

**THE DILEMMAS AND OPPORTUNITIES  
OF COLLABORATION: DRAWING  
LESSONS FROM ONE MENTAL  
HEALTH COURT**

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Mental health courts have become an increasingly common feature of American court systems. Yet jurisdictions with young or new programs are likely to face significant, and sometimes unexpected, operational obstacles. This case study identifies several obstacles faced by one mental health court as well as the methods that allowed the court to overcome them.

Observations of the Diversion Treatment Court in DeKalb County, Georgia suggest that the collaborative nature of mental health courts makes them particularly susceptible to operational obstacles. These courts must link the complex, and relatively incompatible, criminal justice and mental health systems. Also, the multiple criminal justice and mental health agencies partnering to form these courts generally have not worked together before and may have contradictory missions. Thus, incompatibility between the criminal justice/mental health systems, goal/role conflict, and miscommunication can impede the success of mental health courts. The experience of the Diversion Treatment Court, however, suggests factors such as the flexibility of the court process and the social capital of the staff

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that can allow courts to create innovative solutions to operational obstacles.

The population of mentally ill offenders in America's jails and prisons is significantly higher than in the general population, and it continues to grow.<sup>1</sup> As mentally ill offenders have increasingly become a resource drain on overworked court systems and correctional facilities, jurisdictions across the country have developed mental health courts to provide mentally ill offenders access to mental health treatment with the expectation that judicial supervision along with a link to social services will ultimately reduce recidivism.<sup>2</sup> Yet, despite commitment to the goal of providing access to treatment, many mental health courts, especially in the early years of implementation and development, struggle to meet that goal. This study will consider the case of one mental health court – the DeKalb County Diversion Treatment Court in Decatur, GA – in which court personnel confronted serious obstacles to bringing participants into the program, obtaining appropriate treatment/housing for participants, and ensuring participant compliance.

The first mental health court in the United States was formed in 1997 in Broward County, Florida.<sup>3</sup> This court and others that followed were adapted from drug court models in an effort to address similar problems for a new category of offenders.<sup>4</sup> As of 2008, more than 150 mental health courts were operating in the United States.<sup>5</sup> Mental health courts intervene after criminal charges have been filed,<sup>6</sup> and all potential partici-

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1. DORIS J. JAMES & LAUREN E. GLAZE, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: MENTAL HEALTH PROBLEMS OF PRISON AND JAIL INMATES (2006), available at <http://ojp.usdoj.gov/bjs/pub/pdf/mhppji.pdf>.

2. See Nancy Wolff, *Courting the Court: Courts as Agents for Treatment and Justice*, in COMMUNITY-BASED INTERVENTIONS FOR CRIMINAL OFFENDERS WITH SEVERE MENTAL ILLNESS 143-45 (William H. Fisher ed., 2003).

3. JOHN S. GOLDKAMP & CHERYL IRONS-GUYNNE, EMERGING JUDICIAL STRATEGIES FOR THE MENTALLY ILL IN THE CRIMINAL CASELOAD: MENTAL HEALTH COURTS IN FORT LAUDERDALE, SEATTLE, SAN BERNARDINO AND ANCHORAGE, vii (2000).

4. *Id.* at 3.

5. Bureau of Justice Assistance – Mental Health Courts Program, <http://www.ojp.usdoj.gov/BJA/grant/mentalhealth.html>.

6. See Bureau of Justice Assistance – Improving Responses to People with Mental Illnesses: The Essential Elements of a Mental Health Court, <http://consensusproject.org/mhcp/essential.elements.pdf>. Because mental health courts intervene post-booking, participants have necessarily interacted with the criminal justice system and will continue to be monitored through the courts. As such, mental health courts are not true diversion programs. Nonetheless, the team mem-

pants must have a mental health issue and indicate a willingness to participate in monitored, community-based treatment in lieu of prosecution.<sup>7</sup> Mental health courts—like other “problem-solving courts,” including drug courts—share certain features that differentiate them from conventional courts.<sup>8</sup> For instance, the mental health court judge sits at the center of the treatment process by personally addressing clients’ problems, encouraging clients’ progress, and sanctioning poor performance at periodic status reviews.<sup>9</sup> Mental health courts also emphasize a team-oriented approach; the judge, prosecutor and defense attorney are expected to relax the adversarial orientation and focus on working together to develop a treatment plan in the “best interest” of the client.<sup>10</sup> Finally, mental health courts require the linkage of various criminal justice and mental health service agencies.<sup>11</sup>

The collaborative component of mental health courts means that staff must unite often fragmented community services and negotiate across agency boundaries to bring clients from the criminal justice system into community treatment.<sup>12</sup> Yet, interagency collaboration can create significant constraints for court operation. The DeKalb County Diversion Treatment Court faced serious, enduring obstacles to its operation largely because the court had to function as a collaboration between many disparate agencies representing two large, inflexible and very different systems, without any real possibility of structural change within those systems. Yet, over time, it seemed equally clear that, while certain obstacles were inevitable, the structure of the court and the personal resources of the court staff could lead to innovative solutions. This study of the DeKalb County Diversion Treatment Court identifies three major operational

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bers in the Diversion Treatment Court see their efforts as diverting mentally ill offenders from jail/prison into treatment, and they have named their court accordingly.

7. GOLDKAMP & IRONS-GUYN, *supra* note 3, at 14.

8. See Greg Berman, *Problem-Solving Courts: A Brief Primer*, in *JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS* (Bruce J. Winick & David Wexler eds., 2003).

9. See GOLDKAMP & IRONS-GUYN, *supra* note 3, at 16.

10. See *id.* at 17; See also Wolff, *supra* note 2, at 143-45.

11. PAMELA M. CASEY & DAVID B. ROTTMAN, *PROBLEM-SOLVING COURTS: MODELS AND TRENDS 8-9* (2003), available at [http://www.ncsconline.org/WC/Publications/COMM\\_ProSolProbSolvCtsPub.pdf](http://www.ncsconline.org/WC/Publications/COMM_ProSolProbSolvCtsPub.pdf); See also Wolff, *supra* note 2 at 143-45.

12. See Wolff, *supra* note 2 at 143-45.

obstacles likely to be endemic to a developing mental health court – incompatibility between systems, goal/role conflict, and miscommunication – as well as strategies used by the court to overcome those obstacles.

### **The DeKalb County Diversion Treatment Court**

The Diversion Treatment Court began operation in May 2001 with a commitment to moving defendants out of jail and into treatment.<sup>13</sup> The inspiration for the court was the estimation that 18 to 20% of the DeKalb County jail population suffered from a serious mental illness.<sup>14</sup> In response, a group of four concerned individuals, a chief magistrate judge, a National Alliance for the Mentally Ill advocate, an attorney, and a psychiatrist came together to launch a collaborative effort to access treatment for mentally ill offenders already involved with the criminal justice system.<sup>15</sup> From their efforts, a task force representing more than fifty criminal justice and mental health agencies was convened in late 1999, which culminated in a grant application to the Substance Abuse and Mental Health Services Administration in May 2001.<sup>16</sup> Court operation began that same month, without funding, inside the DeKalb County Jail.<sup>17</sup> The court functioned on a largely ad-hoc basis, relying on representatives from various agencies “donating” hours to keep the process going, until it received a three-year grant later in 2001.<sup>18</sup> Ultimately, the Substance Abuse and Mental Health Services Administration pulled the last year of funding, and the Diversion Treatment Court has been operating with intermittent funding since that time.<sup>19</sup>

The Diversion Treatment Court accepts defendants, both in and out of custody, with an open, non-violent misdemeanor/

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13. *Diversion Treatment Ct. Newsletter* (DeKalb County Magis. Ct., Decatur, Ga.), Jan. 2004, at 1.

