

COMPASSIONATE JURISPRUDENCE AS PRAXIS FOR JUSTICE:  
A QUALITATIVE DIALOGIC INQUIRY ACTION RESEARCH STUDY

by

Bridgett Elaine Ortega

Copyright 2018

A Dissertation Presented in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Management in Organizational Leadership

University of Phoenix

ProQuest Number: 10841190

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



ProQuest 10841190

Published by ProQuest LLC (2018). Copyright of the Dissertation is held by the Author.

All rights reserved.

This work is protected against unauthorized copying under Title 17, United States Code  
Microform Edition © ProQuest LLC.

ProQuest LLC.  
789 East Eisenhower Parkway  
P.O. Box 1346  
Ann Arbor, MI 48106 – 1346

The Dissertation Committee for Bridgett Elaine Ortega certifies approval of the following dissertation:

COMPASSIONATE JURISPRUDENCE AS PRAXIS FOR JUSTICE: A  
QUALITATIVE DIALOGIC INQUIRY ACTION RESEARCH STUDY

Committee: Anthony Kortens, PhD, Chair  
Mark McCaslin, PhD, Committee Member  
Peter Ellis, PhD, Committee Member

Anthony Kortens  
Anthony Kortens

Mark L. McCaslin  
Mark McCaslin

Peter T Ellis  
Peter Ellis

William C. Beck II  
William C. Beck II, PhD  
Academic Dean  
School of Advanced Studies  
University of Phoenix

Date Approved: April 17, 2018

## ABSTRACT

Legal scholars, lawyers, judges and other legal practitioners theorize that the role of a judge is to apply abstract rules to concrete facts and that judges should resist any emotional engagement as they go about the task of judging (Knight, 2009). The traditional law and order theories are in direct contrast with those who believe that compassion holds an honored place in the administration of justice (Zipursky, 1990). Little is understood about human-centered judging or how judging with compassion impacts everyone in the courtroom (Hora & Schma, 2009). Given this lack of understanding, the current qualitative dialogic inquiry action research study explores how human-centered judging affects the thoughts, communications, and behaviors of 25 judges. The idea of compassionate jurisprudence presents a paradox that challenges judges to think beyond the view of justice as procedurally neutral, disinterested, and blind and could prompt more research into the humanness of judging and the role of compassion in judicial-decision-making. Exploring themes discovered through further qualitative measures may yield recommendations for curricular and instructional models that support compassionate jurisprudence in the American justice system.

## DEDICATION

This study is dedicated to my family. To my dear sweet husband, five children, 15 grandchildren, and three great grandchildren all who graciously sacrificed my non-presence on many occasions, and encouraged me as I pursued what probably seemed to them, an unending journey. By God's grace we made it!

## ACKNOWLEDGEMENTS

This dissertation would have been an impossible feat without those who were lovingly and positively involved in my journey with their guidance, caring, love and wisdom. Thank you, Dr. Anthony Kortens for the opportunity to experience your compassionate guidance. Thank you not only for your wisdom and expressions of interest in my topic, but your timely, gentle, yet persistent nudges that kept me moving forward. Thank you Dr. Peter Ellis for your insistence on simplicity and clarity and all of the books and resource material you pointed me to. Thank you, Dr. McCaslin for your encouraging words and for stepping in at a very critical point of the process. Thank you, Carolyn Roan and Daquita Cooper for making all of those phone calls and holding down the fort as I went from courtroom to courtroom for what seemed like many months. Thank you all for believing in me!

Thank you to all twenty eight of my participants for opening your doors, sharing your time and providing a wonderful and invaluable learning experience. Judges rock! As always, thanks to all of my family and friends for your enduring love and support.

## TABLE OF CONTENTS

Contents	Page
List of Tables .....	xi
List of Figures .....	xii
Chapter 1: Introduction.....	1
Problem Background .....	4
Statement of the Problem.....	9
Study Purpose .....	12
Significance of the Study.....	13
Nature of the Study .....	14
Research Question .....	17
Theoretical Framework.....	18
Assumptions .....	22
Scope.....	23
Limitations .....	24
Delimitations.....	26
Definitions .....	26
Summary of Chapter 1 .....	31
Chapter 2: Literature Review.....	33
Keyword Search.....	34
Western Jurisprudence and the Rule of Law .....	35
Judicial Dispassion .....	36
Loss of Public Confidence in the Courts .....	38

Drugs and Law.....	38
Therapeutic Jurisprudence.....	40
Empathy.....	42
Compassion.....	43
Compulsory Compassion.....	46
Compassionate Jurisprudence.....	47
Action Research.....	49
Dialogic Inquiry.....	51
Summary of Chapter 2.....	53
Chapter 3: Research Methodology.....	55
Research Design and Design Appropriateness.....	56
Research Context.....	58
Research Participants.....	61
Research Location.....	63
Data Collection.....	63
Compassionate Jurisprudence Data Collection Tool.....	63
Structured Web-based Dialogue Questions.....	66
Limitations.....	69
Sampling Frame.....	71
Validation.....	71
Summary.....	73
Chapter 4: Presentation and Analysis of Data.....	74
Demographics and Sample Selection.....	76



Age .....	79
Gender .....	80
Years of Tenure as a Judge.....	80
Tenure as a Drug Court Judge .....	81
Number of Years Participant’s Drug Court in Existence .....	82
Types of Drug Courts Judges Presided Over .....	83
Data Analysis.....	84
Stage 1 – Court Observations .....	86
Building a Picture Compassionate Behaviors.....	91
Courtroom Environment.....	91
Amount of time spent with participants .....	95
Introductory, Closing or Other Statement .....	97
Fee Discussion.....	98
Incentives and Sanctions .....	101
Attentive Listening .....	104
Familiarity over Time.....	106
Explanatory Communication.....	107
Forbearance .....	109
Attention to Detail .....	111
Concern.....	112
Consideration.....	115
Honoring the Person .....	116
Patience.....	118

Summary of Court Observations .....	120
Stage 2 - Structured Web-based Dialogue.....	120
What Compassion Looks like in the Courtroom? .....	128
Is the amount of time spent with participant important? .....	130
What does compassion look like when you are disappointed or angry? .....	131
What influences might enhance or inhibit the expression of compassion? .....	133
Honoring the Person .....	134
Handling Court Fees.....	136
Confidentiality .....	139
Creating a Supportive Environment .....	141
Connecting with a Participant .....	143
Understanding Recovery .....	145
Ending Strong.....	147
Familiarity over Time.....	149
Engaging Participants in Court.....	150
Out of Options .....	152
Transformation .....	153
Consideration.....	155
Forbearance .....	157
Transferability .....	159
Compassion and Legacy.....	161
Emerging Themes .....	163
Summary of Chapter 4.....	164

Chapter 5: Conclusions and Recommendations .....	167
Statement of the Problem.....	167
Review of Methodology .....	167
Summary and Discussion of Results .....	168
Theme 1: The Power of Listening .....	172
Theme 2: Compassionate Judicial Demeanor .....	174
Theme 3: Time Spent with Participants .....	175
Theme 4: Dialogue Makes a Difference.....	177
The Significance of the Study.....	181
Recommendations for Further Research .....	183
Summary and Conclusion.....	187
References.....	189
Appendix A: Theoretical Framework.....	215
Appendix B: Compassionate Jurisprudence Mind Map.....	220
Appendix C: Key Words Index .....	221
Appendix D: Instructions—How to Register on TWEN.....	222
Appendix E: Guest Registration Key .....	225
Appendix F: Invitation to Participate.....	228
Appendix G: Researcher’s Biography .....	229

## LIST OF TABLES

Table 1:	List of Pseudonyms by Cohort .....	58
Table 2:	Observation Data Collection Tool.....	64
Table 3:	Online Dialogue Question.....	67
Table 4:	Number of Drug Court Judge - Participant Interactions .....	87
Table 5:	Researcher Observations .....	89
Table 6:	Courtroom Environment.....	93
Table 7:	Average amount of time spent with drug court participant.....	96
Table 8:	Introductory or Closing Statement .....	98
Table 9:	Fee Discussion.....	100
Table 10:	Incentives and Sanctions .....	102
Table 11:	Attentive Listening.....	106
Table 12:	Familiarity Over Time.....	107
Table 13:	Explanatory Communication.....	108
Table 14:	Forbearance .....	110
Table 15:	Attention to detail.....	112
Table 16:	Concern .....	114
Table 17:	Consideration.....	116
Table 18:	Honoring the Person.....	117
Table 19:	Patience .....	119
Table 20:	Time Spent in Confidential Web-based Forum.....	122
Table 21:	Web-based Dialogue Questions .....	125

## LIST OF FIGURES

Figure 1:	Hypothetical Elements of Compassion (Skaff et al., 2003) .....	17
Figure 2:	Compassionate Jurisprudence .....	32
Figure 3:	Adult Accountability Drug Courts Observed.....	60
Figure 4:	Dialogue participants and Non-dialogue participants (Judges observed in the middle). .....	78
Figure 5:	Participant Age.....	79
Figure 6:	Gender. ....	80
Figure 7:	Number of Years Tenure as a Judge. ....	81
Figure 8:	Number of Years Tenure as Drug Court Judge.....	82
Figure 9:	Number of Years Participant's Drug Courts in Existence. ....	83
Figure 10:	Types of Drug Courts Observed.....	84
Figure 11:	What compassion looks like in the courtroom. ....	129
Figure 12:	Amount of time spent with participant.....	131
Figure 13:	What compassion looks like when angry and disappointed.....	132
Figure 14:	Behaviors that inhibit or enhance compassion. ....	134
Figure 15:	Behaviors that honor the person.....	136
Figure 16:	Compassionate behaviors related to court fees. ....	138
Figure 17:	Compassionate behaviors related to confidentiality.....	140
Figure 18:	Behaviors that create a supportive environment. ....	143
Figure 19:	Compassionate behaviors that support connecting with the participant.....	145
Figure 20:	Understanding Recovery as a Compassionate Behavior. ....	147

Figure 21: Compassionate endings with participant in court.....	148
Figure 22: Behaviors that demonstrate familiarity over time. ....	150
Figure 23: Compassionate ways to engage participants in court process. ....	152
Figure 24: Compassionate behavior when out of options for participant. ....	153
Figure 25: Transformation as a Judge.....	155
Figure 26: Consideration of Participant’s wishes. ....	157
Figure 27: Behaviors of Forbearance (mercy). ....	159
Figure 28: Compassionate behaviors that can be transferred to traditional court settings.....	161
Figure 29: Legacy as Compassionate Judge. ....	162
Figure 30: Emerging Themes.....	163

## Chapter 1

### Introduction

When President Barack Obama chose Sonia Sotomayor to fill the position of Justice of the United States Supreme Court, he praised her as a judge of high intellect with respect for the law and, as a judge with “a common touch, a sense of compassion, and an understanding of how the world works and how ordinary people live” (The White House, Office of the Press Secretary, 2009, p.1). This statement resurrected a long-standing debate among legal scholars and practitioners regarding the appropriateness of compassion and empathy in United States courtrooms. Legal scholars, lawyers, judges and other legal practitioners theorize that the role of a judge is to apply abstract rules to concrete facts and that judges should resist any emotional engagement as they go about the task of judging (Knight, 2009). The traditional law and order theories are in direct contrast with those who believe that compassion holds an honored place in the administration of justice (Zipursky, 1990). Compassion connects people by putting them in touch with the human condition. When compassion is displayed in the workplace it is a reminder that work organizations, in this case the courtroom, are institutions made up of human beings capable of caring for other human beings. This caring can lead to enriching another’s life and facilitating healing for those who are physically, emotionally and spiritually damaged (Cameron, Dutton & Quinn, 2003; Frost, Dutton, Worline & Wilson, 2000).

In recent years, American criminal courts have come under increasing scrutiny, suffering a loss of public confidence (Berman & Feinblatt, 2005). Public opinion polls reveal frustration with what people perceive as “revolving-door justice,” the cycling and recycling of offenders in and out of courts, jails and prisons throughout the United States.

The biggest complaints include the slowness of the process, the ignoring of the victims of crime, offenders continuing to commit the same crimes repeatedly, and judges out of touch with society and the human condition of those who appear in their courtrooms (Berman & Feinblatt, 2005). Against this backdrop, personal connections leading to compassionate responses to criminals, victims and, those working in the criminal justice system could improve judge's perceptions, interpretations and, transformations of social (O'Connell, 2005; Berman, 2000).

Compassion supports notions about centrality of emotion in reasoning and decision-making (O'Connell, 2005). Judges are presumed to have the intellectual ability to appreciate the circumstances of those who stand before them, individuals faced with situations that a judge may have never encountered or who represent a completely different race, status, gender or background (Berman, 2000). In this context, compassion is a method of thought, a way of checking their work (Greenfield, 2009). Compassion encompasses empathy and protects the citizenry because it encourages judges to place themselves in another's shoes when making decisions (Greenfield, 2009).

The traditional theoretical role of the judge has dominated the practice of judging throughout the course of American history and sets forth a disembodied framework for making judicial decisions (Young, 2008). Other scholars, particularly feminists, criticize the disembodied framework as one that ignores the human experiences inconsistent with the dominant class, thereby creating practices that discriminate (Nussbaum, 2004). The disembodied framework masks discrimination under the guise of neutral or universal application of the rule of law (Young, 2008). Legal tradition dictates that the ideal judge is a dispassionate judge (Maroney & Gross, 2014).



Historically, the literature demonstrates longstanding debate among philosophers and legal scholars regarding two theories of law that are in conflict with one another; natural law, which finds its basis in morality and maintains that certain laws are universal and if a law is deemed immoral a citizen is not obliged to obey it (Finnis, 2011), and the Rule of Law, which dates back to Ancient Greece during the time of Plato and Aristotle. The Rule of Law doctrine provides that whatever the rules are, they are to be applied evenly and no one is above the law (Tamanaha, 2004). In both theories of law a judge is presumed as political philosopher Thomas Hobbes wrote, “divested of all fear, anger, hatred, love and compassion” (Hobbes, 1651/1904, p. 203).

These philosophies of law and jurisprudence promote and attempt to explain the principle of justice. Within each of these theoretical frameworks there is controversy over the role of compassion and empathy in the process of a judge making decisions (Bandes, 2009). The Rule of Law looks only at the literal application of the law, while a natural lawyer or judge will attempt to find general principles grounded in morality. Both theories are abstractions and do not take into consideration the possibility of human and social relationships as a prevailing basis for law (Nolan, 2001).

A failing criminal justice system, evidenced by overcrowded jails and prisons, congested court dockets, and increased recidivism rates, present opportunities for a departure from the traditional strict adherence to law and order principles and conformity with established jurisprudence processes (Fox & Huddleston, 2003; Clear & Frost, 2014).

Accountability courts, which are also known as drug treatment courts, represent one answer to society’s cry for more socially responsible and restorative justice practices (Hora, 2002). However, drug treatment courts present challenges to the traditional

training and education of judges because of the compassionate orientation which considers people's feelings and needs and purposes to prevent further harm (Nolan, 2001). Evidence supports the notion that relationships formed between drug treatment court judges and participants is a key factor in the participant ceasing criminal behavior and illegal substance use (Rossman, Roman, Zweig & Rempel, 2011).

Chapter 1 describes the evolution of drug courts as one practical way of applying therapeutic jurisprudence theory which transforms the courtroom into compassionate places of healing and transforms those suffering with addictions and the social injustices which define their realities. This is in direct contrast with literature noting public dissatisfaction with the criminal justice system generally and loss of confidence in judges specifically. This study will examine and reformulate definitions of compassion as they emerge in drug courts through a collaborative theory-building process known as dialogic inquiry action research (Carson, 1990). The problem statement and purpose of the study articulates the ongoing debate regarding the place of compassion in a court of law.

The Chapter 1 explains the importance of this contribution to the overall body of knowledge on compassion, American jurisprudence and drug courts. The nature of the study is described and the research questions and conceptual framework are outlined in this chapter. Chapter 1 concludes with the assumptions made in this study along with the scope, limitations, and delimitations.

## **Problem Background**

Over the years, the public has lost confidence in the effectiveness and integrity of American criminal courts and the criminal justice system (Berman & Feinblatt, 2005).

“Offense definitions and sentencing policies not only have failed to reduce crime, but

have created the mistaken image that crime is primarily a threat from the poor and have unintentionally served the rich and powerful” (Reimen, 2007, p.5). There are deep seated concerns about inefficiency and unfairness and the public is much more enthusiastic about alternatives to traditional court processes (Flango, McDowell, Saunders, et. al.,2015).

As the result of failed drug policies, drug cases overwhelm the local courts of most American cities (Gray, 2001). To date over 1 trillion dollars has been spent since the 1970’s (Coyne & Hall, 2017). The 40 year, 1 trillion dollar United States war on drugs has resulted in thousands of lives lost without a decrease in drug use and continuing rampant violence locally and abroad (Reimen, 2007). The United States has tried for years to fight the war on drugs spending upwards of \$40 billion a year on interdiction efforts and arresting 1.5 million people a year for drug offenses and over half a million of them finish their cases behind bars (Baum, 1996).

Millions of criminal cases that come before the courts are committed by people who suffer from a range of serious issues that plague society such as, homelessness, poverty, substance abuse, and mental illness (Berman & Feinblatt, 2005; Nolan, 2001). The war on drugs and the government’s insistence on criminalizing drug use has resulted in much more devastating consequences for minority communities, especially African Americans (Coyne & Hall, 2017).

Increased sentencing guidelines for possession of illegal drugs from 1981 to present resulted in large numbers of drug users going to prison, thereby overburdening the criminal courts and correctional institutions (Sheldon, 2001). “From 1980 to 1989, the number of drug offenders in custody of state correctional authorities increased from

19,000 to 120,100, an increase of 532%” (Franco, 2010, p. 4). These offenders are not likely to receive treatment for their drug dependency while incarcerated (Hora, 2002). Every week in almost every American criminal court there are individuals sentenced to long-term jail, or prison for crimes committed while under the influence of drugs or to support their drug dependency (Fox & Huddleston, 2003).

In 1989, in Dade County, Florida, an innovative approach to handling criminal drug cases emerged to address the problem of criminal behavior and drug use (Nolan, 2001). The drug court movement was a response to drug court cases crowding court calendars and the rates of incarceration for drug offenders (Belenko, 2006). Drug treatment courts provide treatment in conjunction with judicial control to affect the behavior of persons dependent on drugs and the commission of crimes for their survival (Daicoff, 2006). Rather than incarceration, drug court clients are offered the opportunity to participate in an intensively court monitored term of probation with strict requirements (Feinblatt, Berman & Denckla, 2000). These requirements include frequent court appearances, drug treatment, random drug testing, and restricted personal movement. The desired outcome is a recovering person who will eventually achieve self-reliance, personal responsibility and self-efficacy. The psychological and social behavior of the individual is influenced using the power of the judiciary (Hora, 2002).

Contemporaneously with drug courts being tested, Wexler and Winick (2003), law professors at University of Miami, and the University of Arizona Rogers - College of Law respectively, were exploring different approaches to how the law dealt with mentally ill defendants. Wexler and Winick (2003), studied whether the rule of law and the legal participants in the courtroom, i.e., judges and lawyers produce therapeutic or non-

therapeutic results for mentally ill people involved in a legal action (Daicoff & Wexler, 2003). The result of their study was an approach now known as therapeutic jurisprudence (Nolan, 2002). Black's Law Dictionary, 9th edition, 2009, defines 'therapeutic jurisprudence' as the study of the effects of law and the legal system on the behavior, emotions, and mental health of people: a multidisciplinary examination of how law and mental health interact.

In 1998, approximately 25 percent of convicted offenders entering prison admitted committing their crimes to obtain the funds to procure drugs (U.S. Department of Justice: Bureau of Justice Statistics, 2000). Statistics from 2006 verify that "among state prisoners, 32% reported drug use at the time of the offense, and 53% of state prisoners met the medical criteria for drug dependence or abuse" (U.S. Department of Justice: Bureau of Justice Statistics, 2006, p.1). According to the National Council on Alcoholism and Drug Dependence, 2015 statistics indicate that alcohol and drugs are implicated in an estimated 80% of offenses leading to incarceration in the United States such as domestic violence, driving while intoxicated, property offenses, drug offenses, and public-order offenses.

Over the course of the past two decades, drug courts have evolved into an accepted alternative sentencing method and have morphed into accountability courts to address various aspects of the criminal justice system. While the foundation has remained constant, empirical research has allowed practitioners to identify specifics that have resulted in positive outcomes.

Drug courts operate within the therapeutic jurisprudence framework (Wexler & Winick, 2003) applied social science to develop the theory known as therapeutic

jurisprudence. This theory seeks to examine “the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects” (Slobogin, 1995, p.193). Application of the therapeutic jurisprudence approach has expanded to a wide variety of contexts. The movement began within the mental health community and grew to include responses to family law crisis’ including homelessness, domestic violence and other family law issues (Senjo & Leip, 2001). In 1999, an article was published in the Notre Dame Law Review, by the Honorable Judge Hora advocating for the therapeutic jurisprudence approach to be applied to drug cases in criminal court to promote offender behavior change. The publication of this article began a national movement.

Drug treatment courts are collaborative courts that require a team to work together to monitor the treatment progress of the individual before the court. Such teams require substance abuse providers and other community based organizations to collaborate with judges, prosecutors, defense attorneys, probation officers and police (Senjo & Leip, 2001). This means new roles for each member of the team who work together using a system of graduated responses to infractions and successes (Senjo & Leip, 2001). “The metamorphosis of these roles allows the goal of the court to become primarily therapeutic while remaining a legal institution” (Hora, Schma & Rosenthal, 1999, p.15). Drug treatment courts use the adjudication process to address causes of criminal behavior rather than simply ruling on the offense. In doing so, judges knowingly or unknowingly have the opportunity to use the law for therapeutic purposes, and to employ “three powerful components of compassion (1) the character trait or virtue of sympathetic understanding; (2) willingness to carry out professional responsibilities toward a defendant, recognized as a moral duty, and (3) readiness to go beyond the call of duty” (Purtilo & Doherty, 2011, p.77).

In the face of revolving door justice, some scholars see a judge's inability to display empathy and compassion as a threat to a just society. As a result, there is a growing movement advocating transformation of the legal system from the traditional, detached adversarial process to a more socially responsible system with activist judges (Wright, 2002). Criminologists such as Wexler and Winnick (2003) and the legal profession have been calling for an overhaul of processes as they exist today in the United States system of criminal justice for a number of years. Drug treatment courts are one such response to the call for justice reform by using civil and criminal legal procedural rules to promote the physical and psychological wellbeing of people (Senjo & Leip, 2001). By moving beyond the therapeutic objectives of the court, a compassionate judge could possibly create interruptions and upheavals of thought within the individual, the judicial institution and social structures that create the suffering reality of the person standing before them.

An under examined area of research is the role of compassion in jurisprudence, specifically judicial decision-making. Judges are trained to apply abstract rules to concrete facts and are resistant to any emotional engagement with the people who appear before them (Knight, 2009). Dispassionate judges create a morally unjust, unreasonable and unfair burden on the poor and minorities (Ulmer, Kurlychek & Kramer, 2007).

### **Statement of the Problem**

The problem is increased recidivism rates, overcrowded dockets, perceptions of bias, wrongful convictions of innocent people and increased dependence on incarceration which results in low marks from the public for American criminal courts (Fox & Huddleston, 2003).

This combined with “Tough on Crime” sentiments of the press, politicians, and subsequently the public in addition to mandatory sentencing laws has created a detached criminal justice system devoid of compassion and humanity. Criminal courtrooms are chaotic, crowded, and overwhelmed. Judges rarely if ever have the opportunity to step back and analyze the work they do (Berman & Feinblatt, 2005). Judges are increasingly growing fed up with revolving-door justice and judicial peers and scholars are encouraging an examination of what judges do and how they do it (Berman & Feinblatt, 2005).

The problem this study explored is the lack of current epistemology as it relates to judicial compassion which confines judges to a cultural script of judicial dispassion (Maroney, 2011). Judicial compassion has not been defined therefore compassion in a court of law is associated with bias, weakness or irrational and emotional thought by traditional jurists who hold fast to the concept that the role of a judge is to apply abstract rules to concrete facts and that judges resist any emotional engagement as they go about the task of judging (Knight, 2009).

Despite the growing movement advocating transformation of the legal system from the traditional, detached adversarial process to a more socially responsible and compassionate system with activist judges (Van Kaam, 1966; Wright, 2002), contemporary Western jurisprudence holds on to the idea that a good judge should be non-emotional and never display compassion or empathy towards the people who stand before them (Maroney, 2011). The law and psychology movement has tried to expose naive assumptions about the law’s expectations of judges (Ogloff, 2002).

According to some scholars the insistence on judicial dispassion is incongruent with the reality of what goes on in courtrooms throughout America (Maroney, 2011).



Others suggest that it is impossible for a judge to be completely dispassionate even if this were a correct standard (Maroney & Gross, 2014). However, stigma is associated with judges who display compassionate responses and behaviors. These judges are thought to fail at discipline, impartiality and reason (Maroney, 2011). Judges and scholars stumble over foundational questions regarding the value and nature of emotions such as empathy and compassion in the courtroom as evidenced in the Sotomayor confirmation hearings (The White House, Office of the Press Secretary, 2009). As evidenced by the Sotomayor confirmation hearings, the attitude that judges should be divested of empathy and compassion is still firmly entrenched in American political and legal culture (Maroney & Gross, 2014).

One compelling explanation of why judges hang on to the script of judicial dispassion is asserted by scholar Orwin, 1997, who posited that confusion or lack of clarity about compassion leads to its misuse and misappropriation in current political and philosophical dialogue. A better understanding of the forces at work in the courtroom culture that encourage or discourage compassionate behaviors may provide insight and contribute to the existing body of knowledge and contemporary scholarship concerning emotions and judging. Defining what compassion is and what it does will help scholars to overcome the taxonomic difficulty of determining where these emotions fit in current American jurisprudence. To date there is a little epistemological understanding as it pertains to emotions such as compassion and empathy in American court rooms. There is a dearth of scholarship.

This dialogic inquiry action research study explored whether judges are hiding from humanity (Nussbaum, 2004) and whether a compassionate jurisprudence model

can challenge the status quo of a detached adversarial process with a robust and vibrant theory of how compassion might coexist with, or contribute to the existing process of jurisprudence. This model could theoretically provide judges a way of recognizing opportunities to empower the people in their courtrooms through their compassionate behavior by helping them to name the causes of their suffering and join them in resisting those causes (Nussbaum, 2001).

### **Study Purpose**

This dialogic inquiry action research study explored compassionate behaviors in drug treatment courts with 30 drug court judges over a period of one month to develop further knowledge of compassion as a relevant dimension of therapeutic jurisprudence. Judges were encouraged to explore an alternative mental model to see compassion as a means of perceiving, interpreting, and transforming the reality of those who appear in their court rooms. Judges were willing to explore and discuss their understanding and ideas about compassion to create interruptions and upheavals in: (1) their own thought processes, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001). This dialogic inquiry study explored compassion as a dimension of therapeutic jurisprudence to determine whether this compassionate jurisprudence model is an approach where social, human, and legal problems intersect and social and human relations could become the basis of law, rather than abstract rules. This innovative compassionate jurisprudence epistemology could inform the jurisprudence theoretical base. As behaviors are demonstrated by judges and explored through a dialogic inquiry they could be documented and incorporated into future judicial trainings.

## Significance of the Study

Accountability courts generally and drug treatment courts, specifically, are a relatively new phenomenon. As with any new phenomenon, there is limited research into all aspects of drug courts. Until recently, research concerning drug treatment courts has been confined to the results observed in clients (Bouffard & Taxman, 2004) and the court's effectiveness in reducing recidivism (Banks & Gottfredson, 2003). Recent scholarship has produced a number of studies examining the cost efficiency and efficacy of drug treatment courts (Gottfredson, Najaka & Kearly, 2003). Researchers have studied the evolution of drug courts and their impact on criminal defendants and their families (Hora et al., 1999). The roles of attorneys in drug courts and judicial satisfaction with the therapeutic jurisprudence model have been the subjects of empirical research (Chase & Hora, 2000). The research focus to date has been on the therapeutic benefits of drug courts to the individual participants and the economic benefits to the court (Hora, 2002).

Until now, little, if any research has been undertaken on judges and their demonstration of compassionate behaviors as a central factor in drug courts or the interruptions compassion can create to transcend the experience of everyone in the courtroom including the judge. More research is needed to deepen understandings and broaden perspectives on the relational aspects of drug treatment courts and how compassionate behaviors arise during the drug court process.

Understanding the role of compassion in drug treatment courts as initiated by the judge could provide impetus for continued advocacy for compassionate jurisprudence leading to human-centered judging. "Judges make decisions every day and yet few researchers have gained insight into the humanness of judging" (O'Hare, 2009, p.35).

Judges set the tone for their courtrooms and for the court processes so critical to the dispensation of justice. Judges represent the leaders of a respected institution, the courts. Judges are powerful leaders but may not feel free to engage in compassionate behavior because of the historical ambiguity surrounding judicial role orientations and the definition of compassion. Differing judicial theories and philosophies about how law is to be interpreted also create ambiguity. Finally, there is a failure to recognize compassion as a core value of judicial behavior. For the reasons mentioned above, compassion is not a component in the design and development of judicial training and leadership programs.

Little is understood about human-centered judging or how judging with compassion could impact everyone in the courtroom (Hora & Schma, 2009). Given this lack of understanding, the purpose of this research is to better understand how human-centered judging affects the thoughts, communications, and behaviors of 30 judges. The idea of compassionate jurisprudence presents a paradox that challenges judges to think beyond the view of justice as procedurally neutral, disinterested, and blind and could prompt more research into the humanity of judging and the role of compassion in court proceedings. Exploring themes discovered through further qualitative measures may yield recommendations for a curricular and instructional design that supports compassionate jurisprudence in the American justice system.

### **Nature of the Study**

This study was a qualitative dialogic inquiry action research design which examined how judges describe, perceive, make sense of and talk about compassion in the context of their role of judges. Dialogic inquiry action research is a qualitative research

method whereby the researcher and the subject of the research, i.e., real world practitioner speak to one another in the language of the practitioner (Martensson & Lee, 2004). Researcher accepts the practitioner as the expert on his or her organization or job function and its problems (Martensson & Lee, 2004).

In dialogic inquiry action research, the dialogue is what bridges theory and practice. According to Beech, MacIntosh and MacLean, 2010, p. 1342, “dialogue is regarded as a dialogue between two or more people that goes beyond the trivial, which changes some meanings or processes and/or creates some new knowledge.” A dialogic inquiry action research approach was appropriate for answering the research question as it focused on co-production of knowledge by emphasizing the way in which knowledge influences specific behaviors. The idea was to connect the theory to day to day experiences (Eikeland, 2007; Ellis & Kiely, 2000; McInnes & Hibbert, 2007; Reason, 2006). When researcher and practitioner work together in order to solve a problem, they can generate insights for further development of a theory (Beech et al., 2010). Dialogic communication not only leads to theory development, coupled with critical pedagogy, a tradition of public discourse can develop (Howard, 2002).

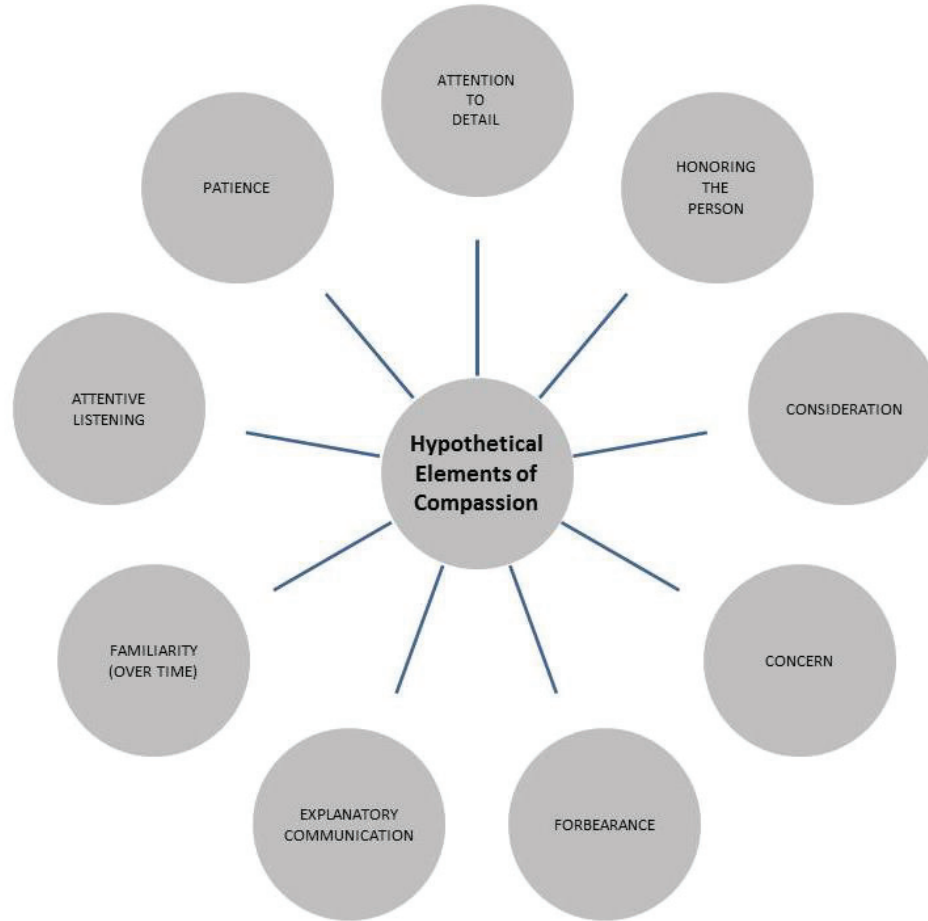
Dialogic inquiry as an action research method allowed the researcher to investigate the unconscious psychological processes, including intuitive and emotional processes that drive the compassionate behaviors of the judges as they addressed real-time operational issues (Coget, 2009). In a dialogic relationship the participants in dialogue assist one another in learning and developing knowledge (Eikeland, 2007).

The research questions were best answered by this qualitative design because the researcher began with a full description of her own experience observing the social

dynamic between the judges and the drug court participants. The researcher analyzed statements in the ensuing dialogue through interviews and online discussions about how the judges were experiencing what was observed by the researcher.

A sample of 22 drug treatment court judges, of the overall pool of 28 drug treatment court judges had a desire to reflect upon and discuss compassion. The participant judges were acquired through snowballing methodology (Patton, 2002). Patton's (2002) snowball or chain sampling technique was used to create a list of possible judges to observe and interview. Several data collection methods were used to examine the experiences of judges who were willing to reflect upon compassion with respect to their role in drug courts. The data collection methods included observation, in-person discussions and a one month web-based semi-structured dialogue. Judges were invited to share their thoughts about compassion in a conversational manner. The more detailed the conversation, the more discovery of meaning unfolded (Compton, 2005; Marshall & Rossman, 2006).

The Skaff, Toumey, Rapp & Fahringer (2003) hypothetical elements of compassion formed the basis of the tool used to describe the observed behaviors of judges in drug treatment courts and served as the foundation for the web-based discussions. The hypothetical elements of compassion as illustrated in Figure 1, include familiarity over time; attention to detail; consideration; honoring the person, attentive listening, forbearance, concern, explanatory communication and patience (Skaff et al., 2003). A member check (Compton, 2005) process was used whereby the online digital verbatim transcripts were provided to the judges for verification to establish credibility. Themes are consolidated to create descriptions of compassionate jurisprudence as the judges experienced it (Leedy & Ormrod, 2005).



*Figure 1.* Hypothetical Elements of Compassion (Skaff et al., 2003)

### **Research Question**

This qualitative dialogic inquiry action research study explores the concept of compassionate jurisprudence and the judge's understanding and ideas about compassion and compassionate behaviors as a necessary element of the dispensation of justice. The study will be guided by the following research questions:

1. Whether compassion and traditional perceptions of judging might coexist in American court rooms and give way to a new paradigm?
2. Whether awareness of compassionate behaviors in drug court, gleaned through a dialogic process, influences judges to create interruptions and

upheavals in: (1) their own thought processes and behaviors, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001; O'Connell, 2005).

### **Theoretical Framework**

Eight theoretical areas form the conceptual framework for this research on judicial awareness of compassionate behaviors in drug treatment courts as a means for judges to create interruptions and upheavals. The eight theoretical areas are (1) compassion theory (Nussbaum, 2001; Frost et al., 2006; Dutton et al., 2007; O'Connell, 2005; Purtilo & Doherty, 2011; and Skaff et al., 2003); (2) therapeutic jurisprudence (Winnick & Wexler, 2003; Hora et al., 1999; Hora, 2002); (3) judicial behavior and decision-making (Martin, 2006) ; (4) function of law theories (Tamanaha, 2004; Annus & Tavits, 2004); justice theories (Kant, 1965; Hegel, 1942; Foucault, 1979; Orwin, 1997; Rousseau, 1762); restorative justice (Morrison & Vandering, 2015); (6) action research and dialogic inquiry theories (Watts, 1985; Freire, 1970); (7) judicial dispassion (Hobbes, 2002, Maroney, 2006, 2011); and (8) procedural justice (Maitlis & Ozcelik, 2004), as outlined in Appendix A.

For years philosophers and legal scholars have debated three primary theories of law which are in conflict with one another; (1) Legal positivism, Tamanaha, 2004, which maintains that the legal system is a process by which laws are properly made and they are to be obeyed and applied no matter what the content is; (2) natural law, which finds its basis in morality and maintains that certain laws are universal and if a law is deemed immoral then a citizen is not obliged to obey it (Finnis, 2011); (3) finally there is the concept of Rule of Law, which dates back to Ancient Greece during the time of Plato and



Aristotle. The Rule of Law doctrine provides that whatever the rules are, they are to be applied fairly and that no one is above the law (Tamanaha, 2004). These are philosophies of law and jurisprudence theories that promote and attempt to explain the principle or pursuit of justice. Within each of these theoretical frameworks there is controversy over the role of compassion and empathy in the judicial decision-making process.

Legal positivists look only at the literal application of the law, while a natural lawyer or judge will attempt to find general principles grounded in morality. Since legal positivism is removed from social systems and natural law and rule of law are abstractions, neither theory of law takes into consideration the possibility of human and social relationships as a prevailing basis for law. Key elements of Nussbaum's feminist development theory underscore compassion as a social duty to respond to suffering (Nussbaum, 2001 and 2004). Compassionate jurisprudence may be an alternative mental model to the literal and moral applications of the law.

The processes and factors that influence judges to decide cases as they do is referred to as judicial decision-making (Weiden, 2007). There are several theoretical models of judicial decision-making. The most widely used is the legal model where judges are most influenced by legal precedent and doctrines. The opposing theoretical model is the attitudinal model which posits that high court judges make decisions based upon their own attitudes and ideological preferences and as equity demands (Weiden, 2007). Public debates on the proper role of the courts often focus on the tension between these two views. How a judge responds to injustice and human suffering depends upon their emotional capacity to empathize with or distance themselves from the human stories that give rise to legal controversies (Wizner, 1988). Compassionate

judicial decision-making is an expression of a judge's emotional capacity to respond to the human stories from which legal controversies arise as well as their intellectual conception their role as a judge (Wizner, 1988). Compassionate judicial decision-making involves "a convergence of logic and experience, reflection and intuition, precedent and creativity, reason and passion (Wizner, 1988, p. 191). These attributes were attributed to Justice Brennan of the Supreme Court who felt that permitting passion and compassion to play a part in the judicial process is essential to finding, recognizing and telling truth, which is the means to achieve justice (Wizner, 1988). In Justice Brennan's words: "Only by remaining open to the entreaties of reason and passion, of logic and experience, can a judge come to understand the complex human meaning of a rich term such as liberty, and only with such understanding can courts fulfill their constitutional responsibility to protect that value" (Brennan, 1988, p.9).

Drug treatment courts operate within the framework of therapeutic jurisprudence. Therapeutic jurisprudence is a legal theory developed by Wexler (2011) to assist those appearing before the court with mental illness. The concept of jurisprudence helping to advance therapeutic and reduce anti-therapeutic legal outcomes was revolutionary (Nolan, 2001). This new mental model challenged traditional thinking about what constitutes justice. Many articles and books have been published about Therapeutic Jurisprudence. This theory greatly influenced the emergence of drug treatment courts. The implications of a therapeutic theoretical framework include moving from rights-based processes to interest or needs based processes; from an adversarial to a collaborative way of working and, from formal to less formal proceedings; (Satin, 2008). Furthermore, judges become coaches instead of arbiters. This approach to justice is

designed to remediate underlying problems. By focusing on healing, the justice system becomes less detached and more compassionate. Drug courts focus on healing and are ripe for examination of practices utilizing the tools of action research.

Action research is a social science concept grounded in the work of Kurt Lewin, (1946). Lewin and other social science researchers began to study action research at the end of World War II. Other researchers, among them, Paulo Freire, began to experiment with the process of action research much earlier utilizing a liberationist perspective (Reason, 2006). Action research embarks on an intentional journey critical of everyday logic and reasoning, but destined to develop alternative theories (Reason, 2006).

Action research participants examine their own professional practices through reflection while using research techniques. (Watts, 1985). It is a disciplined inquiry done with the intent that the research will inform and change his or her practices in the future. The research is conducted in the context of the subject's environment, in this case with judges in the courtroom in which her or she works. Compassionate judges start this process in their own minds reflecting deeply about the concept of compassion and its relationship to justice to develop a larger picture. This is where the concept of action research theory provides a useful perspective.

Action inquiry through dialogue is a form of research that is dynamic (Yolles, Miless & Guo, 2006). "The heart of all action inquiry strategies is a recurring action-reflection cycle predicated on the relationship of improved knowledge through action, and new or revised action based on imaginative reflective learning" (Ellis & Kiely, 2000, p.83). Co-inquirers benefit from collaborative learning when they engage in action inquiry since this process requires them to evaluate their opinions, beliefs, core values

and perceptions which contribute to mutual learning (Ellis & Kiely, 2000). This critical self-reflection in action may result in changes to those opinions, perceptions, values and beliefs (Ellis & Kiely, 2000).

Dialogic inquiry action research is a qualitative research method whereby the researcher and the subject of the research, i.e., real world practitioner, speak to one another in the language of the practitioner (Martensson & Lee, 2004). Researcher accepts the practitioner as the expert on his or her organization or job function and its problems (Martensson & Lee, 2004). In dialogic inquiry action research, the dialogue is what bridges theory and practice. According to Beech et al., 2010, p. 1342, “dialogue is regarded as a dialogue between two or more people that goes beyond the trivial, which changes some meanings or processes and/or creates some new knowledge” (quoting Gergen, McNamee, & Barrett, 2001). Dialogic inquiry can result in the co-production of knowledge when researcher and practitioner work together to solve a problem, thereby generating insights for further development of a theory (Beech et al., 2010). In addition to theory development, when dialogic communication is coupled with critical pedagogy, a tradition of public discourse often results (Howard, 2002).

### **Assumptions**

The foundational assumptions for this study are based on the literature review which reveals that judges are leaders and able to create a context for meaning and a context for action that fosters compassion (Dutton, et al., 2005). Going into the study the following assumptions were made: (1) the capacity to express compassion is universal; (2) judges enable or disable this capacity to express compassion as they go about their daily duties; (3) the expression of compassion is a healing act for both the judge and the person

receiving it; (4) Compassion involves action which is what distinguishes it from empathy; (5) Compassion stories inspire others to act and carry hope about what the future holds (Dutton, et al., 2005); (6) Judges would be willing to share their stories and experiences.

Snowballing was assumed an appropriate method of sampling to obtain the study population of judges who would be willing to critically think and share their thoughts, communications and behaviors. The dialogic inquiry action research methodology was assumed to be the best approach to answer the research question. Web-based dialogue and observations were the primary means of data collection and analysis.

It was also assumed that the judges would be fully cooperative having read and understood the study information which described the ability to withdraw and the confidential nature of the study. The judges would be honest and forthcoming about their experiences in drug treatment court once they saw themselves as social, historical, thinking, communicating, transformative persons (Freire, 1970).

## **Scope**

The research scope was narrow. The participant population was defined as sitting adult drug treatment court judges who has served in this capacity for a year or more. A sample of 30 drug treatment court judges were acquired through Patton's (2002) snowball or chain sampling technique which enabled the creation of a list of possible judges to observe and engage in dialogue. A composite description of the participant's experiences using the (Skaff et al., 2003) hypothetical elements of compassion served as a guide for the observation data collection tool. Originally it was anticipated that 5 court observations would be conducted to support development of questions for the structured web based dialogue, however 30 court observations were conducted and these

observations supported the snowball chain sampling and also resulted in the recruitment of 22 judges willing to participate in the structured one month web based dialogue.

