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CARE AND CONTROL IN COLLABORATIVE COURTS: ETHNOGRAPHIC INSIGHTS INTO THERAPEUTIC JUSTICE

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Collaborative courts, such as drug courts, reentry courts, and veterans treatment courts, have long been hailed by reformers as therapeutic alternatives to the adversarialism of traditional criminal justice. Proponents argue that such courts embody therapeutic jurisprudence, offering accountability and care rather than punishment. Yet this vision often clashes with concerns about control and coerciveness, particularly when defendants are expected to relinquish autonomy in exchange for emotional validation and institutional support. Based on ethnographic observations conducted between 2018 and 2023 in four collaborative courtrooms in Alameda County, California, this Essay explores the pervasive logic of "tough love" in collaborative courts: a model in which compassion and coercion are inextricably intertwined. Judges play quasi-parental roles, often praising vulnerability and "emotional growth" while simultaneously imposing rigid behavioral codes and exercising broad discretionary power. Drawing on Michel Foucault's and contemporary critics' analyses of disciplinary institutions, we suggest that these courts function as spaces of moral training and surveillance, governed more by affective control than by legal neutrality. Our findings complicate the celebratory narrative of problem-solving courts: while many defendants express gratitude and

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We would like to thank Reva Kale and Nina Salameh for excellent research assistance. We are deeply grateful to Gavin O'Neill, Principal Analyst at the Office of Collaborative Court Services, Superior Court of California, County of Alameda, for his constant support and cooperation throughout the years of our study, as well as for providing valuable, informative data on the Alameda Collaborative Courts program. Special thanks to *Virginia Law Review* editor, Hannah Lu, for outstanding editing work.

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some clearly benefit from sustained engagement, the overall picture is ambivalent. The courts' daily operations often blur the line between supportive guidance and paternalistic overreach. Building on our ethnographic observations and critical literature, we propose several design commitments that can preserve the caring and dignity-affirming features of collaborative courts while mitigating forms of penal overreach.

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INTRODUCTION

Over the last three decades, collaborative and problem-solving courts have transformed criminal adjudication in the United States and abroad.[1]

[1] See generally Greg Berman & John Feinblatt, Good Courts: The Case for Problem-Solving Justice (2005) (outlining the history, objectives, and achievements of problem-solving courts in the United States); Bruce J. Winick, Therapeutic Jurisprudence and Problem Solving Courts, 30 Fordham Urb. L.J. 1055 (2003) (describing the scope and subject matter of

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From the first drug court in Miami to today's diverse array of modern courts, these forums have promised to address the failures of adversarial processing by integrating treatment, supervision, and judicial engagement.[2] Their ethos is one of accountability with care, offering defendants the possibility of rehabilitation rather than incarceration.[3] Judges and practitioners who devote themselves to this work are often deeply committed to fostering dignity, voice, and opportunities for participants who might otherwise be lost in the revolving door of jail and probation.[4]

Yet these same practices raise questions that cannot be overlooked. Collaborative courts rely on intensive monitoring, regular compliance checks, and a distinctive blend of praise and sanction.[5] Judicial tones can range from encouragement to paternalism, with discretion that blurs the line between voluntary support and coercive leverage.[6] What appears therapeutic on the surface may, in practice, extend the reach of penal power into participants' daily lives, governing their employment, housing, and family decisions. In this sense, the very features that make these courts effective at stabilizing participants may also risk reinforcing disciplinary logics of observation, normalization, and control.

This Essay seeks to examine this hypothesis by situating collaborative courts within that tension. Our goal is not to dismiss their accomplishments—indeed, many of the judges, attorneys, and case managers we encountered demonstrate remarkable dedication and

problem-solving courts in general). "Collaborative courts" is largely a regional label, especially used in California, for the same family of problem-solving courts, emphasizing multiagency partnerships (between courts, treatment providers, probation services, and community organizations). See, e.g., Collaborative Courts, Superior Ct. of Cal.: Cnty. of Alameda, https://www.alameda.courts.ca.gov/divisions/collaborative-courts [https://perma.cc/QD5Q-5752] (last visited Jan. 6, 2026). We use these two terms interchangeably in this Essay.

[2] See, e.g., Pamela M. Casey & David B. Rottman, Problem-Solving Courts: Models and Trends, 26 Just. Sys. J. 35, 37–39, 43–44 (2005).

[3] Anthony C. Thompson, Courting Disorder: Some Thoughts on Community Courts, 10 Wash. U. J.L. & Pol'y 63, 75 (2002).

[4] See Pamela Casey & David B. Rottman, Therapeutic Jurisprudence in the Courts, 18 Behav. Scis. & L. 445, 449–51 (2000). For an ethnographic portrayal of the dynamics and interactions between professionals and participants in community courtrooms in Israel, see Tali Gal & Hadar Dancig-Rosenberg, "I Am Starting to Believe in the Word 'Justice'": Lessons from an Ethnographic Study on Community Courts, 68 Am. J. Compar. L. 376, 409–10 (2020) [hereinafter Gal & Dancig-Rosenberg, The Word Justice].

[5] See Casey & Rottman, supra note 2, at 37.

[6] See, e.g., James L. Nolan, Jr., Reinventing Justice: The American Drug Court Movement 102–03 (2001).

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compassion—but to render visible the institutional costs and normative trade-offs that accompany this model of justice. We do so by drawing on institutional ethnography of four divisions of the Alameda County Collaborative Courts: the Misdemeanor Drug Court, Felony Drug Court, Veterans Treatment Court, and Reentry Court. Through detailed observations of hearings conducted between 2018 and 2023, we map how dignity and care operate alongside surveillance, coercion, and paternalism.[7] We analyze these practices through the lens of Foucault's account of disciplinary institutions and contemporary critiques of therapeutic justice.[8]

The everyday practices we observed in the four Alameda County Collaborative Courts indeed confirm that many participants experience genuine benefits: expressions of empathy from judges, access to services, and tangible legal relief that can alter life trajectories.[9] Our ethnographic observations revealed, in addition to this positive theme, six recurrent patterns.[10] First, courts routinely "govern by file," with case manager reports and treatment notes structuring judicial discretion through routinized observation and dossier-driven decision-making. Second, the courtroom ethos blends care and paternalism: judges praise progress and adopt familial tones while simultaneously imposing corrective expectations and expressing approval of life decisions. Third, compliance demands (such as testing, therapy, and check-ins) often conflict with work, family, and personal health, extending court governance into daily life. Fourth, reliance on external treatment programs produces uneven expertise and diffused oversight, so "being in treatment" can substitute for assessing program quality or fit. Fifth, voluntariness is ambivalent: exiting or refusing the program is formally possible, but it is socially and procedurally costly. Finally, leverage persists: non-completion returns cases to mainstream criminal processing, while completion typically brings relief without jail sanctions—making participation itself function as the operative sanction.