14. *Diversion Treatment Ct. Program Status Rep.* (DeKalb County Magis. Ct., Decatur, Ga.), Jan. 2005, at 9 [hereinafter *Program Status Rep.*].

15. *Id.* at 10

16. *Id.*

17. *Id.*

18. Interview with DeKalb County Jail Liaison, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005). The majority of individuals interviewed will be identified with titles only, to allow them anonymity.

19. *Program Status Rep.*, *supra* note 14, at 11.

felony<sup>20</sup> case and a mental illness, with or without substance abuse issues. Participants must have housing, both to support their treatment and to ensure that court staff can contact them. The court often coordinates housing as part of the treatment plan.<sup>21</sup> Participation in the program is voluntary, and, upon acceptance into the program, the prosecutor agrees to hold the case and dismiss it upon program completion.<sup>22</sup> If a participant is unable or unwilling to continue in the program, his/her case is removed from the docket and continues through regular criminal justice channels with no additional sanctions.<sup>23</sup> The treatment program, with judicial monitoring of compliance, spans from approximately three to twelve months. Some participants remain under court supervision for much longer if deemed necessary, and felony cases are required to maintain court supervision of the defendant for at least a year.<sup>24</sup> While under supervision, Diversion Treatment Court participants receive treatment from existing community resources in accordance with individualized treatment plans, as developed by courts, social workers, and case managers.<sup>25</sup>

## Methods

The research methods used for this study were guided by the structure of the Diversion Treatment Court and the ethical necessity of limited disruption to the court process. Data collection therefore consisted largely of observation of the court in session, during which I attempted to observe the court proceedings as unobtrusively as possible and did not contribute in any way. I also conducted individual face-to-face interviews, and there was a small component of content analysis of court documents, such as periodic court newsletters.

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20. The Diversion Treatment Court primarily deals with misdemeanor offenses. Felony cases are accepted on a case-by-case basis and are generally non-violent. Since late 2003, the court has been accepting felonies, due to an agreement with the Office of the District Attorney to keep such defendants in the program for at least a year. *Program Status Rep.*, *supra* note 14, at 11.

21. Interview with Amy R. Simon, Program Director, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

22. *Program Status Rep.*, *supra* note 14, at 14.

23. *Id.* at 17.

24. *Id.* at 11.

25. *Id.* at 15.

I began informally observing the court in January 2002, when it had been in operation barely six months, and by mid-year 2003, I was observing court weekly. I formally observed the court for a year from March 2004 to April 2005. During my formal observations of the court, I took detailed field notes. Unfortunately, it was impossible to observe the court staff at work out of session as the court has no physical location outside the courtroom, and most court activities occur in the field, within other agencies or over the phone.

I also conducted face-to-face, open-ended interviews with all existing court staff, as well as some individuals who had moved on to different positions. Guided by my observations, I developed an interview guide of open-ended questions that addressed the respondents' impressions of the obstacles facing the court and how they have been or can be solved. I conducted fourteen interviews; each interview was tape-recorded and lasted from 30 to 120 minutes.

The project's coding scheme developed throughout my observations. I carefully noted incidents in my field notes that fit developing patterns and wrote short memos after court sessions in which a new pattern was observed. Following data collection, I analyzed field notes and interviews for examples of obstacles or solutions and organized events and statements into theoretical categories. Analysis of this setting did not lend itself to the use of data analysis software. I found in my observations and interviews that a single concept could be represented by very different stories or examples; the complexity of these links would be missed by software.

### **The Dilemmas of Collaboration: Obstacles in the Court Process**

Mental health courts require collaboration between the criminal justice and mental health systems and across many agencies and individuals within those systems. In 2005, the Diversion Treatment Court functioned as a collaboration between 59 separate criminal justice and mental health agencies.<sup>26</sup> Bring-

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26. Interview with Amy R. Simon, *supra* note 21.

ing so many agencies together to achieve a single goal virtually ensures that organizational obstacles will occur.

One of the most fundamental constraints to the operation of the Diversion Treatment Court is that the court must function within the criminal justice system and, while negotiating that system, interact with the mental health system. Both systems are complex, rigid, and subject to sudden bureaucratic change, and there is virtually no pre-existing integration between them.<sup>27</sup> As the systems have developed independently, they have distinct internal processes, timetables and funding streams, which complicate the transfer of individuals from one system into the other.

The collaborative nature of mental health courts creates similar obstacles across agencies and between individuals. Personnel working in a collaborative organization must internalize and act on the priorities of the new organization, even while maintaining those of their home agency. The agencies participating in the Diversion Treatment Court collaboration have unique organizational cultures, and many times these cultures are in direct opposition. Treatment providers generally view their mission as creating a supportive environment and returning their clients to a productive, independent life. Criminal justice ideology, however, is focused on maintaining public safety and ensuring that offenders are punished. Judges who attempt to “heal” may be seen as too “touchy-feely” or acting outside their appropriate role. Providers who interact with the criminal justice system may be seen as failing to protect their clients by dealing with a system that unfairly punishes the mentally ill.

Another barrier to the mental health court process stems from confusion that can arise across agencies in collaboration. The knowledge base of court personnel will largely consist of the priorities and procedures of their home agency. The operation of the court is therefore dependent on the interactions of workers who, in many ways, do not yet know how to work together or navigate each other’s systems. This often leads to

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27. See Nancy Wolff, *Courts as Therapeutic Agents: Thinking Past the Novelty of Mental Health Courts*, 30 J. AM. ACAD. PSYCHIATRY & L., 431-34 (2002), available at <http://www.jaapl.org/cgi/reprint/30/3/431.pdf>.

communication failures that can quickly limit the effectiveness of the court.

Therefore, the collaborative nature of mental health courts will create obstacles to the goal of providing mentally ill offenders access to community treatment. In the following sections, I will examine three such obstacles to the goals of a mental health court: system incompatibility, goal/role conflict, and communication failures. To illustrate these obstacles within the court, we will first turn to the story of Lucy,<sup>28</sup> a potential mental health court participant.

### Lucy's Story<sup>29</sup>

Lucy's interaction with the Diversion Treatment Court begins when a magistrate judge asks the program director to speak with her about participating in the program. Lucy seems like the perfect candidate. She has been struggling with mental illness and substance abuse for years and is currently homeless. However, while discussing Lucy's legal situation, the director discovers she has already accepted a plea on her current charges. Her case is therefore closed and outside the jurisdiction of the court. Although the judge agrees to rescind the plea agreement to get Lucy in the diversion program, Lucy and the director decide it is in her best interests to move forward, accept the plea, follow the orders of the judge and try to access treatment as a condition of her probation.

The judge's orders are to send Lucy to a local treatment facility for assessment. The judge intends for the sheriff's office to transport her to the facility, yet the orders are given without any contact with the facility, and the sheriff's office will not transport defendants without prior acceptance from the facility. Lucy never makes it to the assessment, and she is back on the streets with no judicial monitoring. She later shows up in court one morning, and the director makes another appointment for her with a residential treatment facility. When Lucy is assessed by the treatment facility, she is informed that they have no programs appropriate for her, and she will not be accepted. Once

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28. The name of this participant has been changed to preserve confidentiality.