### **Limitations**

The first limitation of this study is the narrow scope of the study which focuses on the unique nature of a small number of judges in drug treatment courts (Nolan, 2009). In qualitative research, the small number of research participants produces limited evidence but may provide valuable insight about this setting (Gibbs et al., 2007). This study may be knowledge generating with further research required to test the ideas generated or may represent one aspect of the early stages of a more intensive study (Gibbs et al., 2007).

It is not unusual for qualitative studies to employ simple sampling strategies recognizing that this has a bearing on the level of generalizability of the results (Creswell, 2005). To ensure a contribution to knowledge, it is important to establish a link between the sampling procedures and analysis to demonstrate that the sample is representative of other drug court judges (Gibbs et al., 2007). In-depth studies of small samples of people are not uncommon in qualitative research (Miles & Huberman, 1994). Some in the research community question whether the research findings of a smaller sample are valid and whether they can be (Denzin & Lincoln, 2005; Maxwell, 2005). The research size for this study is a deliberate sample of 30 judges collectively and 22 judges for the online dialogue which falls within the typical sample size of qualitative studies of between 5 and 25 (Leedy & Ormrod, 2005).

Courts are necessarily proprietary therefore the discussion of specific cases and names of drug court participants was strictly prohibited. Focusing on the perspective of the judge fails to consider the role of the participants in drug courts and the influence of

collective thought and behavior in the drug court setting. However, this limitation can be addressed in future studies.

Another limitation is the subjective nature of qualitative action research studies in general. Without rigor, research loses its utility Guba and Lincoln (1981). In this action research study, the participant and the researcher were co-investigators (Herr & Anderson, 2005). The research outcomes of this study consist of the combined experiences of the judges and the researcher (McKay & Marshall, 2001). Generalizable studies actively draw on a well-developed theoretical framework and sample for key theoretical concepts as well as diversity of sample to derive an explanatory model (Gibbs et al., 2007). The theoretical framework drew upon the judge's and researcher's analysis of tacit knowledge but only in the context of other knowledge that comes from their own personal experience (Gibbs et al., 2007).

Another limiting factor is the quality of interview responses. Rapport was difficult to establish solely through web-based interactions with the judges. Hence the necessity for more in-court observations and face-to-face communication with the judges. During these observations and discussions with the judges the researcher established rapport and could detect physical cues the judges would emit, such as distractions, fatigue, or discomfort. The researcher spent a good deal of time and effort to create a dialogic relationship with the participants to ensure that the dialogue was a true engagement between researcher and judges that goes beyond the trivial and changes meanings or processes and/or creates knowledge (Gergen et al., 2001).

The final limitation was geography. The data collection was conducted across the state of Georgia. No attempt was made to control the sample population by culture, age,

demographics, gender, or experience. Snowballing techniques and purposeful sampling were used to select the judges who were most excited and energetic about the subject of compassion and willing to give of their time to participate.

### **Delimitations**

This study is confined to an initial interview and court observations of 28 judges and dialogue with a deliberate sample of 22 judges willing to engage in dialogue about their emotional experiences in drug courts. The research focused on how the judges believe compassion may affect their thoughts, behaviors and communication and whether awareness of compassionate responses in drug court, gleaned through a dialogic process, influence judges to create interruptions and upheavals in: (1) their own thought processes, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001).

### **Definitions**

There are many terms of art in the law. This glossary has been compiled to assist the reader who may be unfamiliar with the judicial process and the emerging concepts of law and theory contained in this study. The following definitions are necessary and relevant to understanding this qualitative dialogic inquiry action research study.

*Accountability Courts* – Supervised alternative sentencing programs with external supports for individuals struggling with addiction, mental health, inability to pay child support and other social problems. Focuses on promoting compliance by participants/litigants, quality services among service providers, and accountability by the court itself to the individual and the larger community. These courts are a major part of criminal justice reform efforts and include, drug courts, family treatment courts, mental



health courts, veterans' courts and domestic violence courts (Porter, Rempel & Mansky, 2010).

*Action Research* – action research refers to a wide variety of evaluative, investigative, and analytical research methods designed to diagnose problems or organizational weaknesses. “Action research seeks to bring together action and reflection, theory and practice in participation with others” (Reason & Bradbury, 2006, p.1).

*Adversarial System* – Common law court process where two opposing advocates represent their parties position before an impartial person or a group of people usually a jury or judge who attempt to determine the truth of the case (Walpin, 2003).

*Attention to Detail* – pays close attention to the details of the drug court participant's problems and complaints (Skaff et al., 2003).

*Attentive Listening* – listening carefully to everything the person is saying (Skaff et al., 2003).

*Common Law* – The legal system that originated in England and is now in use in the United States, which relies on the articulation of legal principles in a historical succession of judicial decisions.

*Compassion* – For purposes of this study compassion is the ability to understand the emotional state or suffering of another person and having a desire to alleviate or reduce that suffering (Engel, 2008).

*Compassionate Jurisprudence* – A balance of empathy, kindness, and concern for the problems and sufferings of those appearing before the court and a desire to alleviate the suffering with rule of law, reason and a degree of judicial dispassion and accountability.

*Concern* – genuinely cares about the struggles or problems a person is having (Skaff et al., 2003).

*Consideration* – when speaking to another, careful about what to say and how to say it (Skaff et al., 2003).

*Criminal Justice System* – the organizations involved in apprehending, prosecuting, defending, sentencing, and jailing those involved in criminal conduct.

*Defendant* – for the purposes of this study it is a person accused of a crime.

*Dialogic Inquiry Action Research* – “A form of research in which the researcher and the participant engage in one-on-one dialogue during which the researcher introduces theoretical concepts to the participant, who then can reflect upon the theory consider its application in real world settings and apply it if they choose” (Ziebarth, 2008).

*Drug Treatment Court or Drug Court* – a specialized, therapeutic court with jurisdiction over cases involving drug-using people in the criminal justice system (Nolan, 2001).

*Drug Treatment Court Pre-Court Staff Meetings* – meetings during which each participant’s progress is reviewed and potential consequences for performance are discussed by the Drug Court Team (NADCP Adult Drug Court Best Practice Standards vol. 1, 2013).

*Drug Treatment Court Team* – In drug treatment court this team consists primarily of the judge, prosecuting attorney, defense attorney, a treatment provider and possibly other community based organizations (Harrison & Scarpitti, 2002).

*Emotion Regulation* – Emotional regulation is a complex process that involves initiating, inhibiting, or modulating one’s state or behavior in a specific situation – for

example the subjective experience (feelings), cognitive responses (thoughts), emotion-related physiological responses (for example heart rate or hormonal activity), and emotion-related behavior (bodily actions or expressions). (Sheppes, Scheibe, Suri, & Gross, 2011).

*Empathy* – stepping into the shoes of another and experiencing their predicament at every level especially their emotions (Switankowsky, 2000).

*Familiarity over Time* – remembers the person having seen them over time (Skaff et al., 2003).

*Forbearance* – does not get upset when the person needs more time or has made a mistake (Skaff et al., 2003).

*Honoring the Person* – honors and respects the person and their individual needs (Skaff et al., 2003).

*Judicial Dispassion* – emotion regulation in judicial decision-making (Maroney, 2011).

*Judicial Review* – in drug courts the clients attend court on a regular basis to report to the judge on progress and setbacks in the program. The judge then rewards or sanctions the participant in response to the reported behaviors (Nolan, 2009).

*Jurisprudence* Derives from the Latin term *juris prudentia*, which means the study, knowledge, or science of law (Burton, 1992).

*Motion for Termination* – the prosecutor in a drug court program will bring a motion to terminate a drug court participant from the Drug Court if they no longer can be managed safely in the community or if they fail repeatedly to comply with treatment or supervision. (NADCP Adult Drug Court Best Practice Standards vol. 1, 2013).

*Procedural Justice* – fairness in the administration of justice and legal proceedings (Maitlis & Ozcelik, 2004).

*Restorative Justice* - the use of the judicial system to affect social change through nontraditional methods. One form is the use of problem solving courts for social change (Daly, 2015).

*Retributive Justice* – punishment inflicted upon a law breaker in response to the commission of a crime (Nolan, 2002).

*Rule of Law* – All government officers of the United States, including the President, the Justices of the Supreme Court, state judges and legislators, and all members of Congress, pledge first and foremost to uphold the Constitution. These oaths affirm that the rule of law is superior to the rule of any human leader (Vile, 2006).

*Skaff Hypothetical Elements of Compassion* – include the following: Attentive listening, forbearance, concern, explanatory communication, patience, honoring the person, consideration, attention to detail, familiarity over time, and general compassion (Skaff et al., 2003).

*Stare Decisis* – a Latin phrase meaning to stand on decided cases (Black’s Law Dictionary, 2009).

*Therapeutic Jurisprudence* – using legal role to affect the physical or psychological well-being of a defendant (Horn, 2002; Wexler & Winnick, 1996).

*War on Drugs* – attempt to eradicate the use of illegal drugs by decreasing supply and demand through interdiction (Belenko, 2006).

## Summary of Chapter 1

Compassion connects people. It acknowledges that they are in touch with the human condition. In the context of this study the dialogue is intended to see if judges perceive the court as an institution capable of caring for, healing, and enlivening people (Cameron et al., 2003; Frost et al., 2000) and behave accordingly. Compassionate behavior helps leaders to be more accurate in perceptions, interpretations and transformations of social reality (O'Connell, 2005). Judges in American Courts are leaders challenged to make decisions about a range of legal matters that call into question the function of law and their ability to balance the needs of the individuals appearing before them with the needs of the community at large. Demonstrating compassionate behavior in the courtroom theoretically may help judges perceive the individuals before them in a different light which may affect their decision-making (Correia, 2009). The 3rd District Court of Appeal has held in the case of State vs. Porter, 659 So.2d p.730 (Fla. 3rd. DCA 1995) that "Judges are not a race of computers. Because of the humanistic side of judging, compassion has always been an honored place in the administration of justice."

This study noted the lack of current epistemology as it relates to judicial compassion which in turn limits judicial decision-making to a cultural script of judicial dispassion (Maroney, 2011). The study was guided by the following research question:

Whether awareness of compassionate behaviors in drug court, gleaned through a dialogic process, influence judges to create interruptions and upheavals in: (1) their own thought processes, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001; O'Connell, 2005)?

Chapter 2 provides an in-depth review of the literature that forms the theoretical framework for this dialogic inquiry action research study.

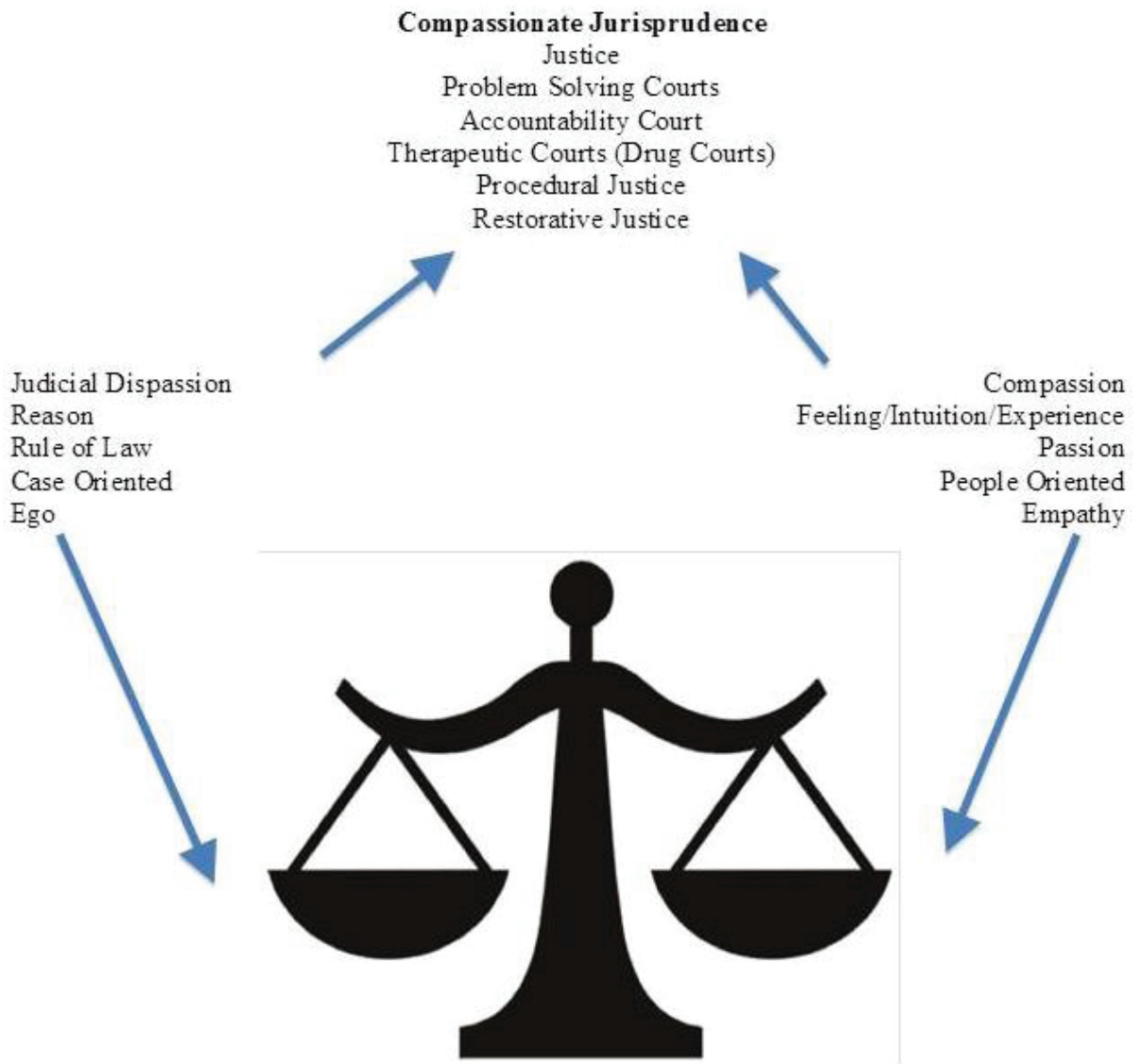


Figure 2. Compassionate Jurisprudence

Empathy is central to our humanity, but empathy without reason is blind (Trout, 2009).

## Chapter 2

### Literature Review

Chapter 1 introduced the problem of American courts inability to deal with mounting social issues such as failed drug policies, increasing recidivism rates, and poverty, utilizing traditional, law and order decision-making models. Decreases in public confidence in the courts resulted in new models such as therapeutic jurisprudence emerging to push judges towards a more personal and interactive way of being with suffering people appearing in their courtrooms.

Deeply ingrained in western jurisprudence is a script that calls for judicial dispassion. Judges should feel no emotion as it is a sign of failure of impartiality, reason and discipline (Maroney, 2011). Although scholars, legal theorists and judges admit that emotion is inevitable, the power of the script prevails and no theory has emerged that suggests how emotions such as compassion and empathy might coexist with well-reasoned and competent judicial decision-making (Maroney, 2011).

The purpose of this dialogic inquiry action research study is to explore whether drug treatment court judges demonstrate emotional capacity to empathize with or distance themselves from the humanity that gives rise to legal controversies (Wizner, 1988). This study will be conducted with 20-25 drug court judges over a period of a month to develop further knowledge of compassion as a relevant dimension of the therapeutic jurisprudence model and to explore an alternative mental model for judges to transform their thinking about compassion as a means of perceiving, interpreting and transforming the reality of those who appear in their court rooms.

## Keyword Search

The problem and purpose statements as well as the definitions provide the foundation for the keywords in the literature review. Appendix B (Compassionate Jurisprudence Mind Map) illustrates the breadth and depth of the literature search across the knowledge areas of politics, religion, psychology, organizational theory, American jurisprudence and compassion theory. More than 40% of the 52 books and 36% of the peer reviewed articles are current within the past ten years. A comprehensive historical review of published materials revealed that the concepts of compassion and jurisprudence have been topics of concern in numerous published works prior to 2006 and date back as far as 1651 with Thomas Hobbes, Leviathan.

Historical research established how the concept of compassion came into existence and what the term “compassion” means. A historical review of American jurisprudence and the roots of judicial dispassion, although undertheorized, reveal that there is epistemological space for compassion and empathy to coexist with the rule of law (Maroney, 2011).

The main source for historical investigation of the crossover between compassion, emotions and jurisprudence is found in the work of Nussbaum (1996, 1999, 2001, and 2004). Nussbaum points out the hypocrisy and absurdity of the position that compassion is inconsistent with the rule of law. She posits that dispassionate jurisprudence is a fiction. The law constantly takes account of people’s emotional states so it is a fiction that judges and others are not prone to emotional responses (Nussbaum, 2001). A contemporary legal scholar, Maroney, 2011, explores the concept of judicial dispassion and concludes that it is possible for emotions and judicial decision-making to coexist.



This study seeks to explore this possibility looking specifically at the emotional response known as compassion.

The sources of literature in this dissertation include peer reviewed articles, law review articles, scholarly books, book chapters, popular works, other dissertations on the subject matter and conference proceedings. The key words searched in Appendix C were used to find literature relevant to the exploration of compassion, jurisprudence, judicial dispassion, therapeutic jurisprudence and action research. Searches were conducted in physical libraries at the University of California, Berkeley; Stanford; Atlanta's John Marshall Law School and the University of Phoenix online library. The primary search tools were EBSCOhost, ProQuest, Thomson-Gale PowerSearch, HeinOnline and Google Scholar. The initial research strategy was to focus on books, peer-reviewed journals and law review articles obtained through HeinOnline, EBSCOhost, ProQuest and Google Scholar. A further search was conducted using research from citations within original works, which led to a gold mine of scholarly books. Key words were also inserted into amazon.com and google.com to seek out more scholarly works.

Appendix A is the cataloging of relevant supporting literature that forms the theoretical framework for compassionate jurisprudence. The framework lays the foundation for a relevant theory of how compassion might contribute to or coexist with judging that departs from traditional western jurisprudence models and the rule of law.

### **Western Jurisprudence and the Rule of Law**

Thomas Hobbes declared in his great work Leviathan, 1651, p.203 that the ideal judge is without, "fear, anger, hatred, love, and compassion." Historically this belief is so strong that judicial dispassion is regarded as a core element of the rule of law (Maroney,

2011). Passion, emotion, compassion is associated with irrationality and partiality (Maroney, 2011). Judges are trained to apply abstract rules to concrete facts. The rule of law is paramount.

The themes contained within the concept of rule of law include the ideas that law is binding on all and that laws should be public and stable and finally that laws should not be subject to the whims of individual actors (Tamanaha, 2004). It is the third theme that is most relevant to this discourse. The rule of law does not take into consideration the fact that laws are not self-interpreting and therefore the individual and their emotions cannot be eliminated from the equation that ultimately arrives at justice.

Support for rule of law is grounded in the belief that laws are just, for the community good, and are made by the people (Tamanaha, 2004). Legal realists however reject these notions and hold that law is made and not found. Rather than emanating from formal logic, it is derived from policy, ethics and human experiences (Leiter, 2007). Legal realists also maintain that “law and legal reasoning are part of the way we create our form of social life” (Singer, 1988, p. 474). If law is a social construct designed by people, where does human emotion, specifically compassion, fit into this construct? Traditional law and order theories are in direct contrast with those who believe that compassion holds an honored place in the administration of justice (Sandel, 2009).

### **Judicial Dispassion**

There are differing positions regarding emotions such as compassion and empathy in the courtroom. Judges are trained to apply abstract rules to concrete facts and to resist emotional engagement with the people who appear before them (Knight, 2009).

However, legal realists assert that the concept of dispassion is a fiction. Realists maintain

“that judges exercise unfettered discretion in order to reach results based on their personal tastes and values, which they then rationalize after-the-fact with the appropriate legal rules and reasons” (Leiter, 2007, p.16). Legal realists assert that judicial emotion in fact, influences the activities that occur in the courtroom (Maroney, 2011). Unfortunately, the realist movement has not gone far enough in its investigation of the emotional element of the judicial decision-making process (Maroney, 2011).

Posner (2008) expanded the thinking about emotions in the courtroom by reframing the question. The issue according to Posner is not whether emotions influence judging but rather, how they should influence judging (Posner, 2008). According to Posner, acknowledging the existence of judicial emotion allows researchers and judges themselves to better understand it (Posner, 2008). Nussbaum shares the cognitive view that emotions such as compassion are triggered by information and once you evaluate the information it motivates one to act (Nussbaum, 2001). Nussbaum also suggests that perhaps a judge could stand in the shoes of the participants in the courtroom but filter out “that portion of anger, fear, and even compassion that focuses on the self in its cherished projects” (Nussbaum, 2001, p. 28). Nussbaum goes on to say “that the judge as a judicious spectator would ensure that their emotional identification with the participants would be grounded in a true view of what is going on” (Nussbaum, 2001, p.30). Staunch advocates of judicial empathy and compassion such as Nussbaum and Brennan believe that “emotional engagement enables judges to perceive the human interests such as equality and dignity at stake” (Nussbaum, 2004, p.13).

Judicial dispassion is firmly rooted in the history of American jurisprudence but its dissenters are making the case that judicial emotion is inevitable. Emotional realism is

emerging and empathy and compassion are the primary characters in the new script (Maroney, 2006). The drug court movement has advanced the idea that it is important to make a connection with the participants in the courtroom and judges are encouraged to cultivate interest in and concern for the defendant (Nolan, 2002). Drug courts are a departure from the traditional model of the judge as neutral and dispassionate fact finder.

### **Loss of Public Confidence in the Courts**

Over the years damaging blows have been dealt to public confidence in the effectiveness and integrity of criminal courts and the criminal justice system overall. Increased recidivism rates, overcrowded dockets, perceptions of bias, wrongful convictions of innocent people and increased dependence on incarceration have resulted in low marks from the general public for American criminal courts (Fox & Huddleston, 2003).

A failing criminal justice system, evidenced by overcrowded jails and prisons, congested court dockets, and increased recidivism rates, present opportunities for a departure from the traditional strict adherence to law and order principles and conformity with established jurisprudence processes (Fox & Huddleston, 2003). Furthermore, many criminal courts, especially in urban areas, are overwhelmed, crowded, confusing and chaotic and judges have little or no time to reflect or analyze what they do from day to day (Berman & Feinblatt, 2005). “The quality of people’s court experiences can have powerful influence on public attitudes and confidence in the justice system and the rule of law” (Pfau, 2008, p.1).

### **Drugs and Law**

The historical context of drug use in America stems from the puritan moral and ethical view that drugs are evil, a bad habit, and a weakness in character. From this point

of view individuals are responsible for their actions and drug use is irresponsible (Nolan, 2001). This view is in contrast with the therapeutic paradigm which does not view drug using individuals as immoral, but have a disease which requires treatment (Nolan, 2001). A third lens is the utilitarian view which opposes drug use because of its drain on society due to lack of productivity (Morgan, 1994). Social responses to drug use tend to fall in one of the constructs described above. Legal responsibility for drugs did not begin until the first part of the twentieth century (Nolan, 2001).

The government's response to narcotics use was born out of religious concerns. Opium became a national concern after the U.S. acquired the Philippines in 1898 (Nolan, 2001). At the turn of the century, the early 1900's through the 1950's drug users were viewed with disdain and federal narcotics laws were passed harsh punitive laws with stiff mandatory minimum sentences for drug offenders and the death penalty for anyone who sold drugs to minors (Nolan, 2001).

The U.S. Supreme Court halted the trajectory of these harsh drug policies by declaring in *Robinson vs. California* that addiction was not a crime and that to convict and sentence someone for a drug addiction was cruel and unusual punishment (*Robinson v. California*, 1962). Four years later Congress passed the 1966 Narcotic Addict and Rehabilitation Act. This act resulted in drug offenders being involuntarily ordered to treatment programs after having contact with the courts. This law was followed by passage of the Comprehensive Drug Abuse Prevention and Control Act in 1970. This act divided substances into categories from the least addiction Schedule V to those having the highest abuse potential Schedule I (Witters et al, 1992).

The 40 year, 1 trillion dollar United States war on drugs has resulted in the loss of thousands of lives without a decrease in drug use and continuing rampant violence locally and abroad (Mendoza, 2010). The United States has tried for years to fight the war on drugs spending upwards of \$40 billion a year on interdiction efforts and arresting 1.5 million people a year for drug offenses and over half a million of them end up behind bars (Baum, 1996).

Drug misuse is a social problem of great significance in the United States and courts have become more proactive over the years in dealing with this problem, given the failure of interdiction and policy efforts. As the result of failed drug policies, drug cases overwhelm the local courts of most American cities (Gray, 2001). In 1989 in Dade County Florida the first drug court was established (Hora et al., 1999). Drug courts changed the image of judges as restrained and impartial to assertive and compassionate whereby judges create an empathetic connection between themselves and the client (Nolan, 2002). This approach is in direct contrast with the traditional view of judges as dispassionate, detached judicial officers.

### **Therapeutic Jurisprudence**

Therapeutic jurisprudence is the “study of the role of the law as a therapeutic agent” (Wexler & Winnick, 1996, p.1). Therapeutic jurisprudence determines a legal process that promotes therapeutic results for people who are subject to the compulsory process of the court (Wexler & Winick, 1996; Winick, 2003). In 2006, it was reported that over half of inmates in the United States jails and prisons suffered from a mental illness (Odegaard, 2007). Therapeutic jurisprudence began as a process for dealing with the hundreds of mentally ill people coming through the court system. Therapeutic

jurisprudence is also a way to analyze the way law and policy affects the lives of people (Berman & Feinblatt, 2005). Problem-solving courts were birthed from the therapeutic jurisprudence framework.

Problem-solving courts are specialty courts that are a departure from the punishment fits the crime model i.e., distributive justice model, to a process that fits the problem (Berman & Feinblatt, 2005). Problem-solving courts compel the court to recognize and understand the root psychological or social problems that serve as barriers to the defendant succeeding in the community. The judge and the drug court team along with the participant in the drug court are the problem-solvers of the underlying problems experienced by the defendant to ensure that he or she will not return to jail (Odegaard, 2007). Traditional courts have been more concerned with process rather than outcomes (Berman & Feinblatt, 2005). Problem solving courts shifted this paradigm to focus on prevention of the behaviors that result in tangible outcomes such as decreased recidivism, sobriety, and stabilization of mental health symptoms (Odegaard, 2007). Recidivism refers to repeated criminal activity that brings a person back into the criminal justice system on more than one occasion. Therapeutic jurisprudence dictates that the judge and the other team players, for example, in a criminal court, i.e., the prosecutor, defense attorney, probation and others must resolve the legal case but also strive to resolve the problem that produced the case in the first place (Berman & Feinblatt, 2005).

Traditionally judges in conventional court are formal and authoritative and in criminal court are not considering the best outcome for the defendant. A criminal court judge is concerned with past behavior or conduct of the defendant and looks at prior precedent (Winnick & Wexler, 2003). In problem solving courts the judge assumes

leadership of a collaborative. This approach is people-oriented rather than case-oriented (Denkla & Berman, 2001). Over the past 20 years thousands of problem-solving courts have been created across the United States. Drug courts, youth courts, community courts, mental health courts, violation of probation courts.

The most popular therapeutic courts to date are drug courts. Therapeutic jurisprudence is the drug court movement's foundation (Hora et al., 1999). The drug court movement was a response to overcrowded court calendars and the increasing number of drug cases reaching the courts. Drug treatment courts provide treatment in conjunction with judicial control to affect the behavior of persons who are dependent on drugs and the commission of crimes for their survival. Drug treatment courts present challenges to the traditional training and education of judges because of the compassionate orientation which considers people's feeling and needs and purposes to prevent further harm (Wexler, 2011).

Drug court judges have created a space for compassion to emerge. Drug court judges are trained to make a connection with defendants, parents, treatment providers, probationers and others appearing in their court rooms (Tauber, 1998). The judges in criminal drug court treat defendants as people. The empathic connection between the judge and the client is the focus of the courtroom (Nolan, 2002).

### **Empathy**

Compassion and empathy are linked to one another in that they both connect individuals through experience and feelings. Empathy allows a person to step into the shoes of another and experience their predicament at every level especially the emotions. Empathy is deliberate and an active state of being (Switankowsky, 2000). This



description supposes that empathy is the result of active engagement with another human being. Compassion is different than empathy however it encompasses the ideas of empathy and aiding others who are less fortunate.

Empathy is central to our humanity, but empathy without reason is blind (Trout, 2009). Empathy has been marginalized by those holding on to the judicial dispassion script. More exploration is needed to demonstrate how to balance the forces of empathy and compassion with rationality. For this to happen more study is required create epistemology about how both operate (Trout, 2009). Empathy deals with feelings whereas compassion takes empathy to another level by acting on that feeling. Listening is an important element of empathy (Undung & De Guzman, 2009). Empathy helps to understand others and to predict other's behavior (Redmond, 1989). In turn, understanding and prediction make empathy a means of gaining compliance and persuasion (Redmond, 1989). These tools are essential to effective judging, especially in criminal and problem-solving courts. Empathy can be learned and can be used to transcend human relationships (Undung & De Guzman, 2009).

### **Compassion**

Compassion has been a misunderstood concept for quite some time. Many have dismissed compassion as something soft and sentimental. Viewed through the lens of history, compassion has figured prominently in the deliberations of the Greek city-state as discussed by Plato, Thucydides, and Aristotle (Orwin, 1997). From the Christian point of view, compassion has been around since the beginning of time when God created the world. When man fell, according to the rabbis God acted as Adonai which reflects his character as merciful (Orwin, 1997). Rousseau states that compassion is "an emanation

of that natural human self-love which attests to the natural goodness of man” (Orwin, 1997, p.296). Rousseau saw compassion as a by-product of pity and thought of compassion in political terms. Compassion for Rousseau had to do with ones feeling of solidarity with his fellowman (Clark, 1999). Rousseau’s interpretation of compassion suggests that compassion is a useful manifestation that counteracts man’s desires to extend the self and show signs of power (Marks, 2007). Some scholars attribute compassion as a product of the French Enlightenment period (Clark, 1999). Others find that the British Enlightenment shifted the term compassion from the religious personal moral duty to public responsibility which moved the discussion to the political realm (Himmelfarb, 2001).

Compassion is a central theme in eastern cultures and is especially prominent in Buddhism. Compassion is considered the foundation of all aspects of enlightenment in the Mahayana Buddhist traditions (Friedland, 1999). It is a continuum that begins with sympathy and later transforms into higher consciousness which ultimately is the greatest wisdom (Friedland, 1999). The thought is that compassion leads to wisdom. Eastern traditions and philosophy supports the proposition that compassion is what connects individuals together through feelings and understanding (Dalai Lama, 1995). Tibetan Buddhist view compassion as nobility or greatness of heart which reduces human suffering. Compassion starts with the individual and then is passed on socially (Dalai Lama, 1995).

There are differing views on how compassion manifests itself in human beings. The Dalai Lama (1995) believes that compassion can be taught and it starts with connecting with others and walking in their shoes, in other words, empathy. Psychologist

Twemlow (2001) takes the position that compassion is natural and present in all healthy people. Friedland (1999) contends that compassion is developed with connections to others. It involves feelings and insights that emerge because of a common or shared good in which both parties prosper and grow (Friedland, 1999). Values, ethics and morals are associated with compassion. Moral values are what motivates people to care for one another and look after another's well-being (Prilleltensky, 2011).

Compassion can also be understood as an interruptive and self-critical means of perceiving, interpreting and transforming the causes of unjust suffering (O'Connell, 2005). The scholarly literature on compassion yields other possible frames such as (1) compassion as a distinct emotion; (2) compassion resembles empathy and is a vicarious emotion; (3) compassion is a form of sadness or love (Goetz, Keitner & Thomas, 2010). Lilius, Worline, Maitlis, Kanov, Dutton and Frost (2008) describe compassion as a multi-dimensional process composed of three elements: (1) noticing the suffering of another individual; (2) empathetically experiencing the suffering; and, (3) acting to ease the suffering in some manner. According to Lilius et al., (2008) researchers from the University of Michigan's Compassion Lab, all three elements are necessary to understand and measure compassion. The action is a compassionate response and it does not matter whether the action successfully alleviates the suffering (Frost et al., 2006).

Contemporary views of compassion are consistent with eastern philosophies which view compassion as an essential and valuable reminder of our common humanity (Dalai Lama, 1995; Elkins, 2001; Glaser, 2005). More recent studies suggest that compassion is measurable. The hypothetical elements of compassion include: familiarity over time; attention to detail; consideration; honoring the person, attentive listening,

forbearance, concern, explanatory communication and patience (Skaff, et.al., 2003).

Society can be transformed in a positive way through individual expressions of love and compassion.

### **Compulsory Compassion**

As described above, the concept of compassion in a court of law is not a novel idea. American jurisprudence is founded on the principles of distributive and procedural justice which assumes equitable and fair access to both the subjective and objective components of the law (Prilleltensky, 2011). Distributive justice considers what a person is due as a direct result of their actions and procedural justice is about how this distribution is performed (Prilleltensky, 2011), and the perception of fairness and transparency of the process (Sunshine & Tyler, 2003). In law, there is also a concept known as restorative justice. The fundamental idea is that justice involves the balancing what is due the community and the people harmed with what is due the offender (Sheppard et al., 1992). Sandel, 2009, p.187 takes his cue from Aristotle and argues that “Justice means giving people what they deserve, giving each person his or her due.” That is the crux of American jurisprudence; however, the issue is how do you determine what a person is due? American courtrooms are largely concerned with distributive and procedural justice and in the relationships between the people involved in dispensing justice. It is contrasted with interpersonal justice, which is sensitive to the dignity of those who find themselves before the bench. Dignity and respect figure prominently in the interpersonal justice paradigm (Prilleltensky, 2011). Injustice occurs when individuals abuse power due to feelings of superiority from possessing greater economic,

physical, psychological, educational or economic resources (Prilleltensky, Nelson & Peirson, 2001).

Restorative justice modifies the procedural and distributive aspects of justice by using a value-based approach to conflict and harm. It is used quite frequently in criminal cases and in international tribunals (Owen, 2011). Restorative justice responses can begin in the courtroom when a judge empowers victims by allowing them to speak in court thereby offering them a voice in the process, as well as the chance to seek answers (von Hirsch et al, 2003). Criminal defendants also benefit by taking responsibility for their conduct. The defendants are given the opportunity to express remorse and make things right. This sets up a forum for reconciliation, forgiveness, and reintegration (von Hirsch et al., 2003). Compassion emerges from the restorative justice process which is compulsory.

Another compulsory process is the concept of mercy in a criminal trial exhibited by a judge at the time of sentencing (Brien, 1990). Despite the perceived notion of tempered justice, mercy may require that the judge retreat from traditional notions of justice by treating someone less harshly than the law requires (Brien, 1990). The issue is whether mercy is a necessary component of justice.

The healing virtues of compassion are exercised in restorative justice as well as values such as inclusion, safety and reintegration. The overarching value is respect. Restorative justice practice and mercy at the time of sentencing are areas where the courts have made space for emotions such as empathy and compassion.

### **Compassionate Jurisprudence**

Judges traditionally respond to injustice and human suffering in one of two ways depending on their own emotional capacity to empathize with or distance themselves from

the humanity that gives rise to legal controversies (Wizner, 1988). Supreme Court Justice Brennan challenged the position of those who held fast to the Enlightenment view that emotion is associated with unrestrained impulse and irrationality and argued that “judging, properly understood, involves the interaction of reason and passion, of logic and experience, and a dialogue between the head and heart” (Brennan, 1988, p.3). Judges who are not compassionate create an “unfair, morally unjust, and unreasonable burden on the poor and minorities” (Garlikov, 2010, p.2).

Although mercy is sought in most criminal trial sentencing proceedings, legal scholars and ethicists argue that judges cannot impart justice and act mercifully at the same time (Brien, 1990). The ethicists argue that when mercy is exercised by a judge, the act springs from compassion for the plight of an individual offender and this type of mercy involves imposing upon the offender a hardship less than he or she deserves. Not giving a defendant what they deserve does not serve the cause of justice (Brien, 1990). Demonstrating mercy is a compassionate act which requires a tempering of justice, and may in some cases require a departure from justice (Murphy and Hampton, 1988). The process of imparting justice is not a linear one.

Jeffrie Murphy, in *Forgiveness and Mercy*, 1988, argues that “mercy” is incompatible with the duties judges have in criminal trials, but presents a strategy to save face by showing it is possible in a criminal case to be merciful. Murphy identifies compassionate concern as the trigger to display the virtue of mercy. Judges in displaying compassion by granting mercy lift the burden of an accused and in criminal cases this is opposed to the concept of retributive justice. However, Murphy concludes that you can have mercy in criminal cases if the victim of the crime waives their right to retribution for

the crime. Murphy & Hampton (1988), refer to this use of mercy as the Private Law Model. This allows the judge to be merciful without displaying personal compassion, which continues the cultural script of dispassion in the courtroom (Maroney, 2011).

The current and historical literature reflects a persistent cultural script of judicial dispassion (Maroney, 2011) despite an appeal to reason regarding the presence of compassion and other emotions in the court room and the benefits deriving from the display of emotion as displayed in Figure 2. Judges are asked to feel no emotions such as joy, fear, anger, compassion or empathy for the people who appear before them (Hobbes, 1651). There have been many theories that posit judicial emotion is inevitable and in some instances welcomed but the script persists to this day. To date there have been no theories formulated that suggest how compassion, empathy and other emotions might contribute to or coexist with thoughtful and competent judging. Emotion research has existed outside of the law (Maroney, 2011), as such, there is epistemological space for emergent knowledge in the field. “Not-yet-embodied-knowledge” (Scharmer, 2007, p.70), is future oriented. Action research that improves self-awareness and stimulates self-reflection allows knowledge to come into being (Scharmer, 2007). The research methodology proposed for this study is dialogic inquiry research which structures inquiry to explore the experience of judges in drug courts as they demonstrate compassionate behaviors as listed in Figure 1.

### **Action Research**

Action Research is a disciplined inquiry conducted with the intent that the research will inform and change his or her practices in the future. The research is conducted in the context of the subject’s environment (McKay & Marshall, 2001). The researcher begins with a full description of her own experience observing the social dynamic between judge

and drug court participant. The researcher then finds statements in the ensuing dialogue through interviews and discussions about how the judges are experiencing what was observed by the researcher. Meaning will be ascribed as those experiences arise rather than measuring the causal relationships between variables. Action research is “a process by which participants examine their own practices systematically and carefully using the techniques of research” (Ferrance, 2000, p.1).

Social researchers employing an action research method explore with the idea of transferring research knowledge to practice applicable in the real world (Reason, 2006; Eikeland, 2007; McInnes & Hibbert, 2007; and Ellis and Kiely, 2000). The emphasis of action research is the interplay between action and knowledge. Action researchers seek to build bridges between theory and practical issues (Reason, 2006; Eikeland, 2007; McInnes & Hibbert, 2007; and Ellis & Kiely, 2000) thereby helping individuals and their environments thrive (Reason, 2006) and change as necessary to meet the demands of a changing world (Reason, 2006; Eikeland, 2007; McInnes & Hibbert, 2007; and Ellis & Kiely, 2000). Action research is a form of experiential learning, reflective practice and transformational learning all rolled into one (Levin & Martin, 2007). Quality action research generates insights, facilitates learning and promotes the acquisition of knowledge (Eikeland, 2007). The processes used in action research addresses issues of scholarship and relevance (Reason, 2006).

Different definitions of action research have emerged that emphasize varying characteristics (Reason, 2006; Van Manen, 1990) however the common themes in action research always involve self-reflection to allow change and growth to occur (Doherty,



2006). Another common element of action research is the cycle of planning, action, reflection, evaluation and learning (Martensson & Lee, 2004).

Phenomenology and action research are complementary methodologies. Some researchers maintain that phenomenology laid the foundation for a range of new paradigm research approaches, action research being one of them (Ladkin, 2004). Action research helps both the researcher and the subject of the research understand the phenomena being examined (McKay & Marshall, 2001). Tacit knowledge is associated with experiential knowledge. Experiential or tacit knowledge is not always present on a conscious level (Nonaka & Nishiguchi, 2001). Action research seeks interpretations and meanings from people in their everyday settings (McInnis & Hibbert, 2007). Action research studies are only valuable if the people being studied are acknowledged as “intentional actors and meaning makers” (Reason, 2006, p. 189).

### **Dialogic Inquiry**

Dialogic inquiry research is a qualitative research method whereby the researcher and the subject of the research, i.e., real world practitioners speak to one another in the language of the practitioner (Martensson & Lee, 2004). Dialogic inquiry shares many of the philosophical assumptions of action research (Coget, 2009). Like action research, dialogic inquiry’s purpose is to generate actionable knowledge (Coget, 2009). Researcher accepts the practitioner as the expert on his or her organization or job function and its problems (Martensson & Lee, 2004). In dialogic inquiry action research, the dialogue is what bridges theory and practice.

According to Beech et al., 2010, p. 1342, “dialogue is regarded as a dialogue between two or more people that goes beyond the trivial, which changes some meanings

or processes and/or creates some new knowledge” (quoting Gergen et al., 2001).

Dialogic inquiry can result in the co-production of knowledge when researcher and practitioner work together in order to solve a problem, thereby generating insights for further development of a theory (Beech et al., 2010). In addition to theory development, critical pedagogy and dialogic communication can work together to establish a tradition of public discourse (Howard, 2002).

In *Pedagogy of the Oppressed*, Freire (1970, p. 17) called dialogue an “existential necessity” for social and personal transformation. Freire noted that truth is not always imposed nor information conveyed during dialogue. Dialogue is “an encounter between men and women who name the world in an act of creation rather than using language as a crafty instrument for domination” (Freire, 1970, p. 77).

The scholarship of Martin Buber is helpful to those engaged in dialogue because it speaks of the interhuman relationship as something different from a social relationship (Howard, 2002). In dialogic inquiry, the researcher and the practitioner become aware of each other and neither regards the other as an object, but “as a partner in a living event” (Buber, 1974, p.145). This personal interaction is what Buber called the “personal making present.” It is approaching the other with empathy and to imagine the real of the other (Howard, 2002). Dialogic inquiry can help the judges establish what Buber, 1974 describes as the interhuman. “Interhuman relationships involve each participant becoming aware of the other and is thus related to him in such a way that he does not regard and use him as his object but as his partner in a living event” (Buber, 1974, p.145).

The dialogic inquiry action research methodology for this study will assist the researcher in unfolding the possibility of a theory, that compassionate behaviors and

judicial decision-making might coexist in American court rooms and give way to a new paradigm whereby judges transform the courtroom into compassionate places of healing and facilitate the transformation of those suffering with addictions and other social injustices which define their realities. It should be pointed out, that researcher-participant relationships can sometimes be awkward. It is important that the relationship between the researcher and the participant is equal. The literature suggests that the orientation and trajectory of dialogue should be mutual and not reflect an intention of knowledge transfer or instruction (Beech et al., 2010) which is easier said than done. Maintaining this balance during the research process is critical to engaging the judges in order to produce relevant research (Beech, et al., 2010).

## **Summary of Chapter 2**

In summary, the research contained in the literature demonstrates that traditional law and order theories supported by dispassionate judges are being challenged on many fronts. The literature also demonstrates that there is epistemological space for a new theory that challenges the cultural script of judicial dispassion and replaces it with a compassionate approach to the rule of law. Compassionate jurisprudence is a mental model that has never been explored completely as an enhancement to the rule of law. American courtrooms are moving closer and closer to understanding how compassion and rule of law can co-exist. The therapeutic jurisprudence theories which birthed a whole movement known as drug courts demonstrate that distributive justice and compassion can coexist. The concepts of mercy and restorative justice place emotions such as empathy and compassion on the table for all to see and respond.

The purpose of this research is to study how awareness of compassionate behaviors as demonstrated in courtroom behavior, affects the thoughts, communications and subsequent behaviors of 20-25 judges in their judging. Chapter 3 explains in depth, the research design including the methodology, sample population, interview questions, data collection and analysis.

The objectives for this research is to use a collaborative theory building process to inform thinking about compassionate jurisprudence, guide development of new training practices, and create knowledge about how compassion might contribute to or co-exist with the traditional theories of judicial decision-making in American jurisprudence. The role of compassion in jurisprudence is an under examined area of research. This dialogic inquiry action research study will explore whether judges are hiding from humanity (Nussbaum, 2004) and whether a compassionate jurisprudence model can challenge the status quo of a detached adversarial process with an emerging and robust theory of how compassion might coexist with, or contribute to traditional jurisprudence. This model could theoretically provide judges a way of recognizing opportunities to empower the people in their courtrooms to name the causes of their suffering and join them in resisting those causes (Nussbaum, 2001) as well as provide a new compassionate epistemology that could reduce recidivism, lessen dependence on incarceration, and eliminate bias.