By combining empirical observation with critical theory, our methodology highlights both the promise and the perils of these courts. Ethnography enables us to observe how participants, judges, and staff fulfill their roles in real time, while theoretical framing reveals the

[7] See infra Parts IV–V.
[8] See infra Section V.A.
[9] See infra Section V.A.
[10] See infra Sections V.B–G.

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structures of power embedded in supportive practices.[11] The result is a portrait that is intentionally ambivalent: collaborative courts succeed in helping many participants, but they also entrench penal authority in new forms.[12] The challenge, we argue, is to preserve the humane dimensions and the meaningful support provided by these courts while remaining attentive to the subtle ways in which care can become control.[13]

This Essay advances the problem-solving courts literature on three fronts. Conceptually, it employs a critical theoretical frame not as a fixed identity or prior disposition but as an alternative epistemology, enabling a fresh read of how care and control intertwine in these courts.[14] Unlike work that begins from an a priori celebratory or uniformly skeptical stance, our approach treats the Foucauldian lens as an analytic tool, in dialogue with our own prior studies that employed other, less critical frameworks.[15] Methodologically, the study presents a robust, multiyear, multi-docket institutional ethnography across several collaborative courts, enabling us to identify patterns that single-site or short-term studies often overlook.[16] Normatively, it translates these observations into design commitments to make voluntariness substantive and power transparent, thereby bridging celebratory and skeptical camps: we both document tangible benefits and specify the mechanisms by which therapeutic aims can slide into disciplinary power.[17] In so doing, this

[11] See infra Sections V.D–F.

[12] See infra Sections V.A, V.D–F.

[13] See infra Part VI.

[14] See infra Part II.

[15] For illustrative examples of our decade-long empirical work on problem-solving courts (especially community courts) conducted under theoretical frameworks that differ from this study's, see generally Tali Gal & Hadar Dancig-Rosenberg, Evaluating the Israeli Community Courts: Key Issues, Challenges and Lessons, 62 Int'l Annals Criminology 104, 105 (2024) (surveying the "formative and evaluation studies that examined the Israeli [community courts] model from its inception"); Hadar Dancig-Rosenberg & Tali Gal, Success Stories in Community Courts: Listening to Participants' Voices, 25 Cardozo J. Conflict Resol. 255, 257–58 (2023) (concluding that "success" in community courts is multidimensional, rooted in motivation, family support, court professionals' care, and community ties, and manifested in self-image, daily functioning, relations with authorities, and worldview); Tamar Ben-Dror, Hadar Dancig-Rosenberg & Tali Gal, Uncharted Success: Expanding Metrics for Community Court Impact, 58 U. Ill. Chi. L. Rev. 625, 625 (2025) (arguing for expanding success metrics beyond recidivism to those related to family/social relationships, trust in institutions, and stability, and showing that participants' gains also appear among non-completers); Gal & Dancig-Rosenberg, The Word Justice, supra note 4, at 389–91 (construing the communal life of these courts).

[16] See infra Part IV.

[17] See infra Part VI.

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Essay reframes the evaluative baseline for collaborative courts from "Does recidivism fall?" to "How is power organized, justified, and experienced, and how can it be redesigned?" This approach provides granular, field-grounded guidance to a debate that is often dominated by program metrics and abstract critique.

This Essay proceeds as follows. Part I outlines the rise and working model of problem-solving courts, along with the policy claims that underpin their diffusion. Part II surveys the critical literature, using Foucault's account of disciplinary institutions to frame concerns about net-widening, "soft" penal control, the shift from judging acts to examining persons, judicial collectivism, and institution-friendly success metrics. Part III explains our institutional ethnography methodology—multisite, courtroom-based observation across four Alameda County dockets. Part IV situates the study within the Alameda Collaborative Courts, detailing the dockets, the eligibility criteria, the supports and relief provided, and the program's architecture. Part V presents our findings: scenes of care, dignity, and tangible benefits; the routine "examination" of participants and normalization through phases and rituals; the governance of daily life via files, check-ins, and testing; the frictions of time, work, and compliance; and the ambivalent voluntariness of program entry and persistence, including the use of leverage and warrants. Part VI concludes with design commitments to preserve humane, dignity-affirming practices while minimizing penal overreach.

I. THE RISE AND PROMISE OF PROBLEM-SOLVING COURTS

Problem-solving courts emerged in the late 1980s and early 1990s as a pragmatic response to the limits of assembly-line adjudication, in particular the revolving door of drug-involved defendants cycling through pleas, probation, and jail without treatment.[18] One of the first modern drug courts (Miami, 1989) reframed the judicial task from processing cases to changing behavior by integrating treatment into case disposition and subjecting participants to close, judge-led supervision.[19] Early innovators soon found a vocabulary and normative framework in therapeutic jurisprudence, which encouraged legal actors to redesign procedures to

[18] Berman & Feinblatt, supra note 1, at 23–25, 37–39.

[19] See John S. Goldkamp, The Drug Court Response: Issues and Implications for Justice Change, 63 Alb. L. Rev. 923, 947–50 (2000) (describing the first drug court in Florida and its operation).

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promote well-being and mitigate anti-therapeutic effects.[20] Judges in drug courts were cast as "therapeutic agents."[21] Within a few years, the movement was institutionalized nationally through the National Association of Drug Court Professionals ("NADCP") and its *Key Components* (1997), which distilled a model built on early identification, non-adversarial collaboration, treatment integration, frequent testing and judicial interaction, graduated sanctions and incentives, ongoing evaluation, and community partnerships.[22] Scholars have labeled the movement as a "'revolution' in criminal justice."[23]

Across variants, problem-solving courts substitute a team-based, non-adversarial alternative for the conventional adversarial process. Prosecutors, defense attorneys, judges, social workers, and treatment providers confer in out-of-court meetings, share information, and craft individualized rehabilitation plans.[24] The judge becomes the team's convener and the participant's primary interlocutor in high-touch, conversational status hearings.[25] Programs may unfold in phases tied to frequent check-ins and discussion throughout the process (e.g., related to sustained abstinence, attendance, employment), with graduated sanctions for lapses and incentives for progress, culminating in a public graduation

[20] Winick, supra note 1, at 1062–63. Therapeutic jurisprudence examines how legal rules, procedures, and professional roles shape the psychological and emotional well-being of those who encounter them. It treats law as capable of producing therapeutic or anti-therapeutic effects and asks—both empirically and normatively—how court processes, doctrines, and lawyering practices might be designed to promote dignity, voice, and healing while preserving core legal commitments such as due process, neutrality, and public safety. See generally David B. Wexler & Bruce J. Winick, Essays in Therapeutic Jurisprudence (1991) (exploring specific applications of therapeutic jurisprudence); David B. Wexler & Bruce J. Winick, Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence (1996) (tracking the growing body of therapeutic jurisprudence literature); Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts (Bruce J. Winick & David B. Wexler eds., 2003) (analyzing the transformation of judicial involvement within problem-solving courts from traditional methods of intervention to a collaborative, interdisciplinary approach).

