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The Rehabilitative Ideal and the Drug Court Reality

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I. Introduction

Drug courts don't work, and never have. They don't reduce recidivism or relapse. Instead, they trigger such massive net widening that they end up sending many more drug defendants to prison than traditional criminal courts ever did. Their failures have resulted in a quiet refocusing, from pre-adjudicative treatment to post-adjudicative treatment. That is, they have become officially what they have always been unofficially: a form of glorified, and terribly expensive, probation. Their continued popularity is a testament not to their effectiveness but rather to their political appeal, and to the irrational commitment of a handful of true believers. Federal courts should continue to resist them.

What is most disturbing about the drug court movement is that we have been down this rehabilitative road before, and have apparently not learned anything from the spectacular failures of the rehabilitative model. It not only didn't work, it invested the judicial branch with dangerous powers we eventually decided were not acceptable in a democratic society. Now it's déjà vu all over again. Drug courts don't work, and they have created a dangerous psycho-judicial branch populated by judges who think they are doctors, who think drug addiction is a treatable disease, and who send their patients to prison when they fail to respond to treatment.

II. Drug Courts Don't Work

The first therapeutic drug court was the one started in Dade County (Miami) Florida in June 1989. The first significant independent study of drug court effectiveness was likewise done on the Dade County drug court, in 1991. In that study, sponsored by the American Bar Association, investigators found that, although Dade County's drug court reduced case processing time, it had no impact on recidivism.[1]

In 1994, investigators did a similar analysis of the Maricopa County (Phoenix) Arizona drug court, using a longer 36-month follow-up period. The results were a little more encouraging than the 1991 Dade County study,[2] but the small reduction in recidivism was still characterized by researchers as "non-significant."[3]

In 1994 investigators decided to go back to Dade County to do another, slightly longer, study. Using an 18-month follow-up period, they found a statistically significant but still relatively small reduction in recidivism.[4] But this study was infected with all kinds of methodological failures, including the researchers' failure to select the target group of drug court defendants randomly.[5]

Frustrated at the paucity and spotty results of these effectiveness studies, in 1994 Congress directed the Attorney General to undertake a series of comprehensive evaluations of drug courts.[6] Despite this directive, over the next three years only a single additional drug court study was completed—of the drug courts in Baltimore, Maryland. Investigators studied both the county drug court and the district drug court in Baltimore, using six-month follow-up periods, and at neither level did they detect reductions in recidivism above the study's margins of error.[7]

Congress appointed Lawrence W. Sherman of the University of Maryland to report on the overall effectiveness of federal drug policy, and in particular on the efficacy of drug courts and on the results of the Attorney General's drug court studies. He issued his report in 1997, and was highly critical not only of the lack of additional studies, but also of the methodologies used in the four existing studies.[8] He concluded the drug court portion of his report by noting that although existing data appeared "hopeful," the bottom line was that "[t]here is yet little research to examine how effective [drug courts] are in reducing crime."[9]

Since the date of the Sherman Report, there have been many more drug court impact studies, with wildly mixed results. Many of these studies suffer from a fatal methodological defect—they target drug court graduates instead of all drug court defendants. Respected evaluators agree that this kind of comparison is not appropriate, because drug court graduates can be expected, by definition, to do significantly better than their traditional court cohorts.[10] This approach is analogous to measuring the effectiveness of two high schools by looking at how many students went on to college, but comparing *all* students in one school with *graduates* in the other.

There were nevertheless a handful of post-Sherman Report studies that made the proper comparison. Here are the results from six of the most significant:

Drug Court recidivism	% Traditional recidivism	%Drug Court
Denver, CO	58.0	53.0
Multnomah County, OR (Portland) (Portland)	1.53[a]	0.59[a]
Oakland, CA	1.33[a]	0.75[a]
Riverside, CA	33.0	13.4
Travis County, TX (Austin) (Austin)	41.0	38.0
Wilmington, DE	51.1	33.3

[a] Expressed not as a percentage but rather as the average number of arrests suffered during the follow-up period.