29. Interview with Amy R. Simon, *supra* note 21.

again, Lucy is released with no judicial monitoring and is back on the streets. When Lucy has not been heard from in several weeks, the program director checks the jail system and finds that Lucy has been arrested on a new charge.

The new charge finally gives the Diversion Treatment Court jurisdiction over Lucy's case and means she can be accepted into the program.<sup>30</sup> The director asks the city Solicitor's Office, which has jurisdiction over all misdemeanor cases handled by the court, to put a hold on her case so it can be brought onto the diversion court calendar, and the Solicitor agrees. Lucy has Supplemental Security Income and Medicaid benefits and can therefore be treated and monitored by the court's treatment staff at the DeKalb Community Services Board.<sup>31</sup> Lucy's treatment and housing plan is established. All the pieces are in place for her to be brought in as a court participant. Yet when the program director attempts to release her from jail and into the program on a conditional bond, she finds Lucy has already been bonded out of jail. Yet again, she is released back onto the streets with no judicial monitoring or linkage to mental health treatment. The court has a treatment plan and housing set up for her, but Lucy is homeless and there is no way to contact her.

### **Criminal Justice/Mental Health System Incompatibility**

Lucy's story illustrates numerous operational obstacles faced by the Diversion Treatment Court, beginning with the disconnect between the criminal justice and mental health systems that the court must link. The criminal justice system is a big, inflexible government bureaucracy, and it is exceedingly difficult to navigate its many potential entries and pathways. Itself a component of the DeKalb County court system, the Diversion Treatment Court is allowed to work *with* the larger criminal justice system, but it cannot change the system. For instance, judges may bond defendants out of jail and into the mental health court. The program director may even ask a judge in Recorder's Court to bind a case over to the mental health court and give it jurisdiction. Still, the Diversion Treat-

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30. Interview with Amy R. Simon, *supra* note 21.

31. *Program Status Rep.*, *supra* note 14, at 12.

ment Court is constrained by the procedure and speed of the system. If the Recorder's Court judge refuses to give up jurisdiction when asked, no one in the mental health court has any power to divert the case. If an individual has already bonded out before a judge orders a provisional bond, the case may be lost. This occurred in Lucy's case; she was released from jail before being brought into the program, and it indefinitely delayed her participation in the Diversion Treatment Court.

The public mental health treatment system is somewhat smaller, yet also an inflexible government bureaucracy. While it might seem that the publicly funded services of community mental health treatment would be available to all and easily accessible, this is not quite the case. The pathways in and out of the DeKalb County Community Service Board are fewer than in the criminal justice system, but are nonetheless difficult to navigate.<sup>32</sup> Entrance into many programs requires complicated and lengthy paperwork and, often, the assistance of a case manager.<sup>33</sup> Even once an individual is considered a client of the Community Service Board, a case manager must apply for entrance into the appropriate treatment programs.<sup>34</sup> In addition, even as a "public" agency, the Community Service Board does not provide services to every DeKalb County resident who shows need; there are significant restrictions on how and to whom services will be provided. For example, it was long the policy of the DeKalb Community Service Board to close a file on a client if there had been no contact for 30 days.<sup>35</sup> This could be problematic for many mentally ill clients who might be in jail for some or all of that time period.

Diversion Treatment Court staff must not only work within the constraints of rigid systems, but they must also help defendants navigate between them. The complexity of these systems was sharply illustrated during a workshop to enhance mental health/criminal justice collaboration in DeKalb County. The workshop participants represented every agency affected

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32. Interview with Case Manager, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005). In order to preserve confidentiality, the names of many of those interviewed have been omitted and their titles or roles inserted as identifiers.

33. *Id.*

34. *Id.*

35. Interview with Social Worker, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

by the intersection of criminal justice and mental health issues, including police officers, mental health treatment providers, and even the DeKalb County Chief Magistrate Judge. The participants were asked to create a DeKalb County Systems Map, picturing every pathway into the criminal justice system and links to the mental health system. The development of the systems map took over an hour of discussion and disagreement, and ultimately resulted in an incredibly complicated and convoluted snapshot.<sup>36</sup> It also quickly became obvious that no single individual present on their own fully understood the intricacies of the entire system. To the extent that staff members are unaware of pathways between agencies or the pathways are overly complex, Diversion Treatment Court participants lose access to potential treatment opportunities.

Another constraining aspect of the criminal justice/mental health systems is their dependence on the ever-changing political environment. The mental health court interacts with some private agencies, but the bulk of its collaborators are government agencies. Government agencies rely heavily, if not exclusively, on government funding. So, when political changes occur, it can have massive effects on the functioning of both systems. New leadership generally means a new set of priorities and new funding streams. It is not surprising, then, that one of the most significant obstacles facing the Diversion Treatment Court is, and always has been, money. As one of the mental health court judges explains, “[The DeKalb Community Service Board] changes or the Feds change how they’re funding and so we have to completely redo how we do everything. I don’t know that it will ever be static because everybody’s pieces are changing, so we have to be fluid.”<sup>37</sup>

The criminal justice budget, while relatively hefty, has been increasingly allocated to prisons and post-adjudication programs, and money for rehabilitation programs is scarce.<sup>38</sup> Similarly, community mental health budgets are still grappling

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36. See Figure 1 *infra* at 37 for the completed DeKalb County System Map.

37. Interview with Judge, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

38. See DEREK DENCKLA & GREG BERMAN, CTR, FOR COURT INNOVATION, *RETHINKING THE REVOLVING DOOR: A LOOK AT MENTAL ILLNESS IN THE COURTS* (2001), available at [http://www.courtinnovation.org/\\_uploads/documents/rethinkingthe-revolvingdoor.pdf](http://www.courtinnovation.org/_uploads/documents/rethinkingthe-revolvingdoor.pdf).

with the effects of deinstitutionalization. Providers were never allocated the necessary funds to treat the bulk of the country's mentally ill population within the community.<sup>39</sup> Struggling to provide services, providers may face additional cuts, as their efforts are judged inadequate or ineffective by funding sources.

As the court operates as a collaboration between pre-existing criminal justice and mental health agencies, it inherits these budget problems. If county-level services lose funding and must abandon a particular treatment program, the court loses that program as well. This is one of the most fundamental limitations of the court: it must divert mentally ill individuals from the criminal justice system by utilizing a mental health system that has been unable to provide sufficient treatment to keep those individuals out of the criminal justice system. Gaps in service mean that, even with a court staff at the ready to link defendants to mental health treatment, sometimes the treatment just does not exist.

For instance, the Diversion Treatment Court requires participants to have stable housing in order to facilitate their supervision, but there is a critical shortage of housing for their participants.<sup>40</sup> Like Lucy, many participants are homeless when taken into the program or can no longer return home after their offenses. These individuals need to be put into residential treatment or linked to housing they can afford. Both options are in extremely short supply. Residential treatment facilities are expensive and difficult to operate. There are relatively few in DeKalb County, and many residential facilities are unwilling to accept clients from the Diversion Treatment Court.<sup>41</sup> These individuals are mentally ill, have criminal records and, in most cases, are dealing with a substance abuse issue. This "triple whammy" means that many residential facilities either lack the structure required to take on such clients or are simply unwilling to assume the risk.

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39. Richard H. Lamb & Leona Bachrach, *Some Perspectives on Deinstitutionalization*, 52 PSYCHIATRIC SERVS. 1039, (2001), available at <http://psychservices.psychiatryonline.org/cgi/reprint/52/8/1039>.

