prominent role, these authors also note the importance of supporting actors, most notably the case managers and treatment providers.

Several prior studies also use the front-stage/backstage framework to examine decision-making within the criminal justice system (Bynum & Paternoster, 1984; Rose et al., 2010). Rose and colleagues (2010) use Goffman's framework to look at juror decision-making. They refer to formal court proceedings that occur on the witness stand, judge's bench or attorney tables as the front-stage, and the “offstage” as the other more informal behaviors and interactions that occurring within the courtroom. These authors argue that few places exist within a courthouse where courtroom actors are backstage. As such, jury members are often privy to actions and behaviors that they should not see. As part of a videotaping project supported by the Arizona Supreme Court, Rose and colleagues (2010) focused primarily on the information jurors discuss in deliberation to make formal decisions. Results suggest deliberations commonly used offstage observations, but jurors relied mostly on information presented during the formal, front-stage proceedings to make final decisions regarding the court case.

Bynum and Paternoster (1984) also examined decision-making within the criminal justice system, arguing that racial discrimination is most prevalent in the backstage. Looking at sentencing and parole decisions in a state with indeterminate sentencing, they found that during the sentencing process, which takes place front-stage, Native Americans and non-Native Americans were treated equally. However, when examining parole decisions which take place backstage, Native Americans were less likely to be paroled than their non-Native American counterparts. These findings support the idea that racial discrimination is not likely seen in visible, front-stage regions of the criminal justice system, but are more likely to play a role in hidden, backstage decision-making processes.

In addition to decision making processes in court settings, scholars have also explored restorative justice settings in light of Goffman's (1959) framework. Some argue that such practices are a criminal justice process that requires staging similar to a performance (Dignan et al., 2007). This research highlights the complexity of the performance by criminal justice actors in the front-stage, as they often fulfill multiple roles to represent the offender, victim and community simultaneously, as well as in the backstage, where measures must ensure that the front-stage performance aligns with the goals of restorative justice: fairness, inclusiveness and equality.

In the case of misalignment between the front- and backstage, criminal justice procedures, which may be unseen and thus questionable, may need to be altered to align with front-stage norms of accountability (Thomas, Mika, Blakemore & Aylward, 1991). Thomas and colleagues used ethnographic data from prison disciplinary hearings to illustrate the inconsistency between formal rules and enacting performances. Hidden from public examination, new laws must protect prisoners from injustices that may occur behind prison walls, such as abuse. These authors argue that legal mandates barely make a dent in changing prisons as staff members can “make do” by developing strategies that maintain power relations as opposed to modifying them. Thus, actors in the prison system can rework rules that supplement rather than subvert prison staff power to secure a preferred social order. This suggests that formal methods of control in the front-stage will not necessarily weaken the control power of staff in the backstage.

It is common, and often expected, for front-stage performances to differ from what occurs backstage due to the complex processes associated with legal performances. This is heightened in the typically adversarial US criminal justice system, where there are multiple and sometimes competing, goals present. As Miller and Johnson (2009) highlight, the participating court actors are crucial to performances within problem-solving courts. Utilizing this dramaturgical framework, we argue that judges are front-stage stars within problem-solving courts, but are also supporting producers backstage.

Settings and Methods

This paper grows out of larger study that examines the implementation of one evidence-based practice, Contingency Management (CM) (using operant conditioning to reward positive behaviors) within problem-solving courts¹. An evidence-based practice is a technique identified by rigorous and solid research that improves outcomes at the participant level (Taxman & Belenko, 2011). While the initial study design involves a program and process evaluation of probation and federal problem-solving courts during CM implementation, this paper emerged out of an inductive, grounded-theory (Charmaz, 1995) approach to qualitative data analysis. As such, our research question: *How do courtroom workgroup actors adapt to their roles in problem-solving courts?* grew from the data itself, rather than as a pre-data collection or pre-analysis research hypothesis.