As before, these results are maddeningly inconclusive. And even though these six studies make the correct comparisons between all drug court defendants and all traditional drug defendants, some of them suffer from other methodological problems. For example, the most glowing study—of the Riverside drug court—uses a shorter follow-up period for the target group of drug court defendants (21 months) than for the control group of traditional drug defendants (27 months), with the result that the study seriously overstates control group recidivism compared to drug court recidivism.[11] Moreover, many drug courts use various eligibility criteria to select drug court candidates, thus producing a population which, by definition, is less likely to recidivate than the random population of non-drug court drug defendants.

In addition to these kinds of individual studies, the literature is becoming increasingly populated with so-called "meta-studies"—studies of drug court studies. One of the most significant meta-studies to date was the one delivered to Congress in 1997 by the United States General Accounting Office ("GAO"). The GAO report was based on twenty evaluations done through March 1997, covering sixteen different drug courts. After expressing methodological concerns similar to those expressed in the Sherman Report and elsewhere, the GAO study concluded that there was insufficient data and research to definitively determine whether drug courts were having any effect in reducing recidivism or drug relapse.[12]

One of the most recent meta-studies is the one done by drug court researcher Steven Belenko in June 2001.[13] Of the thirty-seven new published and unpublished drug court studies that Dr. Belenko reviewed, only six reported post-program recidivism results using the proper comparisons. Only one of those six found a statistically significant reduction in recidivism; one found a statistically significant *increase* in recidivism; and the other four found no statistically significant differences.[14]

So after thirteen years of operations in hundreds of drug courts across the country, and with unprecedented motives and opportunities to demonstrate their effectiveness, the quality and strength of the evidence of drug court effectiveness is no better today than it was in 1993. Most studies are deeply flawed, and the ones that are not do not justify the conclusion that drug courts are having any demonstrable impact on either recidivism or relapse.

These unsatisfactory results about compulsory court-based drug treatment are not surprising to anyone familiar with similarly unsatisfactory results about the effectiveness of voluntary drug treatment programs. Although reliable peer-reviewed studies are scandalously rare, those few that have been done demonstrate that 12-step programs, in-patient treatment and other voluntary substance abuse regimens are no more effective, and in some cases less effective, than doing absolutely nothing. Doing absolutely nothing is what the experts sometimes call "natural remission." The fact is that a large percentage people with drug problems simply grow out of their dependencies on their own, with no intervention whatsoever. Treatment seems to do nothing to accelerate or expand this process of natural remission. In one meta-study done in 1986, researchers found only two controlled studies on the effectiveness of AA programs, both of which showed that AA members got arrested more often and relapsed more often than the control group of untreated problem drinkers.[15] The data on the effectiveness of drug treatment, as distinguished from alcohol treatment, is no better.[16] Even clinical treatment seems ineffective. In a famous 1983 study of the effectiveness of in-patient alcohol treatment, the ability of treated patients to stop drinking and stay sober two years and eight years post-discharge was no better than that of the untreated control group.[17] Virtually every recent longitudinal study touting the effectiveness of drug and alcohol treatment fails to compare the treated group with a control group of untreated subjects, and therefore fails to distinguish the effects of treatment from the effects of natural remission.[18]

How is it that an entire jurisprudential movement can sweep the country, taking prosecutors and judges by storm, without any empirical support? The answer is complicated, but not unprecedented. Our genuine and powerful hopes for workable rehabilitation have clouded our judgment before, as discussed in Part V below. In the case of drugs, that clouded judgment has been rendered completely opaque by a combination of frustration over the war on drugs and a willingness by state and local courts to cave in to the substantial economic and political pressures that drive drug courts.

Drug courts are an economic boon not only to treatment providers but also to the courts themselves. New drug courts receive large grants of federal seed

money. Moreover, most court systems allocate state resources to individual judicial districts based on some measure of caseload, and drug courts give court administrators a healthy infusion of cases that can be managed by a proportionately few court employees.