40. David Simpson, *DeKalb Court Puts Focus on Mental Health*, ATL. J. CONST. (Dec. 31, 2007). See also Thomas Bornemann & Cynthia Waincott, Op-Ed., *Mental Health System Needs Legislature's Boost*, ATL. J. CONST., Apr. 12, 2007, available at [http://www.cartercenter.org/news/editorials\\_speeches/ajc\\_041207.html](http://www.cartercenter.org/news/editorials_speeches/ajc_041207.html).

41. Interview with Case Manager, *supra* note 32.

The treatment providers' reliance on outside funding can also mean the sudden demise of treatment/residential programs as funding streams shift or disappear. Judges often suggest a residential facility for a particular candidate during court hearings only to be told that it has ceased to exist in the two months since they have heard cases. Also, many of the available treatment programs are in insufficient supply for the need, and appropriate applicants are often turned away.<sup>42</sup> This is illustrated in Lucy's experience. She was rejected from a treatment program suggested by the court's director despite a documented mental disorder and full benefits. Her rejection seems to reflect the limited space in these programs. With so few available slots and so many qualified applicants, facilities often run out of space or feel a prospective client must be a perfect match and especially likely to succeed to warrant acceptance.

### **Goal/Role Conflict**

One of the unusual characteristics of the Diversion Treatment Court collaboration is that the participating agencies are working together to achieve a goal quite unlike the goals of any of the individual agencies. The mental health agencies are collaborating with a system they generally work to keep their clients *away from*, and the criminal justice agencies are working to send offenders out of their own systems. This characteristic makes for an innovative program with great potential for change in clients' lives, but it also virtually guarantees goal conflict for participating agencies and role conflict for individual court staff.

To the extent that organizational goals are incompatible (or perceived as such) agencies will resist collaboration with the court. Despite the excitement felt by many of the individuals and agencies involved with the Diversion Treatment Court, there was also resistance. Some of the resistance came from the treatment community. It was difficult for many to believe that any new program, especially one emanating from the criminal

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42. Interview with Judge, *supra* note 37.

justice system, could address such an enduring problem. A court social worker explains:

I know there was resistance from the treatment community. Families that are as burned out as some of these families are, couldn't see how this could possibly make a difference when nothing else ever had. So, there were just a lot of questions about whether this could work, and a lot of [people] thought that it couldn't work.<sup>43</sup>

Many of the treatment providers who questioned the mental health court felt that a criminal justice program could not mesh with the treatment approach.<sup>44</sup> There was doubt that the court could gain compliance and concern about using punishment to enforce it. Treatment providers were hesitant to participate in a program they felt could punish their clients for normal treatment setbacks. Because of these concerns, many day programs did not participate early on.<sup>45</sup>

Even when there is no overt resistance, there may still be conflict. Collaborating agencies that fully support the Diversion Treatment Court continue to have their own institutional priorities that determine day-to-day actions and may conflict with the goals of the court. For instance, the jail must contend with overcrowding and the mandate to provide treatment to a growing population of mentally ill offenders. So, although the mental health staff in the DeKalb County Jail regularly refers individuals to the court, they simply cannot do so for every potential mental health court participant. This type of conflict can be seen in Lucy's case. The program director identified Lucy as a potential participant and simply needed the jail to hold her until a judge released her into the program on a conditional bond. However, the jail operates on its own timeline, with its own agenda of releasing people as quickly as legally possible. This agenda, while entirely legitimate, creates a hurdle for bringing new participants into the Diversion Treatment Court.

An additional source of conflict can occur because the majority of Diversion Treatment Court personnel remain under the auspices of their home agencies. Most of the personnel continue to have regular caseloads in their home agencies and continue to be paid and supervised by those agencies. While these

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43. Interview with Social Worker, *supra* note 35.

44. *Id.*

45. *Id.*

collaborations allow the court access to the resources and networks of multiple agencies, it also creates conflict. Sometimes the missions and operational priorities of these agencies do not mesh.

For instance, as the United States legal system is adversarial, the public defender is expected to be a staunch advocate for the client, while the prosecutor must be a staunch advocate for the community. The Diversion Treatment Court defense attorney describes this tension:

I've seen a lot of criminal trials, and in most cases, the D.A. doesn't ever say, "Well, you know, maybe the public defender is right and this person didn't have the mens rea to convict him for this crime." They are a conviction machine and the public defender is a getting-them-off machine and there's no middle ground for finding what would work best.<sup>46</sup>

Solicitors are measured in large part by their ability to secure a conviction and may be the first on the chopping block if a released defendant goes on to commit a violent crime. These occupational realities mean that even an office generally committed to the idea of a mental health court can feel pressure to keep cases in the criminal justice system. The Diversion Treatment Court solicitor explains:

We prefer generally just to prosecute them, and as part of their probation, give them any treatment they need or any medication they need. That way we can have it on their record so if they do it . . . again we can . . . [elevate subsequent charges and] go forward with the felony if we need to.<sup>47</sup>

Even once a case has been released to the Diversion Treatment Court and the defendant begins the treatment outlined in the bond, the conflict often does not end for the solicitor. The role of the solicitor is to protect the interests of the Solicitor's Office and raise objections if or when a participant seems unable to successfully complete the program. While the solicitor sits in on hearings and occasionally wields the "stick" of possible prosecution, the court and the Solicitor's Office have an agreement to keep cases in the program until a Diversion Treatment Court judge sees fit to remove them.<sup>48</sup> This goal conflict

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46. Interview with Defense Attorney, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

47. Interview with Prosecutor, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

48. Interview with Amy R. Simon, *supra* note 21.

has not caused the Solicitor's Office to consider ending the collaboration, but the tension does limit the number and type of cases the Office is willing to send to the court.<sup>49</sup>

Treatment providers also experience goal conflict between the mission of the court and their commitment to the well-being of their clients. In general, treatment providers and the court staff feel that judicial intervention can be used to their advantage; they can use both the "stick" of prosecution and the "carrot" of support to encourage compliance. Yet, some providers still have the lingering fear that clients will be punished or even sent to jail for behavior they see as normal setbacks in mental health treatment. Indeed, the court's bond conditions usually include taking all medication, avoiding all alcohol and illegal drugs, and adhering to all laws and residential rules. Few participants make it through the program without violations. Providers' fears of the judicial consequences of their clients' actions can occasionally lead providers to limit or terminate their relationship with the court. More often, however, these concerns lead providers to conceal or minimize non-compliance, thereby reducing the court's ability to effectively monitor and support its participants.

Even if the court personnel and their home agencies are on board with the organizational goals and procedures, a collaborative effort often requires personnel to take on new and unfamiliar roles. Early on in the Diversion Treatment Court's development, many agencies were unsure of their roles within the court. Without guidelines or directives being provided from above, each agency (or individual representative) had to determine what level of participation was comfortable. During this learning process, there were information and service gaps.