At the project's start, we conducted site visits with teams in five problem-solving courts within three federal districts over sixteen months between 2009 and 2010, totaling 350 hours of fieldwork. Each district in our study has a minimum of four agencies involved in its court workgroup, including prosecutors, public defenders, POs (supervision side rather than pre-trial) and judges². Table One presents the five courts included in the analysis for this paper. Three of the courts operate as traditional drug courts, and two operate as reentry courts. Participating courts come from geographically diverse settings, representing regions from across the nation, in three federal districts in three circuits. Two of the courts involve treatment providers in team meetings and decision-making. All five courts involve judges, prosecutors, defense attorneys and POs.

The problem-solving courts in this project are less than five years old and are representative of other problem-solving courts at the federal level. A federal judge who operates a criminal docket in addition to his or her work on the drug court bench leads each problem-solving court. The problem-solving courts share a similar structure where participants navigate through various court phases as their good behavior earns them fewer courtroom visits and edges them closer to court graduation. In the first phase of each court, participants appear before the court team once a week at the problem-solving court session. Depending on the

¹Courts were selected for the larger research project based on their willingness to consider the implementation of contingency management in their problem-solving courts. Two of the three districts already had established problem-solving courts at the start of the study. The courts had been running from 1 to 5 years. One district was just establishing their problem-solving court at the start of our project. We were able to observe the planning and first year of the court's implementation as part of the project.

²Although seemingly similar in the US, problem-solving courts at the federal and state levels are different. Considerable differences in resources, sanctions, internal coordination and support engender these dissimilar environments. First, unlike state courts where resources for training and treatment/programs are scarce, federal problem-solving courts possess seemingly unlimited resources with advanced technical training for workgroup members. Armed with the science of evidence-based practices and garnering the power of information, federal POs assigned to problem-solving courts operate on an equal playing field with other workgroup actors. Federal problem-solving courts also hold numerous contracts with treatment facilities with no shortage of services. At the state level, treatment for participants is infamously scant. Second, state problem-solving courts navigate state criminal laws and interpret these laws in various ways, making comparison between them difficult. At the federal level, all problem-solving courts adhere to federal laws, presenting a unique opportunity for cross-site comparison. Third, state problem-solving courts generally hire court coordinators for scheduling and various administrative services. In federal courts, Pos regularly act as coordinators, giving them increased access to backstage court activity. Finally, federal courts do not operate with the same broad endorsements as state courts. They are often organized and run without official approval from the U.S. Administrative Office of the Courts.

number of participants present (ranging from eight to eighteen during our observations), court sessions generally last about sixty minutes. They occur weekly, with all participants attending at least one session a month and some attending more often, depending on their current phase in the program. Each program decreased the frequency of court appearances for participants as they progressed. During court sessions, participants sit in the jury box while the judge or PO calls each up in turn. Talk between the judge and participants dominate courtroom interactions with other team members speaking minimally. Each court team also meets pre-court to discuss participants' cases. In these meetings, the court workgroup shares key information and the team finalizes their decisions regarding participants, barring some unforeseen court occurrence. The courts are open to the public, but observers are infrequent.

Observation and Interview Methods

Qualitative data collection for this project includes direct, non-participant observation of problem-solving courts and their affiliated organizational actors, in-depth, semi-structured interviews and analysis of organizational documents (e.g. memos, emails, etc.). The use of multiple methodologies triangulates the data sources, offering greater depth and reliability in the results (Lofland et al., 2006; Morrill, 1995; Snow & Anderson, 1993). We were unable to tape-record conversations, as federal courts prohibit recording devices. However, we did take notes of observations. We were careful not to let our note taking disrupt the scene or interfere with the flow of action/rapport. Thus, we completed most formal note taking upon exiting the field daily.

We conducted semi-structured (thematically focused) interviews with all members of each problem-solving court team (5 teams, n=38 players in three districts combined). Interview themes include: 1) understandings of problem-solving court processes; 2) recollections of past experiences with problem-solving court teams; 3) ideas regarding problem-solving court goals; 4) ideas regarding the role of each problem-solving court actor in the court process, and 5) stories about daily activities including routine and typical events, as they related to the problem-solving court. We spent roughly three to six hours each observation day with court team members (e.g. judges, prosecutors, defense attorneys, POs and treatment providers). We interviewed and observed every individual in this study separately (in a private office or automobile), among co-workers or supervisors, and within a courtroom work team setting (pre-court meetings and court appearances). The informal interviews did not last a set amount of time, rather they continued throughout the entire time we were in the field each day.

