

Roles and Power within Federal Problem Solving Courtroom Workgroups

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Problem solving (PS) courts (e.g., drug, family, gang, prostitution, reentry) are becoming more commonplace. Today, PS courts exist or are planned in nearly all of the ninety-four U.S. federal districts. These courts focus on integrating therapeutic jurisprudence into the courtroom environment while emphasizing group decision-making processes among courtroom workgroup members. In this legal setting, courtroom workgroup teams, regularly consisting of judges, prosecutors, defense attorneys, probation officers (POs), and treatment providers engage a collective, case management approach to decision making with shared power among team members. However, despite the court's therapeutic and collaborative design, we find that POs wield powerful influence in decision making. Informed by sixteen months of qualitative fieldwork, including semistructured interviews, observation of courtroom workgroup meetings, and court observations in five federal PS courts in three federal districts, we find that POs exert undetected informational, technical, and relational power within the PS courtroom workgroup. This role and its accompanying power transforms POs into key decision makers, regardless of PS court type, workgroup dynamics, and decision-making style. The POs' role makes them critical contributors to the outcomes in federal PS courts with important implications for punishment decisions in the federal justice system. With an increasing number of PS courts currently in the planning stages at the federal level, our study has implications for the structure and decision outcomes in these growing courtroom workgroups.

INTRODUCTION

The U.S. problem-solving (PS) court movement began just over twenty years ago with the first drug court in Dade County, Florida (Taxman et al. forthcoming; Butts 2001). Touted as a revolutionary advance in justice processing,

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this therapeutic approach to offender management significantly alters traditional courtroom structure, processes, and goals in three primary areas. First, PS courts expand the court team beyond traditional criminal courts that rely heavily on a three-player, judge-led system (e.g., judge, prosecutor, and defense attorney).¹ The PS court model also includes probation and treatment providers as key members of the court team. Second, PS courts shift decision-making processes from individualized, adversarial systems to collaborative, team-based approaches. Third, because of group expansion and collaborative decision-making processes, the PS court model theoretically redefines team member roles while balancing power between all work team members (Butts 2001; Nolan 2001; National Association of Drug Court Professionals 1997). PS court work teams initiate and maintain contact with court participants (no longer called defendants) and other court team members throughout their tenure in the court. Rather than an overall focus on legal processes and outcomes, PS courts focus on an “ethic of care,” providing medical treatment and therapy in response to chronic problems such as drug abuse (Rottman and Casey 1999). This system melds scientific knowledge with legal processes, trumping legal goals of conviction or acquittal with rehabilitative goals. These rehabilitative goals include treatment and long-term planning with court participants to address all needs, while privileging management of addiction, use, and abuse issues/behaviors.

The current study brings together literature on courtroom workgroups, therapeutic jurisprudence, and power and role theory to explain the part federal probation officers (POs) play in PS courts including their role and accompanying power in courtroom processes and outcomes. In this article, we first review the literature on PS courts, where scant attention focuses on roles and power among PS courtroom workgroup members. Then we present the findings from our work. We argue that despite perceived and professed equality among court team members, POs wield enormous—and often unrecognized—power from informational, technical, and relational sources that heavily influence case outcomes. Finally, we offer a discussion of the implications of this work for future studies of PS courts and the unique issues they are designed to address.

CHANGING TRADITIONAL COURTROOM WORKGROUPS WITH PS COURT MODELS

The advent of PS courts presents a major focal shift over the last two decades that some scholars dub a “quiet revolution” in criminal courts, with judges and attorneys leading the way as “innovators” of PS courts (Berman and Feinblatt 2005). Scholars point to PS courts as a space of increased judicial discretion at a time when sentencing guidelines are reigning (Miller and Johnson 2009). Touted as value changers in the justice system, these courts refocus attention on rehabilitation and unique decision points (e.g., reentry,

preadjudication, etc.) using a therapeutic jurisprudence framework (Berman and Feinblatt 2005; Taxman and Bouffard 2002; Wolff 2002; Feinblatt and Denckla 2001; Goldkamp, White, and Robinson 2001). Under a therapeutic jurisprudence system, the question of “*why* punish” becomes “*how* to punish” (Rosenthal 2002). A rehabilitation or treatment program is justified only if it would do more good than harm. The goal under a therapeutic jurisprudence system is to move from a punitive orientation toward offenders to a rehabilitative orientation toward participants in the court system. Participants become the *subject* of rehabilitative processes built into justice process rather than simply an *object* affected by court processes. Unlike simple rehabilitation thinking that any treatment is better than no treatment, treatment plays a pivotal part in PS court processes through justified programs (Winick and Wexler 2003; Hora, Schma, and Rosenthal 1999).

Although drug courts are one of the most prolific types of PS courts, there are almost a dozen types of PS courts, ranging from mental health courts to domestic violence courts to gang courts (Berman and Feinblatt 2001, 2005; Goldkamp, White, and Robinson 2001). Despite their particular emphasis, PS courts share several core elements, including (1) prolonged and collaborative courtroom workgroup involvement, (2) intimate judicial involvement, (3) a rehabilitative-focused work team, and (4) a therapeutic jurisprudence framework (Orr et al. 2009; Berman and Feinblatt 2005; Boldt 2002; Feinblatt and Denckla 2001; Goldkamp 2000). In addition, nearly all PS courts work toward integrating treatment into the postconviction supervision of offenders (Orr et al. 2009; Boldt 2002; Wolff 2002; Feinblatt and Denckla 2001; Goldkamp 2000). The longer-term therapeutic jurisprudence orientation requires creative, nonadversarial teamwork on the part of the courtroom workgroup.