## Chapter 3

### Research Methodology

The Skaff et al., (2003) Hypothetical Elements of Compassion were adapted for use in this dialogical inquiry action research study to explore compassion as an element of therapeutic jurisprudence and to determine whether this is an approach where social, human, and legal problems intersect, creating the opportunity for human relations to become the basis of law rather than mere abstract rules.

The overall sample consisted of 28 in judges who were observed presiding over their drug treatment courts and had been sitting for a minimum of one year on the bench as a drug court judge. A collaborative theory building process, dialogical inquiry, was used with 22 of those judges to inform their thinking about compassionate jurisprudence, guide development of new training practices at the judicial college, and create knowledge about how compassion might contribute to or coexist with traditional theories of judicial behaviors and role orientation. The study was intentionally designed to determine whether a compassionate jurisprudence model could challenge the detached and dispassionate adversarial process with an emerging and robust model whereby judges were given the opportunity to empower the people in their courtrooms to name the identify the causes of their suffering and join them in resisting those causes (Nussbaum, 2001) as well as provide a new compassionate jurisprudence epistemology.

Action research was appropriate for this study because the researcher is involved in the research with the participants making them part of the outcome (Shelley, 2014). This is very different from traditional research approaches that have the researcher maintaining an independent position apart from the participants (Herr & Anderson,

2015). Action research is systematic inquiry that is collective, collaborative and self-reflective, critical and undertaken by the participants of the inquiry. The goals of such research are the “understanding of practice and the articulation of a rationale or philosophy of practice to improve practice” (McCutcheon & Jung, 1990, p. 148). Action research is reflective problem-solving at its best. Dialogical Inquiry is a powerful method of inquiry because the subjectivity of the participants in the setting is crucial to understanding (Tandon, 2014). Dialogue can result in a deepening commitment of the participants to transform their setting, thereby producing effective action outcomes from the inquiry itself (Freire, 1970; Tandon, 2014).

This chapter explains the methods used in carrying out the study, giving special emphasis to the analysis of the data. It should be noted at the outset that the methodology was an evolving one, which took definite shape as the study progressed.

### **Research Design and Design Appropriateness**

A qualitative dialogic inquiry action research design was applied to explore how judges describe, perceive, make sense of and talk about compassion in the context of their role of judges. Dialogic inquiry action research is a qualitative research method whereby the researcher and the subject of the research, i.e., real world practitioner speaking to one another in the language of the practitioner (Martensson & Lee, 2004). Researcher accepts the practitioner as the expert on his or her organization or job function and its problems (Martensson & Lee, 2004). In dialogic inquiry action research, the dialogue is what bridges theory and practice. According to Beech et al., 2010, p. 1342, “dialogue is regarded as a dialogue between two or more people that goes beyond the trivial, which changes some meanings or processes and/or creates some new knowledge” (quoting

Gergen et al., 2001). Dialogic inquiry can result in the co-production of knowledge when researcher and practitioner work together to solve a problem, thereby generating insights for further development of a theory (Beech et al., 2010). In addition to theory development, dialogic communication and critical pedagogy can work together to build a tradition of public discourse (Howard, 2002).

In *Pedagogy of the Oppressed*, Freire (1970, p. 17) called dialogue an “existential necessity” for social and personal transformation. Freire noted that truth is not always imposed nor information conveyed during dialogue. Dialogue is “an encounter between men and women who name the world in an act of creation rather than using language as a crafty instrument for domination” (Freire, 1970, p. 77).

The scholarship of Martin Buber is helpful to those engaged in dialogue because it speaks of the interhuman relationship as something different from a social relationship (Howard, 2002). In dialogic inquiry the researcher and the practitioner become aware of each other and neither regards the other as an object, but as a partner in a living event (Buber, 1974). This personal interaction is what Buber called the “personal making present.” It is approaching the other with empathy and to imagine the real of the other (Howard, 2002).

The dialogic inquiry action research methodology for this study was appropriate because it assisted the researcher in unfolding a possible theory, that compassion and traditional perceptions of judging might coexist in American court rooms and give way to a new paradigm whereby judges transform the courtroom into compassionate places of healing and facilitate the transformation of those suffering with addictions and other social injustices which define their realities.

Action research was appropriate because it allows the researcher to be an active participant in the study with their own perspectives and descriptions consistent with the situation being observed. Furthermore, dialogue was an appropriate method of inquiry because the questioning was of interest to the participants who had the opportunity to not merely discuss but to hear what other judges had to say and ask questions (Tandon, 2002). The questions were not consensus oriented or adversarial. The judges had the opportunity to sit with different and sometimes conflicting views. The questioning in this context sought deeper levels of context and understanding of why judges do the things they do in drug court and to examine the roots of their behavior (Tandon, 2002).

### **Research Context**

28 judges throughout the state of Georgia were observed in their respective courtrooms conducting drug court proceedings during the first phase of the research study. The second phase involved 22 judges participating in dialogue in a confidential online platform known as The West Education Network (TWEN). Each judge was assigned to a cohort. The cohorts were Altruist, Humanitarian and Benevolent. For purposes of confidentiality each judge was assigned a pseudonym as shown in Table 1.

Table 1

*List of Pseudonyms by Cohort*

<b>Username</b>	<b>Pseudo First Name</b>	<b>Pseudo Last Name</b>
Altruist1	Altruist	Judge1
Altruist2	Altruist	Judge2
Altruist3	Altruist	Judge3



<b>Username</b>	<b>Pseudo First Name</b>	<b>Pseudo Last Name</b>
Altruist4	Altruist	Judge4
Altruist5	Altruist	Judge5
Altruist6	Altruist	Judge6
Altruist7	Altruist	Judge7
Altruist8	Altruist	Judge8
Benevolent1	Benevolent	Judge1
Benevolent2	Benevolent	Judge2
Benevolent3	Benevolent	Judge3
Benevolent4	Benevolent	Judge4
Benevolent5	Benevolent	Judge5
Benevolent6	Benevolent	Judge6
Benevolent7	Benevolent	Judge7
Humanitarian1	Humanitarian	Judge1
Humanitarian2	Humanitarian	Judge2
Humanitarian3	Humanitarian	Judge3
Humanitarian4	Humanitarian	Judge4
Humanitarian5	Humanitarian	Judge5
Humanitarian6	Humanitarian	Judge6
Humanitarian7	Humanitarian	Judge7

Each court was an adult drug treatment court, however, some of these courts served specialized populations with drug problems. Several were veteran's courts, a couple were family treatment courts for parents with drug problems whose children were in the system due to abuse and neglect, and others were mental health courts. All drug

courts fall under the general category of Accountability Courts. See Figure 3 for a breakdown of the types of drug treatment courts observed. Each drug treatment court calendar had 35 - 50 people appearing on the calendar for the day. Two judges held more than one type of accountability court; a felony drug court and a veteran's court. A total of 28 judges were observed in 30 different accountability court proceedings. 756 total judge-participant interactions were observed.

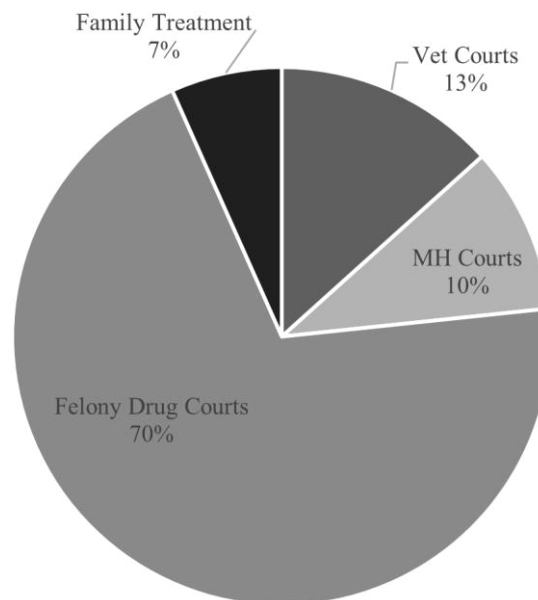


Figure 3. Adult Accountability Drug Courts Observed.

Although it was intended that the study be national, geographic constraints made this impossible. Early on it became increasingly clear that judges needed fact to face contact before agreeing to participate in the study. Judges were not responding to email or phone call solicitations. This limited the geographic boundaries to the state of Georgia. However, research was conducted in urban, rural, Appalachian, and coastal regions of the state.

Drug treatment courts conduct a team staff meeting before the court calendar is called. The staffing is a meeting of the drug court team which includes the judge, the

prosecutor, the defense attorney, a treatment representative and case manager. In veteran's drug treatment courts a representative from the Veteran's Administration is part of the team. In family drug treatment courts the Department of Family and Children Services are represented at the staffing. Mental health courts have a mental health service provider at the staffing. At the staffing the specifics of each drug court participant and their progress, along with potential consequences for performance are discussed by the Drug Court Team (NADCP Adult Drug Court Best Practice Standards vol. 1, 2013).

The researcher was required to sign a confidentiality agreement before being allowed to observe the staffing. Observing the pre-court staff meetings provided yet another opportunity to see the judge in action with the team prior to calling the calendar in open court with the participants the program. The observations of the judge during court proceedings were recorded on the observation data collection tool see Table 2.

### **Research Participants**

A sample of 28 prospective drug court judges desiring to reflect upon and discuss compassion were acquired through snowballing methodology (Patton, 2002). Patton's (2002) snowball or chain sampling technique was used to create a list of possible judges to observe and interview. The researcher started with Administrative Office of the Courts of Georgia and the Georgia Accountability Courts Council to recommend drug court judges for the study. The Administrative Office of the Courts of Georgia also provided the authorization letter which states that these courts are open to the public as a matter of public policy.

Once approval was granted from the institutional review board (IRB), the process of recruiting the participant judges began. Good ethical practices were followed as outlined below:

- The judges were informed of the purposes of the research;
- The privacy and anonymity of the judges was honored by providing each judge participating in the structured online dialogue a pseudonym. See Table 1.
- Judges who were observed fall within the purview of the Administrative Office of the Court's letter which maintains that the court proceedings are public;
- Researcher signed a confidentiality agreement for all pre-court staff meetings attended;
- There was no recording of any kind, written, video or audio of the names of the drug court participants or the drug court proceedings other than the observations pursuant to the data collection tool, Table 2;
- Each judge participating in the structured online dialogue gave fully informed consent, and were advised of the right to withdraw from research participation at any time;
- Once the participant judge signed and returned the consent form, he or she was enrolled in the study.
- The judge was then sent detailed instructions on how to register in The West Education Network (TWEN) which was the private electronic platform used for the study. See Appendix D. The judge was also sent a guest registration key Appendix E.

## **Research Location**

The data collection was conducted online along and through observation. Data was gathered in the courtroom setting of each of the participants where patterns were studied. Consents were obtained from the judges at each of the observation locations. A confidential web platform known as The West Education Network (TWEN) was used to engage in dialogue with the judges throughout the state. The focus of the dialogue was what was observed in the courtrooms and contextualizing data from Skaff et al., (2003), Hypothetical Elements of Compassion.

## **Data Collection**

Interview questions were open ended questions to determine the level of engagement with the subject matter. Clarifying questions were asked throughout the duration of the study. The questions were open and conversational, casual style and posted on the secured website. All interactions with the participants, i.e., were captured and recorded in the online platform. Observations lasted 2-6 hours and were recorded in handwritten notes. Follow on discussions occurred about the observations with some of the participants. The observation data was recorded on the Observation Data Collection Tool as shown below in Table 2. The goal was not to invent a measurement scale for compassion in courts, but rather to describe specific behavioral indicators of compassion by noting the elements according to the degree to which the observations supported them.

## **Compassionate Jurisprudence Data Collection Tool**

Judges will be observed to see whether compassionate behaviors are displayed in the courtroom during drug court proceedings. The observations will be limited to days and times when drug courts are being held and open to the public.

Principle Investigator will be in the audience with the general public.

The data will be collected one time in approximately 5 separate adult drug courts.

All data will be collected by a single observer, the principle investigator.

Data will be recorded using the following observation checklist based upon Skaff's Hypothetical Elements of Compassion.

Data will be analyzed to look for a flow process which includes, dialogue, the nature of the dialogue, physical touch, room and time for dialogue as well as patterns of behavior as described in Skaff's Hypothetical Elements of Compassion. The purpose of the recorded observations is to describe the activity for later discussion and also to ascertain when and whether a connection is made between the judge and the drug court participant.

Checklist to record the frequency and context of behaviors of the judge as listed in Skaff's Hypothetical Elements of Compassion, Skaff, Tourney, Rapp & Fahringer (2003), when interacting with people appearing in drug court. There will be a separate checklist for each court observed.

Table 2

*Observation Data Collection Tool*

<b>Demonstrated Behaviors of Judge (Hypothetical Elements of Compassion, Skaff et al., 2003)</b>	<b>No. of times</b>	<b>Description of Time and Context of the behavior</b>
<b>Attentive listening:</b> When the drug court participant speaks, the judge shows that he or she is listening carefully to everything the person is saying.		
<b>Forbearance:</b> The judge does not become irritated if the drug court participant does not understand what the judge is saying.		

(table continues)

<b>Demonstrated Behaviors of Judge (Hypothetical Elements of Compassion, Skaff et al., 2003)</b>	<b>No. of times</b>	<b>Description of Time and Context of the behavior</b>
<b>Concern:</b> The judge is genuinely concerned about the struggles or problems the participant is having.		
<b>Explanatory communication:</b> When the drug court participant has trouble understanding something, the judge explains the information in further detail.		
<b>Patience:</b> The judge does not get upset when the drug court participant needs more time than was allotted for their time before the bench.		
<b>Honoring the person:</b> The judge honors the drug court participant by respecting them and their individual needs.		
<b>Consideration:</b> When speaking to the drug court participant the judge is careful about what to say and how to say it.		
<b>Attention to detail:</b> The judge pays close attention to the details of the drug court participant's problems and complaints.		
<b>Familiarity over time:</b> In some situations, the judge is more compassionate with a drug court participant after several visits compared to their first meeting.		
<b>General compassion:</b> The judge consistently practices compassion on the bench.		

<b>Number of People appearing Before the Court</b>	<b>Date</b>	<b>Time of day</b>

Several trial runs were done watching drug court proceedings on YouTube to test the Observation Data Collection Tool. A local judge presiding over a drug court was asked to log into the website to determine ease of use and comfort level.

The initial data collection method used to explore the experiences of judges who reflected upon compassion with respect to their role in drug courts was observation, and in-person interviews. A one month web-based semi-structured dialogue followed. Judges were then invited to share their stories in a conversational manner, with starter questions in which the views of the participants unfolded. The more detailed the conversation, the more discovery of meaning was facilitated (Compton, 2005; Marshall & Rossman, 2006). The web based dialogue was digitally recorded and provided a record of each event (Creswell, 2003).

The Skaff et al., (2003) hypothetical elements of compassion were used to describe the observed behaviors of judges in drug court and served as the foundation for the web-based discussions. The hypothetical elements of compassion as illustrated in Figure 1, include familiarity over time; attention to detail; consideration; honoring the person, attentive listening, forbearance, concern, explanatory communication and patience. A member check (Compton, 2005) process was used by providing the judges access to the transcripts for verification to establish credibility of their responses and provide a mechanism for the judges to make changes to their initial responses if they so desired.

### **Structured Web-based Dialogue Questions**

The questions asked on the structured Web-based platform were to prompt dialogue and were directly derived from the observations in the court rooms. The following questions (Table 3) guided the verbal semi-structured dialogue:



Table 3

*Online Dialogue Question*

---

Week 1 - Day 1	One of the most prevailing definitions of compassion in the research world is - identifying the suffering of another and taking steps to alleviate that suffering - If a perfect stranger walked into your accountability court looking for a compassionate judge, what behaviors would they see that would lead them to believe that you are compassionate?
Week 1 - Day 2	You are now the observer looking for compassion in the courtroom. Focus now on the entire courtroom and all of the players, not just the judge. What behaviors are you looking for?
Week 1 - Day 3	Adult Drug Court Best Practice Standards indicate that participant outcomes are better when judges spend an average of at least 3 minutes interacting with the participant during court sessions. Is the amount of time important? What are you trying to accomplish in the time that you spend with each participant in court?
Week 1 - Day 4	What does compassion look like when you are angry or disappointed with a participant?
Week 1 - Day 5	What influences might enhance or inhibit the expression of compassion in your courtroom?
Week 2 - Day 1	I observed over 30 courts in 60 days throughout the state and a few in other states. When it comes to honoring behavior I noted the following: (the list is not exhaustive) Judges taking photos with participants who were phasing up; Judges coming off the bench to shake hands and take photos with phase ups; Judges reminding participants of progress even if they had to remand or reprimand them; Looking the person in the eye and having a conversation; Complimenting how great the participant looks; Encouraging those who relapse or get in trouble; Judges standing down with participants instead of sitting on the bench; Self-disclosure of judges own personal struggles in the past; Always ending on a positive note. Question: What do you think of the honoring behaviors noted above? What other honoring behaviors would you add to the list?
Week 2 - Day 2	Most accountability courts assess fees. The handling of these fees with the participants was very diverse throughout the state. Some courts did not deal with this issue in open court unless the participant was really messing around or being dishonest. Some courts dealt with the issue with every participant first thing. They would state how much is owed and discuss why late or when it would be paid all in open court. Some judges mentioned it at the end if the person were behind but did not make a big deal out of it. They would say something like you owe X amount and we do not want that to be the reason to hold you back from phasing up. Some courts made a very big deal out of the fee issue, it literally overshadowed everything else. Some courts celebrate if a person is all paid up. Question: How much should the court make of the fees? How do you think this makes the participant feel? What do you think is the best way to handle the issue of fees?

---

(table continues)

- 
- Week 2 - Most judges were very careful about honoring a person’s right to confidentiality.  
Day 3 Even when a person started talking about a very personal issue or intimate details of their lives, judges would tell them they do not have to share that information in open court. Why do you feel that this is import? Or not?
- Week 2 - Like the Day 1 questions here are some behaviors observed that created a  
Day 4 supportive environment in the courtroom: Judge gives a brief opening statement remind people “we are all in this together;” Judge calls up groups of people not by phase, but if they are experiencing similar struggles or an individual that is struggling with a particular thing with an individual who has overcome that struggle; Judge stands close to the people either behind the podium or in front of the divider and talks to the participants or has the person come up to where he/she is by the podium; Judge tosses out a question to the group of participants as a group question. What do you think of these behaviors noted above? How do you create a supportive environment in court?
- Week 2 - What body language or behaviors lets you know that you are making a connection  
Day 5 with a participant? Is it important to you to make a personal connection with your participants? If yes, what behaviors do you engage in to make that connection?
- Week 3 - How important is it for an accountability court judge to understand the recovery  
Day 1 process, the tools of recovery, and the treatment modalities? (i.e., MRT, 12-step, 7-Habits, etc.)
- Week 3 - During my observations judges ended their conversations with participants in many  
Day 2 different ways. Some asked is there anything that we as a team can do for you? Some asked is there anything else that you need? Some end with an affirmation, Keep up the good work or Hang in there it will get easier. Some issue a challenge, next time we meet I would like to see..., How do you try to end your court encounter with the participants and what are you trying to accomplish with your ending?
- Week 3 - How long does it take you to get to know a participant? What helps you to get to  
Day 3 know them?
- Week 3 - When participants appear in court, some judges ask participant for a personal  
Day 4 affirmation (they write it on a card before they come up), some judges have a question of the day, some individualize the question depending on what the participant is going through. These seem to be icebreakers to get the participants to relax or to engage in the process. How do you engage your participants in the court process?
- Week 3 - How do you feel when you run out of options for a participant?  
Day 5
- Week 4 - Are there behaviors that you have acquired in your accountability court that you did  
Day 1 not do before? (e.g. eye contact, encouragement, attentive listening, consideration)
- Week 4 - How much consideration do you give to what a participant feels is in his or her best  
Day 2 interest?
- 

(table continues)

---

Week 4 - Day 3	In my observations I saw many judges struggle with termination decisions. When do you feel compelled to exercise forbearance (mercy) with a participant?
Week 4 - Day 4	of all the things you do and the things we discussed over these weeks which of these would you say are transferable to a traditional court calendar?
Week 4 - Day 5	Would you describe yourself as a compassionate judge? What do you want your legacy as an accountability court judge to be?

---

## Limitations

As a field researcher, it is important to watch and listen, to pay close attention to everything and, carefully scrutinize everything (Creswell, 2003). The limitations of a study are weaknesses in the design of the study which may affect the results of the research (Creswell, 2005). The first limitation, the narrow scope of the study which focuses on the unique nature of a small number of judges in drug courts (Neuman, 2003). As in quantitative research, the small number of research participants produces limited evidence but may provide valuable insight about this setting (Gibbs et al., 2007). This study may be knowledge generating with further research required to test the ideas generated or may represent one aspect of the early stages of a more intensive study (Gibbs et al., 2007).

It is not unusual for qualitative studies to employ simple sampling strategies recognizing that this has a bearing on the level of generalizability of the results (Creswell, 2005). To ensure a contribution to knowledge, it is important to establish a link between the sampling procedures and analysis to demonstrate that the sample is representative of other drug court judges (Gibbs et al., 2007). In-depth studies of small samples of people are not uncommon in qualitative research (Miles & Huberman, 1994). Some in the research community question the validity and generalizability of the research findings (Denzin & Lincoln, 2005; Maxwell, 2005). The deliberate sample

of 25 judges falls within the typical sample size of qualitative studies of between 5 and 25 (Leedy & Ormrod, 2005). Focusing on the perspective of the judge fails to consider the role of the participants in drug courts and the influence of collective thought and behavior in the drug court setting. However, this limitation can be addressed in future studies.

Another limitation is the subjective nature of qualitative action research studies in general. Without rigor, research loses its utility (Morse et al., 2002). The participant and the researcher are co-investigators in action research studies (Herr & Anderson, 2005). The research outcomes of this study consist of the combined experiences of the judges and the researcher (McKay & Marshall, 2001). Generalizable studies actively draw on a well-developed theoretical framework and sample for key theoretical concepts as well as diversity of sample to derive an explanatory model (Gibbs et al., 2007). The theoretical framework relied upon the judge's and researcher's analysis of tacit knowledge but only in the context of other knowledge that comes from their own personal experience (Gibbs et al., 2007).

The final limiting factor is determined by the quality of interview responses. Rapport had to be attained through face to face dialogue as it was difficult to establish rapport through telephone or via web-based interactions with the judges. A good deal of effort was expended to create a dialogic relationship between the participants and the researcher. This ensured the dialogue was a true engagement between researcher and judges that goes beyond the trivial and changes meanings or processes and/or creates knowledge (Gergen et al., 2001).

## **Sampling Frame**

This study was confined to interviews and dialogue with a deliberate sample of 28 judges willing to engage in dialogue about their emotional experiences in drug courts. The research focuses on how the judges believe compassion affect their thoughts, behaviors and communication and whether awareness of compassionate responses in drug court, gleaned through a dialogic process, influence judges to create interruptions and upheavals in: (1) their own thought processes, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001).

Snowballing methodology was used to obtain referrals to this unique set of judges through an interconnected social network of people starting with the Georgia State Administrative Office of the Courts in Georgia (Creswell, 2005; Maxwell, 2005; Neuman, 2003). This referral mechanism allowed for the development of a sample with a breadth of participant perspectives which is important in Action Research (Stringer, 2007). A sample size of 20-25 judges was proposed for the study. The study sample was 28 judges in 31 courts for observation and 22 participants in the web-based dialogue falls within the range for saturation to occur in a qualitative research study (Leedy & Ormrod, 2005).

## **Validation**

Data triangulation involves using data/information from different sources. In this study the findings were validated by triangulation of data. By combining observations, documented theories, methods and dialogic action research data the researcher sought to overcome the intrinsic bias that comes from a single observer study (Patton, 2002). The court observations combined with the web-based dialogues were used to corroborate findings. If the conclusions from each of the methods are the same, then validity is

established (Denzin & Lincoln, 2005). Checking the consistency of findings generated by different data collection methods may expose errors. Checking what people say in private with what they say in public, as well as checking the consistency of what they say over time is also a way to triangulate the sources (Patton, 2002). In addition to the foregoing it is also possible to engage in theory/perspective triangulation by using multiple perspectives or theories to interpret data to understand how differing assumptions and premises affect findings and interpretations (Miles & Huberman, 1984). Inconsistencies in any of these areas can be illuminative and important.

Member checking with the participants was solicited to determine views of the credibility of the findings and interpretations (Cooper & Schindler, 2003). Accurate descriptions of what happened have been recorded for transferability and assessment of accuracy (Cooper & Schindler, 2003).

Guba and Lincoln (1981) stated that truth value, applicability, consistency, and neutrality are essential for research to be considered worthwhile, the bottom line is it must be believable. There are several strategies that can be employed by qualitative researchers who wish to present a case that their work is academically sound and can withstand the test of rigor or trustworthiness. When research truly measures that which it was intended to measure it is valid and the research results are deemed truthful. (Golafshani, 2003). This result is determined by researchers asking a series of questions and looking for the answers in the research of others.

Guba and Lincoln, (1981) have developed criteria that can be used to evaluate the quality of research beyond methodological dimensions. In the past two decades researchers have replaced reliability and validity in qualitative research with criteria and

standards designed to evaluate overall significance, relevance, impact, and utility of completed research to ensure rigor (Morse, Barret, et al., 2002). To ensure trustworthiness in this study specific strategies to ensure trustworthiness include persistent observation, prolonged engagement and peer debriefing, as well as audit trails and member checks (Lincoln and Guba, 1985). As an investigator, it is important to be responsive and adaptable to changing circumstances and be ready to clarify and summarize observations (Guba & Lincoln, 1981).

### **Summary**

Despite the growing movement advocating transformation of the legal system from the traditional, detached adversarial process to a more socially responsible and compassionate system with activist judges (Van Kaam, 1966; Wright, 2002), contemporary western jurisprudence holds on to the idea that a good judge should be non-emotional and never display compassionate behaviors or empathy towards the people who stand before them (Maroney, 2011).

This dialogic inquiry action research study explored whether judges are hiding from humanity (Nussbaum, 2004) and whether a compassionate jurisprudence model can challenge the status quo of a detached adversarial process with a robust theory of how compassion might coexist with, or contribute to judicial decision-making. This model could theoretically provide judges a way of recognizing opportunities to empower the people in their courtrooms through their compassionate behavior by helping them to name the causes of their suffering and join them in resisting those causes (Nussbaum, 2001). This new compassionate jurisprudence epistemology as behaviorally demonstrated by judges could be incorporated into future judicial trainings.

## Chapter 4

### Presentation and Analysis of Data

This dialogical inquiry action research study explored compassionate behaviors in drug treatment courts with 20 - 30 drug court judges over a period of a month to develop further knowledge of compassion as a relevant dimension of therapeutic jurisprudence. Drug treatment courts are considered therapeutic, problem solving courts. These courts entail direct communication between the judge and the drug court participant as part of an intensive supervisory program in which the court works in partnership with treatment and other social service agencies to help the participant overcome their addiction. In this context, judges were encouraged to explore an alternative mental model to see compassion as a means of perceiving, interpreting, and transforming their reality as well as the reality of the attorneys and litigants who appear in their court rooms. They were asked to consider their own behavior instead of focusing on the participant. The sampling process identified in Chapter 3 included the development of a sample of drug court judges from a variety of accountability court models by referral starting with the Administrative Office of the Courts of Georgia who was asked to refer drug court judges who may be interested in participating in the study. Once the judges were identified, a snowball approach was used to develop the ultimate sample of judges for this study (Streton et al., 2004). The foundation for the research design integrated dialogical action research (Martensson & Lee, 2004), and action inquiry derived from recorded observational data. Mulhall (2003) suggests that observations provide a means for researchers to determine whether participants' actions are consistent with what they say they do.



The objective for this research was to use a collaborative theory building process to inform thinking about compassionate jurisprudence, guide development of new training practices, and create knowledge about how compassion might contribute to or co-exist with the traditional theories of judicial neutrality in American jurisprudence. The role of emotions generally, and compassion specifically in jurisprudence is an under examined area of research. Important new developments are pushing courts to reexamine the role of the judge as a dispassionate neutral (Mack & Anleu, 2012). Several scholars have challenged the assumption that emotions need to be put aside to achieve compliance with law and ultimately public trust (Maroney & Gross, 2014). Furthermore, there has been a shift towards different forms of judging that rely more on direct interaction between the judge and the individuals appearing in court, such as drug treatment courts, judicial mediation as well as case management in civil cases (Mack & Anleu, 2012).

This dialogic inquiry action research study explored the question of whether judges are hiding from humanity (Nussbaum, 2004) and whether a compassionate jurisprudence model might challenge the status quo of a detached adversarial process (Maroney, 2014) with an emerging and robust theory of how compassion might coexist with, or contribute to traditional jurisprudence. An alternative model could theoretically provide judges a way of recognizing opportunities to empower the people in their courtrooms to name the causes of their suffering and join them in resisting those causes (Nussbaum, 2001) as well as provide a new compassionate epistemology that could reduce recidivism, lessen dependence on incarceration, and reduce bias.

The researcher and the participants interact with one another in dialogical action research (Martensson & Lee, 2004). In this research model the researcher introduces new

concepts to the participant for them to reflect upon and consider those concepts for application in their day to day work, in this case the judge's courtrooms and pre-court staff meetings. The data emerged from two distinct phases of data collection. The first was the courtroom observations and the second a semi-structured online dialogue conducted over a four-week period. Chapter 4 includes a detailed analysis of the research process with the 28 judges in 31 courts from across the state of Georgia.

Additionally, chapter 4 includes findings from the courtroom observations and semi-structured online dialogue, a description of the characteristics of the sample, a review of the data collection process and a discussion of the data analysis process. The discussion of the interview and observation findings includes the identification of categories, subcategories, and numerous properties, using examples from participants' words and actions. Chapter 4 concludes with the identification of the themes which emerged from the findings. The research findings follow the presentation of the sample selection and demographics.

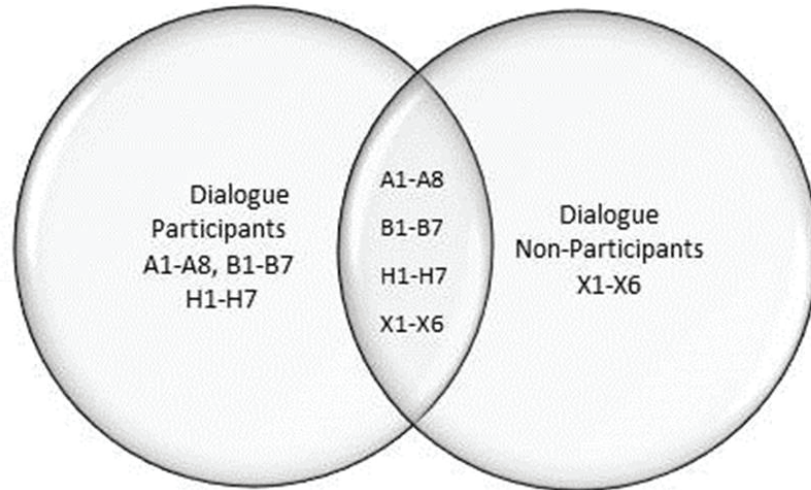
### **Demographics and Sample Selection**

A purposive sampling method was chosen for this study because it allows the researcher to select the most appropriate participants who are considered capable of answering the research questions, within a set of inclusion and exclusion criteria (Shelley, 2014). This researcher's professional experience with judges in the target population helped with the selection process.

In order to participate in this study, the essential criteria for inclusion in the sample were (a) the judge had to be a sitting judge in an adult drug court, (b) had served in this capacity for a year or more, (c) had access to a computer and some degree of computer

literacy, (d) was willing to reflect and share their feelings about demonstrated behaviors in an open forum with other judges, (e) was willing to participate in a confidential semi-structured online dialogue by answering a question a day over a period of four weeks and, (f) was willing to have his or her words quoted in a dissertation or other journal publication. Judges without drug court experience were excluded from the study. Participants who did not have at least one year of drug court experience as required by the parameters of the study were also excluded. Any subject who decided not to participate at any time were also excluded. Three judges opted out early in the study. Geographic location, gender, age, culture, political affiliation, or socio-economic factors were not used as selection criteria. Only one judge was excluded for not having at least one year of experience on the bench as a drug court judge. At the end of the court day, after observation, the judges were asked to recommend other judges who might want to participate in the study. This created the desired snowballing effect. Researcher obtained referrals to this unique set of judges through an interconnected social network of people starting with the State Administrative Office of the Courts in Georgia (Creswell, 2005; Maxwell, 2005; Neuman, 2003). This referral mechanism allowed for the development of a sample with a breadth of participant perspectives which is important in Action Research (Stringer, 2007).

General demographics are provided to ensure strict confidentiality of the judges who participated in the study. The demographic data which follows describes the sample participants by (a) age, (b) gender, (c) number of years on the bench, (d) number of years as a drug court judge; (e) the number of years the drug court has been in existence (f) type of drug court presiding over. The judges who participated in the semi-structured online dialogue are a subset of the total judges observed as indicated in Figure 4.



*Figure 4.* Dialogue participants and Non-dialogue participants (Judges observed in the middle).

The online judges were divided into cohorts and assigned pseudonyms that were synonymous with the word compassion, i.e. Altruist 1-8, Benevolent 1-7, and Humanitarian 1-7. Although judges, were informed at the onset that the study was about compassion in drug courts, the researcher was deliberately vague about what constitutes compassionate behavior to reduce demand characteristic bias that might make the participant judges change their natural behavior in the courtroom (Nichols & Maner, 2008). Every precaution was taken to avoid communicating to the judges what was expected and what the researcher hoped to find (Orne, 1962). Judges were observed in their natural setting, the courtroom. This allowed the researcher to get a better look at the specific behaviors as they occur in the real world. Throughout the study, the judges were identified by their pseudonym with the associated number for the judge. For purposes of the following demographic figures judges will be referred to as A1, A2... B1, B2,... H1, H2... and so on.

As such, data will be presented for both those participating in the dialogue and those who were observed. The median number of years on the bench, handling a drug

court calendar, for the 28 judges observed was 5 years. The range of years on the bench was from 1 year to 33 years. 30 adult drug court calendars were observed. 20 adult felony drug courts, 4 mental health drug courts, 4 veterans drug courts, and 2 family treatment drug courts. See figure 3. Although 30 adult courts were observed only 28 judges were observed as two of the judges presided over both a veteran’s drug court and an adult felony drug court or a mental health court and a drug court.

### Age

The age of the participants ranged from a low of 35 years, with a single participant below the age of 40, to a high of 77 years. Five of the participants were within the age band of 40-49, ten fell within the 50-59 age band, eleven fell within the age band of 60-69, and one participant was 77 years old. The median age of the participant judges was 56 years old. Figure 5. reflects the overall pool of judges observed in black and the online participants in grey.

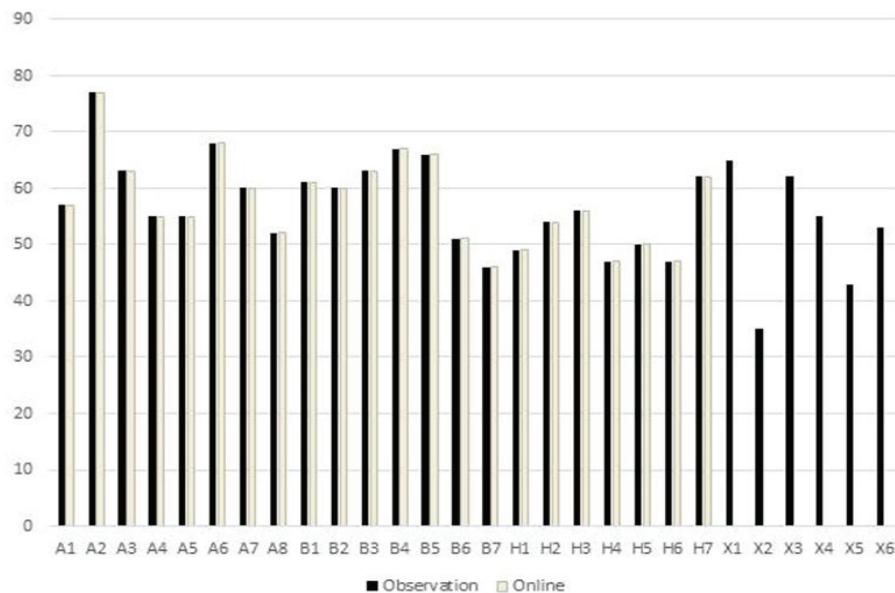


Figure 5. Participant Age.

## Gender

Males comprised most of the participant pool of judges observed numbering 22. There were 6 women judges in the pool. The higher number of males in the study reflects the general population where males are more common in judicial roles (Kalantry, 2012). Currently, 60 of the 167, (34%) of active judges currently sitting on the thirteen federal courts of appeal are female (National Women's Law Center, 2016). Women judges represent 30% of state courts of general jurisdiction and 35% of state appellate courts (American Bench, 2016).

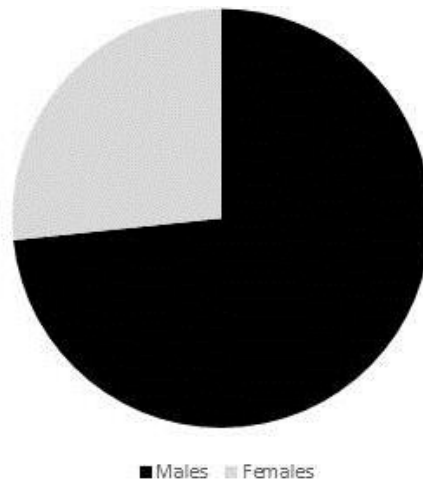


Figure 6. Gender.

## Years of Tenure as a Judge

The range of years on the bench as a judge was represented in the sample with a low of one year to a high of 33 years. Only 5 participants had fewer than 5 years of experience. Sixteen participants had 5-15 years of experience. Seven had more than 15 years of experience on the bench. The median range of experience as a judge was 11 years.

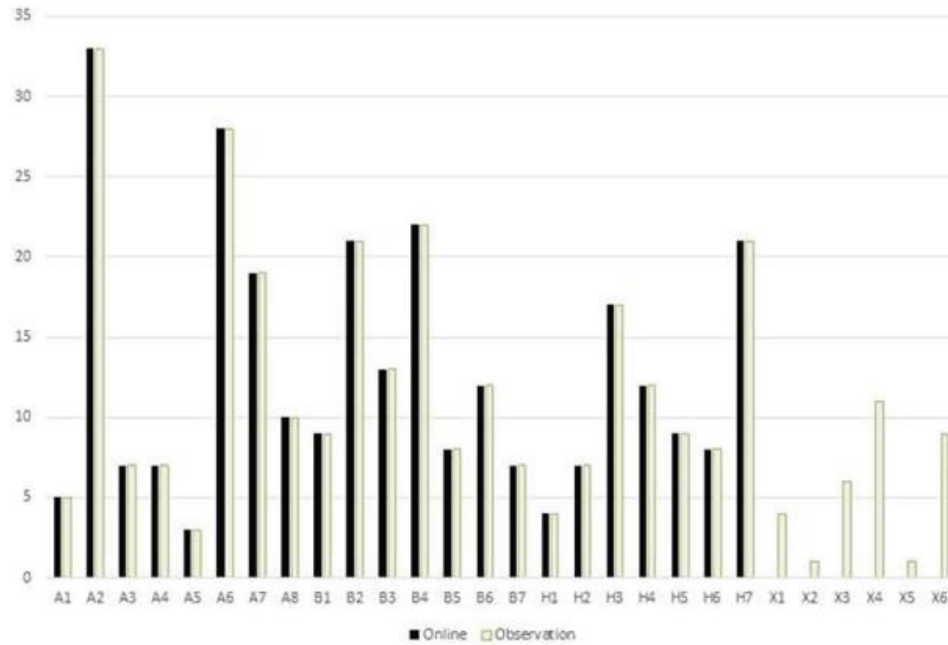


Figure 7. Number of Years Tenure as a Judge.

### Tenure as a Drug Court Judge

Tenure of participants in their current position as a drug court judge ranged from a low of 1 year to a high of 16 years. The median number of years as a drug court judge was 5 years. Nine participants had been in their respective drug court for more than ten years. Four of the participants had been in their position for 6-10 years. Fifteen participants had been in their position as a drug court judge for 5 or fewer years. Seventeen of the participants were also founders of their drug courts.

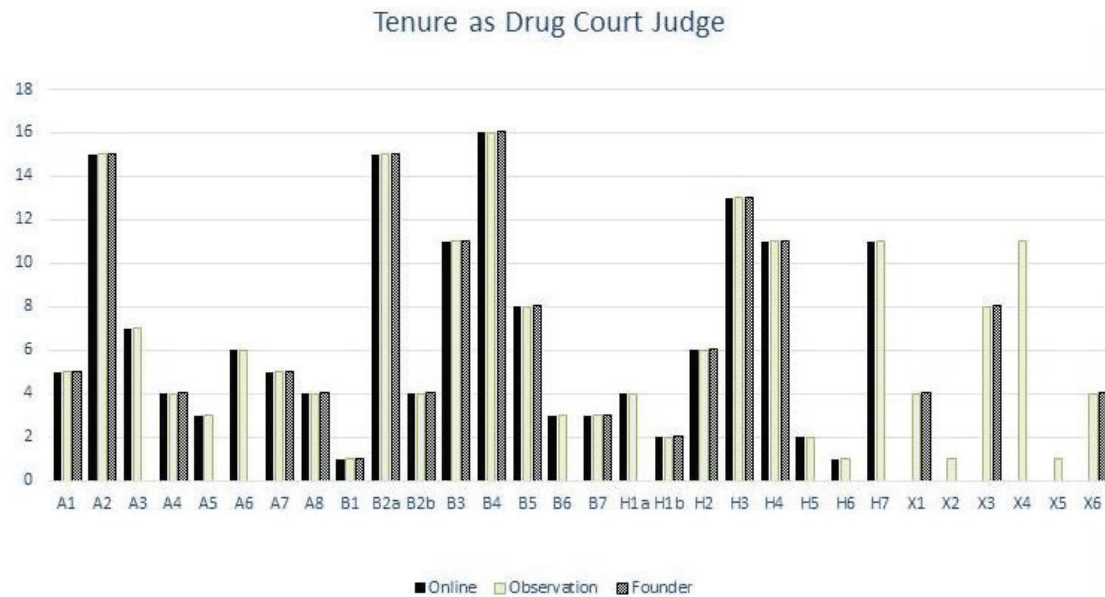


Figure 8. Number of Years Tenure as Drug Court Judge.

### Number of Years Participant’s Drug Court in Existence

The oldest drug court observed was 18 years old and the newest drug court was one year old. The veteran’s drug courts tended to be newer as these courts came on the scene in 2008 (DeAngelis, 2012), whereas general drug courts have been around since 1989 when the first drug court was founded in Miami-Dade County, Florida (Tiger, 2013). Mental health treatment courts were founded in the late 1990’s (Burns, Hiday and Ray, 2013). Family Drug Treatment Courts emerged in the United States in 2004 and are designed to reduce maltreatment by treating the underlying substance abuse problems of drug addicted parents (National Drug Court Institute & Center for Substance Abuse Treatment, 2004). Ten of the observed drug courts were 5 years old or less. 8 of the courts were between 6 and 10 years old and 12 of the courts were between 11 and 18 years old.