[21] Winick, supra note 1, at 1065.

[22] Michael C. Dorf & Charles F. Sabel, Drug Treatment Courts and Emergent Experimentalist Government, 53 Vand. L. Rev. 831, 843–44 (2000) (describing the drug court model and the rehabilitation process under court supervision); Bureau of Just. Assistance, U.S. Dep't of Just., NCJ 205621, Defining Drug Courts: The Key Components, at iii, 15 (2004), https://www.unodc.org/documents/ungass2016/Contributions/Civil/Drug_Court_Professionals/Key_Components.pdf [https://perma.cc/93N2-VLRA].

[23] Nolan, supra note 6, at 39 ("The rapid expansion of the drug court model has led participants and observers alike to label the phenomenon a 'movement,' even a 'revolution' in criminal justice." (citation omitted)).

[24] Gal & Dancig-Rosenberg, The Word Justice, supra note 4, at 378–79, 382.

[25] Id. at 382–83.

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and tangible legal relief for successful participants.[26] The practical definition of success thus shifts from program completion and case closure to durable behavior change, as evidenced by a reduction in recidivism.[27]

What began as adult drug courts quickly diversified into Mental Health Courts (1997) for defendants with serious mental illness;[28] Community Courts (e.g., Midtown and Red Hook in NYC) linking low-level offending to neighborhood problem-solving;[29] Family Treatment Courts in child-welfare cases;[30] Veterans Treatment Courts (Anchorage, 2004) addressing service-related trauma;[31] and Reentry Courts coordinating post-prison supervision.[32] By the 2000s, these dockets had been integrated into many state court systems and were supported by statewide standards, technical assistance, and ongoing judicial education, with

[26] Id. at 382–84; Cynthia G. Lee et al., Nat'l Ctr. for State Cts., A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Center: Executive Summary 2–6 (2013), https://www.innovatingjustice.org/wp-content/uploads/2012/11/RH_Report_ES.pdf [https://perma.cc/HX8R-VM4F].

[27] Recidivism reduction is commonly used as a central metric for assessing success in problem-solving courts. See 2 Nat'l Ass'n of Drug Ct. Pros., Adult Drug Court Best Practice Standards 62 (text rev. 2018), https://allrise.org/wp-content/uploads/2023/06/Adult-Drug-Court-Best-Practice-Standards-Volume-2-Text-Revision-December-2018-corrected-May-2022.pdf [https://perma.cc/55PS-TNLN] ("[P]olicymakers, the public, and other stakeholders are likely to judge the merits of a Drug Court by how well it reduces crime, incarceration rates, and taxpayer expenditures. Therefore, Drug Courts need to measure in-program outcomes that not only reflect clinical progress, but are also significant predictors of postprogram criminal recidivism . . . ."). Some scholars have urged widening the lens to include metrics that capture the pathways that participants and stakeholders traverse during program involvement, even when such achievements do not manifest as reductions in recidivism or program completion. See, e.g., Hadar Dancig-Rosenberg & Tali Gal, Many Shades of Success: Bottom-Up Indicators of Individual Success in Community Courts, 49 Law & Soc. Inquiry 42, 58–60 (2024). For participatory research that recommends developing bottom-up measures of success that reflect the priorities of stakeholders, which often extend well beyond recidivism, see Hadar Dancig-Rosenberg & Peter Dixon, "Justice of Our Own": Defining Success at the Red Hook Community Justice Center, 78 Vand. L. Rev. 1989, 2007 (2025).

[28] Winick, supra note 1, at 1059.

[29] Julius Lang, Ctr. for Ct. Innovation, What Is a Community Court? How the Model Is Being Adapted Across the United States 9–11 (2011), https://www.innovatingjustice.org/wp-content/uploads/2012/05/What-is-a-Community-Court.pdf [https://perma.cc/Q8EN-M4C3].

[30] Winick, supra note 1, at 1058.

[31] Cassandra A. Atkin-Plunk, Gaylene S. Armstrong & Nicky Dalbir, Veteran Treatment Court Clients' Perceptions of Procedural Justice and Recidivism, 32 Crim. Just. Pol'y Rev. 501, 504 (2021).

[32] Winick, supra note 1, at 1058.

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thousands of programs operating nationwide.[33] The model's diffusion has also generated comparative experimentation (e.g., problem-solving court adaptations beyond the United States).[34]

Proponents point to several gains that problem-solving courts achieve. First, recidivism reduction: the Multisite Adult Drug Court Evaluation reported lower self-reported criminal activity and drug use among drug court participants relative to comparison groups at eighteen months.[35] Meta-analyses reveal modest but significant average reductions in reoffending, particularly when programs adhere to best practices.[36] Second, cost-effectiveness: while front-loaded with treatment and supervision costs, evaluations generally report net savings driven by fewer new crimes, fewer jail days, and reduced victimization; some

[33] See Elvita Dominique, Ctr. for Ct. Innovation, Statewide Coordination of Problem-Solving Courts: A Snapshot of Five States (2011), https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/CCI_ProblemSolvingCoord.pdf [https://perma.cc/9X3E-UJ4Y] (describing how states centralized administration and pursued quality assurance via guidelines/standards and technical assistance); Cynthia Alkon, Have Problem-Solving Courts Changed the Practice of Law?, 21 Cardozo J. Conflict Resol. 597, 603 (2020) (noting that the number of problem-solving courts has grown dramatically).

[34] See generally James L. Nolan, Jr., Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement (2009) (chronicling the history of the international problem-solving court movement and comparing the movement in six countries using ethnographic research).

[35] See 4 Shelli B. Rossman et al., The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts 35, 66, 68 (Shelli B. Rossman, John K. Roman, Janine M. Zweig, Michael Rempel & Christine H. Lindquist eds., 2011) (reporting lower self-reported criminal activity and drug use in the prior year among drug court participants when compared to similar criminal offenders at the eighteen-month follow-up, including forty percent versus fifty-three percent committing any crime, and fifty-six percent versus seventy-six percent reporting any drug use).

[36] Ojmarrh Mitchell, David B. Wilson, Amy Eggers & Doris L. MacKenzie, Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts, 40 J. Crim. Just. 60, 64 (2012) (synthesizing 154 evaluations and finding lower recidivism among participants); Shannon M. Carey, Juliette R. Mackin & Michael W. Finigan, What Works? The Ten Key Components of Drug Court: Research-Based Best Practices, 8 Drug Ct. Rev. (Special Issue) 6, 6–7, 9–10 (2012) (presenting studies of sixty-nine drug courts that show "significantly better outcomes" where key components / best practices are implemented). Critics, however, contend that problem-solving courts were scaled up before rigorous testing and that headline results often rest on mixed or methodologically fragile evidence (e.g., studies without proper random assignment). See Erin R. Collins, The Problem of Problem-Solving Courts, 54 U.C. Davis L. Rev. 1573, 1577–78 (2021); Roni Factor, Hadar Dancig-Rosenberg & Tali Gal, The Effect of Community Courts on Recidivism: A Quasi-Experimental Study, 53 Crim. Just. & Behav. 198, 200 (2026).