PS courts are relatively new at the federal level, with just one PS court in existence by 2001 and only eighteen PS courts by 2008 (Mark Sherman, PowerPoint presentation, 2011). This slow development is perhaps due to a 2006 Report to Congress arguing against implementing a Federal Drug Court program due to lack of potential clients. While state-level pre- and postconviction drug courts traditionally enroll nonviolent drug abusing/using participants, drug crimes in the federal system are more likely cases involving trafficking, transport, and sales—cases most drug courts consider ineligible. In the PS courts that do exist at the federal level, the courts have a tendency to look starkly different from state PS courts in three key ways: (1) fewer court participants, (2) access to greater and more diverse resources, and (3) more limited judicial discretion due to tight federal sentencing guidelines. Although these distinct contextual criteria distinguish state from federal drug courts in important ways, overall drug courts at both levels function similarly with similar outcomes.

In the nearly two decades of PS court evolution, scholars have recognized that at least the drug treatment version of these courts is effective for reducing recidivism (Wilson, Mitchell, and MacKenzie 2006). The changing roles

and nonadversarial nature of courtroom workgroups in PS courts are largely accepted (Berman and Feinblatt 2001; Butts 2001; Goldkamp 2000; Rottman and Casey 1999). However, the changing power dynamics within the PS court model have received little attention among scholars and practitioners. In these courts, attorneys on both sides are largely required to tone down their adversarial role and become part of a PS team (Orr et al. 2009). Judges typically retain their role as final case decision makers while working closely with the entire PS court team. Additionally, treatment providers may be part of courtroom workgroups (Peters and Murrin 2000). The role of nontraditional members of the courtroom workgroup has largely expanded within many PS courts. According to Olson, Lurgio, and Albertson (2001), "The most dramatic departure of drug court case processing from traditional case processing is a drug court's inclusion into the courtroom workgroup of POs and treatment staff, most of whom have little or no legal training or background" (192). POs often act as the treatment liaison and rule enforcer (as case supervisor) (Ibid.). Traditionally, federal POs possess power within the courtroom workgroup team as officers of the court who report directly to judges (D'Anca 2001). While the changing roles of attorneys and judges in PS courts have been widely discussed (Berman and Feinblatt 2001; Butts 2001; Feinblatt and Denckla 2001; Goldkamp 2000; Rottman and Casey 1999), there is limited discussion of people processing in drug courts (Coyler 2007). The growing literature on PS courts only hints at the changing roles of POs and the power that can accompany their position (Olson, Lurgio, and Albertson 2001).

For over forty years, scholars have raised the importance of courtroom workgroups (Castellano 2009; Feeley 1992; Eisenstein and Jacob 1991; Mather 1979; Heumann 1978; Gertz 1977; Burns and Stalker 1961). This literature has largely focused on decision making and case² processing among three primary players—judge, prosecutor, and defense attorney—on any particular legal case (Eisenstein and Jacob 1991; Nardulli, Flemming, and Eisenstein 1984; Mather 1979; Heumann 1978). Generally arguing that workgroups consist of complex interactional processes occurring among members affected by internal and external contextual factors, studies often consider traditional civil and criminal plea bargaining and negotiation (Eisenstein and Jacob 1991; Mather 1979; Heumann 1978). At times, this work considers the influence and importance of courtroom actors, most frequently highlighting the interactional dance between legal actors based on legal expertise, roles, symbolism, and tradition (Spohn 2009; Whitford 2002; Gertz 1977).

Despite the dominance of the three-player model in prior research, not all courtroom workgroups fit the traditional mold. Some research notes the elaborate discretionary and resource-driven power POs possess in courtroom workgroup teams (Burton, Latessa, and Barker 1992; Rosecrance 1988; Walsh 1985; Kingsnorth and Rizzo 1979; Ebbeson and Konecni 1975; Hoffman 1968). This work suggests that POs possess profound informational power for influencing case outcomes (McNeill et al. 2009; Carter and Wilkins

1967), with some scholars referring to POs as “agents of individualization” (Walsh 1985, 289). In this thinking, POs are not just *a* member of the court team. They are its *most important* members. POs’ reports assess individual offenders and provide case recommendations for the rest of the team using information only the PO can verify. Probation recommendations come in a variety of forms, including the traditional presentence report (PSR) (McNeill et al. 2009) and in other written and verbal formats. These recommendations are often pivotal for court decision making. Studies on the power of POs in courtroom workgroups find 70 to 99 percent agreement on sentencing decisions between judges and POs (Norman and Wadman 2000; Hagan 1975; Neubauer 1974).

There are also other theories about the power of POs. Some research doubts POs power and influence in court environments, noting that the PSR creates ceremonial, rather than actual, individualized, justice (Hagan, Hewitt, and Alwin 1979). Still, other research on courtroom workgroups has combined focus on probation with correctional staff and legislatures, finding that traditional courtroom workgroup members are often deferential to contracted caseworkers, not necessarily POs, because of their expertise and specialized knowledge regarding cases (Castellano 2009). Still other research expands workgroup focus to other actors within the court. For example, Gertz (1977) argues that court clerks are important, yet virtually invisible, members of some courtroom workgroups with a technical aspect to their job that provides them with vast information about particular cases. Likewise, court clerks also have “boundary spanning” functions for coordinating informational flow between the various workgroup players, often influencing decision making from multiple angles (Steadman 1992). In sum, diverse research on traditional criminal court workgroups suggests the importance of adversarialism, roles, and power for decision outcomes.