Drug courts are tremendously popular on both ends of the political spectrum. Liberals applaud them because they allegedly treat drug use instead of punishing it. Conservatives applaud their pro-active "broken windows" aspects, under which widespread police undercover operations are allegedly cleaning up our cities. Neither position addresses the fundamental political hot potato of decriminalization, and indeed drug courts are beloved by politicians precisely because they give them cover from this most difficult of all domestic issues.

III. Unintended Consequences: Net-widening, Exploding Prison Sentences, Reverse Moral Screening and Eradicating Guilt

Drug courts not only don't work, they are having four serious unintended consequences: 1) they are stimulating a massive increase in drug filings; 2) they are sending substantially more drug defendants to prison; 3) they are sending the wrong kinds of drug defendants to prison; and 4) they are eliminating the central criminal concept of guilt.

A. Net-widening

In Denver, the number of drug cases nearly tripled two years after the implementation of drug court. This massive net-widening was not just a reflection of an overall increase in the number of criminal cases across the board. On the contrary, from the moment the Denver drug court was created, the *percentage* of drug cases exploded, jumping from 27.8% immediately before drug court to 51.6% immediately after.[19]

The numbers and percentages for the eleven-year period from 1991 through 2001 (the Denver drug court became effective in July 1994) are as follows:

Year	Criminal Cases (includes drug cases)	Drug Cases	% Drug Cases
1991	3,795	958	25.2
1992	3,790	1,014	26.7
1993	3,762	1,014	27.8
1994	3,907	1,260	32.2
1995	5,154	2,661	51.6
1996	5,814	3,017	51.9
1997	5,458	2,825	51.8
1998	5,089	2,585	50.8
1999	5,080	2,591	51.0
2000	5,014	2,371	47.3
2001	4,968	2,265	45.6

It is clear that the very presence of drug courts is causing police to make arrests in, and prosecutors to file, the kinds of ten- and twenty-dollar hand-to-hand drug cases that the system simply would not have bothered with before. Because drug courts are about treatment and not adjudication, the arrest and prosecutorial functions have become methods to troll for reluctant patients, unrestrained by practical law enforcement or prosecutorial concerns. A Florida Circuit Judge has complained that Dade County's famed drug court has become a "dumping ground," and a Dade County prosecutor has likened the massive net-widening in that court to "a rubber band that is being stretched and stretched and stretched . . . and very soon it may snap."[20] As discussed in Part IV below, the Denver Drug Court has indeed been "snapping" in all sorts of ways, most of which have fundamentally altered the primary drug court paradigm.

B. Exploding Prison Sentences

Quite apart from the operational problems this massive net-widening has caused, perhaps its most disturbing impact is that drug courts are sending many more drug defendants to prison than traditional courts ever did. In 1993, the last full year before the Denver drug court, 265 drug defendants were sentenced to prison out of all six criminal courtrooms in the Denver District Court. In 1995, the first full year of operations for the Denver drug court, 434 drug defendants were sentenced to prison by the drug court. That number climbed to 625 by 1997. Thus, in a period of two and one half years, the number of drug defendants sent to prison out of Denver more than doubled.[21]

The apparent paradox of more drug defendants going to prison out of courts specifically designed to save taxpayers lots of money by treating drug users instead of imprisoning them is not surprising at all. It is a direct and predictable consequence of massive net-widening coupled with dismal treatment results. Although in theory drug courts should reduce the numbers of prison sentences—by successfully treating some defendants—this theory assumes, quite incorrectly, that treatment will be moderately successful and that drug court dollars will be used to treat defendants already in the system rather than to triple the size of the intake.

In our paternalistic efforts to throw the therapeutic nets wider and wider in hopes of finding more treatable defendants, we have harvested a vast number of defendants we deem untreatable. Our nets are now so wide that there are more untreatable defendants going to prison than there were in the old days, when we did not pretend to be able to distinguish the treatable from the untreatable.