The Solicitor's Office, for example, did not know if it was meant to provide input on the cases during hearings.<sup>50</sup> Treatment providers feared they would be expected to provide additional services to mental health court participants or report to weekly hearings.<sup>51</sup> As many treatment providers had little-to-no

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49. *Id.*

50. Interview with Court Recorder/Program Assistant, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

51. Interview with the Hon. Winston Bethel, Chief Magistrate Judge, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

experience in front of a judge, they were uneasy with their new courtroom roles. This discomfort often led them to agree to everything the judge requested, regardless of its feasibility. The social worker explains:

When the judges would question me about things, I felt scared. In the beginning, whatever they said, I was like, "I'll do that, I'll do that," and then I would try to deliver all that and it's not humanly possible. But over time I became comfortable saying, "I don't know how to make this happen for this person. I think it would be great if it could but I don't know how to make this happen." They became more comfortable with hearing that.<sup>52</sup>

As the above quotation suggests, the court process was very different for judges as well. In conventional courtrooms, there is far less input from far fewer sources. As the providers had to adjust to saying no to the judge when necessary, the judges had to adjust to the additional constraints of the mental health system.<sup>53</sup>

### Communication Failures

For the Diversion Treatment Court, inter-agency communication is essential at every stage. From the very beginning of the process, the court relies on the jail, judges, prosecutors, defense attorneys, among others, to refer candidates to the court. Miscommunication here can mean eligible participants are not referred to the court. The court further relies on reports from various criminal justice agencies – the Solicitor's Office, Adult Probation and pretrial services – for accurate information on defendants' criminal history. At this stage, miscommunication can result in inappropriate referrals and wasted resources. As the participants' treatment progresses, information must be continuously exchanged between treatment providers and the criminal justice agencies. Miscommunication here may lead to noncompliance or the inadequate treatment or monitoring of the participants. With so many agencies working toward a common goal, there are many chances for communication failures that can create obstacles for the court.

Each type of agency in the collaboration operates under its own mission and has developed a unique organizational cul-

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52. Interview with Social Worker, *supra* note 35.

53. *Id.*

ture. Differences in organizational culture often mean differences in language use and interpretation, making a concept as seemingly one-dimensional as “what this court is” open to several different views. As described in a program status report, “[f]rom the criminal justice perspective, the [Diversion Treatment Court] program is a bond modification program . . . . From the treatment provider’s perspective, this program is a treatment program.”<sup>54</sup>

The two perspectives represent fundamental organizational differences and highlight the problems that can result from distinct organizational jargon. As the agencies forming the mental health court were suddenly brought together, the individuals working within them were faced with new and unfamiliar terminology. Misunderstandings were especially common in the courtroom as treatment providers were adjusting to their new roles as participants in the courtroom process. A case manager describes his own confusion: “. . .throwing around stuff like the ‘docket’ and ‘consent holds’ and stuff like that, and I’m like ‘what are they talking about?’ And now, learning the lingo is making it a lot smoother for me.”<sup>55</sup> Although this obstacle can be overcome with discussion and the passage of time, language barriers in the court persisted throughout the early months of collaboration, and there was a significant amount of role confusion and operational delay that occurred due to language uncertainty.

While some miscommunication is simple confusion over language, much miscommunication is more subtle. Many of the agencies operating through the court have never worked together before, and none has used the court system to access treatment for mentally ill offenders. These new relationships can result in a great deal of misunderstanding about how and even why agencies and individuals within those agencies operate. There is little natural interaction between criminal justice agencies and mental health providers. So there remains an ideological divide and reciprocal distrust. The chief magistrate judge explains:

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54. See *Program Status Rep.*, *supra* note 14.

55. Interview with Case Manager, *supra* note 32.

This is why you don't get most providers in it, because they feel like they are targets, and, of course, judges think that providers just come in and fix people. Every time [treatment providers] talk to someone in the criminal justice system, they get a subpoena to come to court. And they don't want to end up testifying. Why should they waste half the day in court?<sup>56</sup>

It is often difficult for treatment providers to accept that people within the criminal justice system are truly interested in rehabilitation and working with providers for the best interests of the client. It is likewise difficult for many within the criminal justice system to accept that their system alone cannot solve all problems and that many treatment providers are willing and able to successfully interact with a court-based program. These generalizations complicate the working relationships across agencies.

Also, actors from one agency in a new working relationship often fail to realize the procedural requirements of other agencies in the collaboration. Early on, the Diversion Treatment Court providers compiling treatment plans did not realize the court needed legal considerations such as curfews or drug screens put into the bond order.<sup>57</sup> Providers were also fairly lax about providing details of the treatment plan to the participants in advance of acceptance into the program, not realizing the legal requirements of informed consent.<sup>58</sup> Likewise, criminal justice representatives had to be educated about treatment procedure and the needs of the community treatment staff. Judges were initially unaware of many of the time constraints within the community-based programs.<sup>59</sup> It was assumed that, once participants were accepted into the court, their treatment programs could immediately begin. As the case manager explains, this is not always the case: "The court wants the treatment plan when we bring them to court on Thursday. By Monday, the court would like to see that person enter that day program, alright? Now we really can't work it that fast, due to the paperwork to get them in."<sup>60</sup> Judges did not realize their orders were unreasonable, and the court's social worker and

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56. Interview with the Hon. Winston Bethel, *supra* note 51.

57. Interview with Defense Attorney, *supra* note 46.

58. *Id.*

59. Interview with Case Manager, *supra* note 32.

60. *Id.*

case manager, still uneasy with their courtroom roles, were hesitant to refuse a judge's request.<sup>61</sup> This confusion often led to inadvertent noncompliance on bond orders as participants could not attend treatment as instructed.

Long after the Diversion Treatment Court was in operation, many agencies or individuals within agencies remained unclear on court procedure.<sup>62</sup> The news that DeKalb County had a mental health court spread quickly; accurate details on *how* the court worked took much longer. This type of misunderstanding complicated Lucy's participation in the mental health court. A magistrate judge thought Lucy was appropriate for the court. Yet, he did not contact the court until *after* accepting Lucy's plea, thus making her ineligible. This misunderstanding of the DTC process blocked Lucy's diversion and welcomed several other obstacles into the mix.

Confusion about the mental health court procedure can also increase resistance to the overall process. Such a misunderstanding occurred with the Solicitor's Office. The Assistant Solicitor expressed concern to the project director that one participant had been through the court three times and was repeatedly non-compliant.<sup>63</sup> The Solicitor's Office questioned the ability of this participant to succeed and wanted to take the case back and prosecute it.<sup>64</sup> However, the individual had never been accepted into the mental health court. The defendant had been put on the calendar three times to be admitted into the program, but each time he was too psychologically unstable to be accepted. The court continued to pursue his case, and once he was stable, he was accepted into the program. Since his acceptance, he had been completely compliant.<sup>65</sup> The Solicitor's misunderstanding of procedure nearly blocked the referral of an appropriate, compliant participant.

With so many agencies collaborating with the express intention of linking previously unlinked systems, the Diversion Treatment Court had to incorporate mechanisms to facilitate the exchange of information. Yet, it was not always clear where

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61. Interview with Social Worker, *supra* note 35.

62. Interview with Amy R. Simon, *supra* note 21.

63. Interview with Amy R. Simon, *supra* note 21.

64. *Id.*

65. *Id.*

information needed to flow, how well the existing mechanisms would function, or what information gaps already existed. When the court began, one of its biggest obstacles was the extremely limited flow of information between the criminal justice and mental health agencies. The role of the court was to link these two systems, but there were no pre-existing mechanisms to do so.