POWER IN PS COURTS

Unsurprisingly, power embeds in the amalgamation of justice roles in PS courts. Although power represents a popular and variable social science concept, the approaches used for understanding power generally suggest an interactional (Emerson 1962) and context-specific (Pfeffer 1981) component. This interactional interpretation occurs despite structural bases (French and Raven 1959) or sources (Pfeffer 1981; Bacharach and Lawler 1980) of power within organizations. Defined as “the ability to make things happen, to be a causal agent, to initiate change” (Follett 1960, 99), power is often best studied in real-world interactions where it is revealed as it is used (Czarniawska-Joerges 1988; Bittner 1965). In these interactions, power reveals a variety of forms, including “power over” and “power with” (French and Raven 1959).

Within workplace environments, occupations represent a particular venue for power where power acts as “a point of convergence of activity and

competing demands of a number of groups controlling resources” (Rothman 1979, 496). In case/client-based occupations, power regularly stems from resources available for particular individuals. Broadly characterized in Astley and Sachdeva’s (1984) work on power within organizations, power stems from hierarchical (formal/bureaucratic), resources/exchanges, and actor centrality (networks/connectivity). Aligned with these three broad power sources other work has considered various power resources. These include legitimacy (Weber 1946); general knowledge/information (Forester 1989); technical expertise (Forester 1989); input, ability to work as a team (Stebbins 1966); quantity and quality of referrals (Shortell 1973; Freidson 1960); repeated visits with and observations of clients (Goode 1957); networks/contacts (Forester 1989); and ability to control clients (Scheff 1961). Although it is an acknowledged presence, the specific sources of power within organizations are often elusive (March 1966).

In traditional thinking, Max Weber considered vertical power emerging from the formal aspects of organizations including knowledge of production and organizational operations as well as from ownership (Hardy and Clegg 1996). Organizational structures such as bureaucracies and hierarchies reinforce this power (Gordon 2009). Another way of exploring organizational power is through analysis of horizontal power differences. Horizontal power is the “use of influence among coacting peers to obtain benefit for themselves” (Salancik and Pfeffer 1974, 453). Within horizontal power, researchers consider the interdependent or involved relationships between organization units, called subunits. It is within these subunits that power becomes visible. For example, studies have noted knowledge power among factory subunits (Crozier 1964), resource-based power from coping with critical organizational contingencies (Thompson 1967), and power because of critical function as in the marketing departments studied by Perrow (1970). Subunits that are able to secure critical or scarce resources for their broader organization increase their overall value and position within the organization (Salancik and Pfeffer 1974). In PS courts, POs represent a subunit within the larger court workgroup team.

STUDY DESIGN AND METHODS

This article grows out of a larger study that examines the implementation of one evidence-based practice, Contingency Management (CM) (using operant conditioning to reward positive behaviors), within PS courts.³ An evidence-based practice is a technique identified by rigorous and solid research that demonstrates the practice improves outcomes at the client level (Taxman and Belenko 2011). While the initial study design involves a program and process evaluation of probation and federal PS courts during CM implementation, this article emerged because of an inductive, grounded-theory (Charmaz 1995; Glaser and Strauss 1967), approach to qualitative data analysis. As

such, our research question, “How do PS courtroom workgroup team members understand and negotiate their role and decisions regarding participants within court?” 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 PS 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 work group, including prosecutors, public defenders, POs (supervision side rather than pretrial), and judges.⁴ Table 1 presents the five courts included in the analysis for this article. Three of these courts operate as traditional drug courts, and two operate as reentry courts. Among the five districts, there are numerous PS courts. Participating courts represent 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 involved judges, prosecutors, defense attorneys, and POs.

THE PROBLEM SOLVING COURT ENVIRONMENT

The U.S. federal probation sites, part of the larger Justice Steps (JSTEPS) study, included five specialized PS courts. The PS courts operate within the federal courthouse in five major U.S. cities. As federal probation and district courts are committed to incorporating evidence-based practices into both sentencing and supervision of offenders in the community (Sherman 2009), each court willingly agreed to participate in the study by signing a memorandum of understanding (MOU) with researchers. In the MOU, the courts agreed to develop and implement a CM protocol within their site and allow both procedural and outcome data collection throughout that process.

All of the PS courts in this project are less than five years old, representative of other PS courts at the federal level. A federal judge who operates a criminal docket in addition to his/her work on the drug court bench leads each PS court. The PS 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 PS court session. Depending on the number of participants present (ranging from eight to eighteen during our observations), court sessions generally last about sixty minutes. During these sessions, participants sit in the jury box of the court while the judge or PO calls each up in turn. Talk between the judge and the participant dominates the courtroom interactions with other team members—except the PO who speaks more than others do—minimally speaking. Each court team also meets precourt to discuss participants’ cases in private. In these meetings, the court workgroup team shares key information and finalizes their decisions regarding participants,

Table 1. Characteristics of Five Federal Problem Solving Courts

PS Court	Type of Court	Players Involved	Interorganizational Dynamics	Court's Perceived Leadership
1	Drug Court	Judge AUSA FPD and Paralegal PO Treatment Providers	Team worked together for years, but maintain adversarial process	Team says they view judge as independent and charismatic leader and final decision maker
2	Reentry Court	Judge AUSA FPD and Paralegal PO	Have worked together for two 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 and 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 and 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

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, nonparticipant observation of PS courts and their affiliated organizational actors, in-depth, semistructured interviews, and analysis of organizational documents (e.g., memos, e-mails, 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 and Anderson 1993). We observed interactions between POs and supervisees and interactions among officers, supervisors, and peers in the office, precourt meetings, and in the PS court setting. In these observations, we focused on several key interactional cues: (1) formal and informal supervision style, (2) perceptions and understandings of PS court goals, (3) discretionary decisions regarding clients' progress in PS court, (4) social contexts within PS court environments, (5) use of and reliance on information in PS court, and (6) compliance with and/or resistance to PS court procedures over time. 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/report. Thus, we completed most formal note taking upon exiting the field daily.