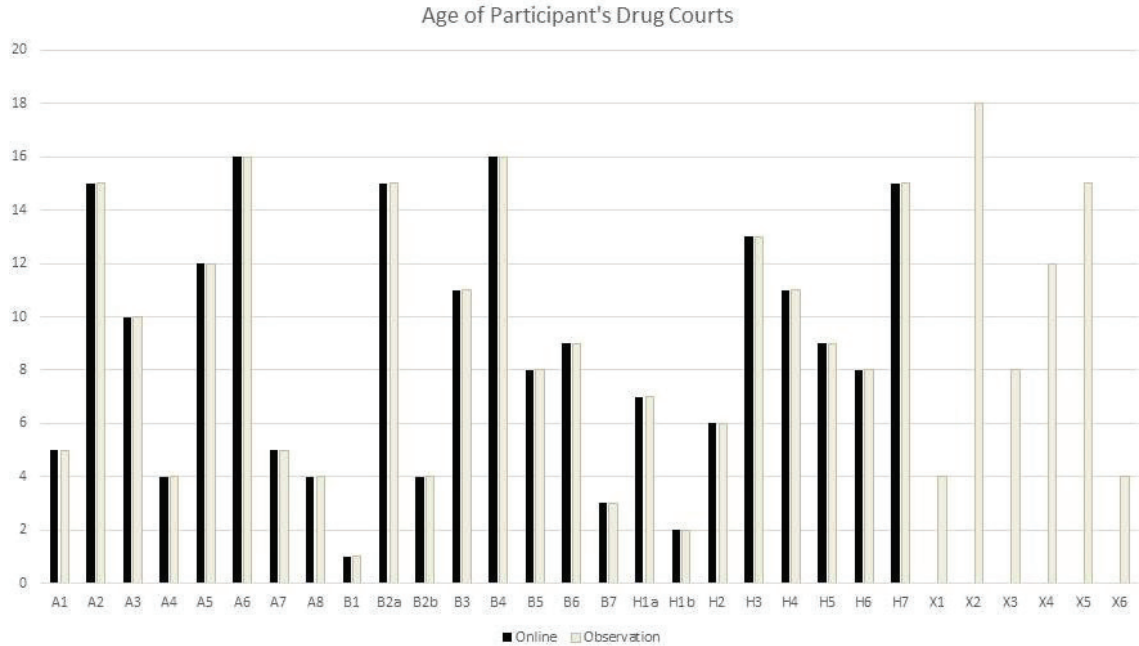


Figure 9. Number of Years Participant’s Drug Courts in Existence.

### Types of Drug Courts Judges Presided Over

Four Different types of adult drug treatment courts were observed. All drug courts fall under the general category of accountability courts. Research statistics published by the National Association of Drug Court Professionals, June 2015 there were 1558 felony drug courts, 70 mental health treatment courts, 306 veteran’s treatment courts, and 312 family treatment courts (National Institute of Justice, 2017). Although there are other types of accountability courts, these courts treat people with substance abuse disorders.

In the current study, 21 felony drug courts, 3 mental health treatment courts, 4 veteran’s treatment courts and 2 family treatment courts were observed.

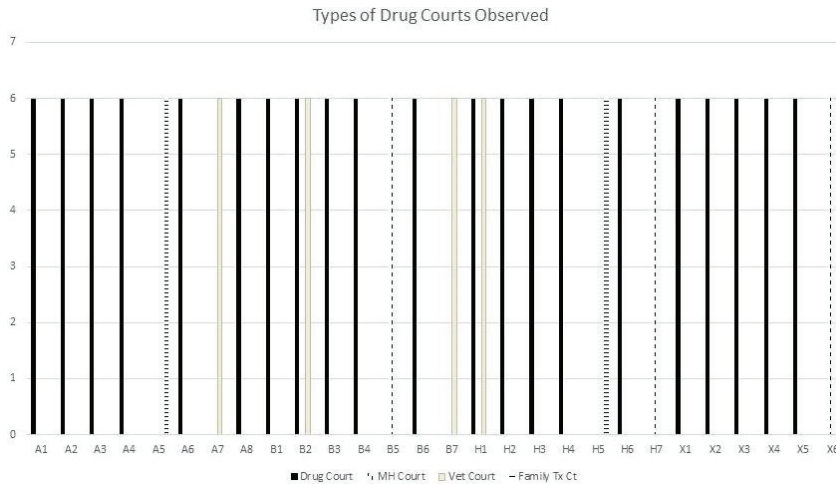


Figure 10. Types of Drug Courts Observed.

The collection of observation data took place in judges A1-A8, B1-B7, H1-H7, and X1-X6 respective courtrooms and the collection of the structured web-based dialogue took place at the judge’s computer in whatever location they chose which was unknown to the researcher. The coding process was accomplished to ensure confidentiality of the participants. The participants in the structured web-based dialogue were represented as Judges Altruist 1-Altruist 8 (A1-A8), Benevolent 1- Benevolent 7 (B1-B7), Humanitarian 1- Humanitarian 7 (H1-H7). The judges who chose not to participate in the structured web-based dialogue were coded as research participants X1-X6.

### Data Analysis

Once a judge was identified as a prospective participant, the researcher contacted the judge by telephone. The purpose of the study was explained to the judge with a request for permission to observe their drug court proceedings. 28 of the judges in the participant pool agreed to allow the observation and extended an invitation to observe the pre-court staffing if the researcher agreed to sign a non-disclosure agreement. At the pre-court staff meeting each drug court participant’s progress is reviewed and potential

consequences for performance are discussed by the Drug Court team. Once the observation date was arranged, an informed consent form, an invitation to participate Appendix F and researcher's biography Appendix G were emailed to the judge and the drug court coordinator.

After frustrated attempts to recruit judges by phone and email, the researcher traveled to the site of each of the participant judges who were spread throughout the state of Georgia. This data approach was more productive in enrolling judges in the study. At each site, the researcher reiterated the purpose of the study, reviewed the informed consent form, and signed a confidentiality agreement which promised not to release the names or any information about the individuals appearing in the drug court. 30 drug courts and 28 judges were observed and notes were made on the observation data collection tool, Table 2 to capture the perceptions and questions which arose for the researcher during the observations as well as record what was learned immediately for post-observation reflection during the semi-structured web-based dialogue sessions (Compton, 2005). It is important to note that the goal was not to invent a measurement scale for compassion in courts, but rather to describe specific behavioral indicators of compassion by noting the elements according to the degree to which the observations supported them. Judge H4 was not observed due to a scheduling glitch, however, he did agree to participate in the web-based structured dialogue.

Of the 28 judges observed, 22 agreed to participate, Judges A1-A8, B1-B7, H1-H7 and 6 declined, Judges X1-X6. Those who declined explained that they were too busy to participate. The 22 participating judges signed the informed consent forms before their participation in the semi-structured web-based dialogue. Judges A1-A8, B1-B7 and H1-H7 were asked to provide an e-mail address to send their username and login

instructions for The West Education Network (TWEN), the confidential web platform used for the dialogic phase of the study. A copy of the signed consent form, username and login instructions were then emailed to each online participant judge. Judges B2, H4 and B1 requested to know which other judges were participating and they were informed that the study was confidential.

The Judicial Council of Georgia and the Council of Accountability Courts of Georgia provided a letter confirming public access to Georgia adult drug courts as public policy, therefore no informed consent was required to observe the courts. The non-disclosure agreement signed by the researcher was relevant to the pre-court staffing sessions.

### **Stage 1 – Court Observations**

The schedule of observations commenced on December 6, 2017 to May 12, 2017. The time of the court sessions varied from 4 to 6 hours depending on the judge's style and the number of drug court participants appearing on that day. The specialty drug court calendars, i.e. veteran's courts, mental health courts and family treatment courts tended to be smaller and required less time in court but longer pre-court staffing sessions due to the complex nature of these cases. In each of these courts the participants have a substance abuse problem and are in treatment. They appear before the judge weekly, bi-weekly, or monthly depending on which phase of the program they are in. Regular interactions between the judges and the drug court participants set up the condition for the hypothetical element of compassion, "familiarity over time" to occur. 756 judge-participant interactions were observed.

Table 4

*Number of Drug Court Judge - Participant Interactions*

<b>Participant Judge</b>	<b>Number Drug Court Participant Interactions</b>	<b>Date</b>
Altruist 1	33	March 23, 2017
Altruist 2	21	March 27, 2017
Altruist 3	42	April 12, 2017
Altruist 4	25	April 20, 2017
Altruist 5	7	May 1, 2017
Altruist 6	42	May 2, 2017
Altruist 7	14	May 5, 2017
Altruist 8	44	May 11, 2017
Benevolent 1	33	March 28, 2017
Benevolent 2	21	April 13, 2017
Benevolent 3	32	April 20, 2017
Benevolent 4	26	April 25, 2017
Benevolent 5	16	April 27, 2017
Benevolent 6	60	April 28, 2017
Benevolent 7	18	May 12, 2017
Humanitarian 1	45	March 30, 2017
Humanitarian 2	47	April 4, 2017
Humanitarian 3	30	April 11, 2017
Humanitarian 4	Did not observe	Not scheduled
Humanitarian 5	8	April 25, 2017
Humanitarian 6	16	April 26, 2017
Humanitarian 7	12	April 19, 2017
X1	15	April 6, 2017
X2	45	April 14, 2017

(table continues)

<b>Participant Judge</b>	<b>Number Drug Court Participant Interactions</b>	<b>Date</b>
X3	42	May 5, 2017
X4	26	January 13, 2017
X5	30	December 9, 2016
X6	6	January 13, 2017
<b>Total</b>	<b>756</b>	

A modified version of the Skaff et al., (2003), Hypothetical Elements of Compassion were used to develop the tool for observing the behaviors of the judges in their respective drug courts. The observation collection data tool, Table 2, was tailored to the Skaff, et. al., 2003 was used to note the observations of the researcher as they related to each of the elements. The focus was on the interaction between the judge and the drug court participant. The behaviors the researcher was looking for were: (1) Attentive listening (2) Forbearance (3) Concern (4) Explanatory Communication (5) Patience (6) Honoring the Person (7) Consideration (8) Attention to Detail and (9) Familiarity over Time.

As behaviors that matched the Skaff et al., 2003 Hypothetical Elements of Compassion were observed, they were noted on the observation data collection tool. In addition to the items indicated in the tool, general categories of information were also worthy of observing and noting (Mack, Woodson, et al., 2005). These included the judge's general appearance, whether they stood at the podium, in the audience or sat on the bench, verbal and physical behaviors such as how they entered the courtroom and called it to order, whether they gave an introductory or closing statement and how much time was spent with each drug court participant. Another common discussion in these

courts is the matter of fees. Table 2 below gives a general idea of what the researcher was observing in these courtrooms.

Table 5

*Researcher Observations*

<b>Category</b>	<b>Behaviors</b>
Entry into courtroom	Demeanor upon entering, formal or casual, greeting
Amount of time spent with individuals	Who gets the most attention (compliant or non-compliant)?
Introductory or closing statement	Did the judge just jump right in and start calling cases or did they engage in some banter to help people relax and feel welcome?
Fee discussion	Was there a focus on fees that were owed? Was this handled in open court or privately?
Incentives and Sanctions	Rewards and Punishes participant behavior.
Attentive listening	Was the judge listening to the participant or doing all the talking.
Familiarity over time	Did the judge remember things about the participant from the past?
Explanatory Communication	Did the judge take the time to explain why a course of action was taken or what was happening in court?
Forbearance	How the judge reacted when an individual relapsed or failed to follow the rules. Special attention paid to motions for termination (drug court participants may be terminated from the program if they fail repeatedly to comply with treatment or supervision requirements)
Attention to detail	Did judge comment on how a person looked or some special accomplishment since the last time the individual was in court.
Concern	Judge expresses genuine concern for the struggles a person is going through.

(table continues)

<b>Category</b>	<b>Behaviors</b>
Consideration	Judge hears a person out when they exert self-determination or have an excuse for their behavior.
Honoring the Person	Judge is respectful and genuinely impressed with the accomplishments of the individuals appearing before them. Uplifts and does not demean the person.
Patience	Not rushing through the calendar. Spending time with individuals and hears them out.

During court, handwritten field notes were written directly into the observation data collection tool. Following each court observation event, these field notes were expanded into a description of what was observed at the end of the day. This involved transforming the raw notes into a narrative and elaborating on what was initially observed being careful to consciously acknowledge researcher's interpretation from the observation. Because of researcher's extensive background and knowledge of drug courts, researcher consciously and critically self-reflected on biases, preferences and theoretical predispositions to understand researcher's place in the setting and context of what was being observed (Kleinsasser, 2010). It was important for the researcher to continually question the evidence for any claims asserted in the final narrative (Mack, Woodson, et al., 2005).

Qualitative data interpretation is more subjective in nature and can be influenced by the researcher's biases (Leedy and Ormrod, 2001). Effort must be put into the data collection process to eliminate bias including collecting more than one kind of data to get different perspectives on the events being studied, purposely look for contradicting information, and acknowledging your biases that relate to your research report (Leedy and Ormrod, 2001). Triangulation of the study results was accomplished by engaging in



dialogic inquiry. It was during the observation process that questions for the dialogic inquiry evolved. Stage 1 of the research explored whether compassionate behavior was occurring in drug courts? If the answer was yes, then what does compassionate behavior look like in a drug court?

The process of sorting the data required contemplative reading of the data. The goal was “to break it down, study its components, investigate its importance and interpret its meanings” (Bailey, 2007, p.125). It took time to determine a way to handle the massive amount of data collected. What worked was exploring each element for one judge at a time. That process yielded rich and meaningful data. Once this process was accomplished, the same element for each of the 28 judges was explored. Using this approach, the patterns began to emerge. The tables below represent the frequency and participant data for each observed behavior.

## **Building a Picture Compassionate Behaviors**

### **Courtroom Environment**

Judging is a human process and as such different judges run their courtrooms in different ways. This is not only true in traditional courts, but also in the accountability court form of judging. The judges observed in this study assumed varying positions of proximity and formality upon entry into the courtroom. Judges A3-A8, B1-B4, B6, B7, H2, H3, H5-H7, X1, and X3-X6 were robed and seated on the bench as in traditional proceedings. Judges A2, H1 and X4 stood at a podium to be closer to the drug court participants. Judges A2 and H1 did not wear a robe. Judge X2 stood close to the drug court participants seated in the audience and addressed them informally from this position. Judges X4, A1 and H2 stood at a podium instead of sitting on the bench.

Judges A1, A3-A8, B1, B2, B4-B6, H3-H7, X1, X3, and X5-X6 assumed their traditional place on the bench. Although traditional, judges generally made attempts to create a warm and supportive environment with upbeat attitudes, humor and smiles directed at the drug court participants. None of the observed courts rose to the formality of a traditional court, with recitations of case names and numbers. The participants were simply called by name up to the bench, podium or rail to speak to the judge.

Judges A2, A7, A8, B2, B6, and X5 affirmatively tried to build camaraderie among the participants in their court rooms. This was done in a variety of ways. Judge X5 referred to the “court as community.” Judge X5 would also call several participants up with like problems with a participant that may have overcome a similar problem. The person who overcame would then explain how and encourage the group with a “you can do this.” Judge H1 spoke to the participants as a group as well as individually, creating more of a support group environment. Judges A1, A2, A6, B1- B3, B6, H1, H5, H6, X2 and X5 continually echoed the refrains, “You are not alone,” “We are all in this together,” or “We are here for you.” This collaborative conversation style speaks to the “empathy” and the “desire to alleviate the suffering,” aspects of the definition of compassion.

Drug courts operate in phases, usually 1-5 depending on how long a person has been clean, sober and compliant. Judges A1, A3, A4, A7, B2, B4, B6, H3, H5, X3, and X4 called drug court participants in the same phase up at once and then addressed them as a group and individually. Judge B2 explained that the idea was to reduce their nervousness by having peers accompany them. New participants would be asked to introduce themselves or the drug court team would be asked by the judge to introduce themselves to the new participant. Veteran’s courts, A7, B2, H1 and X6 begin their

proceedings with the pledge of allegiance to the flag and a salute. Judges A3, A4, A6, A7, B1-B3, B5, B6, H2, H5, H6, X2, and X5 demonstrated levity and humor when conducting court, but never at the expense of the drug court participants. Judges would use self-deprecating language about mistakes they had made in the past or habits that their spouses make fun of them about or they would tell a funny story to illustrate a point. Laughter eased tension in the court room and seemed to put the drug court participants at ease.

Most judges maintained eye contact with the drug court participants. Judges X1 and X3 had problems maintaining eye contact. They appeared to be shuffling papers and generally uncomfortable with this degree of personal interaction. Although these findings could be interpreted differently, eye contact by these judges, coupled with other indicators, seemed to be an indication of engagement and supportiveness rather than an attempt to assert dominance.

Table 6

*Courtroom Environment*

Compassionate Behaviors	Count	Participants							
Upbeat	22	A1	A2	A3		A5	A6		
		B1	B2	B3		B5	B6	B7	
		H1	H2			H5	H6	H7	
		X1	X2	X3	X4	X5	X6		
Smiling	19	A1	A2	A3		A5	A6	A7	
		B1	B2	B3		B5	B6	B7	
		H1				H5	H6		
			X2	X3	X4	X5			

(table continues)

Compassionate Behaviors	Count	Participants							
Formal	20			A3	A4	A5	A6	A7	A8
			B2	B3	B4		B6	B7	
			H2	H3		H5	H6	H7	
		X1		X3	X4		X6		
Informal	7	A1	A2						
		B1				B5			
		H1							
			X2			X5			
Seated on bench	21	A1		A3	A4	A5	A6	A7	A8
		B1	B2		B4	B5	B6		
				H3	H4	H5	H6	H7	
		X1		X3		X5	X6		
In the audience	1								
			X2						
Standing at podium	3		A2						
		H1							
					X4				
Robed	22			A3	A4	A5	A6	A7	A8
		B1	B2	B3	B4		B6	B7	
			H2	H3		H5	H6	H7	
		X1		X3	X4	X5	X6		
Creates warm / supportive environment	16	A1	A2	A3		A5			
			B2	B3	B4		B6	B7	
		H1	H2				H6	H7	
		X1	X2				X6		

(table continues)

Compassionate Behaviors	Count	Participants							
Collaborative conversation style e.g. “You are not alone,” “We are in this together,” “We are here for you.”	12	A1	A2				A6		
		B1	B2	B3			B6		
		H1				H5	H6		
			X2			X5			
Used Humor	14			A3	A4		A6	A7	
		B1	B2	B3		B5	B6		
			H2			H5	H6		
			X2			X5			
Maintain eye contact	21	A1	A2	A3	A4	A5	A6	A7	A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2	H3		H5	H6	H7	
			X2		X4	X5	X6		

### Amount of time spent with participants

Time pressure is inherent in our American system of jurisprudence. Court calendars tend to be huge. The courts observed in this study had caseloads ranging from 6 to 60. The mental health, veteran’s, and family treatment courts caseloads were smaller. Mean caseload for the felony drug courts was 33. Best practices for drug courts promoted by the National Association of Drug Court Professionals (NADCP) standards, states “Evidence suggests judges should spend a minimum of approximately three minutes interacting with each participant in court” (NADCP, 2013, p.21). In a study of nearly seventy adult Drug Courts, outcomes were significantly better when the judges spent an average of at least three minutes, and as much as seven minutes, interacting with the participants during court sessions (Carey et al., 2008, 2012). Shorter interactions may not allow the judge sufficient time to gauge each participant’s performance in the program, intervene on the participant’s

behalf, impress upon the participant the importance of compliance with treatment, or communicate that the participant's efforts are recognized and valued by staff.

The average time per matter in the drug courts observed, was 5-10 minutes. One anomaly was judge X3 who conducted court from 1 p.m. until 8 p.m. at night. The staff indicated that this is normal. The judge called the participants up in a group by phase and then addressed them individually. Judge X3 spent a lot of time having very personal conversations with each drug court participant. Despite the length of the calendar, the participants appeared to remain engaged. Judge B7 ran the drug court as if it were a regular calendar calling case by case in order with very little interaction time with the participants. Despite the limited time the 3 participants in that court were engaged.

Table 7

*Average amount of time spent with drug court participant*

1-3 minutes	8		A2					A7	
					B4		B6	B7	
				H3			H6		
		X1					X6		
5-10 minutes	18	A1		A3	A4	A5	A6		A8
		B1	B2	B3		B5			
		H1	H2			H5		H7	
			X2		X4	X5			
More than 10 minutes	2								A8
				X3					

## **Introductory, Closing or Other Statement**

Judges A1, A5, A6, A8, B3-B6, H1, H5, H7, X2, X3 and X5 opened and closed court with a general introductory statement to the audience of participants. It was usually a welcome or a statement of encouragement. If it was a holiday, then holiday greetings were shared. Judges A2, A5, and X6 consistently ended the session by asking the group of participants whether they had anything to ask or say? Judges who were not oversensitive to time pressures posed questions to the participants such as, X5, “What in your life are you proud of?” X6, “Where do you feel the most confident?” A2, “What stressful things or situations might you approach with caution?” A6, “What are you working on therapeutically?” A8, “How is staying clean different than recovery?” In these courts the questions were asked to each individual participant. Sometimes the participants were stumped by the question, but they could usually come up with something. Judges did not seem concerned with the answers, unless the person was totally off base. The questions appeared to be a tool used to engage the participant. Judges A6, B1-B4, H1, H2 and H5-H7 had a specific individualized questions for each participant, demonstrating that the judge knew the individual on a personal level. Judge B2 asked a participant about his ailing mother. Judge A5 inquired about a participant’s safety because the participant had a stalking ex-husband. Judge H5 inquired of a participant when her baby was due and how the pregnancy was going? Off the record, Judge H5 stated that the drug court was saving the life of this mother and her baby and that gave him a great deal of satisfaction. During the pre-court staff meeting information is shared about each treatment court participant and this is the basis of what the judge will talk about with the participant.

Table 8

*Introductory or Closing Statement*

Introductory greeting for audience of Drug Treatment Participants	14	A1				A5	A6		A8
				B3	B4	B5	B6		
		H1				H5		H7	
			X2	X3		X5			
Encouraging statement at end of calendar	14		A2	A3				A7	A8
			B2	B3	B4			B7	
		H1					H6	H7	
			X2	X3		X5			
Question Of The Day	10		A2				A6		A8
		B1		B3		B5			
		H1					H6		
						X5	X6		
Calls the calendar at onset no introductory comments	5					A5		A7	A8
					B4				
			H2						
End on positive note	17		A2	A3	A4		A6	A7	A8
				B3	B4	B5		B7	
		H1	H2			H5	H6	H7	
			X2			X5			

**Fee Discussion**

Georgia Accountability Courts are funded by a variety of sources. Some courts receive grants from the Federal or State government. Some have foundation grants. Many of the drug treatment courts are supplemented by fees paid by the drug treatment court participants. The Georgia legislature has authorized courts to assess fees to pay for ancillary services such as drug testing, incentives, support services and other things



necessary to the operation of the court. Participants are required to pay these fees. A fee not to exceed \$1,000 is authorized by the Georgia state legislature Title 15, Section 2-3. Most of the courts observed assessed \$125 per month.

In, a journal article in the Federal Sentencing Reporter entitled An Honest Chance: Perspectives on Drug Courts, 2002, p.369, it was stated that, “Paying fees for drug court treatment not only contributes to paying some program costs but also teaches offenders accountability and responsibility in the treatment process.” This way of thinking has found its way into the National Drug Court standards and most drug treatment court judges believe and adhere to it. However, the same report points out that most drug court participants are indigent or very poor. The courts I observed did help people find jobs and some even helped them with money management, however, they are still digging themselves out of financial holes from incarceration and being out of work for long periods of time (An Honest Chance, 2002).

How these fees are discussed with the drug court participant varied from judge to judge and some judges appeared more compassionate than others in handling the fee matter. Judges A2, A3, A6-A8, B2-B5, H3, H6, H7, X1, and X3-X6 confronted participants about their fee status in open court. When a participant was up to date or ahead on fee payments judges would praise the participant. If a participant was late or had not paid anything, the judges would sometime inquire why or chastise the person in open court. This seemed harsh, shaming and counterproductive considering research by the American Psychological Association that says not having money is the number one stressor in America and causes people to suffer depression and anxiety (American Psychological Association, 2015). Financial insecurity is associated with depression,

anxiety and loss of personal control (Klontz, Britt & Archuleta, 2015). A study conducted in 2014 found that people in poverty are often made to feel ashamed by the institutions they interact with (Walker, 2014).

Several courts in the study handled this fee matter more compassionately. H1, H2, X6, A1 had the drug court team handle the matter privately in the courtroom. Judges B7, B6, B1, X2, X6, A4 and A7 never mentioned fees in open court or in the pre-court staff meeting. The family treatment courts, courts A5 and H5 do not assess fees at all. Judge B1 expressed to me directly that it was shaming to ask poor people for money especially if they do not have a way to pay it. Judge B1 commented that one participant was “the most indigent person he had ever come in contact with.”

Table 9

*Fee Discussion*

In open court	12		A2	A3			A6		A8
				B3	B4				
				H3			H6		
		X1		X3	X4	X5			
Privately – not in open court	4	A1							
		H1	H2						
							X6		
N/A (Family Treatment Court – no fees)	2					A5			
						H5			

## **Incentives and Sanctions**

In drug courts participants are rewarded for good behavior and achievements and sanctioned for non-compliance. The Adult Drug Court Standards published by the National Association of Drug Court Professionals states, “Consequences for participants’ behavior should be predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behavior modification” (National Association of Drug Court Professionals, 2013, p. 26).

It is not unusual to walk into a drug court everyone applauding. Applause is a common form of praise in these courts. Judges A1, A2, A6, A8, B1-B3, H1, H3 and X3 would take a photo with the participant holding their certificate of accomplishment. Judges A1, A4-A8, B2, B4, B5, B7, H1-H3, H5, H6, and X3-X6 also had tangible incentives such as gift cards, high five cards with a gift card, event tickets and other tangible items. Judges B1 and X3 would waive fees for a month or grant early release from the program as an incentive. Although there are guidelines and best practices for responses to behavior in drug courts, the incentives, sanctions and therapeutic responses are completely at the judge’s discretion. First in whether to award them and second what the sanction or incentive should be. Judges are provided input and recommendations from staff but it is totally up to the judge which incentive or sanction will be awarded. In one instance staff was leaning hard on Judge B4 to remand a participant into custody for a rule infraction. After speaking with the participant, the judge decided not to put the person in jail but to give him community service.

Sanctions were less creative and consisted primarily of community service, jail (usually a weekend or up to 10 days), and bench duty where the person had to sit all day with the judge and observe court. Judge B7 gives participants a time out package to

complete while doing their custody time. The package includes reflective exercises so that the participant could think about what they are doing in the program and why.

New criminal charges in most cases result in automatic termination and dismissal from drug court. Seven termination hearings were observed throughout this study and 5 of the 7 resulted in judgment terminating the participant from the drug treatment court program. Judges X4 and X2 both terminated drug court participants from the program for stealing, inability to stay clean and cheating their drug tests. The offenses occurred over time and the behavior was continuing. Judge A6 terminated a participant because he picked up a new drug trafficking charge while in the program. Judge H6 terminated an individual after a lengthy discussion after the participant became belligerent and refused to go into residential treatment. Judge B2 terminate a young man from the drug treatment program because he just did not want to be in the program. The various sanctions and incentives awarded by judges in this study are outlined in Table 9.

Table 10

*Incentives and Sanctions*

Applause	18	A1	A2		A4			A7	A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2	H3		H5	H6	H7	
Photo with judge	11	A1	A2				A6		A8
		B1	B2	B3				B7	
		H1		H3					
				X3					

(table continues)

Gift card or other tangible reward	19	A1			A4	A5	A6	A7	A8
			B2		B4	B5		B7	
		H1	H2	H3		H5	H6		
				X3	X4	X5	X6		
Remand into custody	8	A1			A4			A7	A8
								B7	
							H6		
		X1					X6		
Community service	7		A2					A7	
		B1							
		X1		X3	X4	X5			
Increase treatment	8	A1							
		B1	B2					B7	
			H2					H7	
			X2		X4				
Jail time self-surrender	6							A7	
				B3			B6	B7	
				H3					
						X5			
Termination Hearing	7				A4		A6		
			B2						
							H6		
			X2		X4		X6		
Terminated	5						A6		
			B2						
							H6		
			X2		X4				
Bench Duty	2	A1							
		B1							

## **Attentive Listening**

Attentive listening is one of the elements of compassion according to Skaff, et.al. (2003). Two different methods of attentive listening were observed in the drug courts; active listening and motivational interviewing. Judges have the option of receiving training in motivational interviewing at the Judicial College or at drug court conferences.

Attentive listening occurs when a person speaks, and the listener shows that he or she is listening carefully to what the person is saying (Skaff, 2003). Active listening is attentive and involves the listener observing the speaker's behavior and body language (Zonger & Folkman, 2016). Having the ability to interpret a person's body language lets the listener develop a more accurate understanding of the speaker's message (Atwater, 1992). Having heard, the listener, in this case, the judges, then paraphrases the speaker's words. Judges A1, A4-A6, A8, B1-B7, H1, H2, H5, H7, and X2-X6 were observed actively listening. It is important to note that the judges did not necessarily agree with what the speaker was saying on all occasions but they were very good at restating what the drug treatment court participant said.

Motivational interviewing is a therapeutic approach, however, anyone that understands the aims of motivational interviewing and the process can use this technique as an effective communication tool. Motivational interviewing places the power on the client. Judges A1, A4-A6, B1, B4, H1, H2, H5-H7, X4 and X5 were very good at motivational interviewing and showing respect for the client's responsibility and decision-making ability. The process of motivational interviewing involves the use of open ended questions, affirmations that support a decision or behavior of the participant,

reflective listening and what is known as change talk, wherein the participant makes a statement of commitment to change some behavior or activity (Hetteema, Steel & Miller, 2005).

These methods of communication, which involve attentive listening were observed. Judges A2-A4, A8, B3, B7, H3, H6, X1-X4, and X6 also liked to talk a lot and impart what they deemed as wisdom and knowledge for the participants. They did more talking than the participants. Judges A2, A6, A8, B1, B3, B5, H1, H6, X5 and X6 who posed a question of the day as indicated in Table 7 or who asked the participants for an affirmation, tended to listen more and talk less. The judges who asked questions and listened to the participant's answers affirmatively created opportunities for dialogue.

Three judges A7, H3 and X1 did not appear to be listening to the participants as they spoke. They appeared to be shuffling papers or their attention was directed in other areas. Opportunities for listening also occurred when a participant did something extraordinary that was brought to the judge's attention or when the participant had a problem. In these instances, the judges demonstrated that they were listening carefully to everything the participant said by active listening. This was obvious from the follow-up questions the judges asked. Judges spent more time talking and listening to people who had accomplished a milestone or those who were not doing well in the program. There was not much talking or opportunities for the judges to listen when participants were fully compliant. If the participant did not have a question to answer, the fully compliant participants did not get much time to talk.

Table 11

*Attentive Listening*

Judge doing most of talking	13		A2	A3	A4				A8
				B3				B7	
				H3			H6		
		X1	X2	X3	X4		X6		
Judge uses motivational interviewing	13	A1			A4	A5	A6		A8
		B1			B4				
		H1	H2			H5	H6	H7	
					X4	X5			
Judge active listening to participants	21	A1			A4	A5	A6		A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5		H7	
			X2	X3	X4	X5	X6		
Judge paraphrasing what participants had to say	21	A1			A4	A5	A6		A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5		H7	
			X2	X3	X4	X5	X6		

**Familiarity over Time**

In drug treatment courts judges have an opportunity to interact with the participants over a course of time. In Georgia drug treatment courts, the participants are in the program for a minimum of 18 months and a maximum of 24 months with the option to extend to 36 months pursuant to Title 15, Section 2. Judges conduct progress reviews to monitor how participants are getting along in the program (NADCP, 2013). Judges A1-A8, B2-B7, H1, H2, H5, H7 and X1-X6 remembered and commented about things from the drug treatment court participant's past. This behavior is supported by information is obtained at the pre-court staff meeting however, some information is co-



created as a shared narrative as the judges ask questions and engage the drug treatment court participants. For example, judge A2 seemed genuinely aware of a participant’s family situation and inquired about the status of that situation. Judge B3 noticed that a participant cut his hair and was wearing new clothes. Judge B2 remembered that a participant’s mom was in the hospital and commended the participant on how well they were handling this stressful situation, commenting, “You are not doing what you would normally do in situations like this – yield to the bottle.” In general, judges appeared to demonstrate more compassionate behaviors with the participants they had seen over time, compared with those that were on the calendar for the first time. During “phase ups,” a term used when a participant graduates from one phase to another, Judges A1-A8, B2-B7, H1, H2, H5, H7 and X1-X6 reminded the participants of where they had started and how far they had come.

Table 12

*Familiarity Over Time*

Remember and comment on Drug Court Participants past	24	A1	A2	A3	A4	A5	A6	A7	A8
			B2	B3	B4	B5	B6	B7	
		H1	H2			H5		H7	
		X1	X2	X3	X4	X5	X6		

**Explanatory Communication**

When a participant could not understand something, judges A1-A6, A8, B1-B7, H1, H2, H5-H7, and X2-X5 were very good at explaining the matter in more detail. Judges A1, A2, A4, A6, A8, B2, B4, B5, H1, H5, H7 and X5 were very good at reframing a question or comment when a drug treatment court participant struggled with

understanding. Judges A2, A3, A6, A8, B1, B3, X2 and X5 used stories to illustrate a concept or idea. Judges A1, A4-A6, A8, B1-B7, H1, H2, H5-H7, and X2-X5 spent a great deal of time explaining to participants why a certain course of action needed to happen. Judge B-4 spent 3 minutes explaining to a participant why the participant needed a sponsor. Judge B-4 also self-disclosed his own personal experiences with recovery. Judges A2-A4, B3, B4 X3, X5 and X6 also were very forthcoming with their own life stories, self-disclosing struggles that they had in the past with the same problems a participant was having. Some of the struggles judges disclosed involved problems with addiction but not all. Judge A4 indicated in open court, “I had to get to a place where I was not afraid to be sober.” Judge B3 talked about how fast cars kept him in trouble with the law when he was young and how that affected his ability to get a valid driver’s license for over a year, he was totally reliant on public transportation or friends to get around.

Table 13

*Explanatory Communication*

Takes time to explain why a course of action	21	A1			A4	A5	A6		A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5	H6	H7	
			X2	X3	X4	X5			
Self-disclosure of similar problems in past	8		A2	A3	A4				
				B3	B4				
				X3		X5	X6		

(table continues)

Uses stories to illustrate concept or idea	8		A2	A3			A6		A8
		B1		B3					
			X2			X5			
Reframes when person has trouble understanding	12	A1	A2		A4		A6		A8
			B2		B4	B5			
		H1				H5		H7	
						X5			

### Forbearance

The element of compassion judges demonstrated consistently was forbearance which is defined in the literature as not becoming irritated or angry when a person does not understand what is expected or is noncompliant (Skaff et al., 2003). To some extent all 28 of the judges demonstrated forbearance although in various ways. The first thing noticed was the language of forbearance, also known as mercy, which was intriguing and a sharp contrast to traditional courts. Judge X5 started a conversation with a noncompliant participant as follows, “We have some things to talk about today.” Judge A8 stated, “Here we sit, what are we to do? 11 dirty tests but I’m not giving up on you.” Judge X6, “I’m so sad that you cannot stay clean.” This statement was made during a termination hearing and the judge came down from the bench and hugged the person. The individual was not terminated but sent to a residential treatment program. Judge A7, “Let’s get you back on track.” Judge X2 had to send an individual to the state prison residential substance abuse program. This judge teared up and stated, “It breaks my heart but you are going to be better for this.” Judge B6 said, “It’s time to fish or cut bait, your choice.”

All 28 judges struggled with terminating participants from the program. Of the 31 courts observed only Judges A1, A6, A7, H3 and X4 terminated a participant from the drug treatment court program. Judges tried hard not to terminate a participant from the program and thought out loud about the impact on the person’s recovery and life. Judge A4 was the only judge in this data set who appeared visibly upset when a participant insisted on being dishonest even when confronted with evidence to the contrary. Most judges demonstrated an intolerance of dishonesty, however, if a person was up front about their infraction, usually a dirty drug test, or they confessed to their wrongdoing without prompting, the judge would not terminate them or be too harsh in the consequence. Judges A3, A4, A7, B1, B3, B5, H2, H7, and X3-X5 would take the time to try and understand why a person violated the rules, drank or used drugs. Judges A5, A7, A8, B1, B3, B6, B7, H2, H6, H7, X2 and X5 sought solutions to address the individual’s inability to stay clean by recommending other programs or having their staff investigate other options for the participant. All 28 judges were heard at least once during the court proceedings saying, “Do not give up” or “I am not giving up on you.”

Table 14

*Forbearance*

Participant terminated from the program for rule violation	5	A1					A6	A7	
				H3					
					X4				

(table continues)

Tried to understand why person violated rule, lied or is struggling	11			A3	A4			A7	
		B1		B3		B5			
			H2					H7	
				X3	X4	X5			
Explored solutions to address relapse	12					A5		A7	A8
		B1		B3			B6	B7	
			H2				H6	H7	
			X2			X5			
Encouraged person not to give up	28	A1	A2	A3	A4	A5	A6	A7	A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2	H3	H4	H5	H6	H7	
		X1	X2	X3	X4	X5	X6	X7	

### Attention to Detail

Judges A2, A5, A6, A8, B2, B3, B5-B7, H1, H2, H6, H7, X3, X5 and X6 paid close attention to the participant's appearance, problems and complaints. Judges A1, A2, A4-A6, A8, B1-B5, B7, H1, H2, H7, X2, X5 and X6 noted large and small accomplishments of the participants from getting jobs and phasing up, to managing to get to court on time and helping another participant. Although this is in compliance with drug court standards (National Association of Drug Court Professionals, 2013) and judges receive limited training on incentives and sanctions, this type of recognition was specific and detailed. Very little appeared to go unnoticed in these courts. Judges A1, A2, A4-A6, A8, B1-B5, B7, H1, H2, H7, and X3 could articulate specific information about various treatment modalities which in turn deepened the level of conversation between the judge and the participant. Judge B3 would ask a participant what level they were on in the MRT treatment program. When the participant responded, the judge carried on a conversation with the participant relating that level with the participant's current life. This also let the drug treatment court

participants know that the judge knew what they were doing so they could not fake it. Judge B3 also noted a participant's new haircut and outfit. Judge X5 would also comment how sharp a person looked in court that day. Judges H5, B2 and A5 all observed that an individual participant was not feeling well and offered consoling remarks.

Table 15

*Attention to detail*

Comment on DCP appearance	16		A2			A5	A6		A8
			B2	B3		B5	B6	B7	
		H1	H2				H6	H7	
				X3		X5	X6		
Noted accomplishments	18	A1	A2		A4	A5	A6		A8
		B1	B2	B3	B4	B5		B7	
		H1	H2					H7	
			X2			X5	X6		
Knowledge of treatment modalities	17			A3	A4	A5	A6		A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5		H7	
				X3					

**Concern**

The concern element according to Skaff, et.al. (2003), is the expression of genuine concern for a person's problem. Judges demonstrated this kind of concern for participants in a variety of ways. Judges A1-A3, A7, B1-B5, B7, H1, H2, H5-H7, X2, X3 and X5 verbally expressed concerns about a participant's specific problem and actively sought solutions. One drug court participant suffered a stroke and Judge A1 made sure that everyone; other participants, staff, and the bailiff signed a get-well card. Judge B3 commented to a

participant, “I know you are struggling, I can see it.” This comment not only demonstrated concern but also showed that the judge paid attention to detail. Judges A1-A3, A5, A7, B1-B4, B7, H2, H5, H7, X2, X3 and X5 were observed helping the participant’s problem solve. Judge A5 indicated, “Your safety is important to me” as she problem-solved with participant and staff the issue of the participant’s boyfriend stalking her. Sometimes the problem solving took place in open court and other times in the pre-court staffing depending on the sensitivity of the issue. Judge A5 requested that staff find a different type of counseling for a participant because the one they were using was not working. Judge B3 inquired of a participant why he was not making progress in his assigned program and found out that the participant had issues with literacy. The judge’s response was to order tutoring for the participant and if that did not work then they would seek an alternative program. Judges appeared genuinely concerned about the basic needs of a participant; housing, food, health, and jobs, and they worked hard to ensure that these basic needs were met. Judge A3 commented to the all of the participants, “Your homework for the weekend is to do something fun as long as it is a legal, sober pro-social activity. It’s important to be balanced.”

Judges A2, A6, B1-B3, B7, H2, H5, X3 and X5 ended their interactions with participants by inquiring how the drug treatment court team could assist or help the participant. Judges A6, B3, B6, B7, H2, H5 and X5 asked the question, “What do you need?” Judges A1, A2, A4, A6, A8, B1, B3, B4, B6, H7, X3, X5 and X6 took time to explain the risk of specific behaviors a participant might be engaging in that the participant may not have thought about, e.g. drinking certain energy drinks might create a false positive on a drug test, hanging out with certain people increase the risks of relapse, people, places and things that trigger the desire to use drugs or alcohol.

Another demonstration of concern was the issue of confidentiality. Judges A1, A6, A8, B1, B2, B6, H1, H3, H6, H7, X3 made statements in open court that were protective of a participant’s confidentiality. Judge H3 asked the question “Do you feel like talking to me about that?” before delving into a specific subject matter. Judge A6 expressed concern about a participant’s confidentiality by stating, “It’s your business and you do not have to share this with us.” Judge H1 attempted to stop a participant from talking about a very intimate detail of her life.

Table 16

*Concern*

Expressed concern about participant’s well-being and their problems.	18	A1	A2	A3				A7	
		B1	B2	B3	B4	B5		B7	
		H1	H2			H5	H6	H7	
			X2	X3		X5			
Engaged in problem solving.	16	A1	A2	A3		A5		A7	
		B1	B2	B3	B4			B7	
			H2			H5		H7	
			X2	X3		X5			
How can we help you?	10		A2				A6		
		B1	B2	B3				B7	
			H2			H5			
				X3		X5			
What do you need?	7						A6		
				B3			B6	B7	
			H2			H5			
						X5			

(table continues)



Explain risk	13	A1	A2		A4		A6		A8
		B1		B3	B4		B6		
								H7	
				X3		X5	X6		
Protected confidentiality in open court	11	A1					A6		A8
		B1	B2				B6		
		H1		H3			H6	H7	
				X3					

### Consideration

Judges A2, A6, A7, A8, B1-B7, H1, H2, H5-H7, X2, X3, X5 and X6 were very careful with the words they used with participants and demonstrated a respect for an individual's right to self-determination. When dealing with a participant's emotional state and hair trigger temper, Judge B1 said, "I need you to do me a favor. My instincts are good, something is up with you. I want you to spend time today with the counselors one on one. If I'm wrong, no harm no foul." Judges X5, B1-B5, and H5 all allowed participant's time to self-surrender for their sanctioned jail time so that they would not lose their jobs. Although judges recognized a person's right to self-determination, they also talked to the participants using stories, analogies, and reframing to keep the participant from making choices that worked against their own self-interest. Sometimes this worked and sometimes it did not. Judge A7 gave one participant opportunity confess their wrongdoing and had determined in advance to give him a break if he "came clean." Judge B4 was advised that a young lady was inappropriately dressed for court. The judge asked in the pre-court staffing meeting for two of the counselors to take the young lady

into a private room and discuss appropriate attire. The judge admonished the counselors to do handle this “privately, gently and discreetly.”

Judges demonstrated consideration for participants when they held staff and programs accountable for the services they were delivering or did not deliver to the participants. Judges A5, B3, B4, B7, H1, H5, and H7 all took staff to task if something the judge ordered was not happening for a drug court participant. The judge would inquire why and ask how the staff was going to fix it. Accountability is huge in these courts not only for the participants. The drug court team concept helps the team to hold one another accountable, including the judge, but in reality the buck stops with the judge as the leader of the team.

Table 17

*Consideration*

Recognized person’s right to self-determination	20		A2				A6	A7	A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5	H6	H7	
			X2	X3		X5	X6		
Hold Drug Court Team accountable	7					A5			
				B3	B4			B7	
		H1				H5		H7	

**Honoring the Person**

Skaiff, et al., (2003) describes honoring the person as respecting them and their individual needs. In this study, honoring was expanded to include uplifting and encouraging the participants as well as expressing admiration. In addition to applause and recognition for

hard work, judges A1-A8, B1-B7, H1, H2, H5-H7, X1-X3, X5 and X6 honored people by treating them as human beings worthy of dignity and respect and not as criminals and drug addicts. Judge X5 commented “I’m proud to be a part of your community.” Judges A4, X3, B1, B4, and H3 asked new participants how they would like to be addressed. Judge A4 apologized to a participant in open court for misjudging a situation. Judges A1-A8, B1-B7, H1, H2, H5-H7, X1-X3, X5 and X6 used empowering language to encourage and uplift the individuals appearing in their courts. Ten of the judges A1, A4-A7, B3, B6, H1, H5 and H7 expressed admiration for the effort and work being done by individual participants. An example of this admiration was expressed by Judge A7, “Thanks for being a role model to your brothers.” Judge B6 stated, “Don’t thank me, thank yourself.” Judge B3 commented to the participants at large in the courtroom, “each of you have powerful stories.”