One of the most problematic information gaps was between the court and the DeKalb County Jail. As the court first developed, it seemed logical to get referrals directly from jail mental health staff. The original referral method was for jail mental health staff to send a list of “new” mentally ill inmates to the court every day.<sup>66</sup> However, there was resistance to this procedure from the jail staff who were already overwhelmed by the volume of mentally ill inmates cycling through the jail. The list of referrals from Jail Mental Health eventually trickled to no more than one a week, and the court had to become more proactive in the search for participants.<sup>67</sup>

Another snag in the flow of information arose when the Diversion Treatment Court wanted to begin accepting non-violent felony cases. While misdemeanor cases were under the jurisdiction of the Solicitor’s Office, the District Attorney followed felony cases. As the court had been in collaboration with the Solicitor’s Office since its inception, there were mechanisms in place to facilitate the transfer and supervision of misdemeanor cases<sup>68</sup>. No such mechanisms were in place at the District Attorney’s Office. Unlike the Solicitor’s Office, the District Attorney has no representative at mental health court hearings and no internal liaison to the court. This means that when a problem occurs with a felony case, someone at the court has no choice but to call individual prosecutors until the “owner” of the case can be found.<sup>69</sup> This process is time-consuming, and while it is taking place, the Diversion Treatment Court may lose jurisdiction.

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66. Interview with Defense Attorney, *supra* note 46.

67. *Id.*

68. This collaboration was greatly facilitated by the program director’s pre-existing relationship with the Solicitor’s Office; *see infra* at 29.

69. Interview with Defense Attorney, *supra* note 46.

Even within the courtroom, there are breakdowns in the flow of information. The non-adversarial nature and relative informality of the court means that the usually strict rules of information exchange are not necessarily followed. Court actors tend to be more focused on their own roles than on how particular pieces of information may be relevant to other actors. Therefore, in this court, the defense attorney is not always informed of noncompliance issues or participants' concerns with treatment plans.<sup>70</sup> This limits the defense attorney's ability to act as an advocate for participants.

There is also an incomplete flow of information to the solicitor from the rest of the staff. From the solicitor's perspective, there is a tendency for other court staff to gloss over the negative parts of participants' progress. He explains,

There's very, very little communication with our office because, I think, some individuals in the court . . . they want to keep us out of the loop. They don't want to communicate with us because they are afraid that we're going to try to interject or approve fewer cases.<sup>71</sup>

The information gap identified by the solicitor is very real. While it is impossible to know if there is full disclosure during court hearings, other staff commented on the ability within the court to work in the best interest of the client without the constraint of the adversarial process. The defense attorney explains, "There have been some solicitors here that would have thrown up roadblocks and said that's not the way we do things or that's not procedurally correct or that can't happen and, you know, it's just been great that they don't have to be in the discussion."<sup>72</sup> While the defense attorney finds the ability to leave the solicitor out of the loop helpful, this information gap can mean defendants are brought into the mental health court without the Solicitor's Office true consent. This could ultimately undermine the Solicitor's Office commitment to the Diversion Treatment Court and severely limit the court's ability to obtain jurisdiction over misdemeanor cases.

In many ways, the Diversion Treatment Court faced an uphill battle from its inception. The court had to link two systems

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70. *Id.*

71. Interview with Prosecutor, *supra* note 47.

72. Interview with Defense Attorney, *supra* note 46.

with no preexisting integrating mechanisms, and it had to do this by bringing together many agencies with fairly incompatible missions. These operational obstacles have not disappeared, yet the Diversion Treatment Court has managed to stay in operation and consistently improve its ability to link mentally ill offenders to treatment. The following sections will consider characteristics of the Diversion Treatment Court and its staff that contribute to the court's ability to overcome operational obstacles.

### **Overcoming Operational Obstacles: Characteristics of the Staff**

The Diversion Treatment Court began with the basic idea of keeping the mentally ill out of jail, but it falls to the staff to turn this concept into an operational court program. If the program is to survive and flourish, it also falls to the court staff to address any obstacles that arise. As one of the judges commented, “[The Diversion Treatment Court] does work, but it only works as well as the people we have and we have great people.”<sup>73</sup> The characteristic of the staff that makes the program work – the “greatness” to which the judge refers – is social capital.

In this context, social capital is the intangible set of resources that individuals bring into the work environment, which allow them to perform their jobs more effectively. Employees' social capital includes all the knowledge, skills and relationships they bring into the workplace<sup>74</sup>. For example, a case manager's ability to connect with his clients and gain their trust or convince treatment providers to do him a favor will significantly enhance his overall job performance. Such resources are difficult to measure, yet fundamental to the operation of the court.

The Diversion Treatment Court functions in an enormously complex and constrained environment. Effective work-

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73. Interview with Judge, *supra* note 37.

74. See W. RICHARD SCOTT, ORGANIZATIONS: RATIONAL, NATURAL, AND OPEN SYSTEMS 301 (5th ed., Prentice Hall 2003). See also EUGENE BARDACH, GETTING AGENCIES TO WORK TOGETHER: THE PRACTICE AND THEORY OF MANAGERIAL CRAFTSMENSHIP 256-57 (1998).

ers must therefore not only be good at their jobs, but also be effective problem-solvers. The court has been able to endure and improve in the face of significant operational obstacles precisely because its staff brings together a crucial assortment of experience, determination, skills, and contacts. Using these assets, the court staff has avoided obstacles, minimized their effect, or adapted the program to solve them.

The staff must contend with individualized treatment and a continuously changing environment; their ability to address operational obstacles therefore depends in large part on their flexibility. The needs of each participant are complex and distinct, and there is no single pathway into the court or through the program. Personnel must be able to adjust and react to very diverse personalities and requirements. The program director describes the general perspective of the court personnel: “Nobody ever says, ‘Well, you said this was going to happen, and it’s not happening,’ because they all know from their own positions that they have to be flexible.”<sup>75</sup> The people who continue working within the court are able to “expect the unexpected,” and they remain willing to roll up their sleeves and deal with problems as they arise.

Due to its mercurial environment, procedures within the court are also fluid. If the jail changes its intake or release procedures, it affects how the court must function. If the DeKalb Community Service Board changes the paperwork for entrance into the dual diagnosis day program, it also affects the court. The methods the staff uses to bring defendants into and through the program, then, must either shift as the environment shifts or circumvent these changing processes entirely. The individuals within the mental health court show an extraordinary ability to use any and all available means in whatever way necessary to support participants. The rigidity of bureaucracies often produces employees who are unable to operate outside of established procedure,<sup>76</sup> but the Diversion Treatment Court employees are not tied to the procedural status quo. The jail liaison explains, “They’re not preoccupied with process. They

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75. Interview with Amy R. Simon, *supra* note 21.

76. See Victor Thompson, *Bureaucracy and Innovation*, 10(1) ADMIN. SCI. Q. 1, 7 (1965).

figure they'll get done what they need to get done and if they have to follow your process to do it, they'll do it. If they have to step outside your process, they'll do that too. They're just about getting it done."<sup>77</sup> The staff must be comfortable with things moving constantly, and the people who stay with the court are able to focus on the end rather than the means. Even during periods when procedure is stable, there are always many cumbersome pieces involved in getting someone into the court and supporting them through the treatment process. There is no consistent process. Every participant goes through a unique experience and needs a different set of tools and support systems to successfully graduate. Here, too, staff members remain flexible and accept that their positions in the court do not entail only one role. The probation officer describes this process:

Sometimes you have to be the stern probation officer. Sometimes you have to be the nurse. Sometimes you have to be the caseworker. Sometimes you have to be the counselor. And you just have to know how to change hats. You have to do that. It's part of the job. You have to be very flexible.<sup>78</sup>

This flexibility is evident during court hearings. For example, there are often situations in which a participant is ineligible or inappropriate for day programs and has no structured activity or mental health treatment during the day. The staff response consists generally of suggestions from every corner of the courtroom. The program director might mention a new program to try, while the probation officer suggests a community service program run through Adult Probation and offers to meet with the participant personally.