Coding and Analysis

Using Atlas.ti (a qualitative software program) for coding and data analysis, we linked fieldnote data and began coding after roughly one-third of data collection was completed. Using a grounded theory approach to data analysis (Glaser & Strauss, 1967; Bryant & Charmaz, 2007) that begins with inductive logic, we first engaged in systematic, line-by-line coding that considers broad and emergent themes (Charmaz, 1995). This entails reading each line of fieldnotes and coding individual words or phrases in-vivo (using the language of the research subject) whenever possible. Interacting with the data in this way allows theory extension and building to occur naturally throughout analysis. Next, we re-coded each set of fieldnotes using a refined componential data analysis whereby we coded data using more focused codes using taxonomic analysis as a path to data synthesis. This involves coding larger chunks of data (e.g. sentences, paragraphs, pages) for behavioral and/or attitudinal processes and patterns to discover how our subjects experience and define their working environment. During this phase of analysis, we wrote numerous analytic memos incorporating raw, descriptive data with initial and subsequent analytic interpretations.

Suggested by Emerson (2001) and Charmaz (1995), this intense, multi-phased approach is a highly respected form of qualitative data analysis. Finally, we used the coded data to inform the writing of this paper. Although many other themes emerged in coding, this paper focuses on the adaptations of judges' roles in the problem-solving court model. In our coding and analysis, we observed no significant differences between types of courts or districts. As such, we present the data collectively below, focusing on the roles of courtroom workgroup members.

Findings

While problem-solving courts are often discussed as judge-centered and judge-led initiatives, we found problem-solving court leadership shifted depending on the situation and task. Backstage, in pre-court meetings and during day-to-day interactions with court participants, POs were often the lead courtroom workgroup actor (Rudes & Portillo, forthcoming). They had the most interaction with participants and presented weekly reports and recommendations regarding participants to the courtroom workgroup. During backstage pre-court sessions, court workgroups regularly engaged in deliberate discussions in preparation for the “theater” or performance of the front-stage court session. In the backstage environment, court members recognized the central role of the judge during the court session and supported the preparations of the judge to interact with participants during the court session. Armed with data and information about participants' progress, judges acted as front-stage stars during the public courtroom sessions. In this setting, judges interacted directly with participants and assumed the expected role of the public face of the courtroom workgroup.

While judges' front-stage presentation is consistent with past research on problem-solving courts (see for example, Miller & Johnson, 2009), we find the backstage leadership and roles of the courtroom workgroup are more nuanced than previously discussed. Below we present our findings, first discussing the backstage interactions among the courtroom workgroup. We then focus on how the courtroom workgroup prepares for the performative aspects of the front-stage courtroom. Finally, we discuss the role of judges in the front-stage courtroom arena.

Backstage: Information Sharing and Shifting Lead Roles

We observed pre-court sessions where the entire courtroom workgroup team reviewed updates for the expected participants in that day's court session. Pre-court sessions typically took place an hour before the day's court session and involved judges, prosecutors, public defenders and POs. Treatment providers were present in two out of the five courts and participated via conference call in one additional court. While the judge convened pre-court sessions and began discussions, the workgroup deferred to POs and treatment providers as experts during these interactions.