Table 18

*Honoring the Person*

Judge is respectful and courteous	25	A1	A2	A3	A4	A5	A6	A7	A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5	H6	H7	
		X1	X2	X3		X5	X6		
Uplifts the person	20	A1	A2	A3	A4		A6	A7	A8
			B2	B3	B4			B7	
		H1	H2			H5	H6	H7	
		X1	X2	X3		X5			
Judge used empowering language to encourage	25	A1	A2	A3	A4	A5	A6	A7	A8
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5	H6	H7	
		X1	X2	X3		X5	X6		

(table continues)

Asked new participants how they would like to be addressed	5				A4				
		B1			B4				
				H3					
				X3					
Expresses admiration	10	A1			A4	A5	A6	A7	
				B3			B6		
		H1				H5		H7	

### Patience

As indicated earlier these courts have very large calendars. Despite the time constraints and large calendars, judges A1, A3, A4 A6, A7, B1-B7, H1, H2, H5, H7, and X2-X5 did not appear to be rushing through the calendars and would take more time with an individual participant if needed. Judges demeanor did not change if court was going longer than anticipated.

Judges demonstrated patience by listening to what the person had to say in response to their questioning. The only time judges demonstrated impatience was when a participant was dishonest. Judges A4, A6, A8, B1, B2, B4-6, H2, H7 and X2-5 all had participants who tried to cheat the system by diluting their drug test or forging their treatment attendance records. These judges would only grow impatient if the person 1) committed this offense more than once or 2) continued to lie about it. Judges seemed to understand that manipulation and lying are characteristic of drug addicts. If the person refused to tell the truth the judge usually put them in jail for further time to reflect on the conduct.

A good demonstration of patience was judge A4 who listened to a long story from participant about a domestic violence incident with his girlfriend. The judge then played

a police car video of the police investigating the incident and taking a statement from the participant's mother and father which was the opposite of the story the participant told. Upon seeing the video, which the participant, clearly did not know the judge had, he broke down into tears and confessed. The judge remanded the participant into custody and was seriously considering a second chance for him. The matter was on calendar for a termination hearing and every member of the drug court team had recommended termination.

Judge B4 demonstrated patience when one court participant acted out in court because he was upset with another participant and felt that the drug court team had treated him unfairly. The judge listened to the participant vent and then patiently and calmly mediated the difference between the two men in open court.

Table 19

*Patience*

Not rushing through calendar	20	A1		A3	A4		A6	A7	
		B1	B2	B3	B4	B5	B6	B7	
		H1	H2			H5		H7	
			X2	X3	X4	X5			
Take time if more time is needed	19	A1	A2	A3	A4		A6	A7	
		B1	B2		B4	B5	B6	B7	
		H1	H2					H7	
			X2	X3	X4	X5			
Judge impatient when participant not being honest	14				A4		A6		A8
		B1	B2		B4	B5	B6		
			H2					H7	
			X2	X3	X4	X5			

## **Summary of Court Observations**

Observations in this study reveal that compassionate behaviors as described by Skaff et al., (2003) are occurring in adult drug treatment courts on a consistent basis. The data shows that drug treatment court judges do not feel constrained by the limited time available and their demeanor are anything but, impersonal, routine, or business-like when it comes to interactions with the drug treatment court participants. The observational evidence suggests that drug court judges are very respectful when dealing with the drug treatment court participants. The judges in this data set, welcomed engagement with the participants and tended to express patient and courteous demeanor when speaking with them. The observational evidence also suggests that judges can demonstrate compassion and hold people accountable for their misconduct simultaneously. The patterns in the data set suggest that compassion and accountability for bad conduct are not mutually exclusive in the context of adult drug courts. These observations formed the basis for reflection during the semi-structured web-based dialogue sessions.

## **Stage 2 - Structured Web-based Dialogue**

The second stage of data collection occurred over a four-week period in a confidential electronic web forum, The West Education Network, hereinafter referred to as TWEN. The 22 judges who agreed to participate in the forum signed an informed consent form which explained the overall objective of the study and what was required of them. See Appendix E. Once the informed consent was signed, the judges were provided a copy and sent a guest registration email, Appendix G and a getting started memo, Appendix F which described the system requirements for using TWEN and the instructions for accessing the Compassionate Jurisprudence forum on TWEN. Although several of the

judges had difficulty accessing the forums and one judge had to be reminded to use his pseudonym instead of his name, by the second week judges were engaged and talking in the forum. To compensate for the week 1 slow start, researcher re-posted questions for week 1 in week 2.

The second stage was for the researcher to engage judges to think and reflect about compassionate behaviors in drug courts. Dialogic inquiry action research involves an intervention in the participant's thought processes to understand how they see and reflect on the picture that emerged from the observation data (Stringer, 2007). The structured web-based dialogue began on May 14, 2017 and ended on June 11, 2017. Each day's question remained open for 48 hours allowing judges time to catch up in the event their schedules did not allow them to check in daily. It should be noted that not all judges participated fully in stage 2 of the study. Thirteen of the 22 judges, A4-A6, B1-B4, B6 and H2-H6 participated daily and answered most of the questions. Even if they did not answer a question, they checked into the forum as evidenced by the digital transcript. Four of the judges A1, A7, H1 and H7 participated intermittently answering approximately 40 percent of the questions. Judges A2, A3, A8, B5, and B7 apologized and dropped out of the study early on stating they could not participate due to conflicts in schedules. Judges spent a total of 1338 minutes in the web based forum over the course of four weeks, collectively 22.3 hours. Researcher spent a total of 178 minutes in dialogue with the judges in the web based forum over the course of four weeks, approximately 3 hours. The median number of hours judges spent in the forum over the course of four weeks was 1 hour and 15 minutes. See Table 20.

A tickler email was sent to the judges immediately when a question was posted in the forum. They also received a message when the posted question was about to expire.

Table 20

Time Spent in Confidential Web-based Forum

<b>Participants</b>	<b>Minutes in Forum Week 1</b>	<b>Minutes in Forum Week 2</b>	<b>Minutes in Forum Week 3</b>	<b>Minutes in Forum Week 4</b>	<b>Total Minutes in Forum</b>
Altruist 1	6	12		16	34
Altruist 4	17	15	17	16	65
Altruist 5	13	15	27	19	74
Altruist 6	9	13	25	22	69
Altruist 7	5		18		23
Benevolent 1	31	33	15	17	96
Benevolent 2	6	22	25	18	71
Benevolent 3	11	13	13	11	48
Benevolent 4	8	15	15	20	58
Benevolent 6	11	27	43	34	115
Humanitarian 1		13		54	67
Humanitarian 2	15	54	18	21	108
Humanitarian 3	26	27		16	69
Humanitarian 4	26	56	5	17	104
Humanitarian 5	36	71	9	20	136
Humanitarian 6	47	51	16	43	157
Humanitarian 7	20	16		8	44
<b>Total</b>	<b>287</b>	<b>453</b>	<b>246</b>	<b>352</b>	<b>1338</b>
<b>Researcher</b>	<b>30</b>	<b>50</b>	<b>48</b>	<b>50</b>	<b>178</b>



Judges knew that they had been observed, however, they were not informed of the results of the observations in advance of the questions being posted. The idea was to triangulate the observation data with the structured web-based dialogue to see whether the judge's behavior in their natural environment, i.e. the courtroom, was consistent with what they revealed through dialogue. Cohen and Manion (2000) define triangulation as an "attempt to map out, or explain more fully, the richness and complexity of human behavior by studying it from more than one standpoint."

Dialogic inquiry research is an action research method that involves interactive conversations between the participants and the action researcher. The primary sources of data used in the web-based semi-structured dialogue were the observation of judges as they performed their duties in their respective drug courts which provided the opportunity for judges to probe and analyze their own and other judges' experiences, thoughts, and feelings about compassionate behaviors.

The web-based semi-structured dialogue was examined for meaning-making potential of the exchanges between the judges. The dialogue was digitally recorded on the website and the judges had immediate access to the web-based dialogue transcript which gave them the ability to see what they had said in real time and what was said by other judges in their respective cohort in real time. Digital recording ensured the accuracy of what was being said (Creswell, 2005, Rubin & Rubin, 2005).

Daily the judge's responses to the questions were reviewed and notes were made to determine the relationship between this data and the following research question; Whether awareness of compassionate behaviors in drug court, gleaned through observation and a dialogic process, influence judges to create interruptions and upheavals in: (1) their own

thought processes, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001, O'Connell, 2005). The judge's responses to the researcher's questions were recorded on a digital transcript. The daily summary memo was written to capture the perceptions of the judges over a one month period. Thoughts that occurred to the researcher as well as quotes that suggested a theme were recorded. Statements that judges made that required follow up to determine their meaning were noted as well. The researcher lifted the date, and the amount of time a judge spent on that day from the digital transcript. Differences in opinion were noted as well as which judges held those differences in opinion. The summary memo then noted main points made by the judges that addressed the research question and the themes identified from their responses. Clarifying questions by the researcher were noted in the memo as well as bias or slant detected in the judge's answers. The summary was made to help guide the research analysis.

The findings in the building a picture of compassionate behaviors section were gathered from the first phase of data collection, the court observations. After the observation data was analyzed, researcher posed questions to the judges and they engaged in dialogue with the researcher and with one another to develop an understanding of compassion in the courts from their perspective as drug court judges. The questions posed to the judges are outlined in Table 21. The dialogue between the researcher and participants during the second stage of the study resulted in explicit and implicit comments from judges (A1, A4-A7, B1-B4, B6, and H1-H7) about what compassionate behavior looks like during drug court proceedings. The explicit responses were the responses elicited from the questions posed to the judges in Table 21. The implicit comments about compassion came about as the judges discussed what

compassion looks like in various situations e.g. when disappointed or angry, or drug court participant keeps violating the rules.

The researcher's interaction with the judges primarily was to request clarification of a statement or pose a scenario observed during the observations to clarify the question asked by the researcher.

Table 21

*Web-based Dialogue Questions*

---

Week 1 - Day 1	One of the most prevailing definitions of compassion in the research world is - identifying the suffering of another and taking steps to alleviate that suffering - If a perfect stranger walked into your accountability court looking for a compassionate judge, what behaviors would they see that would lead them to believe that you are compassionate?
Week 1 - Day 2	You are now the observer looking for compassion in the courtroom. Focus now on the entire courtroom and all of the players, not just the judge. What behaviors are you looking for?
Week 1 - Day 3	Adult Drug Court Best Practice Standards indicate that participant outcomes are better when judges spend an average of at least 3 minutes interacting with the participant during court sessions. Is the amount of time important? What are you trying to accomplish in the time that you spend with each participant in court?
Week 1 - Day 4	What does compassion look like when you are angry or disappointed with a participant?
Week 1 - Day 5	What influences might enhance or inhibit the expression of compassion in your courtroom?
Week 2 - Day 1	I observed over 30 courts in 60 days throughout the state and a few in other states. When it comes to honoring behavior I noted the following: (the list is not exhaustive) Judges taking photos with participants who were phasing up; Judges coming off the bench to shake hands and take photos with phase ups; Judges reminding participants of progress even if they had to remand or reprimand them; Looking the person in the eye and having a conversation; Complimenting how great the participant looks; Encouraging those who relapse or get in trouble; Judges standing down with participants instead of sitting on the bench; Self-disclosure of judges own personal struggles in the past; Always ending on a positive note. Question: What do you think of the honoring behaviors noted above? What other honoring behaviors would you add to the list?

---

(table continues)

- 
- Week 2 - Day 2 Most accountability courts assess fees. The handling of these fees with the participants was very diverse throughout the state. Some courts did not deal with this issue in open court unless the participant was really messing around or being dishonest. Some courts dealt with the issue with every participant first thing. They would state how much is owed and discuss why late or when it would be paid all in open court. Some judges mentioned it at the end if the person were behind but did not make a big deal out of it. They would say something like you owe X amount and we do not want that to be the reason to hold you back from phasing up. Some courts made a very big deal out of the fee issue, it literally overshadowed everything else. Some courts celebrate if a person is all paid up. Question: How much should the court make of the fees? How do you think this makes the participant feel? What do you think is the best way to handle the issue of fees?
- Week 2 - Day 3 Most judges were very careful about honoring a person's right to confidentiality. Even when a person started talking about a very personal issue or intimate details of their lives, judges would tell them they do not have to share that information in open court. Why do you feel that this is important? Or not?
- Week 2 - Day 4 Like the Day 1 questions here are some behaviors observed that created a supportive environment in the courtroom: Judge gives a brief opening statement remind people "we are all in this together;" Judge calls up groups of people not by phase, but if they are experiencing similar struggles or an individual that is struggling with a particular thing with an individual who has overcome that struggle; Judge stands close to the people either behind the podium or in front of the divider and talks to the participants or has the person come up to where he/she is by the podium; Judge tosses out a question to the group of participants as a group question. What do you think of these behaviors noted above? How do you create a supportive environment in court?
- Week 2 - Day 5 What body language or behaviors lets you know that you are making a connection with a participant? Is it important to you to make a personal connection with your participants? If yes, what behaviors do you engage in to make that connection?
- Week 3 - Day 1 How important is it for an accountability court judge to understand the recovery process, the tools of recovery, and the treatment modalities? (i.e., MRT, 12-step, 7-Habits, etc.)
- Week 3 - Day 2 During my observations judges ended their conversations with participants in various ways. Some asked is there anything that we as a team can do for you? Some asked is there anything else that you need? Some end with an affirmation, Keep up the good work or Hang in there it will get easier. Some issue a challenge, next time we meet I would like to see..., How do you try to end your court encounter with the participants and what are you trying to accomplish with your ending?
- Week 3 - Day 3 How long does it take you to get to know a participant? What helps you to get to know them?
-

- 
- Week 3 - Day 4 When participants appear in court, some judges ask participant for a personal affirmation (they write it on a card before they come up), some judges have a question of the day, some individualize the question depending on what the participant is going through. These seem to be icebreakers to get the participants to relax or to engage in the process. How do you engage your participants in the court process?
- Week 3 - Day 5 How do you feel when you run out of options for a participant?
- Week 4 - Day 1 Are there behaviors that you have acquired in your accountability court that you did not do before? (e.g. eye contact, encouragement, attentive listening, consideration)
- Week 4 - Day 2 How much consideration do you give to what a participant feels is in his or her best interest?
- Week 4 - Day 3 In my observations, I saw many judges struggle with termination decisions. When do you feel compelled to exercise forbearance (mercy) with a participant?
- Week 4 - Day 4 Of all the things, you do and the things we discussed over these weeks which of these would you say are transferable to a traditional court calendar?
- Week 4 - Day 5 Would you describe yourself as a compassionate judge? What do you want your legacy as an accountability court judge to be?
- 

As indicated above, judges were divided into three cohorts; Altruists (A1-8), Benevolent (B1-7), and Humanitarian (H1-7). The most active cohort was the Humanitarian cohort which remained intact as a cohort for the entire 4 weeks.

The dialogue between the researcher and the participants during the structured web-based section of the research elicited explicit and implicit comments from 17 of the 22 participant judges A1, A4-A7, B1-B4, B6 and H1-H7. As indicated earlier 14 of the judges participated consistently. Three of the judges A1, A7, and H7 participated intermittently answering questions when their schedules permitted. Judges A5, B4 and H4 sent follow-ups to questions after the structured web-based discussion had closed. Judges also went in and out of the forum at different times of the day as did the researcher. In mid-week 2 the Altruist's forum was getting little activity. At that time, all judges were given the option to join in on discussions in other forums. They would retain their pseudonym in that forum.

Judges A4-A6 and B2 opted into the Humanitarian forum which resulted in active dialogue among the judges rather than judges simply answering the researcher's questions. The figures below illustrate the emerging themes within the findings of compassionate behaviors in drug courts and the list of participating judges for each question.

### **What Compassion Looks like in the Courtroom?**

Sixteen participant judges discussed what compassion looks like in the courtroom. There were a variety of responses to this question, but several themes emerged from the discussion. The most frequently mentioned behavior mentioned by the judges was listening. Judges B1, H2, H4, A5, B3, and H7 all mentioned attentive listening or careful listening in their responses to the question. Another frequently mentioned behavior was respect. Judges A4 and A5 saw listening as a sign of respect. Judge A1 expressed, "I listen and do not cut the participant off to show them respect." H4 also mentioned showing dignity and respect by listening. Respect for the person as well as respect for their point of view was a theme that emerged as well. Judge B4 reflected that the use of non-threatening language was an important aspect of compassion.

Judges H2, A6, H3 and B1 indicated that not only should their language be respectful, non-threatening and clear, but it should be caring. Judges H5, A5, B3, B4 all articulated that explaining the rationale for their decisions and letting people know what is expected of them is compassionate. The third most mentioned behavior by the judges was encouragement of the participants in their drug courts. All participant judges saw praise and encouragement as a compassionate behavior. Not only the judges encouraging the participants, but as judge H4 put it, "you see the participants encouraging one another."

Judges H6, A5, H4, H2, B1 and B3 mentioned smiling and eye contact specifically as an act of compassion. One behavior mentioned that was surprising to the researcher was the concept of a calm, quiet and orderly court as an expression of compassion. Researcher asked Judge A6 to clarify the statement “The courtroom would be quiet and orderly” in response to the question what does compassion look like in a courtroom. Researcher asked the judge to clarify how this is a display of compassion. Judge A6 responded that it reduces confusion and discomfort because everyone would know where they were supposed to go and sit and the individuals would know what was expected of them so they would not be anxious.

Week 1 Day 1 / Day 2 - What does compassion look like in a courtroom?	16 Judges	A1			A4	A5	A6	A7	
		B1	B2	B3	B4		B6		
			H2	H3	H4	H5	H6	H7	

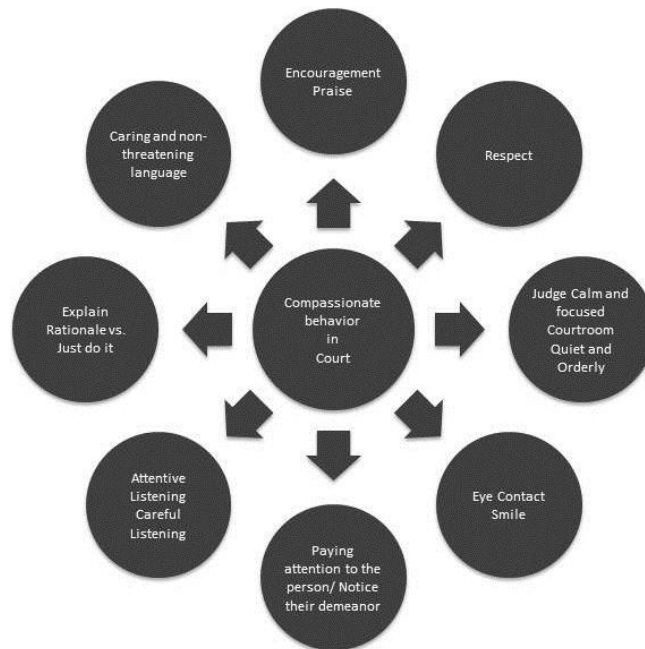


Figure 11. What compassion looks like in the courtroom.



### **Is the amount of time spent with participant important?**

The second question researcher posed to the judges focused on the amount of time the judge spends talking to the participant in the courtroom and what they are trying to accomplish in that discussion. Judges A4-A6, H4 and A5 all agreed that 3-5 minutes' minimum or more depending on the circumstances of the participant's situation, is essential. During that time, the judges are trying to determine what motivates a participant. Judge A5 and H6 use that time to make sure the participant knows they care about them and understand their circumstances. Judge H4 uses this time to reinforce the positive aspects of the person's life and discourage the negatives. Judge B1 celebrates accomplishments and shares stories with them. Judges genuinely want to build trust with the participants in their courtrooms. Another theme that emerged was determining what motivates the participant so that the judge could emphasize and support the individual.

The judges use the time with their participants to go over weekly progress and to encourage more of the positive. Judge B3 indicated that time is important. It is the only way that people will feel connected and special. Judges uniformly are trying to build trust and relationship. Judges B4, A5, A6, H2 and H7 use the time with the participant to engage in dialogue about what the participant is learning. Judge A6 said, "Time is what lets the participant know you care."

Judge A4 indicated that the time with each individual case seems really long and it is especially hard if the person does not want to talk. In this instance, the judge's instincts say let the conversation go where the person wants it to go. Judge A4 and B2 demonstrated flexibility with time. A6 said, "A set time is not important, what's important is that they get the time that they need."



Week 1 Day 3 – Is the amount of time spent with a participant important? What are you trying to accomplish in that time?	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
			H2	H3	H4	H5	H6	H7	

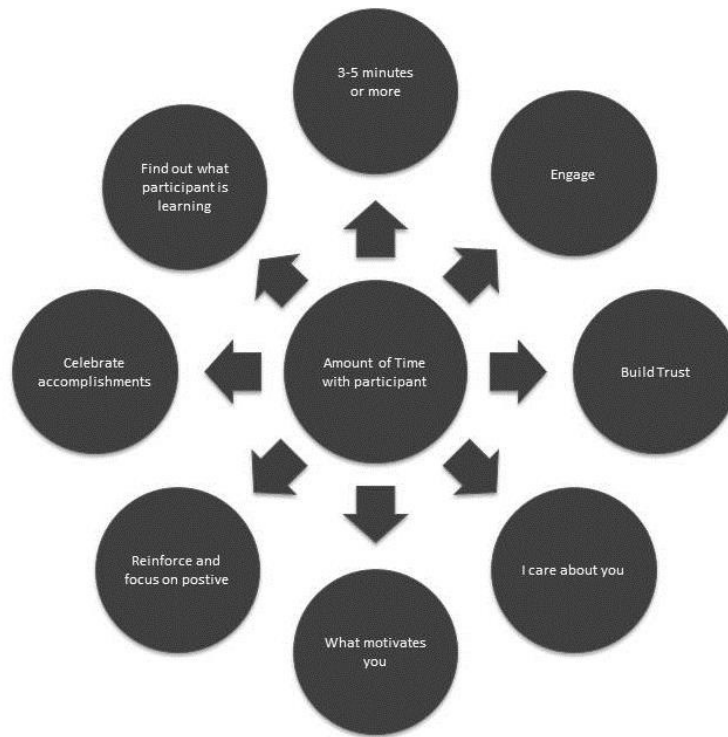


Figure 12. Amount of time spent with participant.

### What does compassion look like when you are disappointed or angry?

All judges tended to agree it is one thing to be compassionate when all is going well and everyone appearing before you are compliant with court orders, but it is another thing when those orders are not being followed. Judge A5 indicated I say, “I’m disappointed.” It is important to let the participant know that you are disappointed was the refrain of several judges. All agreed it is not helpful to display anger. It is more important to encourage them to do better and to remind them of past successes. B4

encourages the participant to learn from it by asking, “What could you have done differently?” H3 will tell the person that they feel sorry or bad about this situation and help them to process what happened. Judges B1 and H1 acknowledged that change does not happen overnight and the important thing is to instill hope and not give up.

“I still believe in you” said judge H2, “Don’t give up.” Judge A6 indicated when the judge is angry it places the focus on the judge’s feelings. Shifting the discussion to the “disappointment” moves the focus to the participant and their actions. Judge A4 noted, “It is important to not let the disappointment drive the moment. Use it to teach.”

Week 1 Day 4 - What does compassion look like when you are angry or disappointed?	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6		

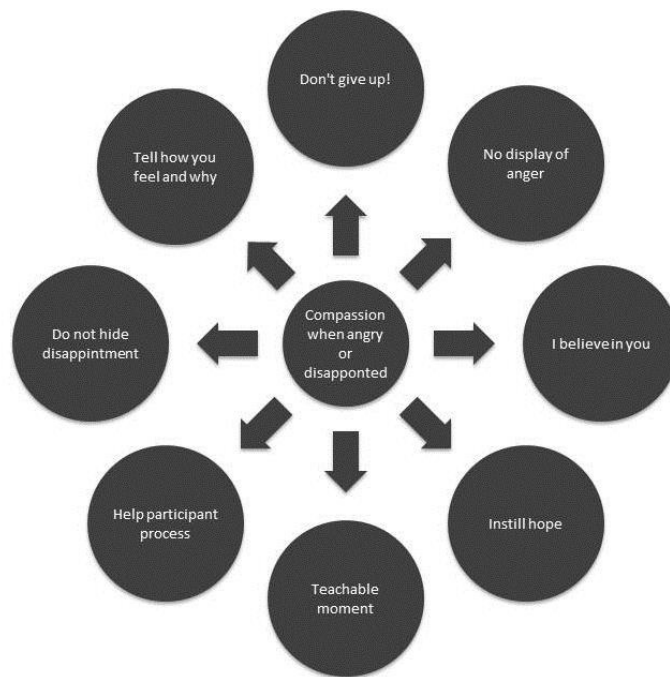


Figure 13. What compassion looks like when angry and disappointed.

### **What influences might enhance or inhibit the expression of compassion?**

Judges A4 and B4 indicated that counsel from others, i.e. counselors, family members, treatment professionals, with more information might enhance or inhibit expressions of compassion depending on the information. Information about a participant can be a double-edged sword. Likewise, the behavior and attitude of the participant can also enhance or inhibit the expression of compassion. If the person comes into court with a lot of attitude, judge B6 is not very tolerant of that. H6 is not impressed by “kissing up” or “disingenuous or over flattering comments. Lying or cheating on drug tests or lying about curfew or anything else will not endear these judges to the participants who engage in those behaviors. There is also not a lot of tolerance for those who stand in the way of progress for others in the program. In these instances, judge B4 expressed there is less compassion and more frustration. Judge H4 noted it is when participants are behaving badly and not demonstrating remorse or are trying to manipulate that the tendency to go back to the traditional law and order way of doing things emerges. The same judge noted that when that happens he must remind himself that manipulation, lying and scamming the system is how these participants have survived, sometimes for many years.

Week 1 Day 5 – What influences might enhance or inhibit the expression of compassion in your courtroom?	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
			H2	H3	H4	H5	H6	H7	

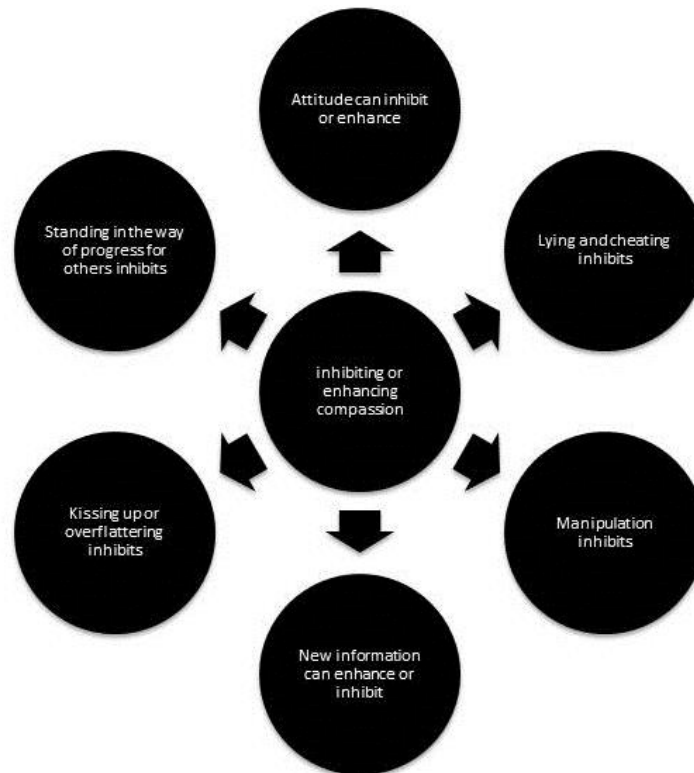


Figure 14. Behaviors that inhibit or enhance compassion.

### Honoring the Person

This discussion was very energized and judges A1, A4-A6, B1-B4, B6, H1-H7 all participated in it. Judges A4, B4 and H1-H6 expressed great admiration for the participants who are in their respective programs and working hard. Every judge had a way of celebrating the successes of their drug court participants. Praise was universal among the judges. Judge A6 noting that the courtroom is not set up for walking down to the participants, calls them up to the bench to achieve closer proximity to give them personal congratulations, thanks them and says, “your progress means a lot to me.” The

judge then stands and has everyone applaud as the person makes their way back to their seat. Judges A5 and B2 provide recognition for a job well done, no matter how large or how small. Certificates of completion are awarded for phase ups. Weekly honor roll is given for achieving small goals throughout the week. Positive developments involving jobs, education, reestablishing or making connections with family as well as sobriety are heralded in these courts. Tangible incentives are provided for very specific achievements related to sobriety. According to Judge B3 tangible incentives are great motivators and, also serve as positive reinforcement of good behavior.

Judge B2 honors people by sharing his story at every opportunity, his personal disclosure is “I too am a recovering alcoholic” he then goes on to share experiences and challenges with alcoholism. Judge B1 honors by coming down from the bench and standing on level with participants and hugs people. Judge B4 on the other hand does not feel respected if not in the robe. Both judges find ways to touch the people they are working with. Photos with the judge were mentioned frequently. Participants love them. When people are struggling, judges B3, B4, H7 and A5 honor them by sharing stories and experiences as well as encouraging them and convincing them that they are not giving up. Judge B4 indicated that he tries to convince the drug court participants,”That they are worthy of all the good things life has in store for them.”

Week 2 Day 1 – Honoring the Person	16 Judges	A1			A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6	H7	

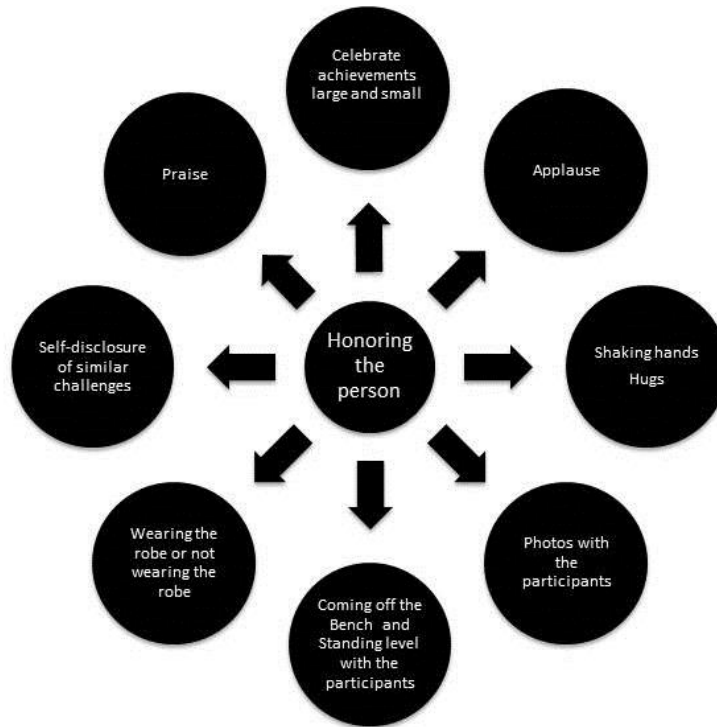


Figure 15. Behaviors that honor the person.

### Handling Court Fees

The Georgia legislature enacted a law that made it possible for courts to charge a fee to the participants for participating in drug courts. The fees range anywhere from \$125 to \$500 a month with a \$1,000 cap for the program duration. The fees are not an admission fee. Participants do not have to pay to get into drug court. The fees are to offset the administrative and program costs of the drug court. This question was added because of a comment one judge made about the shaming nature of charging poor people

fees. According to this judge, “Fees are fines in disguise and traditional punishment.”

The researcher saw this statement as an expression of compassion.

There was strong disagreement among the judges about whether fees are appropriate in drug courts. Judges H4, B2, B1, A6 and A4 saw charging a fee as a benefit for the participant and almost all agreed that fees should not be a barrier to a person being admitted to or participating in drug court. Judge B1 felt fees are a part of the overall behavior change program. Judge H5 and H1 saw fees as the participant’s investment in their own recovery. As Judge H3 put it, “they have skin in the game.” When researcher asked whether it is fair or compassionate to ask poor people to pay fees? Judge H2 noted, “If they can pay for drugs, they can pay for treatment.” Others, like judge B1 felt that it is part and parcel of accountability and learning to live in the real world however, it is not compassionate to ask a poor person to pay or to punish the if they cannot. There was a split among the judges on whether to bring the fees up in open court in front of a courtroom full of drug court participants. Some hope that imposing the financial obligation the participant will become more financially responsible. Judge H4 indicated, “We are very forgiving when it comes to fees, especially as they are trying to get onto their feet after years of drug abuse.”

The researcher elicited specific information from the judges about the various supports and structured payment plans given to participants which were also varied. Judge B1 and H7 simply do not believe in them even though they are provided for in the state drug court statute. The fees accrue and Judge B6 will forgive the balance upon graduation if the person demonstrates that they have done all they can to satisfy their debt. Other judges provide financial management courses for the participants where they prepare a budget which includes the payment of their court fees. Judge A6 will not

mention the fee balance in open court unless it gets over a set amount. If a participant doesn't pay, judge H4 gives them a community service sanction and they must still pay the balance. Others will allow community service in lieu of payment. Judges B6 and B1 indicated that fees will never become a barrier that the participant cannot overcome. B1 provides for a treatment scholarship if the participant is indigent. Fees do not hold people back from phasing up, but it can stop them from graduating the program. Whether a judge believed in imposing fees or not, all participant judges believe they deal with the matter of fees in a compassionate manner.

Week 2 Day 2 – Court Fees	15 Judges	A1			A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6		

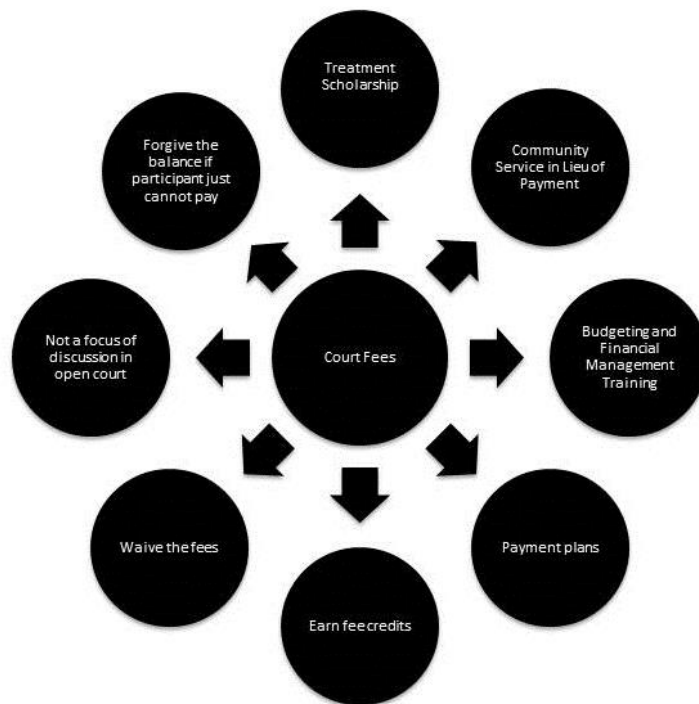


Figure 16. Compassionate behaviors related to court fees.



## **Confidentiality**

Respect for the privacy of an individual is generally not something that is considered in American jurisprudence unless you are in juvenile court. Most court proceedings are open to the public and the records are easily discoverable. This is, despite the fact that a 2015 Pew Research study found, “that the majority of Americans believe it is important – often “very important” – that they be able to maintain privacy and confidentiality in commonplace activities of their lives” (Madden & Rainey, 2015, p2). Drug courts expose individuals to disclosure of very intimate details about their lives. The judges felt that it was important that participants understand that it is not expected that they tell everything about themselves, however, they are available to listen to whatever the participant wants to tell them. Judge A5 indicated that if the case manager or other staff says something in the pre-court staffing that is very sensitive, the judge will address the issue with the participant at the end of the calendar after everyone has left the courtroom.

Judges B1-B4, H2, H3, H1 and B6 all expressed that it is important to respect people’s privacy. Sensitive issues come up in court. When this happen judge A6 will have the person come to the bench, close to the judge. If a person starts to share something sensitive and very personal, judge B4 will stop them and ask whether they would like to discuss the matter after everyone else is gone. Judges try hard not to elicit personal or confidential information.

Judge H3 acknowledged that a lot of personal information about the participant comes to them in any event. It allows the judge to ask the participant whether they want additional help or services and that can be handled discreetly. Judge H1 and the other judges try to discourage people from disclosing the most intimate details of their lives.

Furthermore, participants are advised early on that they have a right to confidentiality and that the court values their right to privacy. H1 points out that it is a balancing act because as judge you want to know what is going on but at the same time it is important to not openly discuss very personal matters or intimate details of their lives for the sake of dignity and self-respect. If the participant wants to discuss something, they can, and they get support from the group. If they do not want to discuss a matter they are not forced to do so. Judges B4 and H3 also reminded the drug court team that treatment professionals are not to share disclosures made in treatment unless it is an extraordinary circumstance.

Week 2 Day 3 – Confidentiality	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6		

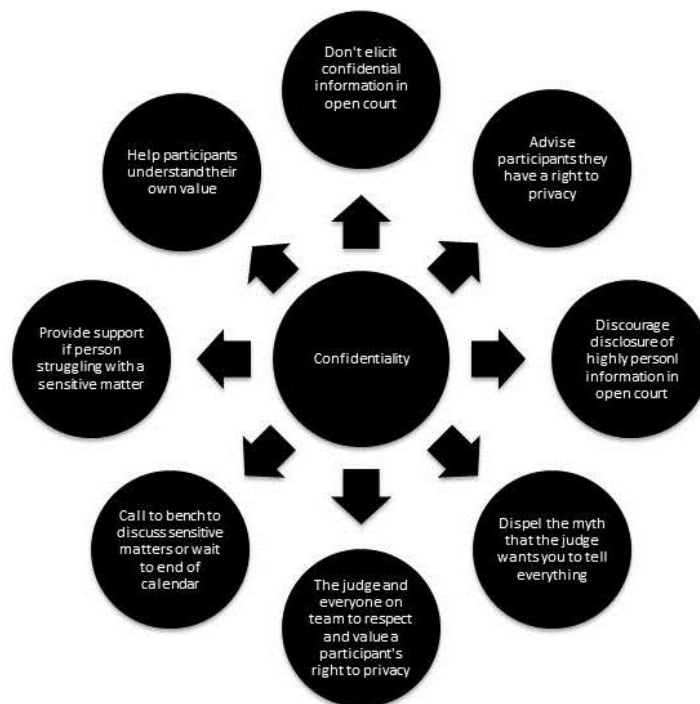


Figure 17. Compassionate behaviors related to confidentiality.

## **Creating a Supportive Environment**

Drug courts are communal in the sense that all drug court participants sit in court together, many of them go to support meetings or treatment together and they start as cohorts. They listen to each other's cases and progress over time. The judge and the drug court team are part of their support system. The team consists of the defense attorney, the prosecutor, probation, case manager, treatment, law enforcement and sometime other supports like job specialists or education specialists. The drug court team show up in court as often as the participants and they all are expected to work together. Researcher asked the judges how they create a supportive environment for the participants. This was an area that judges displayed their individuality and creativity. Judge H3 comes down into the well of the courtroom, this is the open area where the court reporter sits and the witnesses walk through to take the stand. The attorneys sit at a table there. The judge calls the participants up and shakes their hand when they are receiving recognition. The judge makes eye to eye contact on their level. Judge H3 admitted fighting back tears during those close contacts. H6 opens court with an inspirational or positive thought that is intended for all participants and team. Judges A1, A5, H5, and B4 start by saying that the judge and the team are here to help. Others start by asking the participants an open question about how they may be dealing with an aspect of life. Participants generally are asked to share the things that work for them and the things that don't. This may be of help to others in the courtroom.

Judges H4 and A1 have participants turn and speak to their peers at large or sometimes to a specific peer or a new person coming into the drug court program. Judge H1 will ask participants to talk about life before and life after entry into drug court.

Judge A6 enters the courtroom with a smile and immediately starts engaging the group. The idea is to encourage them to work together, to build relationships and trust with one another so when they need something, it is likely that someone will step up to help. Judge H7 shares personal stories about similar issues the participant might be facing. This humanizes the judge and the team. Judge H2 stated, “It lets the participants know that we face the same kinds of problems they face, albeit in a different circumstance.”

Judges B3, H5, H6, start with a group question to highlight a point about sobriety. B6 sometimes suggests that participants partner up with someone else in the drug court program to do something fun and healthy. B4 invites people up as a group and may engage them in a discussion. This can be especially effective if the people all are struggling with the same issue. Judge B5 tells the participants, “We are all in this together and seeking to achieve a common goal.”

Week 2 Day 4 – Creating a Supportive Environment	16 Judges	A1			A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6	H7	

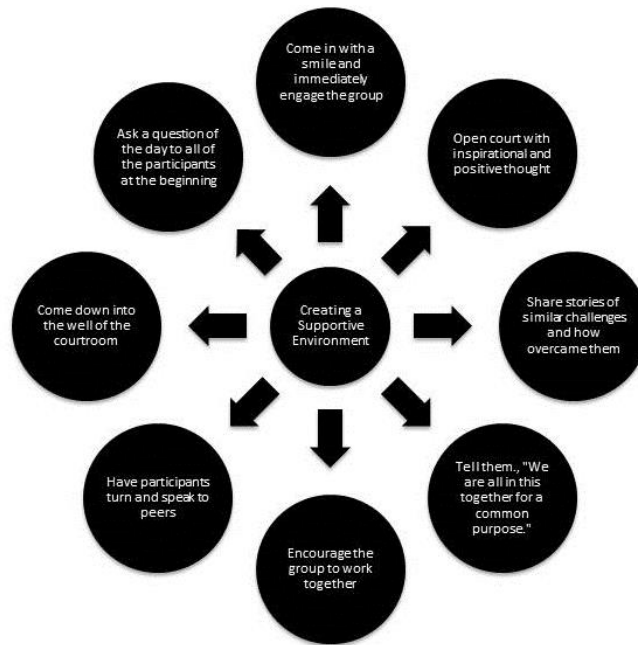


Figure 18. Behaviors that create a supportive environment.

### Connecting with a Participant

Judges generally use their body language and tone to make connections with the participants. Several mentioned eye-contact, smiling, leaning forward and humor as tools to foster connections with people in general and participants in their drug courts specifically. Judges B4, A5, A6, B1, and H2 all mentioned the use of humor. Judge A5 was careful to point out never at the expense of the person. Judge H6 indicated that he is not a joker, but if something funny happens in court he will laugh and acknowledge the humor of the situation. Two judges, A5 and B4 mentioned making fun of themselves.

Every court has several pro-social events throughout the year. It could be a picnic, a Christmas party, or some other social. Usually the participant's families are invited and this is an ideal way to bond with the participant and their family. Judge A5 and B2 indicated that they enjoy these events. Judges A5, A6, B2, B6, B7, H3, and H1 live in small rural communities where everyone knows everyone. Unlike large metro areas, it is not unusual for judges to run into the people who appear before them in court. Judge A6 loves to see them to talk about things other than court. Visual recognition is huge. All agree that humor works well and smiling. Judge B4 indicated when first meeting a participant the discussion is general and easy, mostly small talk. Judge A5 tries to block out everything in the room. "It's just you and I and you've got my full attention."

Judge B1 uses a process he learned from a salesman called the 4 cores of high level service. It starts by looking in the eyes of the person, next the mouth, greeting the person with a smile and the speaking to them enthusiastically. Another way that judges make the connection is by talking about things other than that interest the participant such as their hobbies and family. The ultimate goal of these interactions is to let the participants know that the judges care about them. Judge H2 always ends his discussion with a participant by asking what they can do for them or is there anything that you need?

Week 2 Day 5 – Connecting with a Participant	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6		

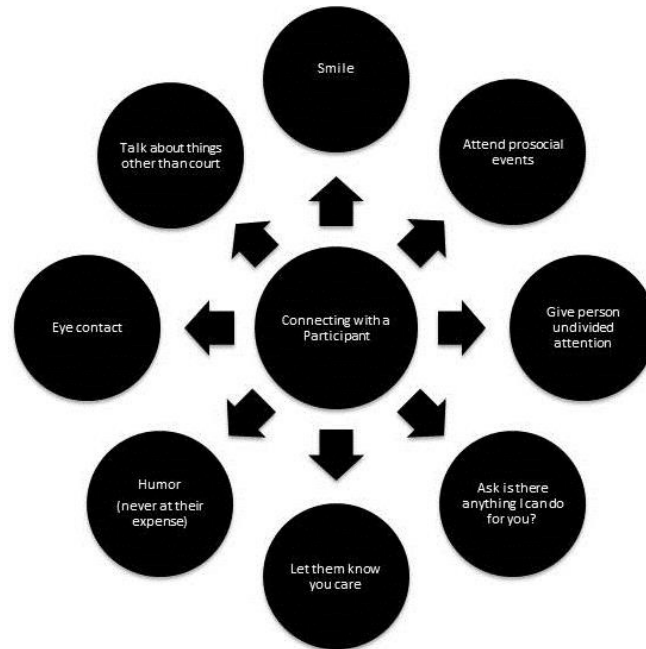


Figure 19. Compassionate behaviors that support connecting with the participant.