C. Reverse Moral Screening

Drug courts are not just sending more drug users to prison than ever before, they are, under the axioms of their own disease model, sending the wrong drug users to prison. The drug law conundrum is that there are

both medical and criminal aspects to drug abuse. Few of us, and none of our legislatures, truly believe drug use is a disease in the way cancer or tuberculosis are diseases. If we did, drug possession would not be a crime. Instead, we sense that there is both a voluntary and involuntary component to drug use, and the attraction of drug courts is that they offer the promise of magically separating out the diseased addict from the willful miscreant simply by compelling treatment, standing back, and seeing who responds.

But of course this whole approach is grossly oversimplified. Our treatment efforts are hardly so effective that a mere three or four failures indicate some sort of "intentional" failing. Indeed, if we accept the drug court credo—that drug addiction is a treatable disease, and that drug users need medical treatment not incarceration—then drug courts perform what I have called "reverse moral screening" by sending precisely the wrong people to prison. Those defendants who do not respond to treatment, and whose drug use may thus truly be an uncontrollable "disease," go to prison. Those who respond well and whose use was truly voluntary and driven by nothing more than a desire to feel good, escape prison.

What is really going on with drug courts is that most of its proponents simply do not believe drug use should be a crime, and when drug court judges sentence drug users to prison they desperately need another reason, besides the defendant's mere drug use. Compelled therapy provides that reason. Drug court judges sentence defendants to prison not because the defendants used drugs but rather because the defendants refused to respond to our treatment efforts. This may be highly effective in treating trial judge guilt, but it has nothing to do with justice, or with the disease model of addiction, or with getting to the heart of the drug use conundrum.

D. Eradicating Guilt

By focusing on treatment rather than on the criminal act, drug courts—like all so-called "therapeutic courts"—are effecting a profound change in the criminal justice system. In the postmodern therapeutic moral order, suffering is no longer viewed as a part of the human condition, but rather as the inevitable consequence of some disease or injury.[22] Almost all of human behavior has become pathologized. We speak of "addictions" to all manner of behaviors that we would have called "choices" just thirty years ago.[23] Today, heart disease and alcoholism are both "diseases." Heroin use now shares an addictive moral equivalence with things like gambling and overeating. Blaming phantom pathogens has become the raison d'être for the new therapeutic judicial system, replacing entirely the concepts of free will and individual responsibility upon which the traditional criminal justice system was based.

IV. The Quiet Retrenchment

There is nothing like docket overload to get the attention of trial judges. Even the most committed drug court proponents are beginning to realize that something has to be done about net-widening and judge burnout. Some are even starting to have a glimmer about the ineffectiveness of treatment.

The bloom is definitely off the drug court rose in Denver. Our county court judges recently declined the mayor's funded invitation to create a county court drug court. We in the district court have consistently resisted efforts to create a second district court drug court. Over time, we have made changes to the existing drug court that are inimical to fundamental drug court dogma, and are considering more changes, including eliminating the drug court entirely.

Our initial reaction to docket-shock was typical—we raised the eligibility bar to exclude two-time felons and illegal aliens in an effort to reduce the dockets to manageable levels. We made the former change despite the fact that it is a well-recognized drug court axiom that addiction is a series of successes and failures, and that some of the most hardcore addicts who should be in drug court will often have many prior felony convictions.

With each passing year the realties of the widened net forced us to implement more and more operational changes that, over time, have fundamentally altered the classic drug court profile of the original version. Successive drug court judges began to set substantially less frequent reviews. We hired magistrates to conduct most of the reviews and take most of the guilty pleas. Perhaps most importantly, last year we transferred virtually all pre-adjudication drug court responsibilities to our county court.