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studies estimate that several dollars are saved for every dollar invested.[37] Third, expanded treatment access and stabilization: participants receive more treatment and treatment for longer periods than similarly situated probationers, with ancillary benefits in employment, family reunification, and other socioeconomic factors.[38] Fourth, participants' perceptions of procedural justice reflect positive experiences: qualitative and survey research documents high perceptions of fairness, voice, and respect in problem-solving courts.[39] Such perceptions often correlate with increased compliance and desistance.[40]

The movement's "accountability with care" ethos has altered courtroom culture, re-centering rehabilitation and prevention inside the legal process and offering a laboratory for evidence-based practice.[41] At

[37] See, e.g., Wash. State Inst. for Pub. Pol'y, Washington State's Drug Courts for Adult Defendants: Outcome Evaluation and Cost-Benefit Analysis 1, 10 (2003) (reporting that drug courts cost more up front for treatment/supervision but yield $1.74 in benefits per $1 spent, with benefits including avoided criminal justice costs and victim costs tied to reduced recidivism). But see Rossman et al., supra note 35, at 247 (stating that "drug courts—while effective at reducing costly criminal offending—are also expensive enough to offset those costs").

[38] Rossman et al., supra note 35, at 28, 92 (noting that "on average, drug court offenders were relatively *more* likely to receive treatment, as well as a series of other interventions, including: judicial status hearings, case management, drug testing, and interim sanctions and incentives," than the comparison sample).

[39] Procedural justice concerns how people evaluate the fairness of decision-making processes and the manner in which officials exercise authority. Its core ingredients are commonly identified as voice (a real chance to be heard), neutrality (impartial, rule-guided reasoning), respectful treatment (dignity and courtesy), and trustworthy motives (benevolence and transparency). A large body of research finds that when procedures are perceived as reflecting these qualities, individuals are more likely to view legal authorities as legitimate and to cooperate or comply—even when the substantive outcome is not in their favor. See generally Tom R. Tyler, Why People Obey the Law (2006) [hereinafter Tyler, Why People Obey the Law] (arguing that legitimacy is grounded in people's normative ideas about what constitutes procedural justice); Tom R. Tyler & Yuen J. Huo, Trust in the Law: Encouraging Public Cooperation with the Police and Courts (2002) (showing that people defer to legal authorities out of trust in their motives and a sense of fairness). For studies documenting positive perceptions of procedural justice components in problem-solving courts, see, e.g., Lisa M. Kruse & Nicholas W. Bakken, Creating Legitimacy in a Diversion Court: Testing the Theoretical Framework of Procedural Justice and Therapeutic Jurisprudence, Drug Ct. Rev., Fall 2023, at 1, 8; Cindy Brooks Dollar, Bradley Ray, Mary Kay Hudson & Brittany J. Hood, Examining Changes in Procedural Justice and Their Influence on Problem-Solving Court Outcomes, 36 Behav. Sci. L. 32, 42 (2018); Atkin-Plunk et al., supra note 31, at 511–12.

[40] Tyler, Why People Obey the Law, supra note 39, at 161–66 (linking perceived legitimacy and fairness to compliance).

[41] See Winick, supra note 1, at 1060–61 (describing the novel role problem-solving court judges play in rehabilitating participants and generating new evidence about the efficacy of therapeutic jurisprudence).

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the same time, the very mechanisms that promise change—of judicial leverage, collaborative decision-making, data-driven monitoring, and the integration of rehabilitation services within a penal regime—raise normative and structural questions. These critical debates, which provide the essential context for interpreting the ethnographic scenes analyzed in this Essay, include concerns about the risks of net-widening and "soft" penal control, tensions between collaboration and zealous advocacy, and the blurred line between voluntary support and coercion. The next Part focuses on these questions.

II. CRITICAL PERSPECTIVES ON COLLABORATIVE AND TREATMENT COURTS

In his seminal work, *Discipline and Punish: The Birth of the Prison*, Michel Foucault examined how modern penal power transitioned from the spectacle of sovereign punishment to a diffuse regime of discipline, aimed at producing compliant and normalized subjects.[42] Foucault described how punishment ceases to be theatrical and becomes a calibrated, technical intervention justified in the name of knowledge and reform.[43] The center of gravity thus shifts from judging a past act to correcting, classifying, and normalizing the actor.[44]

Three interlocking techniques organize this disciplinary power across institutions, such as the army, schools, factories, hospitals, and prisons, and increasingly within the criminal justice process itself.[45] First, hierarchical observation relies on continuous surveillance and reporting that generate a steady flow of information about conduct over time.[46] Second, normalizing judgment involves constantly measuring individuals against shifting standards of the "[n]ormal," distributing rewards and penalties, and replacing a narrow focus on guilt with assessments of conformity and character.[47] Third, the examination fuses observation and

[42] Michel Foucault, Discipline and Punish: The Birth of the Prison 170–71 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1975) ("The success of disciplinary power derives . . . from . . . hierarchical observation, normalizing judgement and their combination in a procedure that is specific to it, the examination.").

[43] Id. at 171, 173–74, 176.

[44] Id. at 170.

[45] Id. at 170–72, 174–75, 185.

[46] Id. at 172, 176–77 (characterizing observation as a coercive mechanism since it makes subjects visible).

[47] Id. at 177–84 (explicating normalizing judgment as a comparison to norms and the distribution of rewards and penalties).

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judgment about the individual—dubbed the "case," or the file of the score—through rituals producing documented knowledge and diagnosis.[48] Together, these techniques form a broader "carceral continuum" that monitors, classifies, and corrects subjects well beyond prison walls.[49]

Within this continuum, the court itself is reconfigured. Rather than a neutral arena that simply adjudicates facts, the courtroom becomes a node that relays and encodes disciplinary knowledge.[50] Contemporary proceedings are saturated with evidence such as dossiers, psychological reports, risk assessments, presentence investigations, and expert opinions.[51] The legal question ("Did she do it?") is supplemented and often overshadowed by the disciplinary question ("Who is she?"; "How dangerous?"; "What treatment?").[52] The individual increasingly replaces the act as the object of intervention: sentences purport to fit criminogenic profiles, prognoses, or needs, not merely legal elements.[53] A new cadre of "judges of normality," composed of psychiatrists, psychologists, social workers, and probation officers, supplies expertise through which knowledge circulates.[54] The judge no longer merely applies law: she arbitrates among expert truths and converts them into coercive programs.[55] In this way, disciplinary power wears judicial form.