### Understanding Recovery

Understanding the recovery process, the tools of recovery and the treatment modalities helps judges to help the participants. It also helps to further connect with the participants by aiding them in their recovery process. According to judge B1 it helps to remember that addiction is an illness. Another advantage is that the judge can reinforce what the participant is learning according to judge H6. The judge doesn't have to be an expert but at least literate in the tools of recovery so that the judge and participant can have an informed discussion. From a judicial standpoint, Judge A4 says that knowing the tools of recovery helps them to understand for themselves whether the person is making

progress or not. Judges generally leave treatment decisions up to the professionals on staff, but it helps to have a good working knowledge. It also helps to hold the treatment professionals accountable or make changes when needed. Judge B1 described a situation where a participant was struggling with their treatment program and was not making progress. By inquiring about the phase of the program the participant was on, the judge determined that the participant had a literacy problem. Once discovered adjustments were made to get the participant in a program that they could function better in.

Understanding treatment modalities also gives the judge a language that they would not ordinarily use and this helps in dealing with treatment professionals who are responsible for the treatment of the individuals in the drug court. It is also a language that the drug treatment court participants understand. H4 indicated that this knowledge also helps to create boundaries as it relates to expectations and have a general idea of what the treatment professionals are trying to accomplish so that the judge can reinforce it in court. It also allows the judge to assess the quality of the treatment the participants are receiving.

Understanding relapse and relapse prevention is critical according to judge B1. Participants are going to relapse especially early in the program until they get some treatment under their belts. Judges need to understand this so that they do not have unrealistic expectations and affect the person's recovery negatively. A6 indicated that failure to understand, "leads to judging rather than measuring progress." A7 stated that understanding recovery helps to interact with the participants on a deeper level. A5 uses the knowledge to relate to the participant's difficulties. The bottom line is taking the time to learn; the process of recovery, the tools of recovery, and the treatment modalities used



in the court is an act of compassion as it leads to deeper connections and the ability to aide in relieving the suffering of another.

Week 3 Day 1 – Understanding Recovery	13 Judges				A4	A5	A6	A7	
		B1	B2	B3	B4		B6		
			H2		H4	H5	H6		

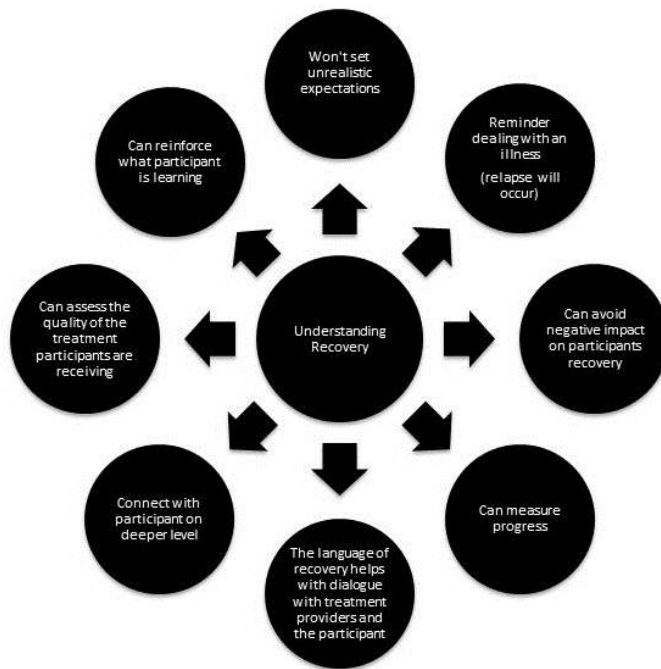


Figure 20. Understanding Recovery as a Compassionate Behavior.

**Ending Strong**

All the judges in this discussion, A5, A6, B1-B4, B6, H2, H4, H5, and H6 try to end on a positive note with each drug court participant in the drug court. “Keep up the good work,” “We are not giving up on you,” “You can do this,” and “Let’s make it happen” are some of the refrains heard in these drug courts. As indicated above, judge B3 ends his conversation with an individual by asking, “is there anything you need help

with today?” Setting expectations is also another way to get the attention of the participant, “I expect more of you” accompanied by a handshake is an ending that is used by judge H4. The closings depend on what’s going on that day. Judges try to individualize the closing for each participant. The common theme was to end on a positive note no matter what is going on with the person. If they have been engaged in violation of the rules or addictive behavior and are being sanctioned, remind them of the good stuff they have been known to do. Judge A5 takes them to that place. Another ending that is used by judge B2 is “Is there anything you want to say or tell me before we are done?”

Week 3 Day 2 – Ending Strong	12 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
			H2		H4	H5	H6		

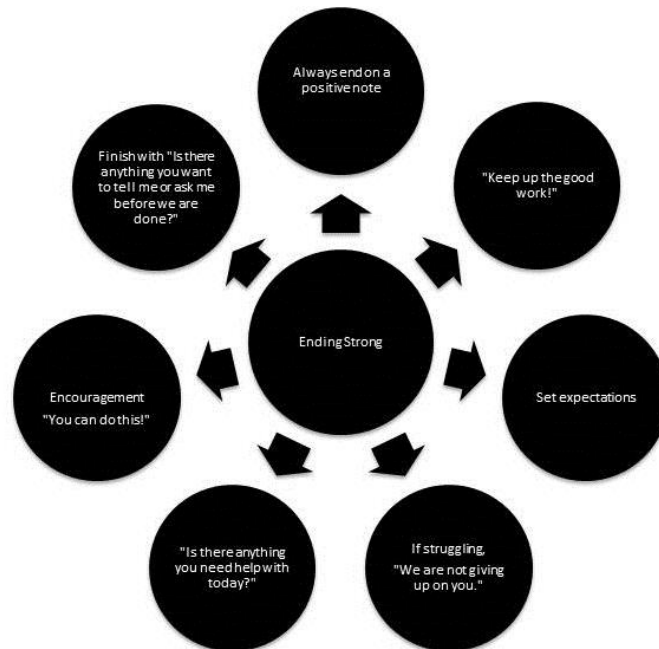


Figure 21. Compassionate endings with participant in court.

## **Familiarity over Time**

Drug courts by their very nature involve many conversations with participants over time. Most of the programs last 18 -24 months and can be extended to 36 months. This is very different from traditional courts even if the court is accustomed to doing review hearings. It takes time to connect with people so this is an advantage that drug courts have. Judges and their staff get to know people and connect with them. Judges were asked how long it takes for them to get to know a participant and what helps them to get to know them? Judges uniformly agreed that it varies with each participant. Judge H6 indicated less than 6 months to get to know a participant. Judge H2 and B3 said 2-3 weeks. H4 also indicated a few weeks.

To create trust, dialogue is essential and the dialogue must be about things that are important to the participant. Judge H6 encourages and sometimes participates in prosocial activities with the participants. Judge B3 attends the drug court orientation to spend time with the new people outside of the courtroom setting. Judge B4 reviews their background information to create a reference point to build upon. The judges all agree that issues and repetition bring familiarity. Judge A5 participates in court sponsored prosocial events like their annual Christmas party where families are welcome and it is a great opportunity to see the participant in a different light.

Week 3 Day 3 – Familiarity over Time	11 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
			H2		H4		H6		

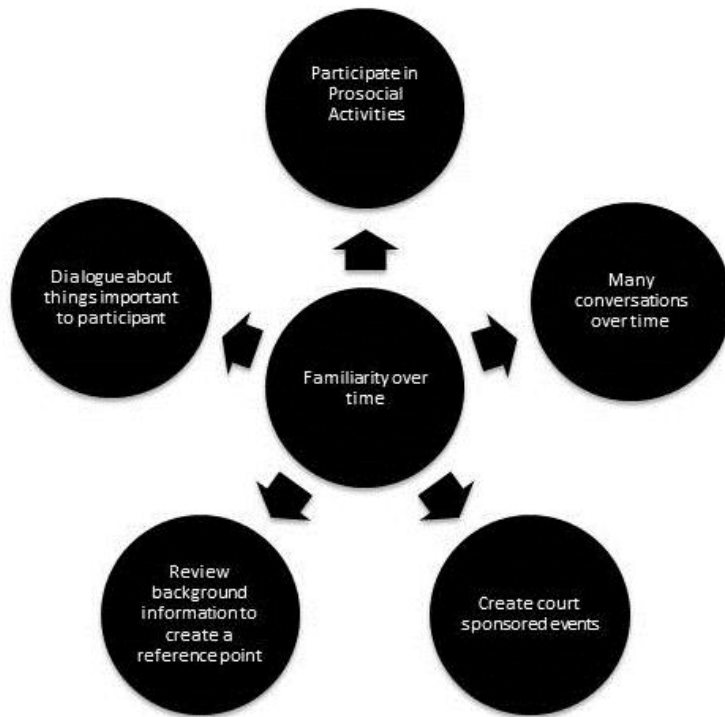


Figure 22. Behaviors that demonstrate familiarity over time.

### Engaging Participants in Court

Judges tend to be very creative when it comes to getting participants to engage in court. As expected, participants are very nervous upon entry into the drug court. Judges in this study do not appear to have any problems talking to and about the individual, their issues, their struggles and their recovery. The judges try hard to make this a two-way conversation, a dialogue. It is difficult for judges when they cannot get the participant to open up and share. The participant judges do not give up only it takes longer. A5 asks participants individualized questions about what they are learning. B1 will ask

participants to name a song that identifies with where they are in life right now. H4 tries to lead with something positive like an affirmation or praise them for something that they have done well. Not only does this judge praise but also probes about how the person was able to accomplish what they did well. The goal is to make them think and share.

Judge H6 asks what the participant learned in treatment this week and how will they use it to maintain their sobriety? Judge B6 starts with general questions like “how are you feeling today?” or “How has your week been going?” This leads to more specific discussions about their progress in the program. Discussing failures or mistakes of the week are also part of the dialogue, but as indicated earlier, judges try to end on a positive note. Judge H2 pointed out that having a person explain what they are learning in counseling and how they will apply it in life, provides an opportunity to reinforce what they are learning and give them praise.

For new participants, Judge H5 will ask about their children or family. If they are new to treatment, recovery and particularly that court, everything is foreign therefore the judge starts with an easy and comfortable subject. Children usually are easy to talk about. Judge B1 indicated that when a person is doing well in the program they run out of things to talk about so the judge will just “pick their brains” about anything and affirm their progress. Helping them talk through or process a relapse or bad judgement call is another way to engage in court. H2 and B3 are very big on personal affirmations. H6 and B1 explores the participants’ week especially any stressors they may be having or how they handled a specific situation?

Week 3 Day 4 – Engaging Participants in the Court	13 Judges				A4	A5	A6	A7	
		B1	B2	B3	B4		B6		
			H2		H4	H5	H6		

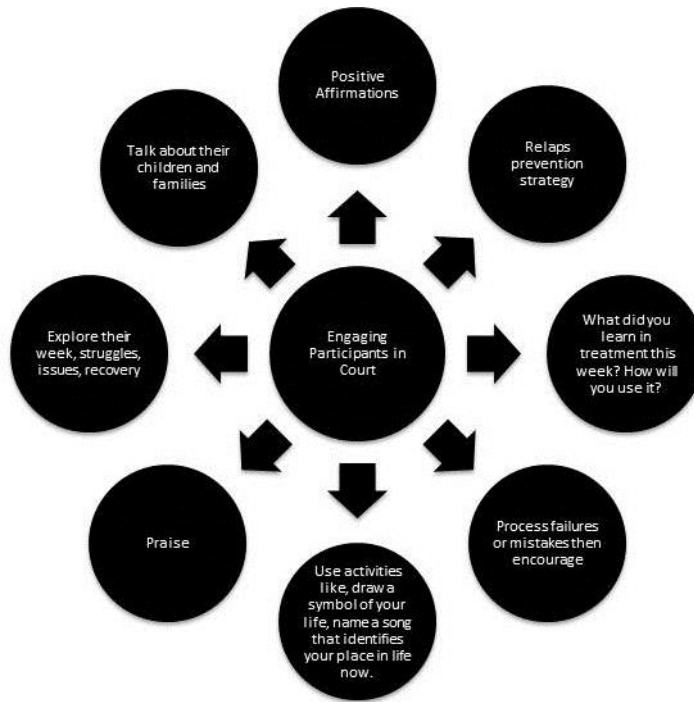


Figure 23. Compassionate ways to engage participants in court process.

### Out of Options

The judges in the study all experience grief and loss when a participant must be terminated from the program. For many of the participants it means a long stint in a state prison. Judge H5 said, “It is not a happy day.” However, the judge encourages the terminated participant to use what they did learn already. Judges B4, B1, B6, H2, H4, A5 and B3 used words like, “I feel defeated” “Not happy” “Defeated, frustrated and sad.” Judges also indicated that when it gets to this point they have done everything that they can do. Every effort has been made with this person. Judge H6 indicated that it takes a lot to get ousted from the program. They all agree that termination is absolutely

the last resort. Although these situations do occur most leave the door open even when they are terminated. Judge A5 who presides over a family treatment court is especially sad because for her court it means the family will most definitely be torn apart. Judges also indicated frustration with the fact that there are not enough treatment resources and sometimes people get ousted because the court team cannot provide what they need.

Week 3 Day 5 – Out of Options	12 Judges				A4	A5	A6	A7	
		B1	B2	B3	B4		B6		
			H2		H4	H5	H6		

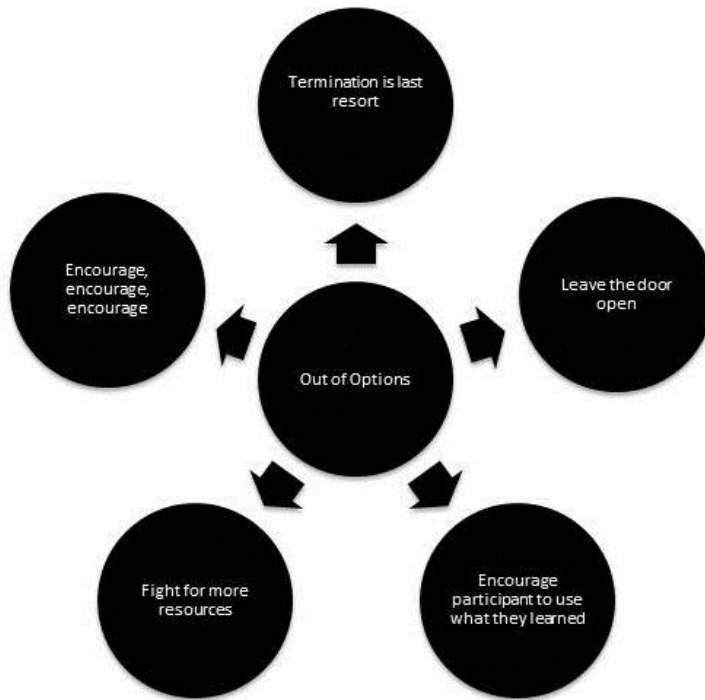


Figure 24. Compassionate behavior when out of options for participant.

**Transformation**

Judges were specifically asked whether this type of court assignment where they have to engage emotionally changed them as a judge. The judges who answered this

question answered in the affirmative and indicated that they are better judges for the experience. Judge A5 indicated that he praises more than in the past. Judge A6 indicated that he lets the people appearing before him know that they have his full attention and that he is listening to what they have to say. Listening more attentively was stated as an attribute by several of the judges. Criminal court judges also indicated that they are more solution oriented rather than punitive because they now understand the underlying causes of criminal behavior. H4 indicated that he is shy and tends to avoid eye contact in most situations; however, this assignment in drug court has helped improve this judge's ability to make eye contact.

Self-disclosure of personal foibles in the past are shared in open court. Judge B4 noted that he is developing relationships and not just processing litigants. Judge B1 indicated that he was a prosecutor in another life and has changed his philosophy and outlook from law and order to problem solving approaches. His tone has changed and he is more empathetic and mild-mannered. H2 understands now how hard it is for someone to stay clean, even with the best intentions. Judge A6 acknowledged more sensitivity when fashioning sentences in criminal court. This judge is more inclined to structure a sentence that attempts to address the causes of criminal behavior i.e. drugs, mental health, and lack of education and so on.

Judges indicated more willingness to listen to an offer for an alternative sentence that seeks treatment for a defendant after balancing the public safety interest. Judges indicated that they are more personable, listen more, and always seeking solutions. Judge H4 stated, "Drug court has made me a better judge. I understand the problems better and am always seeking solutions. Also, I find I'm more personable and encouraging to the



defendants. I even find that drug court has changed how I approach setting bond. I am more likely to give an OR bond even on serious charges if the defendant is going into treatment.” Judge H1 indicated, “I listen more than I used to. I’ve developed a better understanding of poverty and addiction. I agree that the best approach is one where you are trying to solve a problem together.”

Week 4 Day 1 – Transformation	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6		

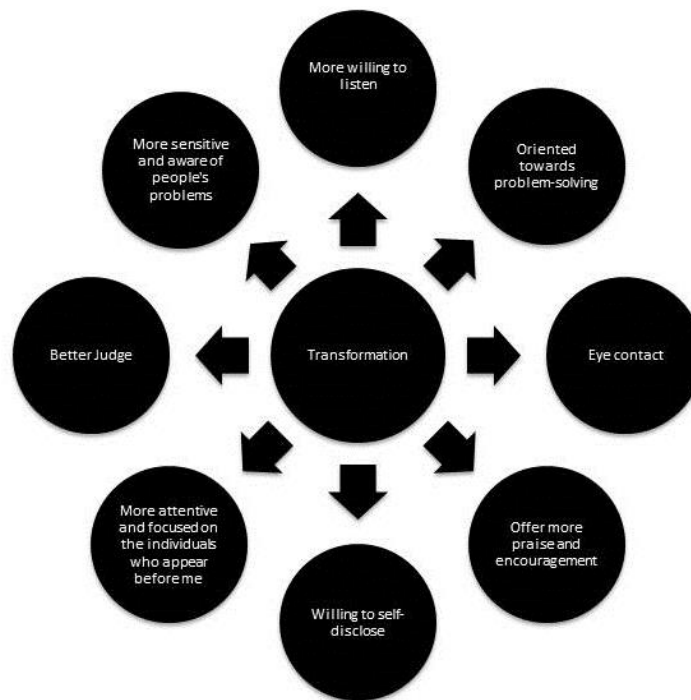


Figure 25. Transformation as a Judge.

### Consideration

Judges were asked how much consideration they were willing to give the participants feelings about what they need or feel is in their best interests. The responses

were mixed here. Some judges feel that many of the people that appear before them are not the best judges of what is in their best interest. Judge B6 put it this way, “Bad decision making and poor thought processes are what contributed to them being in the program to begin with.” Others felt that over time they were willing to give participants more personal freedom and decision making as they progress through recovery. Judge B6 and H4 are looking for participants to critically think, make good decisions and demonstrate self-awareness.

The amount of consideration judge H1 gives to participants depends on a variety of factors; 1) how long the person has been in the program, 2) how compliant they are with the program rules and treatment, and 3) is what the participant desires in line with their treatment goals? Judge H1 is willing to give greater weight to what the participant’s desires are if everything is in order. All agree that the longer the person is in the program the longer they can prove trustworthiness. A participant’s track record whether it is positive or negative determines the weight of judge H6’s decision. Judge B1 does not want to be autocratic so the judge listens and weights the decision about what is in the participant’s best interest. Judge B4 gives a great deal of consideration unless they are seeking to take the easy way out or avoid dealing with their problems. Overall, judges indicated a willingness to listen and weight what the participant is asking them to do, however, several judges express skepticism about whether a participant can determine their own best interest given their addiction.

Week 4 Day 2 – Consideration	12 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1		H3	H4		H6		

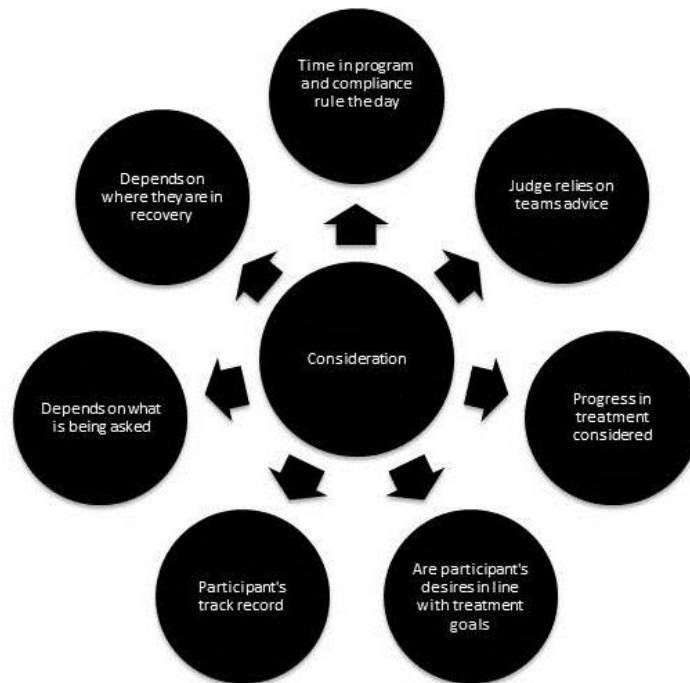


Figure 26. Consideration of Participant’s wishes.

### Forbearance

The stated goal of drug treatment courts is to cultivate success in recovery and to foster positive life changes for their participants. When participants are not following the rules or just cannot stay clean and sober, judges are faced with a motion to terminate, usually from the prosecutor in the underlying case. If it is a family treatment court the request will come from the Department of Family and Children Services.

The judges in the study tended to struggle with termination decisions and the judges exercised a great deal of forbearance with their participants. Judge H4 said, “I fight like hell to keep them in the program.” Judge B4 noted, “If there is a glimmer of

hope and a willingness to change, the person will not be terminated.” Judge A1 said, “We do everything in our power not to terminate a person but if they refuse to get it, we must put our precious and few resources where they can benefit another. Judge B1 indicated that terminations are tough but sometimes he can arrange things so the person gets another shot. H3 indicated that “termination is, and should be, the last and worst decision to have to make with a participant.” To this judge, it is a statement of failure. Judges tend to avoid terminating a participant from the program when they feel there is hope and the person is trying to do better. Sadly, there are times when these efforts are exhausted and the team is just wasting resources and time. Judge B6 sees this as a waste of taxpayer money and resources.

Sometimes judges will take the person back into the program if they are willing to go into a long term residential treatment facility, usually for 6 months to a year. Sometimes judges will go into court with a decision to terminate after the pre-court staff meeting and change their minds in court when presented with new information or the participant makes a plea for mercy. The mindset of these judges is clearly to not give up. They will look at each case individually and exhaust all efforts to ensure the success of that person. Clearly sometimes it works and sometimes it doesn't.

Week 4 Day 3 – Forbearance	14 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
		H1	H2	H3	H4	H5	H6		

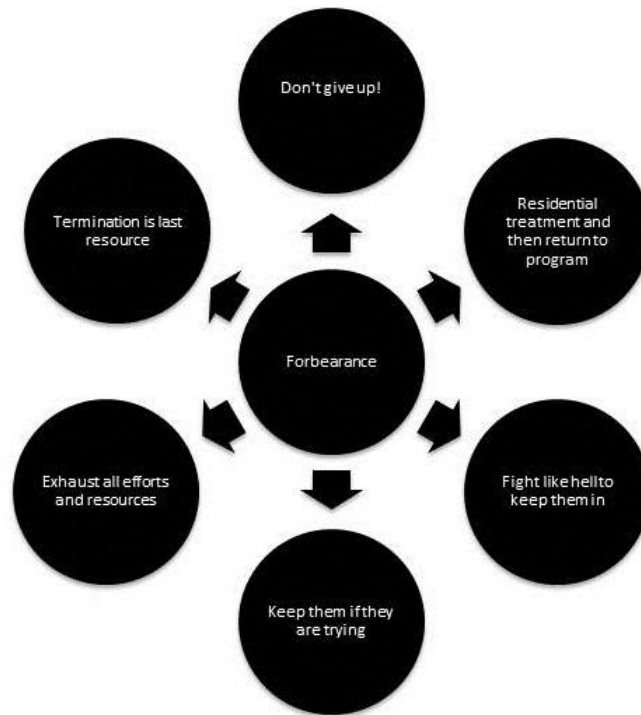


Figure 27. Behaviors of Forbearance (mercy).

### Transferability

One of the purposes of the study was to find out whether there are behaviors that can transfer to a traditional court assignment. Several of the judges in this study preside over drug courts but also handle criminal or civil calendars as well. The judges had very interesting things to say about what is and should be transferred over to traditional court calendars as well as those things that cannot. Judge B1 made it clear that one thing they cannot do is speak one on one with litigants because they are represented by counsel.

Also, there is no opportunity or desire to get to know or connect with defendants or other litigants.

Judges did however; note that there are quite a few things that can be transferred to traditional court. B1, H4, H2, B6, and H6 all indicated that engaged listening is something that is transferable to any court. H6 indicated the following, “thinking outside of the box, being courteous, making eye contact, attentively listening, showing concern and thoughtfulness on each case are all transferable attributes.” Body language was a recurring theme. Leaning forward, showing concern and eye contact were mentioned by most judges. Judge A5 indicated that “treating all parties with respect and courtesy, listening to them when they wish to speak, being patient and not rushing people and maintaining a respectful environment in the courtroom would all transfer to a regular court calendar.” Problem solving was another attribute mentioned as well as addressing the underlying causes of problems as a condition of sentencing. Judge B4 indicated the desire to always look for alternatives to modify behavior as a condition of probation.

Week 4 Day 4 – Transferability	12 Judges					A5	A6		
		B1	B2	B3	B4		B6		
			H2	H3	H4	H5	H6		

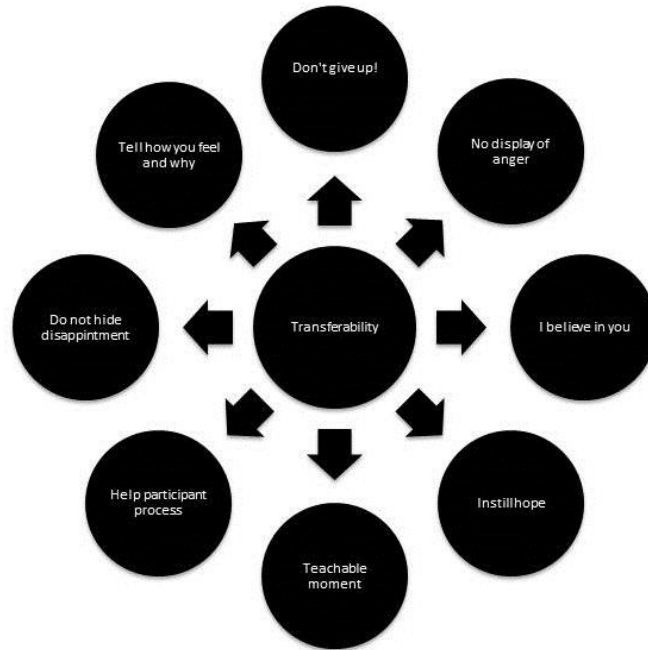


Figure 28. Compassionate behaviors that can be transferred to traditional court settings.

### Compassion and Legacy

The study concluded with an opportunity for judges to express how they see themselves and what they want their legacy as a drug court or accountability court judge to be. Without exception the judges see themselves as compassionate and caring. Judge B1 wants to build a strong foundation for accountability jurisprudence in that community that others will carry forward after his tenure is over. The judges in the study want to be known for helping people become productive and addiction free. Judge H1 said it the best, “I want to be remembered for genuinely helping our participants get to a respectable and productive life. A life that they, their families and loved-ones know is much better,

meaningful, and worthwhile.” Finally, the judges want to be known for caring about people and wanting them to succeed.

Week 4 Day 5 – Compassion and Legacy	13 Judges				A4	A5	A6		
		B1	B2	B3	B4		B6		
			H2	H3	H4	H5	H6		

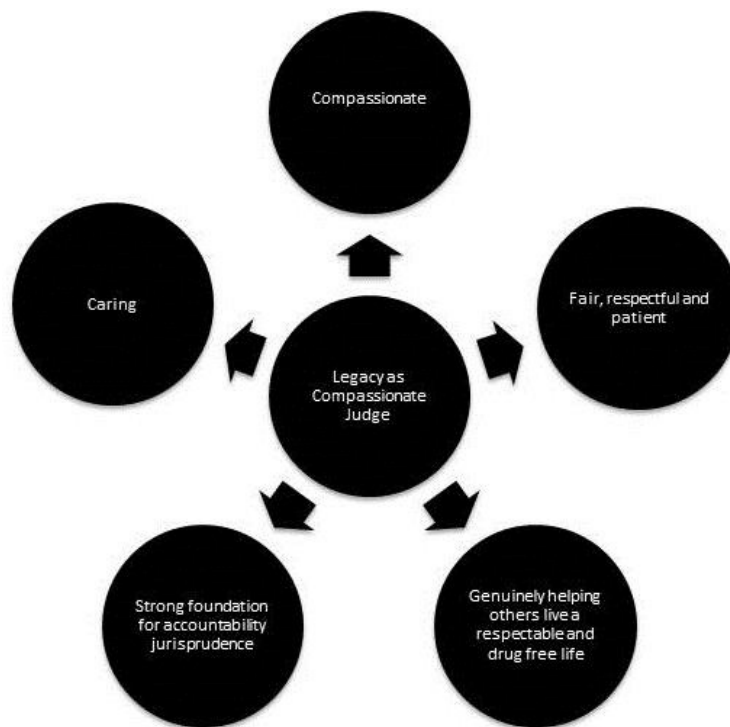


Figure 29. Legacy as Compassionate Judge.



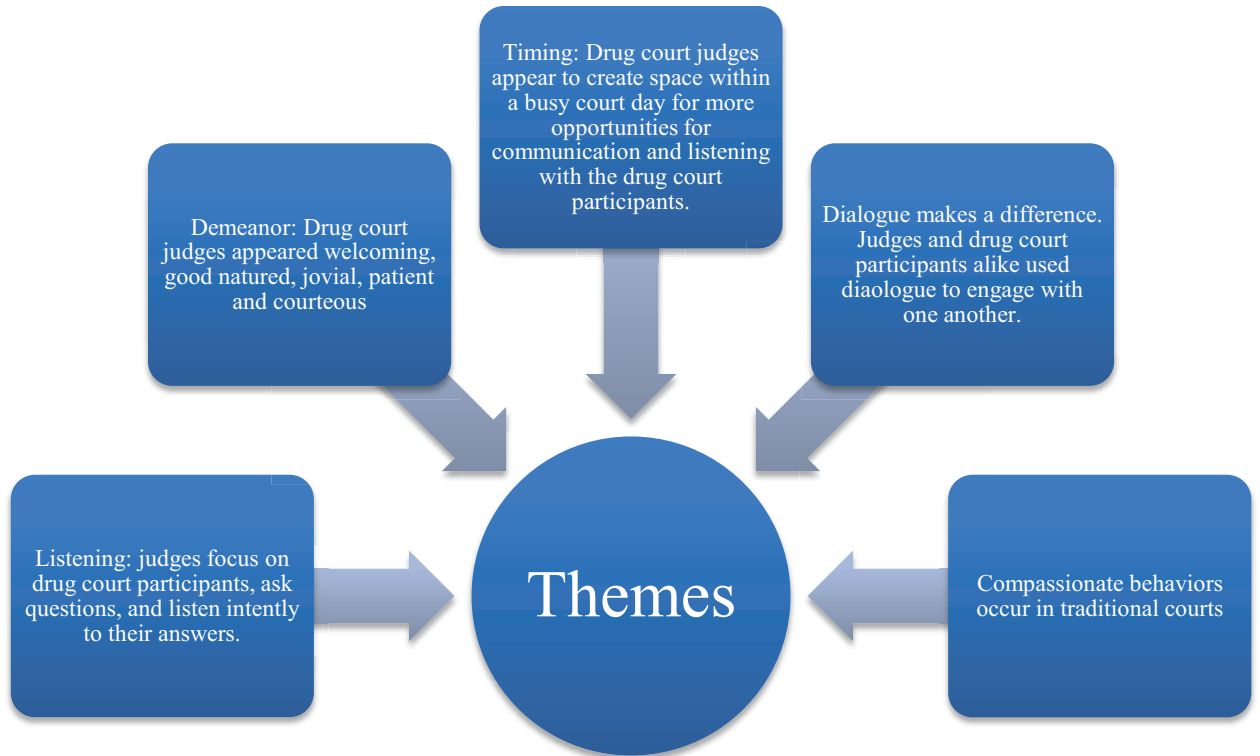


Figure 30. Emerging Themes.

### Emerging Themes

Five distinct themes emerged from the observations, the judge's perceptions about the observed behavior and the process of dialogic inquiry itself. Although presented numerically they are equally important as it relates to this study. The first theme was the power of listening as a compassionate behavior which led to engagement between the judge and the drug court participant. The second theme included factors associated with the demeanor of the judge which was deemed compassionate behavior that established a welcoming environment in the courtroom. The third theme involved the timing of the judge and participant courtroom interaction. The fourth theme emerged from the dialogic inquiry process itself which was used as a tool for engagement, building mutual understanding, and the construction of meaning. This theme emerged from the dialogic

inquiry between the judges and the drug court participants, between the judges themselves and the between the researcher and the judges. The fifth theme is significant as it is the overarching theme of this study and involves transferability of compassionate behaviors to traditional courts.

*Theme 1 – The Power of Listening*

*Theme 2 – Judicial Demeanor as Compassionate Behavior*

*Theme 3 – Time Spent with Participants is Important*

*Theme 4 – Dialogue Makes a Difference*

*Theme 5 – Compassionate Behaviors in Traditional Courts*

#### **Summary of Chapter 4**

The primary purpose for Chapter 4 was to present findings of the study. The focus of the of the dialogic inquiry action research study was to develop knowledge and explore the question of whether judges are hiding from humanity (Nussbaum, 2004) and whether a compassionate jurisprudence model might challenge the status quo of a detached adversarial process (Maroney, 2014) with an emerging and robust theory of how compassion might coexist with, or contribute to traditional jurisprudence. An alternative model could theoretically provide judges a way of recognizing opportunities to empower the people in their courtrooms to name the causes of their suffering and join them in resisting those causes (Nussbaum, 2001) as well as provide a new compassionate epistemology that could reduce recidivism, lessen dependence on incarceration, and reduce bias.

The current chapter presented the findings of the research study and describes the observations, experiences and perceptions of the participant drug court judges. Data collection was conducted in two stages and involved observations of 30 drug court

proceedings and 28 judges and dialogue with 17 of those judges over a one month period in a structured web-based platform known as The West Education Network, TWEN. A brief pre-test of the observation data collection tool was conducted by watching drug court proceedings on YouTube. The pre-test verified that the data collection tool worked in a drug court environment.

The first stage of data collection involved observations of the 28 drug treatment court judges in 31 court proceedings throughout the state of Georgia. The second stage was a dialogue conducted on The West Education Network. The dialogue which ensued after the observations of the judges was prompted by the observations which were recorded on an observation data collection tool designed and adapted from Skaff's (2003) hypothetical elements of compassion. These observations formed the basis of the findings recorded in the Stage 1- Building the Picture section. The second stage of the data collection occurred over a four-week period in a confidential electronic web forum and was stimulated by daily questions and participation reminders posted by the researcher. The findings from the second stage of data collection are found in the Stage 2 – Structured Web-based Dialogue section.

The sample of participants was drawn using a snowballing method and resulted in a diverse group of drug treatment court judges from throughout the state of Georgia. Demographic data collected included: age, gender, years of experience as a judge, years of experience as a drug treatment court judge, number of years the drug treatment court has been in existence and the types of drug treatment courts observed which were felony drug treatment courts, mental health treatment courts, veteran's treatment courts, and family treatment courts.

Data analysis involved qualitative research methods to code key words and phrases from both the observation data and the structured web-based dialogue transcripts to look for key themes and subthemes. The results of the observations and the web-based dialogue revealed the emergence of several main themes comprising the essence of what compassionate judges look like in drug courts. Six emerging themes were presented: 1) the power of listening as a compassionate behavior; 2) compassion is expressed in the demeanor of the judges; 3) the timing of the judge and participant courtroom interaction as a key compassionate behavior; 4) dialogic inquiry as a tool for engagement, building mutual understanding, and the construction of meaning; and 5) Compassionate behaviors can occur in traditional courts. Tables and figures were used in this chapter to assist in data presentation. Documentation used during recruitment and larger figures were included as appendices A-I.

Chapter 5 concludes with a comprehensive presentation of the findings and a summary of the elements of this qualitative dialogic inquiry action research study. Conclusions from the research question are drawn and recommendations for future research follow from those conclusions. The chapter ends with an assessment of the significance of the study and a recommendation of how the findings of this study could be implemented into future judicial trainings.

## Chapter 5

### Conclusions and Recommendations

To assist the readers of this work, this final chapter of the dissertation restates the research problem and reviews the major methods used in the study. The primary sections of the chapter summarize the results and discuss their implications.

#### **Statement of the Problem**

As explained in Chapter 2, the study reported here explored compassionate behaviors in drug treatment courts to develop further knowledge of compassion as a relevant dimension of therapeutic jurisprudence. Judges were encouraged to explore an alternative mental model in which they could see compassion as a means of perceiving, interpreting, and transforming the reality of those who appear in their court rooms. The object of the study was to determine whether this compassionate jurisprudence model could challenge the status quo of a detached adversarial process with a robust and vibrant theory of how compassion might coexist with, or contribute to improving American criminal courts which are ailing. Increased recidivism rates, overcrowded dockets, perceptions of bias and unfairness, wrongful convictions of innocent people, and loss of public confidence in the courts (Fox & Huddleston, 2003, Clear & Frost, 2014) are all evidence of a need for change.

#### **Review of Methodology**

The research study used a qualitative dialogic inquiry action research method, designed to build mutual understanding and engagement of the parties in the construction of meaning. The researcher observed 30 courts and 28 judges presiding in their courts from December 2016 through May 2017. The time of the court sessions varied from 4 to

6 hours depending on the judge's style and the number of drug court participants on a given day. During court field notes were taken and following each court observation event, these field notes were expanded into a descriptive narrative of what was observed. These observations were then used to engage judges to think and reflect about their compassionate behaviors in court in a web-based online forum. 17 of the 28 judge participants took part in a dialogue conducted in a confidential web based platform known as TWEN (The West Education Network) and responded to one question per day over a period of four weeks, weekends excluded.

The dialogic inquiry action research required that the researcher proactively engage with the participants and then assess participants' reflections on what was discussed, thereby obtaining richer insights from the participants' perspectives rather than the opinion of the researcher (Shelley, 2014). The process was unique as the researcher's perceptions of the judicial system and the courts have been shaped by personal experiences as a co-founder of a juvenile drug court, a public defender, and a national trainer of judges on drug court policy, practices and procedures. This understanding of the context and role of judges in the drug court setting enhanced researcher's awareness and sensitivity to many of the challenges, decisions and issues drug court judges face.

### **Summary and Discussion of Results**

During the initial conversations with the participant judges to obtain informed consent, researcher generally discussed the theoretical support for the concept of compassionate jurisprudence and the theoretical underpinnings for the theory. Judges shared their thoughts about what compassion in the courts meant to them and the difficulties in aligning the current mental model of a dispassionate bench with concepts

such as empathy and compassion. Judges expressed their fundamental belief that you cannot operate an accountability drug court without compassion. The 28 judges researcher spoke to had never thought about compassion in the court system and had never discussed it with any of their peers. They did however, mention some of the theoretical concepts that underpin this study, specifically; therapeutic jurisprudence, procedural justice, and restorative justice. Their lack of exposure to the subject of compassion and the courts suggest that the action research design of the study was appropriate, because the judges had not previously reflected on compassionate behaviors in court and lacked a language to describe those behaviors which occurred daily in their respective courtrooms.

Throughout the entire period of the observation stage of the study, judges demonstrated that when they invest time, caring and a listening ear, they are rewarded with rich insights into the hearts and minds of the people who appear before them. This also proved true for the dialogue among the judges and the researcher in the web-based online forum. The research also showed that engagement between the judge and the drug court participants in constructive conversations about behavior and its impact on the drug court participant, society and the team, resulted in understanding about how to achieve the desired outcomes together. Dialogue was the key in both the judge-drug court interactions and the judge-judge-researcher interactions.

Dialogue is a powerful method of inquiry for a researcher who is engaging in action research. Before the researcher could really engage in dialogue to unpack and reveal the thoughts and mindsets of the judges, relationships of mutual respect had to be built and nurtured. One thing learned early on is that trust building cannot be done over

the phone or by email. Face to face is required to build trust. This dialogic inquiry action research study, required that the researcher proactively engage with the participants and then assess participants' reflections on what was discussed, thereby obtaining richer insights from the participants' perspectives rather than the opinion of the researcher (Shelley, 2014). Judges were observed doing the same thing with their drug-court participants in the courtroom setting.

The 28 drug court judges were open to exploring and discussing their understanding and ideas about compassion and they were actively creating interruptions and upheavals in: (1) their own thought processes, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001). 756 judge-participant interactions were observed. Each of the studied courts dealt with people with substance abuse problems. Even though several of the judges were highly differentiated in style, common themes emerged in how the judges approached their work and in the display of compassionate behaviors. The participant judges were unanimous in their belief that a compassionate judge is essential to the effectiveness of drug courts. This led researcher to conclude that accountability courts generally and drug courts specifically are places where social, human, and legal problems intersect and social and human relations form the basis of law, rather than abstract rules. They are places where this innovative compassionate jurisprudence model can be nurtured and thrive. This compassionate jurisprudence epistemology has strong elements of procedural justice, restorative justice, therapeutic jurisprudence and compassion theory, all of which were used as the theoretical framework for this study. As behaviors were demonstrated by judges and



explored through observation and dialogic inquiry they were documented to be incorporated into future judicial trainings.

A modified version of the Skaff et al., (2003), Hypothetical Elements of Compassion were used to develop the tool for observing the behaviors of the judges in their respective drug courts. The observation collection data tool, Table 2, was tailored to the Skaff, et. al., 2003 was used to note the observations of the researcher as they related to each of the elements. The focus was on the interaction between the judge and the drug court participant. The behaviors the researcher was looking for were: (1) Attentive listening (2) Forbearance (3) Concern (4) Explanatory Communication (5) Patience (6) Honoring the Person (7) Consideration (8) Attention to Detail and (9) Familiarity over Time.

It should be noted that regular appearances of the drug court participants before the judges, i.e. weekly, bi-weekly, or monthly depending on which phase of the program they are in, set up the condition for several hypothetical element of compassion to occur; i.e. “familiarity over time,” “concern,” and “consideration,” specifically. The judges get to know the participants on a first name basis and the struggles that they are experiencing. It should also be noted that these elements are the least likely to be transferable to traditional court settings.

The findings in the building a picture of compassionate behaviors section were gathered from the first phase of data collection, the court observations. After the observation data was analyzed, researcher posed questions to the judges and they engaged in dialogue with the researcher and with one another to develop an understanding of compassion in the courts from their perspective as drug court judges.

Having judges think through the observations and dialogue enabled them to reflect upon their own experiences and possibly create a new mental model that dispels the notion of dispassionate justice in our traditional court system. Active participation by 17 of the judges over four weeks of the study suggest strong interest in discussing and learning more about this subject.

The dialogue between the researcher and participants during the second stage of the study resulted in explicit and implicit comments from judges (A1, A4-A7, B1-B4, B6, and H1-H7) about what compassionate behavior looks like during drug court proceedings. The explicit responses were the responses elicited from the questions posed to the judges in Table 20. The implicit comments about compassion came about as the judges discussed what compassion looks like in various situations e.g. when disappointed or angry, or drug court participant keeps violating the rules. A few participant judges initiated questions and dialogue in the online web-based forum as well as answering the questions posed by the researcher. The first question asked was what compassionate behavior looks like in their respective courtrooms. This was posed at the beginning to ascertain what the concept of compassion means to them.

Over the course of the study, approximately seven months, December 2016 through June 2017, six distinct themes worth noting emerged from the observed behaviors, the judge's perceptions about the observed behavior and the process of dialogic inquiry itself. The themes are explored in more detail below.