All of these changes run contrary to the drug court philosophy that drug court judges are most effective when they know their defendants personally, and when they intervene early and often. Indeed, to a great extent our drug court judge today is a drug court judge in name only. The bulk of his work is now traditional post-conviction work: sentencing; revoking deferred judgments and probations; and imposing jail time as a condition of reinstating probation. He has no trial or motions responsibilities, because from the moment our drug court was created the net widening was so dramatic that the drug court judge had no time to try any drug cases or hold many motions hearings.

Recognizing that our drug court judge has become a kind of post-conviction half-judge, and that his talents are being terribly wasted, in March 2002 our Court voted almost unanimously to remove the drug court judge from the drug court in order to free up an additional criminal judge, and to fill his spot with an additional magistrate. Thus, all of the drug court judge's classic functions—short of actually imposing sentence

and revoking deferred judgments and probations—will now be performed entirely by the magistrates. Our chief judge decided to postpone implementing these changes until the summer.

The evolution of the Denver Drug Court reflects the fundamental operational flaw in all drug courts: general jurisdiction criminal judges are busy with serious cases, and it simply makes no institutional sense to waste valuable judicial resources on activities that, in the end and even assuming a level of effectiveness that has never been demonstrated, are nothing much more than glorified probation.

V. Drug Courts as Neo-Rehabilitationism

One of the most curious and troubling things about the drug court movement is that it owes its theoretical underpinnings to the failed rehabilitative movement that became popular in the 1930s. Under this model, crime was considered a kind of sociological disease. One of the important goals of the progressive movement was to eliminate the sociological causes of crime—primarily poverty—and, in the meantime, to treat the people whose uncorrected social circumstances continued to infect them with the disease of criminal impulse. The age-old retributive notion that crime must be proportionately punished to restore the moral standing of the criminal (who, like all of us is cursed with original sin), gave way to the rehabilitative idea that criminals are morally diseased (and therefore very much different from the rest of us) and must be cured of their disease. Proportionate and determinate sentencing gave way to indeterminate sentencing; if it takes twenty years of state intervention to cure a shoplifter then twenty years it is.

The rehabilitative movement was over by the mid-1970s. It had been a spectacular failure, both philosophically and empirically.[24] Uncoupled to any concept of proportionality, it gave the state unchecked powers to "cure" that were unrelated to any notions of criminal responsibility and fundamental justice. The first casualties in the retreat from rehabilitation were America's juvenile courts, which took the nation by storm in the early 1900s, not at all unlike how the drug court movement is spreading today. Juvenile courts, like drug courts, were founded on the assumption that their target defendants suffered from a curable sociological disease—in the case of juveniles the disease was labeled "delinquency." The juvenile justice system's function was not to punish juvenile offenders but rather to maximize the likelihood that they could be cured. But observers soon discovered that in actual operation the sensitive paternalism of the juvenile court movement had an ugly statist face. Gentle persuasion was giving way to unbounded and unchecked judicial powers. The power to treat juveniles became the power to abuse them. The lack of adversary protections, intended to free juvenile judges to experiment with innovative treatment, left juveniles wholly unprotected from the arbitrary whims of the judiciary. The juvenile justice system came under ferocious attacks, has been substantially overhauled, and remains today the object of much criticism.[25]

But the real death knell to rehabilitationism was empirical. Rehabilitation, or "the noble lie" as it became known by its critics, simply did not work. Crime was mysteriously immune to the entire liberal regimen, from anti-poverty programs to prison reform. After four decades of experimentation, the studies rather dramatically illustrated that all of our idealistic efforts to rehabilitate had virtually no effect on the propensity of either juveniles or adults to commit crime.[26]

So criminologists, and, more importantly, legislatures and corrections officials, returned to the retributive tradition. The primary goal of the criminal law once again became to punish rather than to treat. Determinate but proportionate sentences were imposed to punish the criminal act, not to change the actor. In the federal system, the culmination of this return to retribution found expression in the Federal Sentencing Guidelines. Of course, because the Guidelines raise many constitutional and institutional concerns quite apart from the return to retributionism, one can be a neo-retributionist without necessarily being a fan of the Guidelines.