The ability of the court to overcome operational obstacles can also be linked to staff members' personal skill sets and resources. For instance, staff members tend to have a strong understanding of the importance of networking and, as a group, are unusually skilled at forming relationships. A prime example of this skill can be found in the efforts of the original court recorder/program assistant. Filling this role in the early days of the court meant that she had to forge many of the relation-

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77. Interview with DeKalb County Jail Liaison, *supra* note 18.

78. Interview with Probation Officer, Diversion Treatment Court, in Decatur, Ga. (Apr. 2005).

ships between the court and participating agencies. While many of the other staff members commented that they had heard of or personally felt resistance from members of the criminal justice community, the court recorder cites little of this. Yet, she also takes care to note that – especially when the court was first being developed – she always took the initiative to personally get to know every person with whom she needed to interact.<sup>79</sup> For those individuals in close proximity to the office, she would personally deliver every piece of correspondence to put a face to a name and have one-on-one interaction.<sup>80</sup> These efforts almost certainly made collaborators more receptive to the requests of the court.

The impact of relationships is just as central when dealing with obstacles on the treatment end of the process. According to the case manager, navigating the obstacles of the mental health provider system is, in part, dependent on trading favors; it *requires* the formation of relationships across various providers. He explains:

It's kind of a wash my back, I'll wash yours kind of thing. You know . . . some of the program directors call me. Maybe they need an update on somebody that's in jail or they need to have some paperwork done on somebody that's in jail, and I'll say ok. They'll call me, no problem, I do it. And when I turn around and need a favor from them – about somebody coming to visit or can we speed this paperwork up or what do I need to do to get them in this program by today – I can go through them.<sup>81</sup>

The caseworker's personal relationships – one aspect of his social capital – allow him to circumvent bureaucratic procedure.

Although the success of the Diversion Treatment Court rests on the collective contribution of all the court personnel, the program director and the specific characteristics she brings to the court are a fundamental component of the court's success. The program director possesses the interpersonal characteristics that facilitate the bringing together of mental health and criminal justice agencies and ease the conflict of collaboration. The court recorder explains:

I think [the program director] has been excellent at keeping a rapport with the Solicitor's Office and the Public Defender's Office, even throughout the changes. She's even been successful in mak-

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79. See Interview with Court Recorder/Program Assistant, *supra* note 50.

80. *Id.*

81. Interview with Case Manager, *supra* note 32.

ing progress with the DA's office. Two things: her personality and her legal background allow that to be possible. So her being in that role as the director is great because it has opened a lot of doors, and she's able to explain it in a way that people get it. And once someone understands it, then they can feel it, and they don't feel like anything is being taken away from them. Most of all, you want people to feel a part of . . . and I think she's been able to do that.<sup>82</sup>

Most court personnel also had pre-existing relationships within the collaborating agencies; the trust implicit in these relationships eased some collaborative tensions. From the inception of the court and before she was hired in 2002, the program director worked in the DeKalb County Solicitor's Office and acted as the solicitor for hearings.<sup>83</sup> The original court recorder/program assistant also had a background in the Solicitor's Office and had previously acted as the office's secretary/liaison to the court.<sup>84</sup> Their collective experience meant they knew how the Solicitor's Office worked. They were aware of the bureaucratic snags and procedural issues. A strong relationship between the Diversion Treatment Court and the Solicitor's Office is essential to the court's operation as the prosecutor must be willing to divert cases and trust the court's process. The program director explains:

That's really a trust issue that you're not going to grab cases that should be prosecuted just because this person is mentally ill . . . as a [former] prosecutor, I err on the side of [providing treatment] post-conviction, right? Then you know you're safe . . . and the solicitors, they know me; they trust me. You know, it's a trust thing. I'm not going to ask you to give me an aggravated assault case. I'm not going to pretend it's not aggravated assault.<sup>85</sup>

Pre-existing relationships also helped the court deal with obstacles from the mental health system. Each staff member in charge of case management had worked in the DeKalb County system for some time before joining the team. Their years of experience meant they had established a good bridge of communication with many different treatment programs and, perhaps more importantly, with the individuals who worked within those programs. According to the case manager, coming into the court without such experience would be difficult:

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82. Interview with Court Recorder/Program Assistant, *supra* note 50.

83. Interview with Amy R. Simon, *supra* note 21.

84. Interview with Court Recorder/Program Assistant, *supra* note 50.

85. Interview with Amy R. Simon, *supra* note 21.

It wouldn't be that easy because I've grown to have a rapport with some of the people in the [community service board] and some of the people in outside programs. I've grown to have a rapport with them. Now, I'm not saying they couldn't do it, but they would have to start from scratch, just like I did [early in my career]. Somebody could come in and do it, but it takes time to get these relationships with each other going.<sup>86</sup>

All the resources that personnel bring into the Diversion Treatment Court – their attitudes, skills and personal networks – help them to tackle the obstacles facing the court. Yet, while these characteristics are fundamental to the court's ability to deal with the structural barriers in its environment, the structure of the court itself must allow staff members to make necessary changes and implement innovation. The following section will examine the characteristics of the program structure that facilitate overcoming operational obstacles.

### **Overcoming Operational Obstacles: Characteristics of the Court**

The Diversion Treatment Court is able to respond to obstacles because the efforts of its workers are supported by its organizational structure. The overarching focus of the court is on solving problems. In sharp contrast to most government organizations and, in particular, most courtrooms, the Diversion Treatment Court has been designed to facilitate the staff's identification of and response to problems in its operation. Unrestricted by the adversarial process, the court is able to keep its focus on each participant and the individualized treatment plan that will help him or her succeed. Even when participants relapse, the court's focus remains on identifying and fixing problems in the treatment plan and finding the right balance to help them succeed. The same problem-solving philosophy that is applied to individual participants is applied to the program itself. If the environment changes or processes fail, attention is immediately turned to identifying and addressing those problems.

The creation of the position of program director reflects the larger problem-solving character of the court. The director acts as a gateway into the program and places participants on the

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86. Interview with Case Manager, *supra* note 32.

calendar, but the director's role also extends far beyond these tasks. She explains:

I develop the procedures, tweak the procedures . . . I really try to make the pieces work. Since I've got a very logical, organized manner and brain and try not to judge people, I'm really trying to help the process be developed, help people be comfortable with the fact that everything changes continuously and help each [member of the staff] stay true to their organization and their core responsibilities.<sup>87</sup>

In large part, her role is to anticipate, prevent and, when necessary, handle problems.

The court founders always knew such problems would occur. The founding judge admits, "It was kind of a trial and error to get started because we really didn't know what we were doing. There were the ups and downs. That was always going to be the case. I knew that."<sup>88</sup> Because problems seemed to be inevitable yet relatively unpredictable at the outset, it was accepted early on that none of the court procedures could be set in stone and there would need to be ongoing change in response to obstacles. This led to a court atmosphere that welcomed dialogue and brainstorming to identify and address problems.