We conducted semistructured (thematically focused) interviews with all members of each PS court team (five teams, $n = 38$ players in three districts combined). Interview themes included (1) understandings of PS court processes, (2) recollections of past experiences with PS court teams, (3) ideas regarding PS court goals, (4) ideas regarding the role of each PS court actor in the court process, and (5) stories about daily activities including routine and typical events as they related to the PS 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), with approximately 75 percent of our total time in the company of POs. 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 (precourt meetings and court appearances). 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 all fieldnote data and began coding after roughly one-third of data collection was completed. Using a grounded-theory approach to data

analysis (Charmaz 2007; Glaser and Strauss 1967) that begins with inductive logic, we first engaged in systematic, line-by-line coding that considers broad and emergent themes (Charmaz 1995). This work entails reading each line of fieldnotes and coding individual words or phrases in-vivo (using the language of the research subject) whenever possible. This work allowed us to begin to interact with the data and build theoretical analyses. Next, we recoded 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, multiphased approach is a highly respected form of qualitative data analysis. Finally, we used coded data to inform the writing of this article. Although many other themes emerged in coding, we focus this article on the roles and power of POs within the PS court team. 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 role of federal POs across districts and court types.

FINDINGS

Federal POs occupy a unique role among legal decision makers within PS courts. Their supervisory role affords a level of power over probationers, as they are able to make decisions within their formal occupational position that can dramatically affect the participants' liberties. Data collected for the current project also suggests that POs possess a self-generated level of power (not given to them by other court team members). Instead, this PO power emerges from POs' unique occupational requirements when they are among workgroup peers in PS courts, which is largely unrecognized in the PS courts literature because the larger focus of court work teams is on purposively collaborative decision making. In these settings, power emerges via three key sources: (1) *informational power*, (2) *technical power*, and (3) *relational power*. Although awareness of various power types is useful, exploring *how power is used* is crucial for understanding what these power sources mean for organizational dynamics and client outcomes. In that regard, our data suggest that federal POs use three distinct sources for growing and maintaining power in an environment where power is, in theory and by design, shared equally among all team members. In PS courts, POs are able to display competence and legitimacy while maintaining control over their clients, other system players, and certain aspects of the operational system itself. Most interestingly, they do this without appearing overpowering among

workgroup members who profess equal voice and vote for all court team members.

INFORMATIONAL POWER

Akin to POs outside PS courts, perhaps the most valuable form of power POs possess in workgroup settings comes via information. Informational power extends almost exclusively from familiarity with case details; in this instance, the details refer to the life circumstances, backgrounds of the clients, and criminal justice history. While prosecutors, defenders, and judges are aware of the legal issues (e.g., type of case, criminal history, etc.) and primarily devote their attention to these issues, they do not understand the living situation and day-to-day life of the client that may contribute to these factors. The old adage “knowledge is power” rings true for POs in these settings, as they not only know more about the clients up for discussion, they are able to manage and manipulate shared information to benefit their own particular position. That is, other workgroup members often only learn of criminogenic details about particular probation clients if POs share those details with them. POs use their discretion to choose which pieces of information to share with other courtroom workgroup members. Below, we provide examples from interviews and fieldnotes contextualizing the level and depth of knowledge POs possess and the processes through which they use that knowledge within the courtroom workgroup.

In all five PS court environments, judges, prosecutors, and public defenders rely on and often defer to POs regarding client information found in the case file. Prosecutors and judges admit to having little or no one-on-one conversation with court participants. Likewise, federal public defenders (FPDs) carry a full caseload of criminal clients outside drug court (which only meets weekly at most) and do not spend the bulk of their time getting to know drug court clients or working with them. One FPD noted that for the most part he meets with the drug court clients right before the precourt meeting. He also said he gets most of the information he needs for each case via periodic phone calls with clients and treatment providers, and from the PO assigned to the court. In a broader example, in a weekly courtroom workgroup meeting, POs provided the team with written progress reports on current or potential program participants. Each report detailed client information, including the original offense, any positive urine testing for drugs (UAs), any problems the client had while in supervision or treatment programs (e.g., attendance, loss of a job, family issues, etc.), and a short synopsis on the progress of each probationer for the prior week. The reports each contained the POs’ recommendations for specific rewards or unspecified sanctions (noting a need for sanction without identifying a particular sanction) or recommendation for acceptance or rejection from the PS court. Though much of this information is readily available (in separate pieces) to judges, prosecutors, and defense attorneys, the PO is in charge of

synthesizing offender-related information and presenting it to the workgroup while also providing recommendations. This job duty affords POs the power of first—and in many cases, the only—evaluation and recommendation. POs' reports are often jumping-off points for how the team views probationers and ultimately for the decisions they make regarding each case. At different points throughout our research each other team member—judge, prosecutor, and FPD—noted their reliance on and the importance of the PO reports.