In each court we observed, POs prepared weekly progress reports on each participant. The reports differ in style in each court, but all provide information on drug testing, employment, treatment session attendance and PO meeting attendance. POs regularly present a shortened version of the report in both written and verbal form. As part of the report POs detail their interactions with participants in the intervening time between the current and the prior court session. Treatment providers often follow up on POs' reports detailing their sessions with the participant and noting progress or regression in treatment sessions. Each report also provides a recommendation for each participant attending the court session that day. Judges recognize that the POs lead the pre-court meeting through the work that they put into each report. One judge commented:

“I’m the guy behind the curtain like in the *Wizard of Oz*. Everyone thinks I’m in charge, but I’m really not doing anything back there. Matt³ [the PO for the court] is the real boss. This will succeed or fail on Matt’s shoulders.” He said that Matt is the real expert and he is the one that is going to have to run the thing. They need a judge to make it look good and to be the big guy for the participants and he is willing to do that, but really this is Matt’s show.

Judges often put a lot of weight into what POs present in the pre-court sessions. In one pre-court session a judge adopted his recommendation directly from the PO’s reports nine out of ten times. In another session, the team adopted the PO’s recommendations in fourteen out of fifteen cases. We did not observe a pre-court meeting where the judge disagreed with the PO in more than one case. The PO’s recommendations often included expectations for participants and suggestions for needed services. The judge and the rest of the team often adopted PO’s recommendations regarding increases or decreases in frequency of court attendance, drug or behavioral treatment options, and employment expectations, with little discussion.

Other courtroom workgroup members acknowledged the central role of the PO in the pre-court sessions as well. One Assistant US Attorney noted:

The PO pretty much does all the work for these cases. The PO provides the team with amazing information about the participants each week.” She went on to say that they rely on that information. She noted that the judge is extremely busy with a role in the court that demands his time and attention. The Federal Public Defender has a role in defending and representing every participant in the court weekly but the AUSA role is limited. She says she likes to hear the talk about each participant in the pre-court meetings but rarely contributes because she does not feel she has much to say. She is not afraid to contribute, just that the other members of the team know the participants better and seem to realize that if there is a sanction to be implemented that includes custody then the AUSA is important. Otherwise, her role is representative of her office.

The judges discussed their shifting views of the courtroom workgroup team based on their participation in problem-solving courts. One drug court judge mentioned that the entire experience had been educational for her:

She said she never had direct contact with treatment providers and POs. She has a lot more respect for what POs do after the drug court experience. She also has had a major education in treatment. She never realized how influential treatment is for participant’s success until she had the treatment providers in the courtroom every week.

An additional judge discussed the centrality of treatment for decision-making in his court as well. Noting,

The team relies on feedback from the treatment providers to know when participants are ready to move between phases of the court. They will not move someone to the next phase, and reduce their frequency in court, before the treatment provider says they are making progress and ready.

In most of the courts we observed, the entire courtroom workgroup team – judge, prosecutor, public defender and PO – contributed to decision-making regarding which defendants would participate in the court. The POs, however, were the initial gatekeepers, identifying which participants the court should consider for participation in their program.

³Throughout our findings we use pseudonyms for study participants to protect their anonymity.

They prepared histories on each participant they identified within their caseloads and offices, and made the initial recommendation to the court for participation in the problem-solving court. At the end of one pre-court meeting the judge referenced this asking whether there were any new participants to consider for the court:

The POs responded that they had the word out to their fellow officers, but they hadn't sent them anyone new yet. The judge said that they needed to, “drum up some business for the court.

When discussing their role in the pre-court sessions one PO noted that the judges and other courtroom workgroup actors typically listen to them because, “they trust us.” The POs present the information to the court for initial participation in the problem-solving court and provide weekly updates with each participant's progress. The judges typically defer to the judgment of POs and treatment providers during these court sessions. The judge convenes the sessions and ultimately the outcomes of decisions in the sessions to the participants, but the POs typically lead the pre-court sessions.

Preparing for the Performance: Focusing on the Performative Aspects of the Session

Throughout our observations of problem-solving courts' pre-court and courtroom sessions, it became clear that the courtroom workgroup recognizes the performative, front-stage nature of the courtroom sessions. POs and treatment providers would often cue the judges to mention certain things about the participants in the open court sessions.

As the PO in one pre-court session was providing details on his weekly reports he asked the judge to ask one participant about their job interview. He said that while the participant did not get the job, it was an important step, and it would be good for the judge to recognize it in front of the other participants.