Then a funny thing happened on the way back to retribution. The one exception to the almost universal rejection of the rehabilitative ideal lay in the area of drug laws. Despite strong scientific and medical evidence to the contrary, the therapeutic community has managed to create the conventional wisdom that drug addiction is a special kind of "disease," treatable only by them and only with an odd regimen of religious inculcation and pop psychotherapy. The disease model's most striking paradox is that as drug consumption has gone down, the perceived need for treatment has skyrocketed.

> Overall, Americans do not drink and consume narcotics or cocaine as much as they have done at peak levels in the past. Despite these data, however, more Americans—and particularly more young Americans—either declare themselves or are declared by others to be drug- or alcohol-dependent.[27]

Acts have become excuses, free will has become a shadowy illusion of looming disease, and the addiction merchants have become wealthy treating millions of Americans who never knew they were sick. In the space of two decades, the embers of the failed rehabilitative movement have exploded into a new strain of drug law neo-rehabilitationism, one that is particularly pleasing to many judges who simply do not believe drug use should be a crime, who relish intruding into the lives of

the psychiatrically less fortunate, and who need a therapeutic excuse to send drug users to prison.

The neo-rehabilitationists are not content with limiting their renewed movement to drug laws. Proponents are talking about expanding the drug court model to many other criminal areas, to divorce, and even to civil litigation. Even the class of treatment objects is expanding. Not content merely with ineffectively treating defendants, the proponents of "restorative justice" aim to have the system treat victims and even entire "communities."[28] This is not just well-intentioned therapeutic rubbish at its apogee, it represents, as its well-intentioned ancestor did, a significant danger to our constitutional scheme.

VI. Conclusion

Drug courts not only don't work, they have unacceptable consequences, both intended and unintended. They are stimulating unprecedented numbers of drug prosecutions, are not successfully reducing either recidivism or relapse, are giving the lie to their promise to treat rather than imprison, and are imprisoning the wrong people. They are an unexamined throwback to the long-rejected rehabilitative ideal. If we continue down this failed rehabilitative road, we will continue to de-humanize the objects of our humanitarianism, to fill our prisons up with drug users even faster that we have been, to short-circuit what should be the real legislative debate, and to de-value punishment as its own clear social object.

The unprecedented and unwarranted powers assumed by state and local drug court judges in the name of doing psychological good have made them both profoundly dangerous in their own right and hopelessly incapable of protecting citizens from the therapeutic excesses of the other two branches. The federal courts have a special constitutional responsibility in this regard, and they should continue to resist the considerable political pressures to further therapeutize the judicial branch with federal drug courts.

Notes

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1 Barabara E. Smith, et al., Strategies for Courts to Cope with the Caseload Pressures of Drug Cases (ABA 1991). The 1991 ABA Study actually covered four urban drug courts: Chicago, Milwaukee, Miami and Philadelphia, but only Miami's was a treatment-based drug court. Investigators followed two populations of Miami drug defendants—one in drug court and one in traditional courts—for a period of one year after their dispositions. They found that the drug court defendants suffered a re-arrest recidivism rate of 32% compared to the non-drug court defendants' rate of 33%, a statistically identical result.

2 33.1% of the drug court defendants were re-arrested compared to 43.7% of the non-drug court defendants. Steven Belenko, *Research on Drug Courts: A Critical Review,* 1 Nat'l Drug Ct. Inst. Rev. 31 (1998).

3 Lawrence W. Sherman, et al., A Report to the United States Congress: Preventing Crime: What Works, What Doesn't, What's Promising 9–51 (1997).

4 33.2% drug court recidivism compared to 48.7% for the non-drug court control group. *See Belenko*, *supra* note 2, at 30.

5 *See* Sherman, *supra* note 3, at 9–52.