Accordingly, the criminal process seeks not only the truth of the act but the truth of the self.[56] Confessions, clinical evaluations, compliance logs, and performance in mandated programs can all feed a case file that incrementally "individualizes" the defendant along axes of risk, need, and responsiveness.[57] Even without literal panoptic surveillance, courts can coordinate observation by police, treatment providers, and probation

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[48] Id. at 189–91 (explaining that examination, through its documentation, individualizes the surveillance and makes each person become a "case").

[49] Id. at 297–301 (arguing that the "great carceral continuum" extends beyond prison walls).

[50] Id. at 297–304 (explaining that disciplinary rationales diffuse across juridical forums).

[51] See, e.g., Brandon L. Garrett & John Monahan, Judging Risk, 108 Calif. L. Rev. 439, 448–51 (2020).

[52] See Foucault, supra note 42, at 304.

[53] Id. at 189–91 (contending that examination and documentation reorient adjudication toward the person); id. at 297–304 (noting that disciplinary knowledge saturates legal decision-making).

[54] See id. at 304 ("The judges of normality are present everywhere[:] . . . the teacher-judge, the doctor-judge, the educator-judge, the 'social worker'-judge . . . .").

[55] Id.

[56] Id. at 191.

[57] See id. at 184, 189–91.

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officers; translate those observations into normalizing judgments; and ratify them with enforceable orders.[58] What may appear lenient or therapeutic can, in practice, intensify control through conditions, check-ins, and metrics.[59] These practices, which Foucault called the "micro-physics of power," apply small, continuous, corrective pressures on conduct.[60]

Seen through this lens, treatment courts are an intensified expression of modern disciplinary governance. Staff meetings, individualized treatment plans, compliance hearings, and progress reviews exemplify hierarchical observation and examination. Sanction ladders and graduation ceremonies normalize judgment, while clinical or risk discourse provides the knowledge that authorizes expanded judicial leverage. Empirically, this suggests looking for shifts from act to actor in courtroom talk (e.g., "readiness," "motivation," "amenability"); tracing how files, assessments, and check-ins structure discretion over time; and mapping the normalizing vocabularies that justify particular sanctions or rewards.

Critiques converge on how this model widens the net of control and blurs the line between help and coercion. Treatment courts redirect low-level conduct into regimes of supervision and treatment, expanding surveillance under banners of accountability and care.[61] The very practices that appear therapeutic—such as mandatory programs, frequent status hearings, and compliance monitoring—may, therefore, operate as

[58] See id. at 304 ("[T]he activity of judging has increased precisely to the extent that the normalizing power has spread. Borne along by the omnipresence of the mechanisms of discipline, . . . it has become one of the major functions of our society. The judges of normality are present everywhere.").

[59] Id. at 220–23 (arguing that the general juridical form is supported by "tiny, everyday" mechanisms—systems of micro-power—and that the disciplines make law appear more "indulgent" while installing an "immense and minute" machinery and "panopticisms of every day").

[60] Id. at 26.

[61] For this trend in the context of drug courts, see Rebecca Tiger, Judging Addicts: Drug Courts and Coercion in the Justice System 88–89 (2013). For the same in the context of community courts, see Christine Zozula, Courting the Community: Legitimacy and Punishment in a Community Court 7 (2019) (arguing that on the one hand, the community court aims to be less punitive by offering help, but on the other hand, it "ensnare[s] low-level offenders (whose crimes may have previously gone unpunished) in a rigorous process of court supervision").

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gentle but persistent sanctions for minor infractions.[62] Michael Sousa proposed a Foucauldian framework—"therapeutic discipline"—to explain how drug courts normalize participants by combining "technologies of power" (surveillance and sanctions) with "technologies of the self" (guided self-work) under governmentality.[63] Drawing on a long-term ethnography of a drug court in a western state, he documented how responsibilization is operationalized through randomized urinalyses, frequent check-ins with probation, mandatory reporting of use, and employment requirements, while compliance is managed by calibrated rewards and sanctions, thus blurring treatment and punishment.[64] Although incarceration is typically held in reserve, compliance is policed by the constant possibility of it.[65] Services and supports are offered in the shadow of sanction, making the court's therapeutic posture compatible with coercive leverage.[66] Under this reading, problem-solving courts act as "penal welfare" institutions,[67] rechanneling penal power rather than retracting it, and even sometimes functioning as "Band-Aids" that defer structural change.[68]

A complementary institutional critique targets knowledge, metrics, and oversight. Erin Collins argues that celebrated claims of efficacy, cost-

[62] See, e.g., Jessica M. Eaglin, The Drug Court Paradigm, 53 Am. Crim. L. Rev. 595, 631 (2016) ("Increased community supervision extends state control over individuals and exposes low-level offenders to the potential for harsher punishment in the future.").

[63] Michael D. Sousa, Therapeutic Discipline: Drug Courts, Foucault, and the Power of the Normalizing Gaze, 2021 Mich. St. L. Rev. 143, 176–77. Governmentality—a term coined by Foucault—is, in part,

> [t]he ensemble formed by the institutions, procedures, analyses and reflections, the calculations and tactics that allow the exercise of this very specific albeit complex form of power, which has as its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security.

Michel Foucault, Governmentality (1978), *reprinted in* The Foucault Effect: Studies in Governmentality 87, 102 (Graham Burchell, Colin Gordon & Peter Miller eds., 1991).

[64] Sousa, supra note 63, at 184, 187–91.

[65] M. Eve Hanan, Talking Back in Court, 96 Wash. L. Rev. 493, 547 (2021) ("[D]efendant's compliance is procured through the combination of social-emotional pressures, the disciplinary structure of performing tasks while under surveillance, and the fear of the sovereign's power to punish.").

[66] See, e.g., Josh Bowers, Contraindicated Drug Courts, 55 UCLA L. Rev. 783, 788 (2008) ("[D]rug courts meet addicts' inability to exercise self-control and reason not only with therapeutic opportunities to address these deficiencies, but also with concurrent external threats to respond to reason—or else.").

[67] Aya Gruber, Amy J. Cohen & Kate Mogulescu, Penal Welfare and the New Human Trafficking Intervention Courts, 68 Fla. L. Rev. 1333, 1337 n.15 (2016) (defining penal welfare as administering welfare through criminal law).

[68] See id. at 1393–95.