POs and treatment providers would often highlight something good that happened during their interactions with participants that they wanted the judge to point out in a public way during the week's sessions. Since POs and treatment providers had the most interaction with participants, they were often the ones to notice and highlight positive behavior for the rest of the courtroom workgroup. They remarked that highlighting positive behavior provided encouragement to other participants to behave in similar ways so they too would gain recognition.

The courtroom workgroup actors also discussed how negative decisions would play out in front of the participants during courtroom sessions. The following fieldnote excerpt comes from another pre-court session:

The second participant was one with a lot of history in the program. The team decided he needed to spend a weekend in jail. The whole group discussed the need for a scene with this participant. They decided to have the marshal come to court to take the participant into custody. Typically participants will surrender themselves after court, but the group felt that this participant needed the extra theatrics. They also said that it was something the other participants hadn't seen in a while, it was good to have the marshals come to court every once and while. There was general chatter around the group about the participant and the participant's need to take the program and his treatment seriously.

The discussion of theatrics was not unique to a single court. In another district during a pre-court session the courtroom workgroup discussed the arrest of a participant during the court session saying:

Typically if offenders are given a sanction of jail time they will go turn themselves in after court. But, occasionally the team makes “theater” out of the sanction and

will have the marshal come up to the courtroom and arrest the person on the spot. The “theater” gives all of the participants a little scare. The last time they had “theater” in the courtroom was about 3 months ago, but they would likely have it again during the court session because they had a problem participant.

While the entire workgroup team discussed the performative aspects of the courtroom session backstage, they recognized the central role of the judge in the performance of the courtroom front-stage. In discussions about one formerly problematic participant who was being promoted to the next phase in the court, the group decided to promote the participant but insist that he continue to come to court weekly, rather than decreasing his court appearances to every other week as was typical of the new phase.

The Federal Public Defender jumped in and asked how they would explain that to the participant, he has not done anything wrong, so it isn't a sanction. She suggested that the judge explain that since he was doing really well coming so often, they wanted to continue to see him, but he was being promoted so that still meant less drug tests and less contact with the POs. The judge agreed to that explanation.

The entire group often worked off the PO's weekly reports to prepare for the front-stage action of the court proceedings. While POs, Federal Public Defenders, treatment providers and Assistant US Attorneys spoke freely and interacted on a largely level playing field in the pre-court sessions, once court began the judge took the central role -directly engaging with participants.

Front-stage: The Centrality of the Judge

During court sessions the judge took on the role of leader. She or he would initiate conversations with each participant and was typically the one who informed the participant of all incentives and sanctions. Fitting with the therapeutic jurisprudence model of problem-solving courts, judges would often interact with participants on a personal level, noting the details about their week that other courtroom workgroup members brought up in the pre-court sessions, or engaging with them regarding past conversations from earlier sessions. The following fieldnote describes the typical process of a problem-solving court session:

The judge calls each participant up and speaks with him in front of the group. He remembers something personal about participants and starts with small talk about their family or living situation. He focuses on positive change talk, but also focuses on the requirements of the court. The focus of each discussion seems to turn to a job or the financial situation of the participant. The judge emphasizes the requirement of community service if the participant is unemployed. One participant moves between phases and everyone claps as the judge hands him his certificate. The judge seems to take on a supportive and fatherly demeanor. Court moves pretty quickly, the judge speaks with all fifteen participants within an hour.

The process is judge-centered with the judge initiating the conversation with each participant. The judge engages with the participant personally and reinforces the structure of the court and requirements for participants.

Some judges noted that they learned their courtroom role over time. One judge discussed learning the importance of her role in court:

After their court had been up and running for a while, the judge said she went to a training where they discussed the importance of praise and sanctions coming directly from her. Prior to the training the courtroom workgroup members would often rotate who handed out candy bars and other little incentives to the participants who had done well that week. After the training the judge started handing the candy

bars out from the bench and shaking the hand of each participant who had a good week. She said that she recognized it made a difference, the participants lit up when they came up to the bench to receive their candy bars.