In a related example where a PO uses informational power, Raney,⁵ another PO, distributed all of the complete case files for potential program clients to her workgroup. While saying nothing of her reasoning for handing out all the cases during the meeting, Raney privately revealed to researchers that some of her colleagues in the probation office had wanted to weed out some of the “lost” probationers (the most difficult or most at risk of reoffending clients with the worst backgrounds, attitudes and/or supervision progress). However, she had decided to include these cases to see if the PS workgroup would take them on. Raney said these cases “*needed* handling.” She explained her belief for using discretion to disregard others' advice. Where privately Raney expressed feelings about these offenders, in the workgroup meeting she simply handed out the case information without providing her reasoning to workgroup members. In this example, Raney uses informational power to overwhelm other workgroup actors in an effort to achieve her desired outcome. In subsequent interaction, however, Norman, the public defender on the team, asked about a specific client (who had been involved in several instances of domestic violence) whose file was not present in Raney's pile. Raney said that that client could not participate in the court. She explained this was because the client was going to live in a remote area and, according to court rules, all clients had to be near the court and services. Norman dropped the issue and began to look over the packet that Raney had prepared. Again, in a separate discussion with researchers, Raney admitted that she had anticipated and prepared for Norman's inquiry about the domestic violence client. In fact, she noted that the client had been on her caseload, and she really did not get along with him. She admitted that she was able to transfer him to another office because he was planning a move to a remote area. The transfer meant that the client was no longer eligible to participate in the program. Raney noted that although cases usually transferred *after* they moved, in this case, she transferred the client early because of their poor interpersonal skills and her dislike for the client. In these two examples, Raney uses discretion about which cases to present, while simultaneously controlling the information she provides to the group in a way that best suits her particular desired outcomes.

As PO Raney and others demonstrate, once in possession of extensive client knowledge (gathered in the course of daily casework), POs use varying systems of information sifting and sorting when providing varying degrees of information to other workgroup members. The amount and type of

information provided varies considerably. This is how POs exhibit the most power. As another example that displays a POs' informational power, PO Cooper decided to share some information with the PS workgroup that only he knows about a particular client. In the following fieldnote excerpt, PO Cooper shares information only he has privy to due to his unique role in courtroom workgroup:

Cooper says there is something he wants to share with the team regarding probationer Kanter that may be a red flag. Kanter was recently in court at the same time as another client. The other client was going into a treatment facility and asked Kanter to bring him some movies and CDs to help him pass the time. Kanter did so and when PO Cooper was at the facility visiting his other PS court client he saw Kanter with a large, dirty black trash bag slung over his shoulder. Kanter was milling around the common area of this treatment facility talking with other clients. Cooper approached him and asked for an explanation. At first, Kanter wouldn't tell why he was there and who he was seeing, but eventually did. He was taking movies, CDs and a small, portable DVD player to probationer Gentry (another client). Cooper talked with Kanter about making good choices given that he has a condition in his in his standard probation conditions that prohibits him from associating with other known felons (commonly called an association condition). Kanter eventually agreed with PO Cooper and left the facility without giving Gentry the movies and other goods. Cooper then talked to Gentry who initially denied asking for the stuff, but later admitted that he had.

When we spoke with PO Cooper about his involvement in this scene and his reasons for telling the workgroup, he explained that the team thinks favorably of Gentry's progress so far, and he wanted to make sure they knew that this client was not perfect. He noted that he does not always share red flags with the group, but he usually tries to prepare the PS team for a client's potential failure. Upon revealing the information about Gentry, the team expressed gratitude for learning about this potential problem. In this example, Cooper's reveal is powerful in at least three ways: (1) information about the client is presented at-will by the PO, (2) information sharing becomes symbolic of a level of shared trust between the PO and the workgroup, and (3) the PO positions him/herself as a manager of the workgroup's expectations by revealing information when s/he thinks necessary. The PO makes sure that the group understands that if the probationer fails now, the early signs created that expectation. Then the PO will not appear caught off guard or as if s/he was not monitoring the probationer. That is, the PO wants to make certain that this probationer's failure does not reflect negatively on his/her credibility. In this example, the PO acts as though the best way to manage his/her role is to ensure a well-rounded assortment of information about probationers is shared with the PS workgroup. This relationship yields compliments for a job-well-done for the PO and buys some informational power for subsequent interactions with the team.

We also found several additional examples where POs collected enormous amounts of offender-related information and used that information when

making key decisions about what to share with the other workgroup members. A fieldnote excerpt provides an example of how some POs think about this:

PO Jose argues that in his district, the FPD assigned to the PS court is aggressive. He notes that the defense team tries to find out everything about cases that they can so they can then argue from a position of knowledge. This means that the FPDs can occasionally sway the judge onto their side—more importantly this is generally *away from the perspective of the PO*. Jose says he has upped his ante a bit since figuring this out that the FPD affects his credibility. He tries harder now to know more about each case than the FPDs. He keeps up with the files more vigilantly than he's had to do in the past. He keeps his files up-to-date with new and relevant info so that he can beat the FPD in front of the judge often. He says that what the FPD wants is not always in the best long-term interest of the client. The FPD is still working as an advocate, rather than a collaborative team member, so the PO must know more and work harder to get their point across with the judge. The PO believes *he* must manage what is best for the probationers he supervises and he can only do that if he knows more about the case than everyone else in the workgroup does.