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savings, and "'evidence-based' practices" often rest on thin and uneven empirical foundations, yet the model proliferates because it restores judicial purpose and authority in an era of diminished adjudicative power.[69] Built on informal legal foundations with limited external checks, these courts can define "success" in institution-favoring ways (e.g., spotlighting graduates, narrowing metrics, advancing contested cost narratives) and resist reforms that dilute judicial leverage (e.g., constraints on medication-assisted treatment and opposition to sentence-reduction mechanisms).[70]

Structural and normative concerns follow from the team-based ethos. Judges exercise broad discretion over monitoring.[71] Off-the-record staff meetings and collaborative decision-making soften adversarial boundaries, potentially eroding neutrality and the separation of powers.[72] The result, Morris Hoffman warns, is judicial collectivism: decisions about liberty are shaped into opaque, extra-record spaces where prosecution, defense, treatment providers, and the court operate as a unit.[73] Hoffman highlighted two systemic effects. The first is net-widening: the existence of an alternative influences prosecutors and police to bring more people under judicial control.[74] The second is reverse moral screening: namely, those least able to comply (often the most clinically impaired) receive the harshest sanctions when they fail, while more functional participants graduate and avoid punishment.[75] Put simply, even where individual participants benefit, coerced treatment carries significant normative costs and may penalize precisely those who are most in need.

Related critiques focus on voluntariness, coercion, and the roles of defense. Anthony Thompson describes a paternalistic, judge-centered economy that can manufacture consent through the coercive leverage of the criminal process: by shifting from an adversarial model to a

[69] Collins, supra note 36, at 1576–80.

[70] Id. at 1610–28.

[71] Morris B. Hoffman, The Drug Court Scandal, 78 N.C. L. Rev. 1437, 1524 (2000).

[72] See id. at 1523–25; Liz Moore, International Best Practice in Drug Courts, 7 Ariz. Summit L. Rev. 481, 485–86 (2014); Brian D. Shannon, Specialty Courts, Ex Parte Communications, and the Need to Revise the Texas Code of Judicial Conduct, 66 Baylor L. Rev. 127, 128–30 (2014).

[73] See Morris B. Hoffman, Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous, 29 Fordham Urb. L.J. 2063, 2088 (2002).

[74] See Hoffman, supra note 71, at 1501–08.

[75] Id. at 1476.

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collaborative, judge-centered one, these courts mute contestation and steer cases toward coordinated treatment/sanctions, often accompanied by procedural informality and a drift away from rigorous scrutiny of the underlying evidence.[76] He warns that this structure invites a distinctly paternalistic form of judicial intervention. Judges move from neutral arbiters to active participants who effectively prescribe what counts as "appropriate" treatment on limited information and without full therapeutic expertise.[77] The coercive dynamic becomes especially acute when access to services is conditioned on a post-disposition guilty plea, so that entry to help is tied to an early waiver of trial rights and conventional defense protections.[78] In this configuration, the "promise of treatment carries with it the threat of incarceration or other penalties," making treatment "often coerced" and rendering voluntariness deeply suspect.[79] Adriaan Lanni observes the defense counsel's absorption into the "team," prioritizing speed to plea and program entry over adversarial testing.[80] Eric Miller warns that therapeutic courts rely on coercive justice, urging more horizontal power-sharing designs.[81] Comparative work by Nienke Doornbos similarly cautions that shifting from lawyer-driven contestation to judge-centered intervention poses a threat to impartiality and defense ethics.[82]

Finally, critics situate problem-solving courts within broader patterns of governing through crime and penal welfare. Considered in light of Jonathan Simon's account on "governing through crime,"[83] problem-solving courts exemplify how criminal rationalities become templates for welfare governance.[84] This yields a crowding-out risk: resources, expertise, and political legitimacy flow to "therapeutic" penal programs

[76] Thompson, supra note 3, at 77–79.

[77] Id. at 78–79.

[78] Id. at 87.

[79] Id. at 94–96.

[80] See Adriaan Lanni, The Future of Community Justice, 40 Harv. C.R.-C.L. L. Rev. 359, 384–85 (2005).

[81] See Eric J. Miller, Drugs, Courts, and the New Penology, 20 Stan. L. & Pol'y Rev. 417, 418–19 (2009).

[82] See Nienke Doornbos, Community Courts as Legal Transplants: A Socio-Legal Case Study from the Netherlands, 19 Int'l J.L. Context 437, 441–42 (2023).

[83] See generally Jonathan Simon, Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear 14 (2007) (explaining how governance in America is achieved by making resistance at some stage a "crime").

[84] See infra Conclusion.

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while community-based, non-carceral systems are sidelined.[85] As Benjamin Levin warns, a penal welfare state may grow at the expense of a non-penal welfare state, entrenching the criminal process as a gatekeeper to housing, healthcare, and treatment and converting entitlements into rewards contingent on legal obedience.[86] Court-mandated treatment is used as a substitute for community-based services, sometimes lacking adequate quality or suitability checks.[87] The net effect, consistent with Simon's caution, is institutional entrenchment and the normalization of governing social problems through criminal legal venues, even when non-penal alternatives might be more appropriate or effective.[88]

III. THE ALAMEDA COLLABORATIVE COURTS: THE RESEARCH SITE

Alameda County in California was the second county in the United States to establish problem-solving courts.[89] The county's first drug court began operation in 1991, and since then, Alameda County has continued to expand its collaborative justice programs.[90]

Their official website states that Alameda County's Collaborative Courts "help people with drug, alcohol, and co-occurring conditions. The goal is for participants to enter treatment and exit the justice system. All participating agencies are committed to legal relief for people struggling with addiction and related issues."[91] Participants typically present with

[85] See Benjamin Levin, Therapeutic Justice and the Problem of Penal Welfare, 112 Va. L. Rev. 517, 530–31 (2026).

[86] Id. at 531 ("The state would continue to govern through crime and through criminal legal institutions; it is just that the theories animating crime and criminal legal institutions *might* look different."). For practical explanations on "why penal welfare can easily eclipse service programs not directly tied to criminal court," see Gruber et al., supra note 67, at 1394–95.

[87] See Marianne Møllmann & Christine Mehta, Physicians for Hum. Rts., Neither Justice nor Treatment: Drug Courts in the United States 3–4 (2017), https://phr.org/wp-content/uploads/2017/06/phr_drugcourts_report_singlepages.pdf [https://perma.cc/7HMC-BCKE] (finding that, due to long waiting lists and limited options in the community, "drug courts were indeed the most viable route to treatment," giving some people access they otherwise could not obtain); id. at 3 (reporting that treatment plans were often developed by people with "no medical training or oversight, at times resulting in mandated treatment . . . at odds with medical knowledge and recommendations").

[88] See Levin, supra note 85, at 533.

[89] Isabella Banks, Hague Inst. for Innovation of L., Case Study: Problem-Solving Courts in the US (2021), https://dashboard.hiil.org/publications/trend-report-2021-delivering-justice/case-study-problem-solving-courts-in-the-us [https://perma.cc/3YDC-CY8G].

[90] Collaborative Courts, supra note 1.

[91] Id.