### **Theme 1: The Power of Listening**

One of the Skaff, et. al. (2003), hypothetical elements of compassion is attentive listening. Two different methods of attentive listening were observed in the drug courts;

active listening and motivational interviewing. Attentive listening occurs when a person speaks, and the listener shows that he or she is listening carefully to what the person is saying (Skaff, 2003). Active listening is attentive and involves the listener observing the speaker's behavior and body language (Zonger & Folkman, 2016). Having the ability to interpret a person's body language lets the listener develop a more accurate understanding of the speaker's message (Atwater, 1992). Having heard, the listener, in this case, the judges, then paraphrases the speaker's words. Judges A1, A4-A6, A8, B1-B7, H1, H2, H5, H7, and X2-X6 were observed actively listening.

The second process of listening observed in the courtrooms was motivational interviewing. This communication tool is very effective and powerful because it empowers the client, in this case the drug court participant. Judges A1, A4-A6, B1, B4, H1, H2, H5-H7, X4 and X5 were very good at motivational interviewing and showing respect for the client's responsibility and decision-making ability. The process of motivational interviewing involves the use of open ended questions, affirmations that support a decision or behavior of the participant, reflective listening and what is known as change talk, wherein the participant makes a statement of commitment to change some behavior or activity (Hetteema, Steel & Miller, 2005).

During all four weeks of the online dialogue the judge participants spoke of listening as a compassionate behavior more than any other behavior. Judges B1, H2, H4, A5, B3, and H7 all mentioned attentive listening or careful listening in their responses to the question, what does compassion look like in a courtroom? It came up again when discussing forbearance, concern, consideration and patience. Another frequently mentioned behavior was respect. Judges A4 and A5 saw listening as a sign of respect.

Judge A1 expressed, “I listen and do not cut the participant off to show them respect.” H4 also mentioned showing dignity and respect by listening.

Listening is a powerful compassionate behavior because it increases awareness of the person’s situation and serves as the gateway to the other elements of compassion such as concern, familiarity over time, consideration, explanatory communication, forbearance, and attention to detail. Listening enables the judges to connect with the individuals standing before them.

## **Theme 2: Compassionate Judicial Demeanor**

As previously mentioned, judges are human beings and as such different judges run their courtrooms in different ways. This is not only true in traditional courts, but also in the accountability courts. The judges observed in this study assumed varying positions of proximity and formality upon entry into the courtroom, however, most made attempts to create a warm and supportive environment with upbeat attitudes, humor and smiles directed at the drug court participants. Judges A1, A2, A6, B1- B3, B6, H1, H5, H6, X2 and X5 continually echoed the refrains, “You are not alone,” “We are all in this together,” or “We are here for you.” This collaborative conversation style speaks to the “empathy” and the “desire to alleviate the suffering,” aspects of the definition of compassion.

Judges would use self-deprecating language and humor about mistakes they had made in the past or habits that their spouses make fun of them about or they would tell a funny story to illustrate a point. Laughter eased tension in the court room and seemed to put the drug court participants at ease. Most of the judges maintained eye contact with the drug court participants. Unlike in traditional court room settings, eye contact by these

judges, coupled with other indicators, seemed to be an indication of engagement and supportiveness rather than an attempt to assert dominance. Overall, the judges appeared welcoming, good natured, jovial, patient and courteous when dealing with the drug court participants in court.

During the second week of the web-based dialogue the judge participants spoke of entering the courtroom with a smile and immediately engaging with the participants as a way of demonstrating compassion and creating a warmer environment. Judge B4 indicated when first meeting a participant the discussion is general and easy, mostly small talk. Judge A5 tries to block out everything in the room. “It’s just you and I and you’ve got my full attention.”

### **Theme 3: Time Spent with Participants**

Time pressure is inherent in our American system of jurisprudence. Courtrooms are busy places and court calendars tend to be huge. The courts observed in this study had caseloads ranging from 6 to 60. The mental health, veteran’s, and family treatment courts caseloads were smaller. Mean caseload for the felony drug courts was 33.

Although the amount of time spent with an individual is not a hypothetical element of compassion, (Skaff, 2003), the amount of time judges spent with the individual drug court participants seemed significant. Drug court judges in this study appear to create space within their busy day for more opportunities for listening and explanatory communication with the drug court participants, which are both behavioral elements of compassion. Albeit a person could feel compassion in an instant just learning of an individual’s circumstances, it seemed that the longer a judge spent with a participant, the

more compassionate behaviors they demonstrated. Behaviors such as honoring the person, consideration, concern, forbearance, and patience.

During the web-based dialogue the judges discussed the importance of the amount of time spent with the participants. Judges A4-A6, H4 and A5 all agreed that 3-5 minutes' minimum or more depending on the circumstances of the participant's situation, is essential. During that time, the judges are trying to determine what motivates a participant. Judge A5 and H6 use that time to make sure the participant knows they care about them and understand their circumstances. Judge H4 uses this time to reinforce the positive aspects of the person's life and discourage the negatives. Judge B1 celebrates accomplishments and shares stories with them. Judges genuinely want to build trust with the participants in their courtrooms. Another theme that emerged was determining what motivates the participant so that the judge could emphasize and support the individual.

The judges use the time with their participants to go over weekly progress and to encourage more of the positive. Judge B3 indicated that time is important. It is the only way that people will feel connected and special. Judges uniformly are trying to build trust and relationship. Judges B4, A5, A6, H2 and H7 use the time with the participant to engage in dialogue about what the participant is learning. Judge A6 said, "Time is what lets the participant know you care."

Judge A4 indicated that the time with each individual case seems really long and it is especially hard if the person does not want to talk. In this instance, the judge's instincts say let the conversation go where the person wants it to go. Judge A4 and B2 demonstrated flexibility with time.

According to the judges, their drug court participant graduation rates from the program demonstrate successful outcomes. By slowing things down, the judges had time to gauge each participant's performance in the program, intervene on the participant's behalf, impress upon the participant the importance of compliance with treatment, and to recognize the participant's efforts via rewards and incentives. As judge A6 said, "A set time is not important, what's important is that they get the time that they need."

#### **Theme 4: Dialogue Makes a Difference**

As is the case with listening, dialogue is powerful and promotes compassionate behavior. The participants in the drug courts dialogue with the judges and co-create a narrative to address their problem of addiction. Likewise, the researcher and the judges engaged in dialogue. Dialogue was the means, to develop mutual understanding, encourage the construction of personal meaning and ensure engagement (Bound, 2010). The process of inquiry won't work without dialogue (Bounds, 2010). Both the judge-participant dialogue and the researcher-judge dialogue involved a process of inquiry, investigation and questioning for knowledge construction (Bird, 2007).

In using dialogue as a method of inquiry the judges had to assist the drug court participants in unpacking and revealing complex matters about their lives. This required building and nurturing a relationship of trust and mutual respect. This was the case for the researcher-judge dialogue as well. This trust building takes a lot of time and investment. This investment was evident in the courts observed during this study. It also accounted for the inability of researcher to recruit judges online or by phone. It also required the capacity to listen which was the key compassionate behavior in the drug courts that were observed.

The judges engaged their drug court participants in constructive dialogue about their behavior and its impact on their loved ones, society, even the judge and this assisted the drug court participant to achieve desired outcomes.

The dialogue was powerful in this action research study. It resulted in deepening commitments of the judicial participants in the study, the drug court participants and the researcher to transform their setting, and to produce action outcomes from the inquiry itself (Freire, 1970). In the case of the judges, the dialogue influenced the judges to create upheavals and interruptions in a traditional court process that is dispassionate (Maroney & Gross, 2014). This was evidenced by the Week 4 online web based dialogue wherein the judges were asked about their behaviors in their traditional court settings (many of the judges, especially those in small town or rural settings handle multiple calendars not just drug court) and whether this court assignment changed them. Upon being asked to reflect on this question judges responded that they are better judges for the experience. Judge A5 indicated that he praises more than in the past. Judge A6 indicated that he lets the people appearing before him know that they have his full attention and that he is listening to what they say. Listening more attentively was stated as an attribute by several of the judges. Criminal court judges also indicated that they are more solution oriented rather than punitive because they now understand the underlying causes of criminal behavior. H4 indicated that he is shy and tends to avoid eye contact in most situations; however, this assignment in drug court has helped improve this judge's ability to make eye contact.

Self-disclosure of personal foibles in the past are shared in open court. Judge B4 noted that he is developing relationships and not just processing litigants. Judge B1 indicated that he was a prosecutor in another life and has changed his philosophy and



outlook from law and order to problem solving approaches. His tone has changed and he is more empathetic and mild-mannered. H2 understands now how hard it is for someone to stay clean, even with the best intentions. Judge A6 acknowledged more sensitivity when fashioning sentences in criminal court. This judge is more inclined to structure a sentence that attempts to address the causes of criminal behavior i.e. drugs, mental health, and lack of education and so on.

Judges indicated more willingness to listen to an offer for an alternative sentence that seeks treatment for a defendant after balancing the public safety interest. Judges indicated that they are more personable, listen more, and always seeking solutions. Judge H4 stated, “Drug court has made me a better judge. I understand the problems better and am always seeking solutions. Also, I find I’m more personable and encouraging to the defendants. I even find that drug court has changed how I approach setting bond. I am more likely to give an OR bond even on serious charges if the defendant is going into treatment.” Judge H1 indicated, “I listen more than I used to. I’ve developed a better understanding of poverty and addiction. I agree that the best approach is one where you are trying to solve a problem together.” These types of interruptions and upheavals in the traditional court setting are huge.

*Theme 5: Some Compassionate Behaviors are Transferrable to Traditional Courts*

This dialogical inquiry study challenges the conventional thinking of courts as dispassionate, detached and impersonal and emotionally disengaged judges. Although this study was conducted in adult drug courts, the consensus of the judges was that

several of the compassionate behaviors observed are transferrable to a traditional court setting.

As indicated in theme 4, several of the judges in this study preside over drug courts but also handle criminal or civil calendars as well. The judges had very interesting things to say about what compassionate behaviors should be transferred over to traditional court calendars as well as those things that cannot. Judge B1 made it clear that one thing they cannot do is speak one on one with litigants because they are represented by counsel. Also, there is no opportunity or desire to get to know or connect with defendants or other litigants in traditional court.

Judges did however; note that there are quite a few things that can be transferred to traditional court. B1, H4, H2, B6, and H6 all indicated that engaged and attentive listening is something that is transferable to any court. H6 indicated the following, “thinking outside of the box, being courteous, making eye contact, attentively listening, showing concern and thoughtfulness on each case are all transferable attributes.” Body language was a recurring theme. Leaning forward, showing concern and eye contact were mentioned by most judges. Judge A5 indicated that “treating all parties with respect and courtesy, listening to them when they wish to speak, being patient and not rushing people and maintaining a respectful environment in the courtroom would all transfer to a regular court calendar.” Problem solving was another attribute mentioned as well as addressing the underlying causes of problems as a condition of sentencing. Judge B4 indicated the desire to always look for alternatives to modify behavior as a condition of probation.

## **The Significance of the Study**

There has been a long-standing debate among legal scholars and practitioners regarding the appropriateness of compassion and empathy in United States courtrooms. Legal scholars, lawyers, judges and other legal practitioners theorize that the role of a judge is to apply abstract rules to concrete facts and that judges should resist any emotional engagement as they go about the task of judging (Knight, 2009). The adversarial nature of the American court system constructs a distinct narrative for judges to value commitment to due process, protect legal rights and to conduct court as a neutral. “Neutrality is conventionally associated with dispassionate, detached and impersonal or emotionally disengaged judging” (Mack & Anlu, 2012, p. 729). This results in judicial performance void of emotional expression. Conventional judging is valued for its commitment to due process, its protection of legal rights and limiting accusations of bias and favoritism. Historically it was thought that to possess these values judges had to be dispassionate and devoid of emotion.

This study demonstrates that drug court judges are creating upheavals and interruptions by demonstrating that judicial authority can be asserted fairly and impartially through active engagement (Mack & Anleu, 2012). Observations in this study suggest that compassionate behaviors as described by Skaff et al., (2003) are occurring in adult drug treatment courts on a consistent basis. The data shows that drug treatment court judges do not feel constrained by the limited time available and their demeanor are anything but, impersonal, routine, or business-like when it comes to interactions with the drug treatment court participants. The observational evidence suggests that drug court judges are very respectful when dealing with the drug treatment

court participants a behavior that can be carried over to traditional courts. The judges in this data set welcomed engagement with the participants and tended to express patient and courteous demeanor when speaking with them. The observational evidence also suggests that judges can demonstrate compassion and hold people accountable for their misconduct simultaneously. The patterns in the data set suggest that compassion and accountability for bad conduct are not mutually exclusive in the context of adult drug courts.

Most compelling are the behaviors the studied judges noted that can be transferred to traditional court. Engaged and attentive listening is something that is transferable to any court. If judges were to think outside of the box, be courteous, make eye contact, listen attentively and show concern and thoughtfulness on each case, and engage in dialogic inquiry with the people who stand before them, they could create upheavals that could substantially improve the criminal justice system. Judges who demonstrate that they care about who stands before them make a difference in the lives of the people who stand before them.

A historical review of American jurisprudence and the roots of judicial dispassion, although undertheorized, reveal that there is epistemological space for compassion and empathy to coexist with the rule of law (Maroney, 2011). There is great support for the crossover between compassion, emotions and jurisprudence found in the work of Nussbaum (1996, 1999, 2001, and 2004). Nussbaum points out the hypocrisy and absurdity of the position that compassion is inconsistent with the rule of law. She posits that dispassionate jurisprudence is a fiction. The law constantly takes account of people's emotional states so it is a fiction that judges and others are not prone to

emotional responses (Nussbaum, 2001). A contemporary legal scholar, Maroney, 2011, explores the concept of judicial dispassion and concludes that it is possible for emotions and judicial decision-making to coexist.

This study challenges the norms, values and rules that make up the status quo as it relates to a dispassionate judging. It is time for a new form of judging where impartiality is communicated through appropriate active engagement and not detachment. These values foster legitimacy and respect for the court and the institutions of justice. This study suggests that creating space in a busy court day where listening and engaging in dialogue, could impact some of the stark problems the criminal justice system faces.

Dialogue is a critical component of this compassionate jurisprudence model and can be a powerful method of inquiry to engage the person appearing in court so that they can articulate and reflect on their behavior and experiences. It also can result in a deepening commitment of the judges to transform their setting in a way that produces effective action outcomes for all involved.

### **Recommendations for Further Research**

Accountability courts generally and drug treatment courts, specifically, are a relatively new phenomenon. As with any new phenomenon, there is limited research into all aspects of drug courts. Until recently, research concerning drug treatment courts has been confined to the results observed in clients (Bouffard & Taxman, 2004) and the court's effectiveness in reducing recidivism (Banks & Gottfredson, 2003). Recent scholarship has produced a number of studies examining the cost efficiency and efficacy of drug treatment courts (Gottfredson, Najaka & Kearly, 2003). Researchers have studied the evolution of drug courts and their impact on criminal defendants and their

families (Hora et al., 1999). The roles of attorneys in drug courts and judicial satisfaction with the therapeutic jurisprudence model have been the subjects of empirical research (Chase & Hora, 2000). The research focus to date has been on the therapeutic benefits of drug courts to the individual participants and the economic benefits to the court (Hora, 2002).

This study may be knowledge generating with further research required, to test the ideas generated or may represent one aspect of the early stages of a more intensive study (Gibbs et al., 2007). Compassion and other emotional aspects of judging needs more examination. As it relates to drug courts, the unexpected findings leave room for further research. It may or may not be significant that 17 of the judges in the sample were founders of their drug courts and therefore have a significant personal investment in the success of the court. Pursuant to this study's findings, founding judge's tenure on the court tend to be long. It would be interesting to compare compassionate and other emotional behaviors in a larger sample of judges appointed to drug courts or judges who volunteer for a drug court assignment with tenured judges who are founders of a drug court.

This study involved different types of adult drug courts; i.e. veteran's courts, family treatment courts, mental health courts and felony drug courts. A future study could determine whether the findings would be different with larger samples of the different types of adult drug courts. The samples of the mental health, veteran, and family treatment courts were so small you could not distinguish any differences in behaviors between the different types of courts.

Judges expressed great curiosity about the other judges in the study, it may be informative to have a group of judges, possibly even these judges to sit in a room face-to-face to discuss the subject of compassion and how it could play out in courts generally. The judge participants expressed; (a) compassion is a learned behavior, they would welcome training on this topic, (b) judges would love more time for reflective thought, (c) these judges requested the ability to communicate face to face with other members of the research cohort. Harnessing the power of dialogue could possibly encourage more upheavals and disruptions in the traditional court process.

Recognizing that traditional criminal court judges are busy and calendars and case loads are huge, it would be interesting to conduct a similar study in a traditional court setting to see whether compassionate behaviors are present and engage in a dialogue with a group of those judges about the feasibility of incorporating behaviors that involve more active engagement with the defendants.

A research study that looked at how the drug court participants perceive the judge's behaviors in drug courts would be informative. The focus of this study was on the perspective of the judge and failed to consider the role of the participants in drug courts and the influence of collective thought and behavior in the drug court setting.

This would be the procedural justice and restorative justice aspects of compassionate behavior in courts. It would involve analyzing the compassionate behaviors of the judges through the lens of the participants. Procedural justice looks at the perception of fairness in the administration of justice and legal proceedings from the consumer's perspective (Maitlis & Ozcelik, 2004). Restorative justice is the use of the judicial system to affect social change through nontraditional methods.

This study looked at the upheavals and interruptions created by compassionate behaviors by judges in the drug court process and in a limited way the traditional court process of those judges who do a civil and criminal calendar as well. It would be fascinating to do the same study in traditional court settings.

Until now, little, if any research has been undertaken on judges and their demonstration of compassionate behaviors as a central factor in drug courts or the interruptions compassion can create to transcend the experience of everyone in the courtroom including the judge. More research is needed to deepen understandings and broaden perspectives on the relational aspects of drug treatment courts and how compassionate behaviors arise during the drug court process.

Understanding the role of compassion in drug treatment courts as initiated by the judge could provide impetus for continued advocacy for compassionate jurisprudence leading to human-centered judging. “Judges make decisions every day and yet few researchers have gained insight into the humanness of judging” (O’Hare, 2009, p.35).

Judges set the tone for their courtrooms and for the court processes so critical to the dispensation of justice. Judges represent the leaders of a respected institution, the courts. Judges are powerful leaders but may not feel free to engage in compassionate behavior because of the historical ambiguity surrounding judicial role orientations and the definition of compassion. Differing judicial theories and philosophies about how law is to be interpreted also create ambiguity.

Little is understood about human-centered judging or how judging with compassion could impact everyone in the courtroom (Hora & Schma, 2009). Given this lack of understanding, the purpose of this research was to better understand how human-



centered judging affects the thoughts, communications, and behaviors of 28 judges. The idea of compassionate jurisprudence presents a paradox that challenges judges to think beyond the view of justice as procedurally neutral, disinterested, and blind and could prompt more research into the humanity of judging and the role of compassion in court proceedings.

Finally, there is a failure to recognize compassion as a core value of judicial behavior. For the reasons mentioned above, compassion is not a component in the design and development of judicial training and leadership programs. Exploring the themes discovered through further qualitative measures may yield recommendations for a curricular and instructional design that supports compassionate jurisprudence in the American justice system. Providing concrete tools which judges can use to prepare realistically for compassionate dialogue and engagement with the people who appear before them is a long term goal of this study.

### **Summary and Conclusion**

Throughout this study of compassionate jurisprudence in drug courts, judges were challenged to examine their mental models and reflect upon the tensions between the traditional view of judging as dispassionate and detached and impersonal and a newer paradigm of compassionate judging through active engagement with court users.

This qualitative dialogic inquiry action research study explored the concept of compassionate jurisprudence and the judge's understanding and ideas about compassion and compassionate behaviors as a necessary element of the dispensation of justice. The study was guided by the following research questions:

1. Whether compassion and traditional perceptions of judging might coexist in American court rooms and give way to a new paradigm?
2. Whether awareness of compassionate behaviors in drug court, gleaned through a dialogic process, influences judges to create interruptions and upheavals in: (1) their own thought processes and behaviors, (2) the court as an institution and, (3) the legal communities they operate in (Nussbaum, 2001; O'Connell, 2005).

To answer these questions participating judges actively thought about their behaviors in their drug court and traditional court settings. The answer to the first question gleaned from the court observations and the web-based online dialogue is yes. Compassion and traditional perceptions of judging might coexist in American courtrooms. The second question is also answered in the affirmative. Although the study was too short to determine the impact on communities, it was clear that these judges are creating interruptions and upheavals in their own thought processes and the courts.

Chapter 5 reviewed the essential information from Chapters 1 through 4 and detailed conclusions and recommendations that arose from the study. Chapter 5 also includes the findings of the study which conveyed compassionate behaviors as observed and described by the 28 judge participants.

## References

- Acorn, A. (2004). *Compulsory Compassion: A Critique of Restorative Justice*.  
Vancouver: University of British Columbia Press.
- American Psychological Association. (2015). *Stress in America: Paying with our health*.  
Retrieved from <https://www.apa.org/news/press/releases/stress/2014/stress-report.pdf>.
- An honest chance: Perspectives on drug courts (April 2002). *Federal Sentencing Reporter*, 14(6), 369-372. doi:10.1525/fsr.2002.14.6.369
- Annus T., & Tavits, M. (2004). Judicial behavior after a change of regime: The effects of judge and defendant characteristics. *Law and Society Review*, 38(4), 711-736.
- Atwater, E. (1992). *I hear you: A listening skills handbook*. Prentice-Hall.
- Bailey, C. A. (2007). *A Guide to Qualitative Field Research 2nd Edition*. Thousand Oaks, CA: Pine Forge Press.
- Bandes, S. A. (2009). Empathetic judging and the rule of law. *Cardozo Law Review DeNovo*, 133.
- Banks, D. & Gottfredson, D. C. (2003). The effects of drug treatment and supervision on time to rearrest among drug treatment court participants. *Journal of Drug Issues*, 33, 385-412.
- Baum, D. (1996). *Smoke and mirrors: The war on drugs and the politics of failure*. Waltham, Mass: Little, Brown and Company.
- Beech, N., MacIntosh, R. and MacLean, D. (2010). Dialogues between academics and practitioners: The role of generative dialogic encounters. *Organization Studies*. (31) 1341.

- Belenko, S. (2006). Drug courts: The second decade. *National Institute of Justice*. (7)30-31.
- Bell, R. H. (1998). *Simone Weil: The way of justice as compassion*. Lantham: Rowman Littlefield Publishers.
- Berman, G. (2000). What is a traditional judge anyway? *Judicature*. 84 (2), 78-85.
- Berman, G. & Feinblatt, J. (2001). Problem-solving courts: A brief primer. *Law and Policy*. 23. pp. 3-18.
- Berman, G. & Feinblatt, J. (2002). Judges and problem-solving courts: Think piece. *Center for Court Innovation*. Retrieved on September 28, 2011 from [http://www.courtinnovation.org/center\\_1publications.html](http://www.courtinnovation.org/center_1publications.html).
- Berman, G. & Feinblatt, J. (2005). *Good courts: The case for problem-solving justice*. New York: The New Press.
- Bird, I. (2007). The 3 “C” model for networked collaborative-learning: A tool for novice designers. *Innovations in Education and Teaching International*. 44(2), 153-167.
- Black's Law Dictionary* 9th ed. (2009). Berkeley, CA: West Group Publishing.
- Bouffard, J.A., & Taxman, F.S. (2004). Looking inside the “black box” of drug court treatment services using direct observations. *Journal of Drug Issues*, 34(1), 195-218.
- Bound, H. (2010). Developing quality online dialogue: Dialogical inquiry. *International Journal of Teaching and Learning in Higher Education*. 22(2), 107-119.
- Boyatzis, R., & McKee, A. (2005). *Resonant leadership: Renewing yourself and connecting with others through mindfulness, hope, and compassion*. Boston: Harvard Business School Press.

- Braithwaite, J. (2006). Narrative and “compulsory compassion”. *Law and Social Inquiry*. (31) 2. 423-444.
- Brennan, W. (1988). Reason, passion and the progress of the law. *10 Cardoza L.Rev.* 3, 9.
- Brennan, W. (1994). A tribute to Justice Harry A. Blackmun. *Harvard Law Review*. (108) 1, pp. 1-22.
- Brien, A. (1990). Saving grace. *Criminal Justice Ethics*, 9(1), 52. Retrieved from EBSCOhost.
- Brown, R. M. (1995). Toward a just and compassionate society: A Christian view. *Cross Currents*, 164 (11) p. 2. Retrieved September 28, 2011, from EBSCOhost (Masterfile Premier).
- Buber, M. (1974). *I and thou*. New York: Macmillan Publishing.
- Burns, P. J., Hiday, V. A., and Ray, B. (2013). Effectiveness 2 years post exit of a recently established mental health court. *American Behavioral Scientist*, 57, 189 – 208.
- Burton, S. J. (1992). *Judging in good faith*. Cambridge University Press: New York.
- Cameron, K.S. (2003). Organizational virtuousness and performance. In Cameron, K.S., Dutton, J.E. & Quinn, R.E. (Eds.). *Positive organizational scholarship: Foundations of a New Scholarship*: 48-65. San Francisco: Berrett-Koehler.
- Carson, T. (1990). What kind of knowing is critical action research? *Theory into Practice*, 29(3), 167.
- Chase, D. J. & Hora, P.F. (2000). The implications of therapeutic jurisprudence. *Court Review*. 37(1), 12-20.

- Clark, L. (1999). Rousseau and political compassion in *The Nigger of the "Narcissus."* *Conradiana* 31(2). 120–30.
- Clear, T.R. & Frost, N. A. (2014). *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America*. New York: New York University Press.
- Coget, J. F. (2009). Dialogic inquiry: An extension of Schein's clinical inquiry. *Journal of Applied Behavioral Science*. (45) 90-105.
- Cohen, L., & Manion, L. (2000). *Research methods in education*. Routledge. p. 254. (5th edition).
- Compton, S. (2005). Qualitative research methods: The unstructured interview. *Canadian Journal of Dental Hygiene*, 39(1), 13-22.
- Cooper, D. R., & Schindler, P. S. (2003). *Business research methods*. New York: McGraw-Hill Higher Education.
- Correia, E. (2009, August). *The Uncertain Believer: Should judges have empathy or Compassion*. Retrieved on September 13, 2009 from [www.scienceandreligiontoday.com/2009/08/20should-judges-have-empathy-compassion.html/](http://www.scienceandreligiontoday.com/2009/08/20should-judges-have-empathy-compassion.html/)
- Coyne, C. J., & Hall, A. R. (2017). Four Decades and Counting: The Continued Failure of the War on Drugs. *Cato Institute Policy Analysis No. 811*. April 12, 2017 retrieved from <https://www.cato.org/publications/policy-analysis/four-decades-counting-continued-failure-war-drugs>
- Creswell, J.W. (2003). *Research design: Qualitative, quantitative, and mixed methods approaches* (2nd ed.). Thousand Oaks, CA: Sage Publications Inc.

- Creswell, J. W. (2005). *Educational research: Planning, conducting, and evaluating quantitative and qualitative research*. (2nd ed.). Upper Saddle River, NJ: Pearson Merrill Prentice Hall.
- Daicoff, S. (2000). Afterword: The Role of Therapeutic Jurisprudence within the Comprehensive Law Movement, in Dennis P. Stolle, David B. Wexler, & Bruce J. Winick, Eds., *Practicing therapeutic Jurisprudence*. Carolina Academic Press.
- Daicoff, S. (2006). Law as a Healing Profession: The “Comprehensive Law Movement”, 6 *Pepperdine Dispute Resolution Journal*. 1.
- Daicoff, S. & Wexler, D. B. (2003). Chapter 26: Therapeutic Jurisprudence, in *Comprehensive handbook of psychology: volume 11: Forensic psychology*. Alan M. Goldstein, ed., John Wiley & Sons, Inc.
- Dalai Lama (1995). *The power of compassion*. London: Thorsons.
- Daley, K. (2015). What is restorative justice? Fresh answers to a vexed question. *International Journal of Evidence Based Research, Policy & Practice*. (11) 1. 9-29.
- Danielson, R.D. & Cawley, J.F. (2007). Compassion and integrity in health professions education. *The Internet Journal of Allied Health Sciences and Practice*.
- DeAngelis, T. (2012). A history of treatment courts. *Monitor on Psychology*. 43 (3) p.47. retrieved from <http://www.apa.org/monitor/2012/03/treatment.aspx>.
- Denkla, D. & Berman, G. (2001). Rethinking the revolving door. *Center for Court Innovation*. 7. Retrieved from [http://www.courtinnovation.org/\\_uploads/documents/rethinkingtherevolvingdoor.pdf](http://www.courtinnovation.org/_uploads/documents/rethinkingtherevolvingdoor.pdf)

- Denzin, N. K., & Lincoln, Y. S. (2005). Introduction: The discipline and practice of qualitative research. In N.K. Denzin & Y. S. Lincoln (Eds.), *The Sage handbook of qualitative research* (3rd ed.). pp. 1-32). Thousand Oaks, CA: Sage Publications.
- DePoy, E., & Gitlin, L. M. (1998). *Introduction to research: Understanding and applying multiple strategies*. (2nd ed.). Philadelphia: Mosby, Inc.
- DeShon, R. P., & Gillespie, J. Z. (2005). A motivated action theory account of goal orientation. *Journal of Applied Psychology*, 90(6), 1096-1127.
- Doherty, J. J. (2006). Towards Self-reflection in librarianship: What is praxis? *Progressive Librarian, Winter 2005/2006* (26).
- Dutton, J.E., Frost, P.J., Worline, M.C., Lilius, J.M. & Kanov, J. (2005). Explaining compassion organizing competence. *School of Business Working Paper Series. Working Paper no. 993*. Michigan: Ross School of Business.
- Dutton, J., Lilius, J., & Kanov, J. (2007). The transformative potential of compassion at work. In S. Piderit, R. Fry, and D. Cooperrider (Eds.), *New designs for transformative cooperation* (pp. 107-126). Stanford University Press.
- Eikeland, O. (2007). From epistemology to gnoseology - understanding the knowledge claims of action research. *Management Research News*, 30(5), 344-358.
- Elkins, D. N. (2001). Beyond religion: Towards a humanistic spirituality. In K.J. Schneider, J. F. T. Bugental, & J. F. Pierson (Eds.), *The handbook of humanistic psychology: Leading edges in theory, research, and practice* (pp. 201-212). Thousand Oaks, CA: Sage Publications.



- Ellis, J. H. M., & Kiely, J. A. (2000). Action inquiry strategies: Taking stock and moving forward. *Journal of Applied Management Studies*, 9(1), 83-94.
- Engel, B. (2008). What is compassion and how can it improve my life? *Psychology Today*. April 28, 2008.
- Feely, M. M. & Rubin, E. L. (1998). *Judicial policy making and the modern state*. Cambridge, MA: Cambridge University Press.
- Feinblatt, J, Berman, G. & Denckla, D. (2000). Judicial innovation at the crossroads: The future of problem-solving courts. *The Court Manager*. 15(3). pp. 28-34.
- Ferrance, E. (2000). *Action research*. Rhode Island: Educational Laboratory Brown University.
- Ferrer, J. N. (2003). Dialogic inquiry as spiritual practice. *Tikkun*. 18 (1). pp. 29-32. January- February.
- Finnis, J.M. (2011). *Natural law and natural rights*. 2nd ed. New York: Oxford University Press.
- Fischer, B. (2003). Doing good with a vengeance: A critical assessment of the practices, effects, and implications of drug treatment courts in North America. *Criminal Justice*. 3: 227-248.
- Flango, C., McDowell, A., Saunders, D. Sydow, N., Campbell, C. & Kauder, N. (2012). Future trends in state courts. Williamsburg, VA: National Center for State Courts.
- Foucault, M. (1979). *Discipline and punish: The birth of the prison*. New York: Vintage Books.

- Fox, C. L. & Huddleston, C. W. (2003). Drug courts in the U.S. *Issues of Democracy*, 8(1), pp. 13-19.
- Franco, C. (2010). Drug courts: Background, effectiveness, and policy issues for congress. *Congressional Research Service*. 7-5700 www.crs.gov R41448.
- Franco, M. A. S. (2005). The pedagogy of action research. *Education and Research*, 31(3), 483-502.
- Freire, P. (1970). *Pedagogy of the oppressed*. New York: Penguin Group.
- Friedland, J. (1999). Compassion as a means to Freedom.” *The Humanist*. American Humanist Association. Retrieved November 02, 2011 from HighBeam Research: <http://www.highbeam.com/doc/1G1-55100720.html>
- Frost, P., Dutton, J., Maitlis, S., Lilius, J., Kanov, J., & Worline, M. (2006). Seeing organizations differently: Three lenses on compassion. In C. Hardy, S. Clegg, T. Lawrence & W. Nord (Eds.), *Handbook of organizational studies, second edition* (pp. 843-866). London: Sage Publications.
- Frost, P.J., Dutton, J.E., Worline, M.C., & Wilson, A. (2000). Narratives of compassion in organizations. In Fineman, S. (ed). *Emotion in organizations*: 25-45. London: Sage Publications.
- Gall, M., Borg, W. & Gall, J. (1996). *Educational research: An introduction* (6th ed). York: Longman Publishers.
- Garlikov, R. (2010). *The proper role of judges: Compatible with compassion*. Retrieved from <http://www.garlikov.com/philosophy/judgeandlaw.doc>
- Gergen, K. J., McNamee, S. & Barrett, F. (2001). Toward a vocabulary of transformative dialogue. *International Journal of Public Administration*. (24), 697-707.

- Gibbs, L., Kealy, M., Willis, K., Green, J., Welch, N., & Daly, J. (2007). What have sampling and data collection got to do with good qualitative research? *Australian and New Zealand journal of public health*, (31)6, 540-544.
- Glaser, A. (2005). *A call to compassion*. Berwick, Maine: Nicols-Hays.
- Goetz, J. L., Keltner, D., & Simon-Thomas, E. (2010). Compassion: An evolutionary analysis and empirical review. *Psychological Bulletin*, 136(3), 351-374.
- Golafshani, N. (2003). Understanding Reliability and Validity in Qualitative Research. *The Qualitative Report* (8) 4. December 200 597-607. Retrieved from <http://www.nova.edu/ssss/QR/QR8-4/golafshani.pdf>
- Gottfredson, D. C., Najaka, S. S., & Kearley, B. (2003). Effectiveness of drug treatment courts: Evidence from a randomized trial. *Criminology & Public Policy*, 2(2), 171-196.
- Gray, J. P. (2001). *Why our drug laws have failed and what we can do about it*. Philadelphia: Temple University Press.
- Greenfield, K. (2009, June 12). Souter and empathy. American Constitution Society [blog entry]. Retrieved from <http://www.acslaw.org/acsblog/node/13574>
- Guba, E. G. (1981). Criteria for assessing the trustworthiness of naturalistic inquiries, *Educational Communication and Technology Journal*, 29 (2), 75-91.
- Guba, E. G., & Lincoln, Y. S. (1981). *Effective evaluation: Improving the usefulness of evaluation results through responsive and naturalistic approaches*. San Francisco, CA: Jossey-Bass.
- Harrison, L., & Scarpitti, F. (2002). Introduction, progress and issues in drug treatment courts. *Substance Use and Misuse*, 37(12-13), 1441-1467.

- Hasnas, J. (2009). The unseen deserve empathy too. *Wall Street Journal* May 29, 2009.
- Hegel, W. (1942). *Philosophy of right*. Translated by Tim Knox. Oxford: Clarendon Press.
- Herr, K., & Anderson, G. L. (2015). *The action research dissertation: A guide for students and faculty*. Thousand Oaks, CA: Sage Publications.
- Hillon, M. E., & Boje, D. M. (2007). The social ecology of action research. *Management Research News*, 30(5), 359-367.
- Himmelfarb, G. (Fall, 2001). The idea of compassion: The British vs. the French enlightenment. *The Public Interest*. 145, p. 3-29.
- Hobbes, T. (1651). *Leviathan*, p.203 (Waller, A.R Ed.) Cambridge University Press 1904.
- Hoffmaster, B. (2003). Fear of feeling. *Hastings Center Report*. January-February. 45-47.
- Hora, P. F. (2002). A dozen years of drug treatment courts: Uncovering for theoretical foundation and the construction of a mainstream paradigm. *Substance Use & Misuse*, 37(12/13), 1469-1488.
- Hora, P. F., Schma, W. G., & Rosenthal, J. T. (1999). Therapeutic jurisprudence and the drug treatment court movement: Revolutionizing the criminal justice system's response to drug abuse and crime in America. *Notre Dame Law Review*, vol. 74. 439-537.
- Hora, P. F. & Schma, W. G. (2009). Drug courts and the treatment of incarcerated populations. In R. K. Ries, D. A. Fiellin, S. C. Miller, & R. Saitz (eds.), *Principles of Addiction Medicine*, (4<sup>th</sup> ed., pp. 1513-1520). Philadelphia, PA: Wolters Kluwer.

- Howard, L. A. (2002). From ivory tower to town hall: Using dialogic inquiry as a critical pedagogy. *American Behavioral Scientist*. (45) 1125.
- Järvinen, P. (2000). Research questions guiding selection of an appropriate research method. In (pp. 124-131). Vienna: Vienna University of Economics and Business Administration.
- Järvinen, P. (2007). Action research is similar to design science. *Quality & Quantity*, 41(1), 37-54.
- Kalantry, S. (2012). Women in robes. *America's Quarterly*. Summer 2012.
- Kant, I. (1965). *Metaphysical elements of justice: Part 1 of the metaphysics of morals*. Translated by John Ladd. Cambridge: Hackett Publishing Co., Inc.
- Kenn, D. (2009). *Lawyering from the heart*. New York: Aspen Publishers.
- Kleinsasser, A.M. (2010). Researchers, reflexivity, and good data: Writing to unlearn. *Theory into Practice*. 39, 155-162.
- Klontz, B., Britt, S. L., & Archuleta, K.I. (2015). *Financial therapy: Theory, research and practice*. Springer International Publishing: Switzerland.
- Knight, J. (2009). Are empiricists asking the right questions about judicial decision-making. *Duke Law Journal*. 58, 1531.
- Lacity, M. C., & Janson, M. A. (1994). Understanding qualitative data: A framework of text analysis methods. *Journal of Management Information Systems*, 11(2), 137-155.
- Ladkin, D. (2004). The phenomenological roots of action research. *Action research*, 3(1), 109-127.

- Leedy, P. D., & Ormrod, J. E. (2005). *Practical research: Planning and design*. (8th ed.). Upper Saddle River, N.J.: Pearson Prentice Hall.
- Leiter, B. (2007). *Naturalizing jurisprudence: Essays on legal realism and naturalism in legal philosophy*. New York: Oxford University Press.
- Levin, M., & Martin, A.W. (2007). The praxis of educating action researchers: The possibilities and obstacles in higher education. *Action Research*, 5(3), 219-229.
- Lewin, K. (1946). Action research and minority problems. *J Soc. Issues* 2(4): 34-46.
- Lichtman, M. (2006). *Qualitative research in education: A user's guide*. Thousand Oaks, CA: Sage Publication.
- Lilius, J., Worline, M., Maitlis, S., Kanov, J., Dutton, J., & Frost, P. (2008). Contours of compassion at work. *Journal of Organizational Behavior*, 29, 193-218.
- Lincoln, Y. S. (2005). Revolutions in qualitative research: From just experience to experiencing justice. *Journal of Thought*, 40(4), 25-40.
- Lincoln, Y. S., & Guba, E. G. (1985). *Naturalistic inquiry*. Newbury Park, CA: Sage Publications.
- Little, L.E. (2002). Adjudication and emotion. *Florida Coastal Law Journal*. (3) pp. 204-207.
- Machi, L.A. & McEvoy, B. T. (2009). *The literature review: Six steps to success*. Thousand Oaks, CA: Corwin Press.
- Mack, K. & Anleu, S. R. (2012). In court judicial behaviors, gender and legitimacy. *Griffith Law Review*. 21 (3) 728-751.

- Mack N., Woodsong C., MacQueen K., Guest, G., & Namey, E. (2005). *Qualitative research methods: A Data Collector's Field Guide*. North Carolina: Family Health International.
- Madden, R. G., & Wayne, R. H. (2003). Social work and the law: A therapeutic jurisprudence perspective. *Social Work*, 48(3), 338-338-47. Retrieved from <http://search.proquest.com/docview/215269433?accountid=35812>
- Madden, M., & Rainie, L. (2015, May 20). Americans' Attitudes About Privacy, Security and Surveillance. *Pew Research Center*. Published May 20, 2015. Retrieved from <http://www.pewinternet.org/2015/05/20/americans-attitudes-about-privacy-security-and-surveillance/>
- Maitlis, S. & Ozcelik, H. (2004). Toxic decision processes: A study of emotion and organizational decision making. *Organization Science*. 15 (4). pp.375-393.
- Marks, J. (2007). Rousseau's discriminating defense of compassion. *American Political Science Review*, 101(4), 727-739.
- Maroney, T.A. (2006). Law and emotion: A proposed taxonomy of an emerging field. *Law and Human Behavior*. (30) 119.
- Maroney, T.A. (2011). The persistent cultural script of judicial dispassion. *California Law Review*. (99) 629-681.
- Maroney, A., & Gross, J J., (2014). The ideal of the dispassionate judge: An emotion regulation perspective. *Emotion Review*, 6 (2), 142-151.
- Marshall, C., & Rossman, G B (2006). *Designing qualitative research*. (4th ed.). Thousand Oaks, CA: Sage Publications.

- Mårtensson, P., & Lee, A. S. (2004). Dialogic action research at Omega Corporation. *MIS Quarterly*, 28(3), 507-529.
- Martin, W.M. (2006). *Theories of Judgment: Psychology, logic, phenomenology*. New York: Cambridge University Press.
- Maxwell, J. A. (2005). *Qualitative research design: An interactive approach*. (2nd ed.). (Vol. 41) Thousand Oaks, CA: Sage Publications.
- McCutcheon, G., & Jung, B. (1990). Alternative perspectives on action research. *Theory Into Practice*, 29(3), 144.
- McInnes, P., & Hibbert, P. (2007). Exploring the complexities of validity claims in action research. *Management Research News*, 30(5), 381-390.
- McKay, J., & Marshall, P. (2001). The dual imperatives of action research. *Information Technology & People*, 14(1), 46-59.
- McNamee, S., & Gergen, K. J. (1999). *Relational responsibility: Resources for sustainable dialogue*. Thousand Oaks, CA: Sage, Inc.
- Mendoza, M. (2010, May 16). AP's dire assessment of the war on drugs. *The Dallas Morning News*. Retrieved from <http://crimeblog.dallasnews.com/2010/05/aps-dire-assessment-of-the-war.html/>
- Miles, M.B. & Huberman, M.A. (1984). Drawing valid meaning from qualitative data: Toward a shared craft. *Educational Researcher*. 13, 20-30.
- Miles, M., & Huberman, A. M. (1994). *Qualitative data analysis*. (2nd ed.). Thousand Oaks, CA: Sage Publications.
- Morgan, H.W. (1994). *Drugs in America: A social history, 1800-1980*. New York: University of Syracuse Press.



- Morrison, B. E., & Vaandering, D. (2012). Restorative justice: Pedagogy, praxis, and discipline. *Journal of School Violence, 11*(2), 138–155.
- Morse, J.M., Barrett, M., Mayan, M., Olson, K., Spiers, J. (2002). Verification strategies for establishing reliability and validity in qualitative research. *International Journal of Qualitative Studies*. Retrieved on May 16, 2012 from <http://ejournals.library.ualberta.ca/index.php/IJQM/article/viewArticle/4603>
- Mulhall, A. (2003), In the field: notes on observation in qualitative research. *Journal of Advanced Nursing, 41*(3), 306–313.
- Murphy, J. G., & Hampton, J. (1988). *Forgiveness and mercy*. Cambridge: Cambridge University Press.
- National Association of Drug Court Professionals, NADCP (2013). *Adult drug court best practices standards*. Vol. 1. Alexandria, VA: National Association of Drug Court Professionals.
- National Council on Alcoholism and Drug Dependency (2015). Alcohol, drugs and crime. Retrieved from <https://www.ncadd.org/about-addiction/alcohol-drugs-and-crime>.
- National Drug Court Institute & Center for Substance Abuse Treatment. (2004). Family Dependency Treatment Courts: Addressing Child Abuse and Neglect Cases Using the Drug Court Model. *Monograph U.S. Department of Health and Human Services and the U.S. Department of Justice*. Retrieved <https://www.ncjrs.gov/pdffiles1/bja/206809.pdf>
- National Institute of Justice (2017). *Drug Courts*. Downloaded on June 3, 2017 from <https://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>.