At the same time, other workgroup members often do not feel a sense of informational power. In one instance, Ollie, a prosecutor, discussed his lack of knowledge rather candidly, noting,

My time commitment is generally minimal. I do not have much to do on these cases and I often feel “out of the loop” in the pre-court workgroup meetings.” He [Who?] said, “Like today, I didn’t have much to say because I don’t have the time to go find out what each of these guys is up to, so I just have to wait to find out from the PO or the defense and then I have to react quickly when needed. I don’t spend a lot of time thinking about prosecuting these cases . . . rather I just wait until one of the probationers messes up and then I work on behalf of the government’s interest.”

POs spend more time with clients than anyone else on the workgroup. As such, they provide the workgroup with the lion’s share of client-based information. In the interest of time and efficiency, POs typically synthesize the information for their colleagues. In this synthesis, they decide what information to present and how best to present it. Other members of the courtroom workgroup may choose to gather information about their clients/cases themselves, but they are at a disadvantage to POs, who also maintain technical and relational power, power sources that are generally unavailable to others.

TECHNICAL POWER

Concurrent with informational power is a reliance on casework proficiency, testimony by outside experts, and a superior knowledge of how things work with people on supervised release. To this end, POs wield technical power. This type of power also relies on knowledge that is more specific to understanding particular intricacies about probationer behavior. This includes

conditions or diseases (in this case, most are alcohol and drug-related, mental health, or sexual deviancy); content of treatment programs and special facilities; and available community services and control strategies (e.g., drug testing, curfews, use of residential facilities, etc.). Although use and knowledge of scientifically validated risk/needs instruments (a standard classification system in probation casework) represent a form of technical knowledge, we do not consider that here as part of technical power. In federal probation, risk/needs instruments constitute considerations POs use to make discretionary decisions. Among PS courtroom workgroup members, risk scores (ranging on a scale from zero to nine) represent shorthand numbers that POs use to classify probationers in a way that the entire team understands. Technical power, as we discuss it here, refers to scientific or program-related knowledge unique to the PO.

Technical power develops through intense training courses where POs learn subtle details about disease detection, symptoms, short- and long-term complications, and how various treatments work. To that end, though, technical power is more than just knowing *what exists*; it is knowing *what is obtainable*, why or how that particular service works, and learning to have an expert, informed opinion about whether a particular treatment or control strategy is appropriate for a given offender. Even when POs are not formal experts in particular area, they are often viewed as experts by default, because other members of the courtroom workgroup are generally only trained in legal matters and do not have the same training in treatment or postrelease supervision. POs also develop and maintain contracts with treatment providers, giving POs power over which treatment providers keep their federal contracts and how often each contracted provider is used.

In every office we visited, POs discussed what they perceived as their extensive training in drug and alcohol abuse and addiction. Many officers also had specialty training in mental illness and HIV and other blood-borne pathogens, as well as classroom courses on issues offenders such as poverty, homelessness, gang membership, and post-prison joblessness. A common theme among POs was the amount of training they receive annually. Many POs described themselves as “over-trained.” In fact, in one district the probation chief described his training program like this:

We have a decent training budget. In fact, the majority of the POs in this office are National Trainers who travel around the U.S. and train other POs on policies, practices and procedures. This makes our office well set up with in-house resources for our own training. I also do an annual retreat and make sure every PO in my office attends one or more training per year, with most attending several per calendar year.

Similarly, another PO reports he has had good training at the PO’s office and has opportunities to attend conferences, workshops, and training sessions regularly. He consistently receives training on new information that includes suggestions for incorporating these new ideas into caseload management.

In contrast, public defenders and prosecutors often report a lack of training and information regarding probationer-specific issues such as drug and alcohol abuse, addiction and treatment, or the use of risk and needs assessment tools. Similarly, many judges only receive one training course on addiction-related issues. The lack of training for the legal actors in the courtroom workgroup ensures POs are experts by default. Several prosecutors and public defenders considered our questions regarding training with a smile. One prosecutor said he had never received training that prepared him for working as part of a drug court team, and that given the training in the adversarial system, the teamwork was challenging. Similarly, a public defender reported, "Training, are you kidding? We get litigation training once a year if we are lucky and that is all the budget we have for training."

Technical power also resides with POs as the workgroup members charged with handling contracts with treatment providers. For example, Terry is the PS court PO, but he is also the treatment contract manager for the district he works in. He reviews the bids by various treatment providers and ultimately oversees the contracts between them and the PS court. Terry uses the knowledge he gains via his position as the contracts manager to inform the courtroom workgroup which types of treatment may be best for each of their clients and what is available. During our visit, one of the treatment providers the court has worked with for a long time had gone out of business, and Terry was reviewing bids for new treatment providers. The providers are located throughout the district and specialize in different types of treatment. Terry's decision regarding whom to contract with will affect how much and what type of treatment the entire district can offer. These decisions then influence which probationers receive access to the PS court, as a common enrollment condition includes participants living close to substance treatment facilities. While the Administrative Office of the Courts (AO) has provided guidance on the technical components treatment programs should focus on, the contracting PO ultimately makes contract-related decisions.

Additionally, in recent years the AO has made a concerted effort with federal probation to implement evidence-based policies into supervised release (Cadigan 2008). The enhanced focus on scientifically based processes (e.g., "what works" or "best" practices) in postrelease supervision provides POs with a unique and strong basis for their technical power. In sum, POs' advanced training in evidence-based drug treatment (e.g., drug courts) and their subsequent power to select and oversee treatment contracts provides them with technical power in the PS courtroom workgroup. POs often have training and access to contracts that attorneys and judges do not have the time, inclination, or ability to obtain.