During the first months of the court, Thursday morning hearings were followed by an informal group discussion.<sup>89</sup> Every staff member was encouraged to bring up any of the difficulties they faced in bringing people into and through the program.<sup>90</sup> The court staff took these sessions as opportunities to share frustrating experiences as well as suggest and troubleshoot potential solutions to problems.<sup>91</sup> The informal sessions were used to streamline court procedure. These post-court discussions occurred every week for the first several months of the court's operation. Now court personnel will still often meet after Thursday morning hearings to discuss procedural snags or problem cases.

The non-adversarial format of the Diversion Treatment Court coupled with the staff's efforts to maintain equal input

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87. Interview with Amy R. Simon, *supra* note 21.

88. Interview with the Hon. Winston Bethel, *supra* note 51.

89. Interview with Amy R. Simon, *supra* note 21.

90. *Id.*

91. Interview with Amy R. Simon, *supra* note 21.

among collaborators also means that there is little hierarchy within the organization. In many organizations, particularly government, the possibility for innovative solutions to inefficient or ineffective procedure is limited by rigid hierarchical chains of command. There are restrictions on how and when subordinates can speak to their superiors and often fairly inflexible methods of implementing innovative ideas.<sup>92</sup> This is especially true in the average American courtroom, in which every procedure and interaction is constrained by explicit rules.

In contrast, the Diversion Treatment Court promotes the belief that the input of many individuals, from many agencies, makes the court strong, flexible and responsive. The program director describes the decentralized power structure in reference to a particular participant's success:

I never in a million years would have thought [court participant] would get where he is today. So you don't know, and that's why you need all the different eyes, because everybody sees something a little different because you wind up bringing to the situation your history and your experience.<sup>93</sup>

The many "eyes" represent the array of knowledge, skills and personal experience that every staff member brings into the collaboration. The court's ability to address problems is exponentially increased as every staff member becomes an equal contributor to the problem-solving process. The relative lack of hierarchy means that procedural innovations can come from any member of the court staff, at any time. An example occurred when a social worker encountered difficulty collecting information on participants' treatment progress from private providers. After calling these providers repeatedly with no luck, it occurred to her to create a form the participant could personally bring to the provider and return to the court. This would increase the providers' willingness to fill out the form and guarantee that the court had the type of information it needed. The change was quickly incorporated into court procedure, and a similar form is still used today.<sup>94</sup>

Flexibility is built into the treatment court's proceedings. There are freer and more open lines of communication with

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92. See Thompson, *supra* note 76, at 3-10.

93. Interview with Amy R. Simon, *supra* note 21.

94. Interview with Social Worker, *supra* note 35.

judges and among court personnel than there are in a conventional court proceeding. As a result the staff members are able to fully advocate for the participants and openly ask for what is needed. They are further able to acknowledge participants' problems and setbacks without fear that the participant will be penalized for their openness.

### **Lessons for Successful Mental Health Courts**

The types of operational obstacles identified in the case of the DeKalb County Diversion Treatment Court will likely be intrinsic to any collaborative criminal justice program with the goal of linking mentally ill offenders to mental health treatment in the community. As mental health courts continue to be implemented in new locations across the country, these obstacles have significant implications for the issue of "going to scale." Going to scale involves identifying the essential components of a successful program and replicating them in a new location.<sup>95</sup> Yet, this process is never simple; it is more like recreating an entire garden than transplanting a single healthy rose bush. While it is easy to determine the basic procedural model used by the Diversion Treatment Court – things such as which offenders are eligible, when and how participants are brought into the court, and how treatment is monitored – this model alone will not guarantee smooth implementation in a new location. If particular types of obstacles are likely to occur in newly implemented mental health courts, then an understanding of how to overcome and/or adapt to those obstacles may be equally as fundamental to the success and survival of developing programs.

As described above, the nature of the criminal justice and mental health systems and the reliance on a collaboration means that mental health courts are likely to face system incompatibility, goal/role conflict and communication failures. Yet, each jurisdiction attempting to implement a mental health court must deal with permutations of these obstacles that are unique to their local criminal justice and mental health agencies.

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95. See Aubrey Fox & Greg Berman, *Going to Scale: A Conversation About the Future of Drug Courts*, 39 CT. REV. 4 (Fall 2002). See also Jeffrey L. Bardach, *Going to Scale*, 19-25 STAN. SOC. INNOVATION REV. (Spring 2003).

Therefore, while some obstacles may be avoided with thoughtful implementation, specific obstacles often cannot be anticipated. This means that court procedure and policy must be fluid and adaptable to organizational change and conflict; as such, no process can be set in stone.

Creating the position of program director can facilitate this kind of flexibility. In an organization with high levels of conflict between agencies and systems, this position allows one individual within the court the neutrality to consider the entire process and focus on solving problems and alleviating tensions. The program director can address inter-agency conflict, for instance, without experiencing the ramifications of that conflict personally. The unique perspective also allows a bird's-eye view of how all the court components interact as well as each individual step in the process. This enables a program director to identify glitches in the process and solutions that others with specific responsibilities may not be able to see.

A truly non-hierarchical work environment can further support flexibility in the court. In this environment, every staff member gets a voice in the process and contributes knowledge and resources to achieve the best possible outcome. Although the non-adversarial nature of mental health courts automatically reduces hierarchy to a certain extent, this component must transcend procedure and be ingrained in the *culture* of the court. That is, the ideas of all staff and stakeholders must be considered equally valid with equal potential to identify and solve problems. For instance, a case manager is far more likely than a judge to have innovative ideas about how to supervise a difficult-to-place participant. The court must acknowledge these distinct perspectives and welcome all sources of innovation. In the case of the Diversion Treatment Court, this process was facilitated by post-court meetings, in which court staff met to share procedural snags and trouble-shoot as a group. Separating this kind of problem-solving process from courtroom procedure further de-emphasizes hierarchy and gives everyone equal voice.

Still, it is only the individuals working within the court who can transform these aspects of court structure into day-to-day successes. Not all employees – not even all talented and committed employees – have the combination of temperament,

skills and resources necessary for success in this type of environment. Effective workers must be highly motivated and eager to go beyond their job descriptions to do whatever is needed to achieve the court's larger goals. Simply put, they must be the kind of people who get things done. Court staff also must be exceedingly flexible in their daily work process. They must be willing to work within established procedure, but equally willing to look outside that procedure when necessary. In the court environment, such ingenuity requires significant interpersonal skills, as workers must call on their contacts, knock on new doors and be open to trading favors.

The most valuable court staff therefore comes to the court with experience and pre-existing relationships in local criminal justice and/or mental health systems. Court workers with experience in one of the collaborating agencies bring the ability to navigate that system with them and, with their knowledge of that agency's culture and mission, help to ease any resistance. At the same time, individuals with agency experience are likely to be most effective when hired as dedicated court employees. Although this requires funding which may be beyond the capabilities of some fledgling programs, hiring dedicated staff from collaborating agencies is the best way to utilize existing knowledge and networks while limiting goal/role conflict of employees.

The case of the DeKalb County Diversion Treatment Court provides one additional lesson: one of the most effective tools to overcome the tensions of collaboration may be time. Many of the issues stemming from new collaborations – resistance to the new goal, miscommunication and role conflict – may be best addressed by hiring thoughtfully, creating an organizational environment in which all input is welcomed and allowing time to do its own work. With the passage of time, collaborators will adapt to their new roles and organizational mission, thus limiting operational obstacles, and the court will become increasingly adept at tackling the ones that do arise.

Figure 1. Criminal Justice and Mental Health Systems Map: DeKalb County, Georgia.