Numerous courtroom workgroup members and judges remarked on the paternalistic nature of the courts. One judge commented:

He really views the program as a paternalistic program. He said that he really does act like a father figure to a lot of the participants and the formality of the process is a big part of that for him.

A public defender in one of the problem-solving courts discussed the paternalistic nature of these courts in negative tones, but noted that race made a difference in the court he was participating in.

He said that he really thinks it makes a difference that the judge is black. Even if he is conservative, he is not the “white father figure” that most of his participants are used to seeing in the courtroom.

The judge in most courts was discussed as a paternalistic white father figure, interacting with participants on a personal level, but from a place of cultural advantage. In this court the performance was seen as different, and presented by the public defender as more effective, because the judge culturally and physically resembled many participants in the court.

Some judges discussed the formality of their role in the courtroom. One judge discussed the differences he saw as a Magistrate in the federal system, rather than a District Judge. Magistrates do not have the formal power to sentence defendants in the federal system, where District Judges do. Magistrate judges operated the majority of the courts in our project. Some of these judges noted the importance of formality in their courtrooms.

The Magistrate Judge said, really he doesn't have any real power with the program, the offenders are there because they want to be [the program is voluntary] and they gave consent. Even if they agree to sanctions like going to jail that day he can only send them to jail for seven days throughout the whole program - and that is only by special arrangement [approved by the Chief District Judge in his District]. He said that he has observed a District Judge's court [in another District] and she can move straight from the meeting to a revocation hearing. He does not have the power to do that, if someone has to be revoked in his court he cannot handle the hearing and must actually stay out of the hearing process altogether so that it doesn't seem like he is interfering. He said that is why he relies on more formality in the program. Only the staff members are in the meetings and even in those meetings he wears his robe. He sits on the bench every time he interacts with the participants.

The judge above notes the importance of acting out the formality of the court with participants during the sessions as well as with the other courtroom workgroup members backstage in the pre-court meetings.

In all of the courts we observed, judges were the leaders facilitating the courtroom sessions. They, and other members of the courtroom workgroup, noted the paternalistic and performative nature of their interactions with participants. However, it was in the courtroom where the judge adhered to many of the principles of therapeutic jurisprudence and performed in ways that are consistent with previous scholarship on problem-solving courts.

Discussion and Conclusions

The problem-solving court model is proliferating across the US and Europe (Butts, 2001; Bean, 2002). While the model is built on the principles of therapeutic jurisprudence and a

non-adversarial collaborative approach to reforming criminal justice processes, it is often presented as a judge-led and judge-centered movement (see for example Miller & Johnson, 2009). Our work within federal problem-solving courts finds the problem-solving court movement and day-to-day operations of problem-solving courts are more nuanced than previous scholarship suggests. While judges are the public face of the court, leading the court in public sessions, other courtroom workgroup actors take on central roles outside the public courtroom environment. That is, backstage, in pre-court sessions and day-to-day interactions with problem-solving court participants, POs are often the central courtroom workgroup actors. POs spend the most time with problem-solving court participants and are charged with informing other courtroom workgroup actors about the participant's progress and recommending incentives or sanctions for participants. POs, at the federal level, are also the gatekeepers to the courts – recommending who should participate in these newly designed programs.

Problem-solving courts in the US and UK maintain similar designs with a comparative focus on collaborative decision-making framed by a therapeutic jurisprudence process (Bean, 2002; Home Office, 2011; Rottman & Casey, 1999). Under this model the traditional detachment and neutrality of the judicial branch in the US system is replaced with a participatory adjudicator. While some scholars acknowledge potential problems with this model (NACDL, 2009) noting that the collaborative nature of decision-making in problem-solving courts may erode due process and other legal protections for participants, few have explored *how* the roles of courtroom actors actually shift under this new model.