6 In fact, this was one small part of the directive Congress issued in amendments to the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. § 3796ii (1994) (repealed 1996), directing the Attorney General to evaluate the effectiveness of the entirety of federal drug policy.

7 The county drug court reduced recidivism from 30.4% to 22.6%, and the district court from 27.1% to 22.6%. Steven Belenko & Tamara Dumanovsky, Special Drug Courts: Program Brief 31 (USDOJ Sup. Docs. No. J26.31: D84/2, 1993).

8 *See* Sherman, *supra* note 3. Sherman's methodological criticisms included a criticism of the 1994 Dade County Study's failure to use a random method of selecting target group members. Id. at 9–51.

9 *Id.*

10 *See, e.g., Belenko*, supra note 2, at 19 (such flawed comparisons "tend to inflate the overall effect of the intervention"). Despite these criticisms, almost all informal in-house studies, and even a few independent studies, continue to make this fundamental mistake. *Id.* at 29–31.

11 *Id*. at 29.

12 U.S. General Accounting Office, Drug Courts: Overview of Growth, Characteristics, and Results (1997) (Sup. Docs. No. GA1.13:GGD-97-106).

13 Steven Belenko, Research on Drug Courts: A Critical Review, 2001 Update (Nat'l Center on Addiction and Substance Abuse, 2001).

14 *Id*. at 31–35.

15 William R. Miller & Reed K. Hester, *The Effectiveness of Alcohol Treatment: What Research Reveals*, in Treating Addictive Behaviors: Processes of Change 121, 135–36 (W. Miller & N. Hester, eds., 1986).

16 *See, e.g.,* Stanton Peele, *How People's Values Determine Whether They Become and Remain Addicts*, in Visions of Addiction 219–20 (S. Peele, ed., 1988).

17 George Valliant, The Natural History of Alcoholism 284–94 (1983).

18 *See, e.g.,* Charles Marwick, *Study: Treatment Works for Substance Abusers*, 280 JAMA, No. 13 (October 1998).

19 Morris B. Hoffman, *The Drug Court Scandal*, 78 N.C. L. Rev. 1437, 1502 and nn. 260–61 (2000).

20 Jeff Leen & Don Van Natta, Jr., "Drug Court: Favored by Felons," *The Miami Herald*, Section 1A, pp. 6A–7A (August 29, 1994).

21 *Hoffman*, *supra* note 19, 1510–11, nn. 291–294, *citing* Office of Planning & Analysis, Colo. Dep't of Corrections, Denver Drug Court Convictions: D.O.C. Sentenced Offenders Fiscal Years 1993 through 1997 1 (1998).

22 For a compelling examination of the way in which this therapeutic ethos has infected not only the criminal justice system but all aspects of our civic life, see James L. Nolan, Jr., The Therapeutic State: Justifying Government at Century's End (1998).

23 *See, e.g.,* Stanton Peele, The Diseasing of America: Addiction treatment out of control (1989).

24 *See generally* Francis Allen, The Decline of the Rehabilitative

Ideal: Penal Policy and Social Purpose (1981).

[25] *See generally,* Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Courts*, 69 N.C. L. Rev. 1083 (1991); Anthony M. Platt, The Child Savers: The Invention of Delinquency (Chicago, 1977). For a provocative discussion of the similarities between the juvenile court movement and the drug court movement, see Richard Boldt, *Rehabilitative Punishment and the Drug Court Movement*, 76 Wash. U. L.Q. 1205, 1269–77 (1998). *See also* James L. Nolan Jr., Reinventing Justice: The American Drug Court Movement 174 (2001) (contending that drug court judges are even more intrusive in the lives of drug defendants than juvenile judges were in the lives of juveniles).

[26] *See, e.g.,* Ainsworth, supra note 25, at 1104.

[27] Peele, *supra* note 23, at 234.

[28] *See, e.g.,* Judith S. Kaye, *Symposium: Rethinking Traditional Approaches,* 62 Alb. L. Rev. 1491 (1999).