RELATIONAL POWER

Finally, akin to Astley and Sachdeva's (1984) "centrality power," our data suggests that POs infuse knowledge-based power with relationships through

their networks and contacts within their workgroup and with external members of the justice and treatment community. POs are officers of the court, directly reporting to the federal bench. With structural court membership, POs have close structural relationships to judges. In their work world, POs rely on relationship building and bridging for constructing and sustaining knowledge that makes the system work for them. Relational power, however, is not just about whom a PO knows. Rather, it is also about how they collaborate and cooperate with both probationers and PS court workgroup members. They become aware of these processes through their knowledge of how each team member thinks and operates. The following fieldnote excerpt is an example of an on-going and in-depth relationship between a PO and a probationer *and* a PO and other workgroup members (e.g., public defender and judge). This example suggests a salient role relational power play when combined with informational power:

PO Kent says he has lots of trouble with the FPD countering his information about probationers. He notes that the FPD often tries to “pretend they know more about the case than I do.” Kent says that what the FPD wants is not always in the best long-term interest of the client but is often what the client thinks s/he wants. To illustrate this point Kent uses the following example: One offender wanted to move out of his mother’s home and into his own apartment while another offender was unhappy with his current drug treatment program and was asking to switch to another program. While the FPD suggested that the probationers get their way in both instances, the PO believed that was a mistake. Kent says he knows the offenders better than anyone else does, has a better relationship with them. What is more, he knows their families and often gets some of his best information from these relationships. Through his collateral contacts with probationer’s families, he feels that *he* is best situated to understand the complete picture of their lives . . . even better than the judge who only sees them once in a while in the courtroom. PO Kent feels that his recommendations are the most valid and that the judge ought to listen to him almost exclusively. In fact, he mentions that the judge for the drug court usually follows his advice. Kent wants to keep that happening.

In this example, Kent frankly discusses his level of relational power arguing that much of it comes from the amount of time he spent on cases and the contacts he has with other individuals in probationers’ lives. He also expresses understanding for the depth and support this power wields in the courtroom, noting that the judge regularly supports his decisions and follows his “expert” advice. In this way, the expression of relational power becomes observable within interactions between informational power and how that information transpires via relationships.

Relational power is also visible when POs make non-case-specific decisions. For example, POs need judicial buy-in when they implement new programs or change operational practices. In the following example, a PO discusses how his team of officers is working to sway their judge’s opinion about a new rewards-based program (CM, described above as an

evidence-based practices; see Prendergast et al. 2006) they are implementing with probationers. He says,

We will have to sell the judges on any reward-based approaches we decide to incorporate. I believe that our judges are in favor of a drug/re-entry court in our district. We are already working on this a bit by asking judges if they would be willing to present probationers who graduate from our behavioral change program with a certificate and a few words of encouragement. We even asked them [judges] about having some kind of ceremony in the court overseen by the judge. Most of these [probationers] have never had anyone tell them they are doing a good job in any way. They never get compliments or any positive support, especially in court. In fact, I remember a case recently where a probationer said, "the only time I'm ever in court it's bad news." It will be wonderful to have probationers in court for a good reason; something they can finally be proud of. We just have to convince the judges this is a good idea. I'm sure if we play it right we'll get them on board very soon.

In this example, the PO explains that his team is trying to encourage judges' participation in rewards in both symbolic and material ways. He actively and purposively works at indirectly influencing judges to support his position. Similarly, Harry, a PO in another district, discussed his relationship with the judge in their PS court. Harry said that from the first day he walked into the judge's chambers they got along. He understands his relationship with the judge gives him a competitive advantage because he can talk to him/her anytime, one-on-one, something the attorneys cannot (or do not usually) do. He says,

I can just walk upstairs to the judge's chambers and talk to him/her about a particular case. S/he listens to what I have to say because s/he knows that I know my guys. But, it is nice just to be able to walk into his/her office without an appointment or anything. Sometimes it can be a bit annoying; s/he will just call down to my office and expect me to run up there. But, the public defender and the prosecutor can't do that. It is ex parte, or something, but they cannot just go into his/her chambers and talk. They have to do it together, I can just have a conversation person-to-person and s/he trusts me, s/he is easy to talk to.

POs have strong relationships with the judges in their courts in part because of systemic, structural relationships. More often, however, this relationship is based on the level of deference judges provide POs because of their knowledge of the treatment programs and the other relationships in the probationers' lives. POs work closely with probationers, their families, and treatment providers, and can work directly or indirectly with all members of the PS courtroom workgroup. This grants them a level of relational power that other court team members cannot achieve. Table 2 displays an overview of our findings by illustrating PS court power sources and processes using an example from our data to represent each power type.

Table 2. Examples of POs Actions, Power Types, and Court Decisional Outcomes

Fieldwork Examples	PO Action	PO Power Type	Decisional Outcome
Progress Report	Prepare information on 15 probationers for drug court with recommendations	Informational	Judge agreed with PO recommendations in decision outcome 14/15 times.
Case File	Withhold case files and transfers case PO does not want	Informational	Team could only make decisions using the information PO presented.
Insider Information	Shares client personal information with team (“red flag”); notes “client not perfect”	Informational	Team decides to supervise probationer more carefully (POs recommendation); judge tells probationer, “we’re watching you.”
Managing Contracts	Decides with whom to contract for treatment services	Technical	Types of treatment team can choose for court participants is affected by POs contracting choices
Collateral Contacts	Interacts with families and other probationer contacts	Relational	PO argues he has superior knowledge of court participants through relationship building