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co-occurring substance use and mental health disorders; most have prior jail stays, many have had contact with psychiatric hospitals, and a large share are African American, homeless, unemployed, and carry a criminal record.[92]

Program participation is voluntary and organized into four phases.[93] Time to graduation generally ranges from seven to eighteen months, depending on individual progress.[94] Treatment courts do not employ incarceration as a sanction.[95] They combine accountability with concrete supports, such as housing and employment services, transportation vouchers, and modest incentives (e.g., gift cards); they can also deliver significant legal relief upon successful completion, including diversion with dismissal or charge reduction, record sealing, completion in lieu of incarceration, and early termination of probation (or no probation at all).[96] Successful graduation may lead to amnesty for certain court/legal/traffic fees and preservation of student loan eligibility.[97] For noncitizens, completion may mean no conviction is entered on the record.[98] If a participant does not complete the program, the case returns to the referring criminal division for traditional processing, over which the treatment courts have no control.[99] "Success" is assessed by meaningful improvements in quality of life alongside reductions in recidivism.[100] Upon graduation, formal court contact typically ends, though the team occasionally provides short-term rental assistance and ensures linkage to ongoing recovery and mental health services.[101]

Several types of courts operate within the Collaborative Courts Division.[102] The *Drug Court* operates as a health-oriented, collaborative

[92] E-mail from Gavin O'Neill, Principal Analyst, Off. of Collaborative Ct. Servs., Superior Ct. of Cal.: Cnty. of Alameda, to Hadar Dancig-Rosenberg, Professor of L. & Assoc. Dean for Int'l Affs., Bar-Ilan Univ. Fac. of L. (Sep. 8, 2025, at 10:57 IST) (on file with authors).

[93] Id.

[94] Id.

[95] Id.

[96] E.g., id.; Drug Court, Superior Ct. of Cal.: Cnty. of Alameda, https://www.alameda.courts.ca.gov/divisions/collaborative-courts/drug-court [https://perma.cc/Y48V-CVEU] (last visited Jan. 8, 2026).

[97] E.g., Drug Court, supra note 96.

[98] E.g., id.

[99] E-mail from Gavin O'Neill, supra note 92.

[100] Id.

[101] Id.

[102] Id. In addition to the specific models described here, the Collaborative Courts Division also operates a Family Treatment Court, which has not been included in our study. See Family Treatment Court, Superior Ct. of Cal.: Cnty. of Alameda, https://www.alameda.courts.ca.gov/

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docket that accepts pre-plea misdemeanors and felonies, as well as probation violations, with eligibility not limited to drug charges, so long as the participant presents with addiction.[103] Current charges that bar entry include "serious" and "violent" felonies, firearm offenses, and domestic violence offenses.[104] Cases can arrive through referrals from defense counsel for screening via an intake.[105] Participants enter a structured regimen lasting approximately six months for misdemeanors.[106] For felonies, length is determined by the judge.[107] The program includes regular court appearances, drug/alcohol testing, a treatment intervention, and a tailored mental health plan.[108]

The *Reentry Court* serves people on parole or felony probation who are violating or at clear risk of violating their supervision because of addiction and co-occurring conditions, with the aim of stabilizing reentry after serving jail or prison terms.[109] Supervising officers refer cases through an internal agency packet for placement on the reentry court calendar.[110] Eligibility generally requires several months of supervision; the parole department excludes "lifers," high-risk gang offenders, and those supervised by the sex offender unit.[111] The program runs twelve months and combines regular court appearances with "evidence-based treatment practices to address substance abuse and/or mental health problems."[112] In lieu of purely punitive responses to technical violations, the court layers accountability with practical support: waiver of in-custody time, targeted financial assistance (e.g., car costs, rent, DUI school), temporary free sober housing, employment case management, transportation

divisions/collaborative-courts/family-treatment-court [https://perma.cc/V69V-5VHY] (last visited Jan. 8, 2026).

[103] Drug Court, supra note 96.

[104] Drug Possession Charges in Alameda: Possible Defenses and Diversion Programs, Alameda Crim. Def. Law., https://dosalaw.com/drug-possession-defenses-diversion-alameda/ [https://perma.cc/E96R-VF5V] (last visited Jan. 8, 2026).

[105] Drug Court, supra note 96.

[106] Id.

[107] Id.

[108] Id.

[109] Reentry Court, Superior Ct. of Cal.: Cnty. of Alameda, https://www.alameda.courts.ca.gov/divisions/collaborative-courts/reentry-court [https://perma.cc/C3YQ-JHSA] (last visited Jan. 8, 2026).

[110] Id.

[111] Id.

[112] Collaborative Courts, Alameda Cnty. Pub. Defs., https://publicdefender.acgov.org/CollaborativeCourts.page [https://perma.cc/U6YB-4W5Z] (last visited Jan. 8, 2026).

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vouchers, and small incentives (gift cards) at each session.[113] Successful participants may be eligible for early release from probation.[114]

The *Veterans Treatment Court* is a specialized, pre-plea felony and misdemeanor docket for veterans whose conduct is linked to service-related conditions such as PTSD, alcoholism, or military sexual trauma.[115] Qualifying participants must have served in a branch of the military and present charges connected to addiction or co-occurring conditions arising from their service.[116] The court runs a twelve-month regimen of regular court appearances, drug/alcohol testing, structured substance use treatment, and an individualized mental health plan.[117]

IV. METHODOLOGY: INSTITUTIONAL ETHNOGRAPHY OF COLLABORATIVE COURTS

This Essay draws on institutional ethnography to generate a close, ground-level account of interactional life in four collaborative divisions of the Alameda County Superior Court: the Misdemeanor Drug Court, Felony Drug Court, Veterans Treatment Court, and Reentry Court. In order to "construct rich, empirically based descriptions of . . . social life and activities," we observed these forums while they operated in real time.[118] Leveraging Clifford Geertz's notion of "thick description,"[119] we use detailed, situated accounts to illuminate the meaningful structures through which participants understand their own and others' actions.

Within this tradition, institutional ethnography offers a particularly apt lens for courts because such studies "are built from the examination of work processes and study of how they are coordinated."[120] The ethnographer's task, accordingly, is to trace how actors are drawn into

[113] See Reentry Court, supra note 109.
[114] Id.
[115] Veterans Treatment Court, Superior Ct. of Cal.: Cnty. of Alameda, https://www.alameda.courts.ca.gov/divisions/collaborative-courts/veterans-treatment-court [https://perma.cc/E87P-AGCN] (last visited Jan. 9, 2026); E-mail from Gavin O'Neill, supra note 92.
[116] Veterans Treatment Court, supra note 115.
[117] Id.
[118] Robert M. Emerson, Contemporary Field Research: Perspectives and Formulations 27 (2d ed. 2001).
[119] A "thick description" refers to an interpretive account that goes beyond bare physical descriptions to explain what specific actions mean within a shared context. See Clifford Geertz, Thick Description: Toward an Interpretive Theory of Culture, *in* The Interpretation of Cultures 3, 7 (1973).
[120] Marjorie L. DeVault, Introduction: What Is Institutional Ethnography?, 53 Soc. Probs. 294, 294 (2006).