Judges are traditionally trained to adjudicate the guilt or innocence of the defendants in front of them (*ABA Model Code of Judicial Conduct*). Under these new courts, judges are now perceived to lead a team focused on rehabilitative goals through collaborative processes (see for example Miller & Johnson, 2009; Rottman & Casey, 1999; Butts, 2001; Hora & Stalcup, 2001; Winick & Wexler, 2002). Guilt or innocence is no longer a question, but progress towards pro-social goals is. Judges increase their frequency of contact with participants in these courts, but still limit their contact to the courtroom. POs maintain their traditional supervisory roles, overseeing the participants' progress in drug treatment, employment training and pro-social skill development. The judge maintains the leadership role in the courtroom, but base their interactions and decisions off of information provided by other courtroom actors.

While the presentation of information in traditional cases takes place in the courtroom as part of the performative nature of criminal case decision-making, the presentation of information in problem-solving courts takes place behind closed doors in pre-court sessions. Participants no longer have a legally trained actor explaining the process of case resolution and presenting their individual desires to the court in the public defender. Instead, they now have a whole courtroom workgroup team dedicated to their progress in a rehabilitative process. The team shares information as a whole before they interact with the participant. Decisions are performed for the participant in the courtroom where the judge becomes the main point of contact for participants, rather than counsel dedicated to presenting their desires or a PO charged with supervising their post-release progress. While the problem-solving court movement presents the judge as the leader and key decision-maker, decisions are often made in pre-court sessions where POs and treatment providers are lead information contributors.

While the therapeutic jurisprudence literature praises the increasingly interactive role of the judge under the problem-solving court model (see for example Rottman & Casey, 1999; Winick & Wexler, 2001; Winick, 2002; Hora & Stalcup, 2007), there is little discussion in the academic literature on how judges prepare for their new role. Data from the current

study reveal that judges and the rest of the problem-solving court team see their role through a dramaturgical lens. The courtroom workgroup actors often acknowledge the performative aspects of the courtroom process in problem-solving courts, and the judge's star role in the front-stage performances of the court. Our data demonstrate courtroom workgroup actors discuss how they should present themselves in front of participants and the importance of participants seeing how others are being rewarded or sanctioned for their actions.

Courtroom workgroup actors put the emphasis on the judge as the central actor in the courtroom. They discuss the symbolism of having a father-like figure expressing interest in the progress of participants and presenting the decisions of the collective workgroup. But, there has been little scholarship on how the shifting roles of courtroom workgroup actors under the problem-solving court model play out in front-stage and backstage contexts. The data presented here are only the first step in understanding the shifting roles and front-stage and backstage dynamics of this burgeoning criminal justice reform. Our findings may be limited in their generalizability due to the data collection being focused on federal level in US courts, where problem-solving courts have only recently been introduced. At the federal level, POs may take on a more central role backstage because of increased contact with participants and extensive training in rehabilitative supervision processes. But, understanding how roles and leadership in problem-solving courts shift in front-stage and backstage contexts is key for understanding the implementation of this newly instituted reform.

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Table 1
Characteristics of Five Federal Problem-Solving Courts

PS Court	Type of Court	Players Involved	Inter-Organizational Dynamics	Court's <i>Perceived Leadership</i>
1	Drug Court	Judge AUSA FPD & Paralegal PO Treatment Providers	Team worked together for years, but maintain adversarial process	Team says they view judge as independent & charismatic leader & final decision-maker
2	Reentry Court	Judge AUSA FPD & Paralegal PO	Have worked together for 2 years, congenial environment,	Team says they view judge as person who brings players to the table, but makes the final decision
3	Drug Court	Judge AUSA FPD 2 POs Treatment Providers	Team worked together for years, maintain traditional roles & try to reach group consensus	Team says they view judge as person who brings players to the table, but makes the final decision
4	Reentry Court	Judge AUSA FPD 2 POs	Just established the court, collegial group	Team says they view judge as compelling leader who takes input from other players, but ultimately makes final decisions
5	Drug Court	Judge AUSA FPD PO	Court is in its infancy, focused on teamwork & consensus decision-making	Team says they view judge as consensus builder, leading a team to group decisions

Glossary of Terms: AUSA: Assistant United States Attorney (prosecutor), FPD: Federal Public Defender, PO: Probation Officer