DISCUSSION AND CONCLUSION

By theory and design, the structure of PS courts creates a collaborative team environment designed to facilitate consensus-based decision making. PS courts theoretically allow each team member an equal voice and stake in the program, and processes participants’ encounters during their tenure with the court. With broadly defined roles and a presumed balance of power, PS court teams conduct the courts’ business within a therapeutic jurisprudence framework for the betterment of participants, families, and communities. However, despite efforts to structure the systems as described, PS courts display differential power dynamics among team members (Taxman et al., forthcoming; Hiller et al. 2011). This power surfaces from advanced information resources, technical/expert knowledge, and prolonged, in-depth relationships. Throughout our research, we found that regardless of PS court type or federal district, POs wielded significant power. Our data suggest that POs possess an undetected, yet substantially superior level of power when compared to other court team members and thus have a profound influence on PS court decisional outcomes—despite the court teams’ belief that all team members have equal position and impact.

These findings suggest an important, yet unanswered, question regarding justice in PS courts that links therapeutic jurisprudence to decision theory among street-level bureaucrats (see Coyer 2007 on people processing in PS courts). Literature abounds on profound discretionary power of POs within postrelease, community-corrections contexts (Ward and Kupchik 2010; Clear, Harris, and Baird 1992; Walsh 1985). In this work, POs operate as street-level policy implementers (Lipsky 1980), who often make quick decisions about when, how, and whom to refer for treatment/services and when, how, and whom to reincarcerate. By design, the therapeutic jurisprudence-driven PS court environment should eliminate some of the autonomous discretion POs possess when they supervise a non-PS court caseload. That is, within PS courts, whole teams make decisions regarding court participants with equal input from all members. POs may possess detailed information about participants, but theoretically when they present that information to the team the playing field is leveled for all involved justice actors and consensus decision making is possible. Our data suggest something different is occurring. In PS court environments, the well-documented occupational position of POs as law enforcers, resource brokers, and social service workers (Abadinsky 2006) provides POs with systemic opportunities outside the reach of other court team members. These include advanced training and expertise regarding technical issues related to treatment and contracting, and intensified supervisory contacts with court participants that yield advanced levels of collaboration and information. POs then use their discretion to synthesize, manipulate, sift, and sort information, technical knowledge, and relational data before it reaches the court workgroup team. As such, the team begins and ends each court premeeting, and indirectly each court session, on unequal footing. This challenges notions of just processes within PS court environments. That it is systemic and, yet, virtually undetected by other court work team members suggests the consequences are important yet largely unknown. The data presented here is only the first step in uncovering the power dynamics among PS court workgroup members. Next, we must begin to ask questions about the conditions under which certain power sources exist and if/when certain power sources are able to trump others. These are salient topics for future research.

Our findings may be limited in their generalizability due to the unique role POs play at the federal level. Sentencing guidelines, which limit judicial discretion at the federal level, are quite complex. Federal POs are often the member of the courtroom workgroup trained on the implementation of these complex formulas, providing them with increased knowledge and resources. Some scholars argue that PS courts may be one way that judges have increased their discretion after the imposition of sentencing guidelines (see, e.g., Miller and Johnson 2009). Under this argument, it may be that PS courts were actually a response to the increasing power of POs under guideline-based sentencing. At the federal level, POs receive specialized training on guidelines and work closely with the federal bench. Federal POs directly

report to federal judges, operating as subordinates of judges and officers of the court. Our data do not directly speak to the role of power for POs at the state level; however, the PS court context is rapidly proliferating in federal and state court systems.

In the PS court context, POs are rarely deferential to other workgroup members because of their increased informational, technical, and relational power. POs consistently know more than other courtroom workgroup members about individual clients and cases. When combined with their technical power based on training and contracting privileges, POs become latent decision makers in probation cases without any noticeable objection from other court team members. This truncates some of the benefits PS court teams tout as resulting from collaborative decision-making processes within the courts' therapeutic jurisprudence framework. In essence, court team members can conceptualize and understand the formal, structural changes present in PS courts and can iterate how the court and its members should operate. However, within these environments, individual team member roles and the accompanying power are undefined, leaving actors free to create systems that align with their own understandings, rather than the collective teams' understandings, of justice and what that process should entail.

NOTES

1. Though Eisenstein and Jacob (1991) note both primary (judge and attorneys) and secondary (bailiff, etc.) work team members, most literature focuses on the primary group (judge, prosecutor, defense attorney) in traditional criminal courtroom processes.
2. Although traditionally the literature refers to *probationers* when referring to individual persons under supervision and their circumstances, and reserves the term *cases* when referring to the legal aspects of an individual case, we use both terms throughout this article. We do this to invoke the language of the POs and other courtroom workgroup team members in this study who often refer to "clients," "probationers," "cases," and "participants" when discussing individuals on probation who are involved in a PS court. The term case here specifically includes all aspects of an individual case file.
3. Courts were selected for the larger research project based on their willingness to consider the implementation of contingency management in their PS courts. Two of the three districts already had established PS courts at the start of the study. The courts had been running from one to five years. One district was just establishing their PS 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.
4. Although seemingly similar, PS 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 PS 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 PS courts operate on an equal playing field with other workgroup actors. Federal PS courts also hold numerous

contracts with treatment facilities with no shortage of services. At the state level, treatment for clients is infamously scant. Second, state PS courts navigate state criminal laws and interpret these laws in various ways, making comparison between them difficult. At the federal level, all PS courts adhere to federal laws, presenting a unique opportunity for cross-site comparison. Third, state PS 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.

5. We use pseudonyms for all individuals named in this article.

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