- National Women's Law Center (2016). Women in the federal judiciary: Still a long way to go. *Biographical directory of judges. Federal Judicial Center.*  
[www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1](http://www.nwlc.org/resource/women-federal-judiciary-still-long-way-go-1).
- Neuman, W. L. (2003). *Social research methods* (5th ed.). Upper Saddle River, NJ: Prentice Hall.
- Nichols, A. L. & Maner, J. K. (2008). The good subject effect: Investigating participant demand characteristics. *Journal of General Psychology*. 135(2),151-166.
- Nielsen, D. A. (1991). Natural law and civilizations: images of "nature," intracivilizational polarities, and the emergence of heterodox ideals. *Sociological Analysis*, 52(1), 55-76.
- Nolan Jr., J. L. (2001). *Reinventing justice: The American drug court movement*. New Jersey: Princeton University Press.
- Nolan Jr., J. L. (2002). Therapeutic Adjudication. *Society*, 39(2), 29-38. Retrieved from EBSCOhost.
- Nolan Jr., J. L. (2009). *Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement*. Princeton; Oxford: Princeton University Press.  
Retrieved from <http://www.jstor.org/stable/j.ctt7t78x>
- Nonaka, I., & Nishiguchi, T. (2001). Knowledge emergence: *Social, technical, and evolutionary dimensions of knowledge creation*. New York: Oxford University Press.
- Nussbaum, M. (1996). Compassion: The basic social emotion. *Social Philosophy and Policy*, 13(1), 27-58.

- Nussbaum, M. (1999). Emotion in the language of judging. *St. John's Law Review: Vol. 70: No. 1, Article 4.* 108, 23-25.
- Nussbaum, M. (2001). *Upheavals of thought: The intelligence of emotions.* New York: Cambridge University Press.
- Nussbaum, M. (2004). *Hiding from Humanity: Disgust, Shame, and the Law.* Princeton; Oxford: Princeton University Press.
- O'Connell, M.H. (2005). *Upheavals and interruptions: Political compassion as praxis for justice.* Boston: Boston College Graduate School of Arts and Sciences.
- Odegaard, A. (2007). Therapeutic jurisprudence: The impact of mental health courts on the criminal justice system. *North Dakota Law Review.* (83), 225-259.
- Ogloff, J. R. P. (2002). Offender rehabilitation: From “nothing works” to what next? *Australian Psychologist,* 37: 245–252.
- O'Hare, C.A. (2009). *Making a difference: Judicial stewards in the town and village courts of New York State.* Phoenix: University of Phoenix.
- Orne, M. T. (1962). On the social psychology of the psychological experiment: With particular reference to demand characteristics and their implications. *American Psychologist.* 17, 776-783.
- Orwin, C. (1997). Rousseau and the discovery of political compassion. In the *Legacy of Rousseau.* Ed. Clifford Orwin and Nathan Tarcon. Chicago: University of Chicago Press.
- Owen, S. 2011). A crack in everything: Restorative possibilities of plea-based sentencing courts. *Alberta Law Review,* 48(4), 847-892.

- Patton, M. Q. (2002). *Qualitative evaluation and research methods* (3rd ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Pfau, a. (2008, May, 1). Building confidence in town, village courts. *New York Law Journal*. 239(9). Retrieved September 10, 2009 from [https://web2.westlaw.com/search/default.wl?tf=2004&rs-WLW8.06&eq=search&action=Search&fn=\\_top&sv=Split&method=TNC&query=Town+and+Village+courts&tc=1001&rltdb=CLID\\_DB3379137&effdate=1%2f1%2f0001+12%3a00%3a00+AM&db=NYLJ&vr=2.0&rp=%2fdefault.wl&mt=N ewYorkTownVillage](https://web2.westlaw.com/search/default.wl?tf=2004&rs-WLW8.06&eq=search&action=Search&fn=_top&sv=Split&method=TNC&query=Town+and+Village+courts&tc=1001&rltdb=CLID_DB3379137&effdate=1%2f1%2f0001+12%3a00%3a00+AM&db=NYLJ&vr=2.0&rp=%2fdefault.wl&mt=N ewYorkTownVillage).
- Porter, R., Rempel, M. & Mansky, A. (2010). What makes a court problem- solving? Universal performance indicators for problem solving justice. *Center for Court Innovation*. Submitted to the State Justice Institute February 2010. Retrieved from [http://www.courtinnovation.org/sites/default/files/What\\_Makes\\_A\\_Court\\_P\\_S.pdf](http://www.courtinnovation.org/sites/default/files/What_Makes_A_Court_P_S.pdf)
- Posner, R A. (2008). *How judges think*. Boston: Harvard University Press.
- Prilleltensky, I. (2011). Wellness as fairness. *American Journal of Community Psychology*. Originally presented at Biennial Conference of the Society for Community Research and Action, Division of Community Psychology of the American Psychological Association, in Chicago, June 2011.
- Prilleltensky, I., Nelson, G., & Peirson, L. (2001). The role of power and control in children's lives: An ecological analysis of pathways towards wellness, resilience, and problems. *Journal of Community and Applied Social Psychology*. 11, 142-158.

- Purtillo, R. & Doherty, R. (2011). *Ethical dimensions in the health care professions*. 5<sup>th</sup> edition. St. Louis, Missouri: Elsevier Saunders.
- Reason, P. (2006). Choice and quality in action research practice. *Journal of Management Inquiry*, 15(2), 187-203.
- Reason, P., & Bradbury, H. E. (2006). *Handbook of action research*. (Concise paperback edition ed.). Thousand Oaks, CA: Sage Publications.
- Redmond, M.V. (1989). The functions of empathy (decentering) in human relations. *Human relations*. 42(7), 593-605.
- Reimen, J. (2007). *The rich get richer the poor get prison: Ideology, class and criminal justice*. 8th. Ed. Boston: Pearson.
- Richards, L. (2005). *Handling qualitative data: A practical guide*. Thousand Oaks, CA: Sage Publications.
- Robinson v. California, 370 U.S. 660 (1962).
- Rosenberg, G. N. (2008). *The hollow hope: Can courts bring about social change?* University of Chicago Press: Chicago and London.
- Rossman, S., Roman, J., Zweig, M. & Rempel, L. (June 2011). *The Multi-site Adult Drug Court Evaluation: The Drug Court Experience*. Volume 3. The Urban Institute. Retrieved from: <http://www.urban.org/research/publication/multi-site-adult-drug-court-evaluation-drug-court-experience>.
- Rousseau, J. J. (1762). *The social contract*. Translated by Maurice Cranston. London: Penguin Group.
- Rubin, H. J., & Rubin, I. S. (2005). *Qualitative interviewing: The art of hearing data*. Thousand Oaks, CA: Sage Publications.

- Salovey, P., & Mayer, J.D. (1990). Emotional intelligence. *Imagination, Cognition, and Personality*, 9, 185-211.
- Sandel, M.J. (2009). *Justice: What's the right thing to do?* Farrar, Straus and Giroux: New York.
- Satin, M. (1994). Law and psychology: A movement whose time has come. *Annual Survey of American Law*, 1994, pp. 580-631.
- Satin, M. (2008). Healing first!: Time for the U.S. justice system to get less mechanistic and more compassionate. *Radical Middle Newsletter*. 119, 1-17. Retrieved on July 18, 2011 from [http://www.radicalmiddle.com/x\\_wexler.htm](http://www.radicalmiddle.com/x_wexler.htm).
- Scharmer, C. O. (2007). *Theory U: Leading from the future as it emerges*. Cambridge, MA: The Society for Organizational Learning.
- Schma, W. (2000). Judging for the new millennium. *Court Review*. 37(1) 4-6.
- Schma, W. (2003, Jan) Therapeutic jurisprudence. *Michigan Bar Journal*.
- Seale, C. (2001). Qualitative methods: Validity and reliability. *European Journal of Cancer Care*, 10(2), 133-134.
- Senjo, S. & Leip, L. (2001). Testing therapeutic jurisprudence theory: An empirical assessment of the drug court process. *Western Criminology Review* 3(1). Retrieved from <http://wcr.sonoma.edu/v3n1/senjo.html>.
- Sheldon, R. G. (2001). *Controlling the dangerous classes*. Boston: Allyn & Bacon.
- Shelley, A. (2014). *Action research: Creative metaphor to build relationships*. London: Sage Publications, Ltd.
- Shepherd, L. (2003). Face to face: A call for radical responsibility in place of compassion. (77) 3, 445-514.

- Sheppard, B., Lewicki, R. & Minton, J. (1992). *Organizational justice: The search for fairness in the workplace*. New York: Maxwell Macmillan.
- Sheppes, G., Scheibe, S., Suri, G. & Gross, J. J. ( 2011). Emotion-Regulation Choice. *Psychological Science*, 22 (11) 1391 – 1396.
- Silver, M. A. (2007). *The affective assistance of counsel: Practicing law as a healing profession*. North Carolina: Carolina Academic Press.
- Singer, J.W. (1988) Legal realism now. *California Law Review*. 76, p.474-540.
- Skaff, K., Toumey, C., Rapp, D., & Fahringer, D. (2003). Measuring compassion in physician assistants. *Journal of the American Academy of Physician Assistants*, 16 (1), 31-40.
- Slobogin, C. (1995). Therapeutic jurisprudence: Five dilemmas to ponder. ” *Psychology, Public Policy and Law*. (1) 193-196.
- State v. Porter, 659 So. 2d (Fla. 3<sup>rd</sup>. DCA 1995).
- Streeton, R., Cooke, M. & Campbell, J. (2004). Researching the researchers: using a snowballing technique, *Nurse Researcher*, 12 (1), 35-47.
- Stringer, E. T. (2007). *Action research*. (3<sup>rd</sup> ed.). Thousand Oaks, CA: Sage Publication.
- Sunshine, J. and Tyler, T R. 2003. The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review*, 37: 513-547.
- Switankowsky, I. (2000). Sympathy and empathy. *Philosophy Today*. 44, 86-92.
- Tamanaha, B. Z. (2004). *On the rule of law: History, politics, theory*. Cambridge: Cambridge University Press.

- Tandon, R. (2014). Dialogue. *Sage Encyclopedia of Action Research*. London: Sage Publications, Ltd. Eds. David Coghlan & Mary Brydon-Miller.
- Tandon, R. (2002). *Participatory action research: Revisiting the roots*. New Delhi: Mosaic Books.
- Taub, R. F. (1997). Good judges don't always go by sentencing guidelines. *Palm Beach Post*. December 19, 1997 p. 23A.
- Tauber, J. (1998). The future of drug courts: Comprehensive drug court systems. *National Drug Court Institute Review*, 1(1), 86-102.
- The American Bench. (2016). 2016 representation of United States state court women judges. *The American Bench 2016, Forster-Long, LLC*. <http://forster-long.com/americanbenchnawj.asp>.
- The path of compassion: Writings on socially engaged Buddhism*. (ed. Eppsteiner, F. 1988). Berkeley, California: Parallax Press.
- The White House, Office of the Press Secretary (2009, May 26). *Remarks by the president in nominating Judge Sonia Sotomayor to the United States Supreme Court*. Retrieved from <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-nominating-judge-sonia-sotomayor-united-states-supreme-court>.
- Tiger, R. (2013). *Judging Addicts: Drug Courts and Coercion in the Justice System*. New York: London: NYU Press.
- Torbert, W. R. (2000). Transforming social science to integrate quantitative, qualitative and action research. In F.T. Sherman & W. R. Torbert (Eds.), *Transforming social inquiry: Transforming social action* (pp. 67-92). Norwell, MA: Kluwer Academic Publishers.



- Torbert, W. R. (2004). *Action inquiry: The secret of timely and transforming leadership*.
- Torbert, W. R. (2006). The practice of action inquiry. In P. Reason & H. Bradbury (Eds.), *Handbook of action research* (pp. 207-217). Thousand Oaks, CA: Sage Publications.
- Trout, J.D. (2009). *The empathy gap: Building bridges to the good life and the good society*. New York: Viking.
- Tuckett, A. G. (2005). Part II. Rigour in qualitative research: Complexities and solutions. *Nurse Researcher*, 13(1), 29-42.
- Twemlow, S.W. (2001). Training psychotherapists in attributes of “mind” from Zen and psychoanalytic perspectives, part II: Attention, here and now, nonattachment, and compassion. *American Journal of Psychotherapy*, 55(1), 22-22-39. Retrieved from <http://search.proquest.com/docview/213138932?accountid=35812>
- Ulmer, J., Kurlychek, M., & Kramer, J. (2007). Prosecutorial discretion and the imposition of mandatory minimum sentences. *Journal of Research in Crime and Delinquency*. (44), 427-458.
- Undung, Y. & De Guzman, A. B. (2009). Understanding the elements of empathy as a component of care-driven leadership. *Journal of Leadership Studies*. 3 (1) pp19-28.
- U.S. Department of Justice: Bureau of Justice Statistics. (June 2000). Prisoners in 1999.
- U.S. Department of Justice: Bureau of Justice Statistics. (October, 2006). Drug Use and Dependence, State and Federal Prisoners, 2004.
- Van Kaam, A. (1966). *Existential foundations of psychology*. Pittsburgh: Duquesne University Press.

- Van Manen, M. (1990a). Beyond assumptions: Shifting the limits of action research. *Theory Into Practice*, 29(3), 152.
- Van Manen, M. (1990b). Researching lived experience: *Human science for an action sensitive pedagogy*. Albany, NY: State University of New York Press.
- Vile, J. (2006). A companion to the United States constitution and its amendments. Portsmouth, New Hampshire: Greenwood Publishing Group.
- von Hirsch, A., Ashworth, A., & Shearing, C. (2003). Specifying aims and limits for restorative justice: A 'Making Amends' Model? *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms*. Eds. Andrew von Hirsch, Andrew Ashworth, Anthony Bottoms, Kent Roach, and Mara Schiff. Oxford: Hart, 2003. 21-43.
- Walker, R. (2014). The shame of poverty. *Oxford Scholarship Online*. August 2014.
- Wallace, H. & Roberson, C. (2001). *Principles of criminal law*. 2ed. Needham Heights, MA: Allyn and Bacon.
- Walpin, G. (2003). America's adversarial and jury systems: More likely to do justice. *Harvard Journal of Law and Public Policy*. (26), 175-185.
- Ward-Scholfield, J. (1993). Increasing the generalisability of qualitative research. In M. Hammersley (Ed.), *Social Research: Philosophy, Politics & Practice* (pp. 200-225). London: Open University/Sage Publications.
- Watts, H. (1985). When teachers are researchers, teaching improves. *Journal of Staff Development*. 6 (2), 118-127.

- Weiden, D. L. (2007). *Judicial decision-making in comparative perspective: ideology, law and activism in Constitutional courts*. (Doctoral dissertation). Retrieved from <http://www.lib.utexas.edu/etd/d/2007/weidend45079/weidend45079.pdf>
- Wexler, D. B. (2011). The relevance of therapeutic jurisprudence and its literature. *Federal Sentencing Reporter*. 23(4), 278-279.
- Wexler, D. B., & Winick, B. J. (1996). *Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence*. Durham, NC: Carolina Academic Press.
- Wexler, D. B., & Winick, B. J. (2003). Putting therapeutic jurisprudence to work. *ABA Journal*, 89(5), 54.
- Whitehead, L. (2004). Methodological issues in nursing research: Enhancing the quality of hermeneutic research: Decision trail. *Journal of Advanced Nursing*, 45(5), 512-518.
- Winick, B. (2003). The judge's role in encouraging motivation for change. In B. Winick (Ed.), *Judging in a Therapeutic Key: Therapeutic jurisprudence and the courts*. pp. 181-188. Durham: Carolina Academic Press.
- Winick B. J., & Wexler D. B. (2002). Drug treatment court: Therapeutic jurisprudence applied. *Touro Law Review* 3:479-85.
- Winick B. J., & Wexler D. B. (2003). *Judging in a therapeutic key: Therapeutic jurisprudence and the courts*. Durham: Carolina Academic Press.
- Witters, W., Venturelli, P. & Hanson, G. (1992). *Drugs and society*. 3rd. ed. Jones and Bartlett: Boston.
- Wizner, S. (1988). Passion and legal argument and judicial decision making: A comment on Goldberg v. Kelly. *Yale Law School Faculty Scholarship Series*. Paper1855.

- Wright, J. K. (2002). Visionary law: New approaches to expanding our choices in law practice. *Journal of Nursing Law*, 8(4), 7-18.
- Wuthnow, R. (1991). *Acts of compassion: Caring for others and helping ourselves*. Princeton, NJ: Princeton University Press.
- Yolles, Miles, P. & Guo, K. (2006). Culture and transformational change with China's accession to the WTO: The challenge for action research. *Journal of Technology Management in China* (1) 2, 147-158.
- Yorks, L., & Nicolaidis, A. (2007). The role conundrums of co-inquiry action research: Lessons from the field. *Systemic Practice and Action Research*, 20(1), 105.
- Young, D. (2008). *Rationalizing compassion: Images of moral agency in criminal law*. University of Toronto (Canada)). ProQuest Dissertations and Theses, Retrieved from <http://search.proquest.com/docview/304379392?accountid=35812>
- Ziebarth, S. (2008). The paradox of intention and CEO leadership: A dialogic inquiry action research study. (Doctoral Dissertation). Retrieved from <https://search.proquest.com/docview/304322772>.
- Zipursky, B. (1990). Deshaney and the jurisprudence of compassion. *N. Y. U. Law Review*, 65, 1101-1147.
- Zonger, J. & Folkman, J. (2016). What great listeners do. *Harvard Business Review*. July 14, 2016.

**APPENDIX A**  
**THEORETICAL FRAMEWORK**

<b>Theoretical Categories</b>	<b>Supporting Literature</b>	<b>Key Characteristics/Summary</b>
<p>Western Jurisprudence</p> <ul style="list-style-type: none"> <li>● Rule of Law</li> <li>● Role of Judges</li> <li>● Purpose of Criminal Law</li> </ul>	<p>Hora &amp; Chase, 2009; Knight, 2009; Leiter, 2007; Little, 2002; Nolan, 2001; Nielsen, 1991; O’Hare, 2009; Sandel, 2009; Shepherd, 2003; Tamanaha, 2004; Taub, 1997.</p>	<p>Mercy is incompatible with the duties that a judge is thought have in a criminal trial. When mercy is exercised by a judge, the act springs from compassion for the plight of a particular offender. It involves imposing upon the offender a hardship less than he or she deserves. In criminal cases this is opposed to the concept of retributive justice.</p> <p>Judicial training avoids the topics of empathy and compassion.</p> <p>The traditional law and order theories are in direct contrast with those who believe that compassion holds an honored place in the administration of justice.</p>
<p>Judicial Dispassion</p>	<p>Hobbes, 2002; Hoffmaster, 2003; Maroney, 2006; Maroney, 2011.</p>	<p>Deeply ingrained in western jurisprudence is a script that calls for judicial dispassion. Judges should feel no emotion as it is a sign of failure of impartiality, reason and discipline.</p> <p>Judges are trained to apply abstract rules to concrete facts and are resistant to any emotional engagement with the people who appear before them (Knight, 2009). Judges who are not compassionate create an “unfair, morally unjust, and unreasonable burden on the poor and minorities.</p>

(table continues)

Theoretical Categories	Supporting Literature	Key Characteristics/Summary
Loss of Public Confidence in Courts	Burton, 1992; Pfau, 2008; Fox & Huddleston, 2003.	Over the years damaging blows have been dealt to public confidence in the effectiveness and integrity of criminal courts and the criminal justice system overall. Increased recidivism rates, overcrowded dockets, perceptions of bias, wrongful convictions of innocent people and increased dependence on incarceration have resulted in low marks from the general public for American criminal courts (Fox and Huddleston, 2003).
War on Drugs	Baum, 1996; Butler, 1995; Mendoza, 2010; Witters et al., 1992.	As a result of failed drug policies, drug cases overwhelm the local courts of most American cities. The 40 year, 1 trillion dollar United States war on drugs has resulted in the loss of thousands of lives without a decrease in drug use and continuing rampant violence locally and abroad.
Therapeutic Jurisprudence <ul style="list-style-type: none"> <li>• Drug Courts</li> <li>• Problem-Solving Courts</li> </ul>	<p>Berman &amp; Feinblatt, 2005, 2002, 2001; Chase &amp; Hora, 2000; Daicoff, 2000; Daicoff, 2005; Daicoff, 2006; Daicoff &amp; Wexler, 2003; Fischer, 2003; Fredericks, 2006; Fox &amp; Huddleston, 2003; Gottfredson et al., 2003; Hora, 2002; Hora et al., 1999; Nolan, 2002; Senjo &amp; Leip, 2001.</p> <p>Feinblatt, Berman, &amp; Denkla, 2000; O'degaard, 2007; Janoff, 1989; Schma, 2003; Schma, 2000; Taber, Grant, Huser, Norman, &amp; Sutton; Wexler &amp; Winnick, 2003; Winnick &amp; Wexler, 2003; and Winnick, 2003.</p>	<p>The drug court movement was a response to overcrowded court calendars and the growing number of drug cases coming through the courts. Drug treatment courts provide treatment in conjunction with judicial control to affect the behavior of persons who are dependent on drugs and the commission of crimes for their survival.</p> <p>Drug treatment courts present challenges to the traditional training and education of judges because of the compassionate orientation which considers people's feeling and needs and purposes to prevent further harm.</p>

(table continues)

Theoretical Categories	Supporting Literature	Key Characteristics/Summary
Emotions	Ashkanasy, 2002; Maitlis & Ozececik, 2004; Nussbaum, 1999; Nussbaum, 2001.	<p>The law constantly takes account of people's emotional states so it is a fiction that judges and others are not prone to emotional responses.</p> <p>Although scholars, legal theorists and judges admit that emotion is inevitable, the power of the judicial dispassion script prevails and no theory has emerged that suggests how emotions such as compassion and empathy might coexist with judicial decision-making.</p>
Empathy	Coyle, 1995; Greenfield, 2009; Hasnas, 2009; Redmond, 1989; Undung & De Guzman, 2009.	Ethics, morals and empathy are critical to the administration of justice.
Compassion <ul style="list-style-type: none"> <li>● Historical context</li> <li>● Measuring Compassion</li> <li>● Justice</li> <li>● Organizations</li> </ul>	Brown, 1995; Buber, 1974; Cameron, 2003; Dalai Lama, 1995; Elkins, 2001; Glaser, 2005; Epsteiner, 1988; Danielson & Cawley, 2007; Dutton et al., 2005; Dutton et al., 2007; Frost, Dutton et al., 2000; Frost, Dutton et al., 2006; Lilius et al., 2008; Wuthnow, 1988.	<p>Compassion is an essential and valuable reminder of our common humanity.</p> <p>Compassion is a way to demonstrate voluntary justice.</p> <p>Compassion is measurable. The hypothetical elements of compassion include: familiarity over time; attention to detail; consideration; honoring the person, attentive listening, forbearance, concern, explanatory communication and patience.</p> <p>Society can be transformed in a positive way through individual expressions of love and compassion.</p>
Compulsory Compassion	Acorn, 2004; Braithwaite, 2006; Young, 2008.	Restorative Justice models create a scenario whereby a perpetrator and victim may encounter one another in such a way as to elicit compassion.

(table continues)

Theoretical Categories	Supporting Literature	Key Characteristics/Summary
Compassionate Jurisprudence	Bandes, 2009; Bell, 1998; Boyatzis & McKee, 2005; Brennan, 1988; Brennan, 1994; Brien, 1990; Brooks, 2010; Correia, 2009; Daft & Lengel, 2000; Dreher, 2002; Nussbaum, 1996; Nussbaum, 2004; O'Connell, 2005; Rosenberg, 2008; Satin, 2008; Satin, 1994; Wizner, 1988; Zipursky, 1990.	Compassion is a motivator for righting the injustices of the world.  Compassion could be a model for feeling that is directed toward the other; that embraces him, her or it; that marks the other as a morally significant being deserving of our attention, caring concern and effort?
Procedural Justice	Maitlis & Ozcelik, 2004; Tyler, T.R., 1990; Frazer, M.S., 2006; Mazerrol, L., Bennett, S., & Eggins, E. 2012.	Procedural justice (sometimes called procedural fairness) describes the idea that how individuals regard the justice system is tied more to the perceived fairness of the <i>process</i> and how they were treated rather than to the perceived fairness of the <i>outcome</i> .
Action Research • Dialogic Inquiry	Argyris, Putnam & Smith, 1985; Carson, 1990; Compton, 2005; Denzin & Lincoln, 2005; Depoy & Gitlin, 1998; Deshon & Gillespie, 2005; Ellis & Kiely, 2000; Ferrer, 2003; Franco, 2005; Herr & Anderson, 2005; Hillon & Boje, 2007; Jarvinen, 2000; Jarvinen, 2007; Ladkin, 2004; Lincoln & Guba, 1985; Martensson & Lee, 2004; Marshall & Rossman, 2006; McCutcheon & Jung, 1990; McInnes & Hibbert, 2007; Reason, 2006; Reason & Bradbury, 2006; Stringer, 2007; Torbert, 2007.	The researcher begins with a full description of her own experience observing the social dynamic between judge and drug court participant. The researcher then finds statements in the ensuing dialogue through interviews and online discussions about how the judges are experiencing what was observed by the researcher. Meaning will be ascribed as those experiences arise rather than measuring the causal relationships between variables  Action research is “a process by which participants examine their own practices systematically and carefully using the techniques of research.”

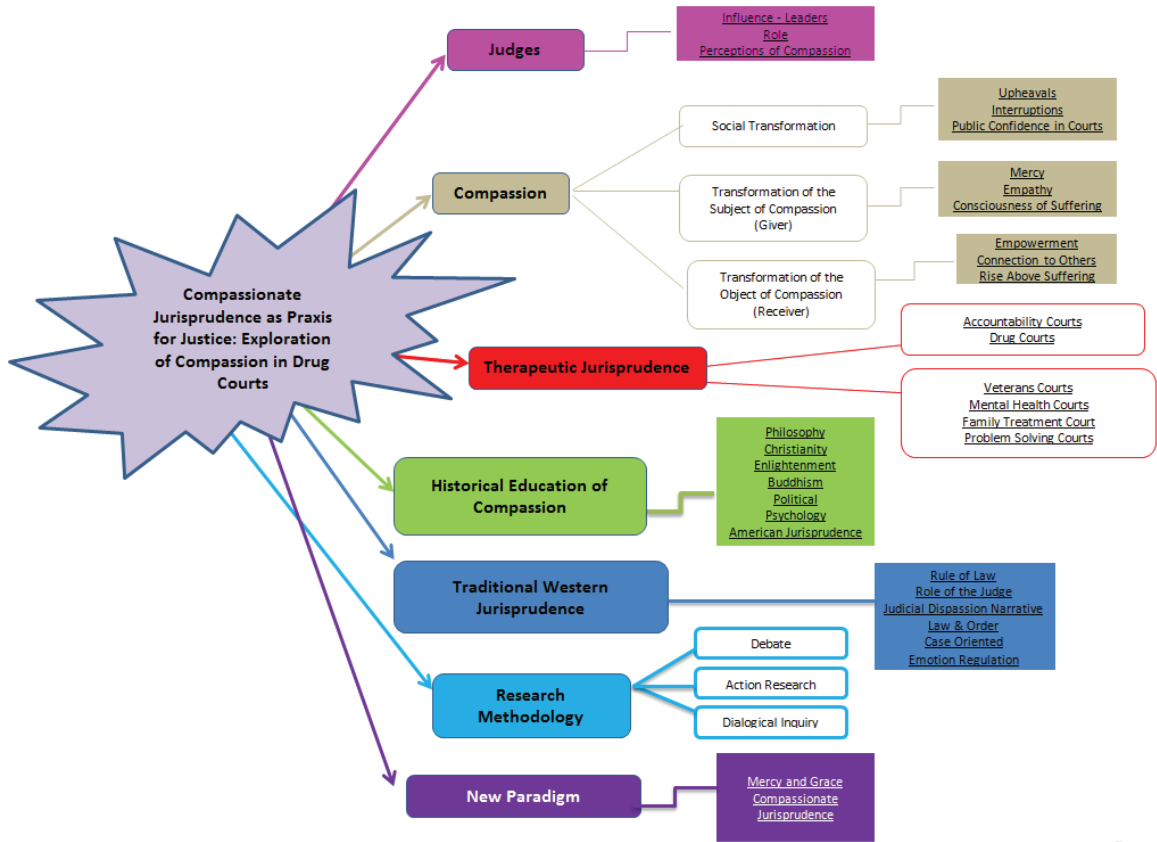
(table continues)



Theoretical Categories	Supporting Literature	Key Characteristics/Summary
		Action Research is a disciplined inquiry done with the intent that the research will inform and change his or her practices in the future. The research is conducted in the context of the subject's environment.

## APPENDIX B

### COMPASSIONATE JURISPRUDENCE MIND MAP



**APPENDIX C**  
**KEY WORDS INDEX**

---

Action Research	Drug Courts	Legal positivism
American jurisprudence	Drug Court movement Drugs in America	Measuring compassion
Collaborative courts	Drug policies in America	Mercy
Compassion	Drug treatment courts	Natural law
Compassion and courts	Empathy	Phenomenology
Compassion and Judicial decision-making	Judges and compassion	Problem solving courts
Compassion fatigue	Judges and emotions	Problem solving justice
Compassion and humanity	Judges and passion	Purpose of criminal law
Compassionate judges	Judicial decision making	Role of judges
Compassionate leadership	Judicial leadership	Rule of law
Decision-making	Jurisprudence	Social Justice
Dialogic research	Jurisprudence and compassion	Therapeutic Justice
Drugs and Crime	Justice	Triangulation
		Western Jurisprudence

---

## APPENDIX D

### INSTRUCTIONS—HOW TO REGISTER ON TWEN

Welcome Judge!

Once again thank you for agreeing to participate in my research study entitled “Compassionate Jurisprudence as Praxis for Justice.” As indicated previously, I am interested in exploring compassion not only as it relates to therapeutic jurisprudence but also whether a compassionate approach can become the basis of all we do in law. Specifically, I am studying compassionate behaviors between judges and participants in accountability courts. All judges in this study actively preside over an accountability court. We have a mixture of felony drug courts, veteran’s courts, mental health courts, and family treatment courts.

Here are a few ground rules before we get started.

1. Daily participation Monday through Friday is required however, it is understood that things do come up. Please do your best to check in daily to maintain the fidelity of the study. The study will run from May 15 – June 16, 2017.
2. I will start a live discussion each day. That discussion will remain open for 48 hours. If you miss posting on a particular day you can post the following day in that live discussion forum. However, the discussion will close after 48 hours.
3. You are to respond not only to my inquiry but take this opportunity to discuss the matter with your peers.
4. **Do not under any circumstances disclose:** your name, the name of any participant, the location or type of accountability court(s) you preside over. Use your pseudonym at all times. Full confidentiality of your discussion responses will be kept by the researcher. Your names will not appear in the transcription of the Live Discussions on TWEN. Your identity will not be disclosed in the material that is published.
5. The decision to participate in this study is entirely up to you. You may decide not to be in the study or withdraw from the study at any point in time.
6. A transcription of the discussions will be made and you are welcome to read it if you wish. A summary of the results of the study will be sent to you.
7. You have the right to ask questions about this research study and to have those questions answered by me before, during or after the research. If you have any further questions about the study, at any time feel free to contact me, Dean Bridgett Ortega at .edu or by telephone at (xxx) xxx-xxxx or (xxx) xxx-xxxx.
8. If you have any problems or concerns that occur as a result of your participation, you can report them to Dr. Laura Brewer or Dr. Diane Gavin at IRB@phoenix.edu.

The TWEN site is Thomson Reuters' virtual law school community, where you will access the Compassionate Jurisprudence Course/Study.

### *Accessing the Compassionate Jurisprudence Course on TWEN*

In a short time, you will receive an email message from Bridgett Ortega (TWEN Guest Registration) granting you guest access to the course Compassionate Jurisprudence.

Click the Activate registration key link provided in the TWEN Guest Registration email. At the registration page:

1. Choose **NO**
2. Enter **registration key & e-mail address**
3. Create your **OnePass Profile\*\*** using the following pseudo information:
  - a First Name: **Altruist**
  - b Last Name: **Judge8**
  - c Username: **Altruist8**
4. **\*\*IMPORTANT:** To maintain the integrity of the study I ask that you **DO NOT PUBLISH YOUR TRUE FIRST and/or LAST NAME**. Should you inadvertently enter your true identity; promptly update your information by clicking **MANAGE ONEPASS PROFILE**. Be careful to enter the pseudo first name, last name, and username provided then click **SAVE**.
5. Log into [lawschool.westlaw.com](http://lawschool.westlaw.com)
6. Enter your username and password. Finally, click **SIGN IN**.

Note: **Until you complete steps # 4 and # 5, your registration will be INCOMPLETE.**

### *Accessing the Compassionate Jurisprudence Course*

To access the course, on the top header bar, click TWEN then click **Altruist - Compassionate Jurisprudence** on the My Courses page then click **LIVE DISCUSSION** on the left navigation bar.

### *System Requirements*

To use TWEN, you need the following:

- A OnePass username and password
- Access to the Web using Microsoft Internet Explorer 8 or later, Apple Safari 4.0 or later, Google Chrome 2.0 or later, or Mozilla Firefox 3.0 or later is required.
- Your browser must have JavaScript enabled.

For assistance with lawschool.westlaw.com, contact Ms. (xxxx@xxx .com). For assistance with your Internet connection, contact your Internet service provider or IT department.

## APPENDIX E

### GUEST REGISTRATION KEY

Dear Judge:

You have been granted guest access to the course **Benevolent - Compassionate Jurisprudence** on TWEN. Here is your guest registration key:

**Guest Course School: John Marshall/Atlanta**

**TWEN Guest Registration Key: GLR25-EP3LC**

To access this course, you must activate your guest registration key and create a password. Your new password will provide access to the central portal [lawschool.westlaw.com](https://lawschool.westlaw.com) and any TWEN courses to which you've been granted guest access.\*

Click the link <https://lawschool.westlaw.com/register> to **Activate registration key** on the TWEN Guest Registration email. To maintain the integrity of the study we ask that you **DO NOT PUBLISH YOUR TRUE FIRST and/or LAST NAME**. Instead, use the pseudonym provided below. **At the registration page:**

1. Choose **NO**
2. Enter **registration key & e-mail address**
3. Create your **OnePass Profile\*\*** use the following pseudo information:
  - a. First Name: **Benevolent**
  - b. Last Name: **Judge5**
  - c. Username: **Benevolent5**
4. **\*\*IMPORTANT:** To maintain the integrity of the study I ask that you **DO NOT PUBLISH YOUR TRUE FIRST and/or LAST NAME**. Should you inadvertently enter your true identity; promptly update your information by clicking **MANAGE ONEPASS PROFILE**. Be careful to enter the pseudo first name, last name, and username provided then click **SAVE**.
5. Log into [lawschool.westlaw.com](https://lawschool.westlaw.com)
6. Enter your username and password. Finally, click **SIGN IN**.

Note: **Until you complete steps # 4 and # 5, your registration will be INCOMPLETE.**

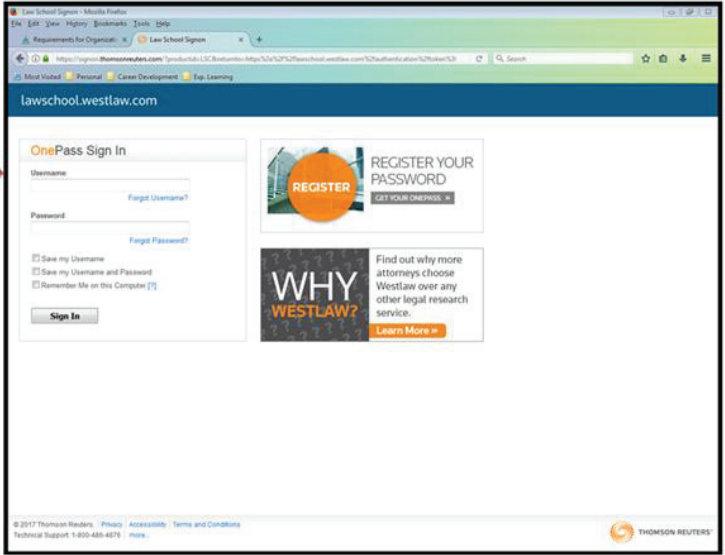
#### *Accessing the Compassionate Jurisprudence Course*

1. Access the Benevolent – Compassionate Jurisprudence course via TWEN at <https://lawschool.westlaw.com/twen/course/239082/join/2JCRU7ZN7L394CCGDLV>

2

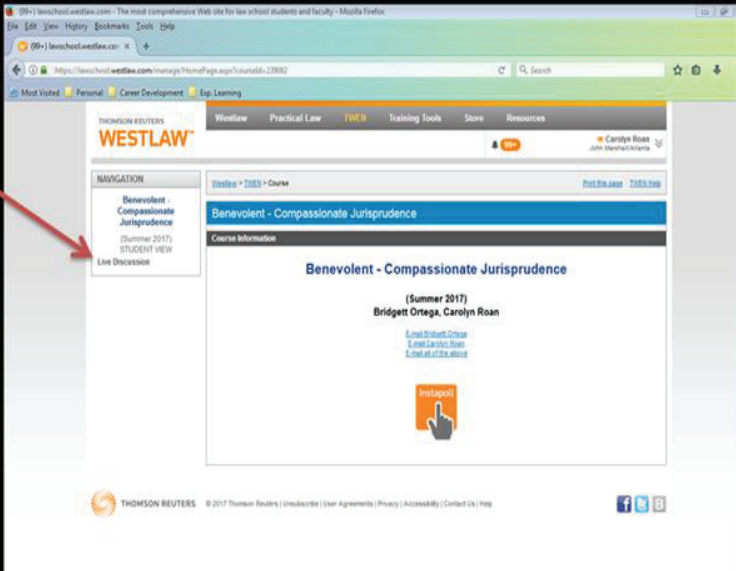
2. Follow the steps outlined below:

Log into TWEN using the link provided.  
<https://lawschool.westlaw.com/twen/course/239082/oinr/2JCRU7ZN7L394CCGDLV2>



The screenshot shows the 'lawschool.westlaw.com' OnePass Sign In page. It features a sign-in form with fields for Username and Password, and checkboxes for 'Save my Username and Password' and 'Remember me on this Computer'. A 'Sign In' button is at the bottom of the form. To the right, there are promotional banners for 'REGISTER YOUR PASSWORD' and 'WHY WESTLAW?'. A red arrow points from the URL in the text above to the 'Sign In' button.

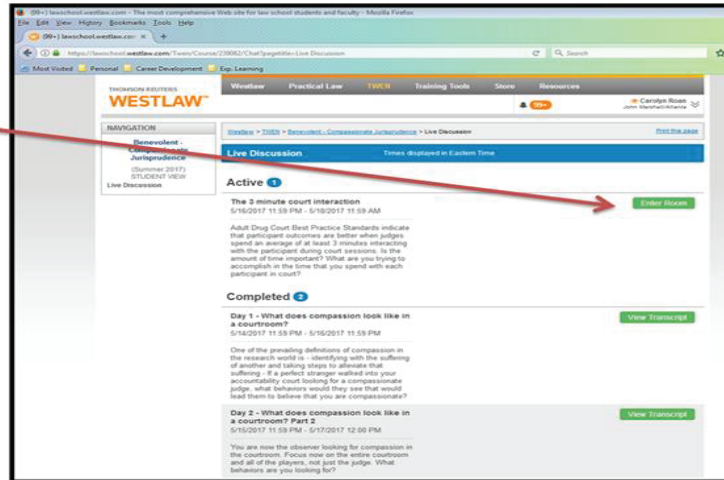
CLICK "LIVE DISCUSSION" on the left navigation bar.



The screenshot shows the Westlaw course page for 'Benevolent - Compassionate Jurisprudence'. The left navigation bar contains links for 'Benevolent - Compassionate Jurisprudence', '(Summer 2017) STUDENT VIEW', and 'LIVE DISCUSSION'. A red arrow points from the text above to the 'LIVE DISCUSSION' link. The main content area displays the course title, '(Summer 2017)', and the instructors 'Bridgett Ortega, Carolyn Roan'. There is also an 'Instagram' icon at the bottom of the course information section.

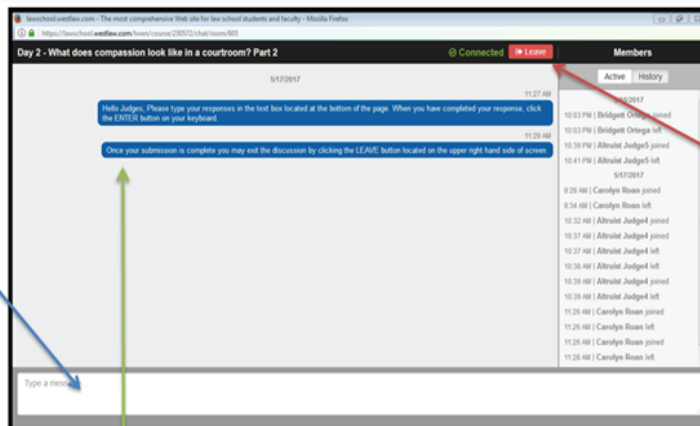


CLICK "ENTER ROOM" to access question "The 3 minute court interaction"



ENTER YOUR RESPONSE TO QUESTION

STEP 1:  
TYPE YOUR RESPONSE



STEP 2:  
VIEW YOUR RESPONSE

STEP 3:  
LEAVE THE CHAT.

**APPENDIX F**  
**INVITATION TO PARTICIPATE**

Script for Email Solicitation

*Dear Judge \_\_\_\_\_*

My name is Bridgett Ortega; I am a graduate student at the University of Phoenix working on my Doctorate in Organizational Management. I am currently seeking volunteer drug court judges to participate in a research study entitled Compassionate Jurisprudence as Praxis for Justice.

The purpose of this research study is to explore compassion as a dimension of therapeutic jurisprudence to determine whether this is an approach where social and social and human relations become the basis of law rather than mere abstract rules. Specifically, I want to see whether compassionate behaviors are happening in court rooms and then talk about those behaviors with judges to determine their attitudes about the compassionate behaviors observed.

Participating judges must be actively presiding in an adult drug court and have 1 year of experience and will be expected to engage in reflections on the days that they are presiding over drug court proceedings specifically and respond to the questions I post and to one another daily. These discussions will occur in a private, confidential online forum in the Westlaw platform known as TWEN (The West Education Network). A separate small pool of judges will also be selected for non- disruptive, discreet court observation.

Your total time commitment will be about 15-30 minutes a day over a 30 day period. Since the forum is asynchronous you could check in and participate each day at a time your schedule permits.

The research will be conducted online through the TWEN platform. Observation data will be collected in 5 separate courtroom settings where patterns can be studied. A confidential web platform will be used for the purposes of engaging in dialogue with each of the judges who participate in the study who will only be identified by a code name or number. At no time will you as a judge reveal or mention the name of any case, participant or your location during the conduct of this research.

All information obtained from you by phone or online including your name, location or any other identifying information shall remain confidential and will be kept in a secure and locked area. The data will be kept for three years and then destroyed. The results of this study may be published.

If you are willing to participate in this important study, I would you like to schedule a time to provide more details about the study, expectations for participation and send you information to review before our next conversation. Please provide 3 best times and the best number to reach you next week.

Thank you for taking the time to read this. If you have any questions or concerns, please feel free to contact me. Again my name is Bridgett Ortega and I can be reached at xxx-xxx-xxxx or .edu

## APPENDIX G

### RESEARCHER'S BIOGRAPHY

Bridgett E. Ortega is the Assistant Dean of Atlanta's John Marshall Law School Office of Experiential Learning and President and Past Chair of the Board of Directors of the National Juvenile Defender Center. Bridgett was formerly Deputy Director for The Robert Wood Johnson Foundation's: Reclaiming Futures, a juvenile justice reform initiative aimed at creating strategies for intervening in the lives of young people with substance abuse and other issues that bring them into the criminal justice system. Bridgett has spent over 25 years serving in legal and programmatic positions aimed at criminal and juvenile justice reform. A zealous advocate for drug courts since their inception, she believes that connections between people and addressing their real problems lead to behavior change. She is an attorney and holds graduate degrees in Organizational Management and Leadership. She is the author of the soon to be published work, "The Heart of Justice: Flipping the Script."