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patterned relations through their work; to surface "indigenous" categories, representations, and "local meanings"; and to show how these inform the production, perception, and interpretation of events.[121]

An ethnographic approach typically unfolds over extended periods: "[T]ime in the field is ideally measured . . . in months and years."[122] Consistent with this norm, the first author and a group of UC Berkeley research assistants and students observed these collaborative courts between March and June 2018 and again from August 2021 to June 2023.[123] Team members attended courtroom calendars and produced contemporaneous fieldnotes aimed at capturing spoken exchanges, embodied conduct, and the sequencing of events during hearings.[124] We also used jottings—rapid, *in situ* notations of phrases, gestures, and actions—to anchor subsequent write-ups.[125] This practice supports textual authenticity and helps position the implied reader as a firsthand witness by familiarizing them with the setting and its actors.[126]

In total, the research team completed an estimated 140 hours of nonparticipant observation, encompassing multiple distinct hearings across the four calendars. Field reports were compiled, scanned, and organized; the authors and research assistants then coded and analyzed the corpus iteratively, moving between inductive thematic development and the sensitizing concepts outlined in the literature review. To protect identities, we have omitted names and potentially identifying specifics, such as hearing dates, and sometimes paraphrased the surrounding context (specific dates of presented quotes are retained in our files).

Throughout, we were inspired by Paul Bate's "Qualities of Good Ethnography."[127] For the purposes of our study, this meant (1) attending

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[121] Emerson, supra note 118, at 33–36 (introducing the interpretive/ethnographic orientation to "members' meanings," native categories, and locally organized activities); see also Robert M. Emerson, Rachel I. Fretz & Linda L. Shaw, Writing Ethnographic Fieldnotes 3 (2d ed. 2011) (explaining that ethnography seeks "deeper immersion in [members'] worlds . . . to grasp what they experience as meaningful and important" and to pursue "what [is] meaningful" in how they classify and interpret events (emphasis omitted)).

[122] Ronald Niezen & Maria Sapignoli, Introduction *to* Palaces of Hope: The Anthropology of Global Organizations 1, 7 (Ronald Niezen & Maria Sapignoli eds., 2017).

[123] Tali Gal & Hadar Dancig-Rosenberg, Ethnography Fieldnotes [hereinafter Ethnography Fieldnotes] (unpublished research notes) (on file with authors).

[124] Id.

[125] Emerson et al., supra note 121, at 29 (explaining the principles and techniques of writing fieldnotes and jottings in ethnographic research).

[126] Id. at 20.

[127] See S.P. Bate, Whatever Happened to Organizational Anthropology? A Review of the Field of Organizational Ethnography and Anthropological Studies, 50 Hum. Rels. 1147,

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to polyphony—the multiple voices of judges, attorneys, treatment providers, staff, and participants; (2) conveying a palpable sense of being there through thick, scene-based description; (3) situating observations holistically in their organizational, legal, and community contexts; (4) foregrounding power, hierarchy, and inequality where they surface in talk and practice; (5) looking beyond the front stage of formal hearings to incorporate "back stage" interactions and off-record talk when accessible; and (6) reading both language and embodiment—how tone, pacing, posture, and spatial arrangements communicate authority, compliance, resistance, and care. The analytic payoff is twofold: first, to uncover the judicial process and stages that court participants traverse, and second, to identify the distinctive organizational cultures these courts have developed and the coordination mechanisms through which they do their work.

The study has several limitations. First, our findings are context-specific; they derive from four collaborative calendars in one California county, spanning bounded windows (2018; 2021–2023), with local laws, funding, providers, and judicial styles shaping what we observed.[128] Therefore, broad generalization is unwarranted. (We frame claims modestly and flag potential idiosyncratic features.) Second, sampling across calendars, phases, and judges was uneven and may overrepresent promotions or particular "judge effects." (We purposively varied observation days/phases and preserved disconfirming instances.) Additionally, parts of the fieldwork took place amid adaptations from the pandemic era that muted nonverbal cues and corridor talk.[129]

Third, our primary lens for this study was open-court observation, so our access skewed toward the "front stage" of these collaborative courts. Off-record spaces such as staff meetings, team huddles, probation/provider conferences, and plea negotiations were not directly accessible. Because consequential judgments are often shaped there, our account may understate the extent to which decisions are framed and contested behind the scenes. Relatedly, many documents invoked in

1163–71 (1997) (identifying four qualities that constitute "good ethnography": conveying a first-person, authentic account; capturing everyday, ordinary details; "close scripting and *reportage* of everyday events"; and walking away with a new perspective).

[128] See generally Ethnography Fieldnotes, supra note 123.

[129] Compare id. (Mar. 31, 2023) (observing a virtual hearing), with id. (Feb. 26, 2018) (noting that a participant received a hug when he entered court). These annotations illustrate how digital hearings constrained embodied cues and off-record interactions visible in face-to-face sessions.

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court, such as Pre-Sentence Investigations ("PSIs"), risk/needs assessments, and provider reports, were not available to us. We infer content from on-record summaries that may be selective. (We quote judicial summaries verbatim with court/date tags and avoid imputing unseen content.) Triangulation outside the courtroom was necessarily limited; treatment milieus, probation supervision, and community constraints are only partially visible from the bench. (We incorporated on-record provider/probation summaries and read extra-court factors as plausible influences, not verified causes.[130])

Fourth, as an observational, non-recorded study, our notes—jottings expanded soon after hearings—cannot capture every turn of phrase or sequence in fast calendars. (We double-observed selected sessions, debriefed as a team, and time-stamped key exchanges to reduce error.) Interpreter-mediated segments and remote formats can shift tone and suppress side-talk. (We mark interpreted exchanges and privilege lexical content over tonal inference.[131]) The presence of observers may also have influenced the interactional tone. (We mitigated reactivity by maintaining prolonged engagement over months/years and by comparing scripts across days to distinguish stable practice from performance spikes.)

V. POWER, CARE, AND DISCIPLINE IN COLLABORATIVE COURTS: ETHNOGRAPHIC OBSERVATIONS

Drawing on ethnographic observations across Misdemeanor Drug Court, Felony Drug Court, Veterans Treatment Court, and Reentry Court in Alameda County, this Part analyzes recurring patterns in courtroom interaction and decision-making through the critical lenses of Foucault's account of disciplinary institutions and contemporary critiques regarding coercion, paternalism, and penal control in problem-solving courts. The notes reveal a system that mixes genuine care and procedural justice with intensive observation, normalizing judgment, and judicial leverage, features consistent with a disciplinary court that governs as much as it adjudicates. Since our analysis is critical by design, we begin with a

[130] See, e.g., id. (Mar. 7, 2023) (observing a hearing where the judge praised a participant for "doing his meetings, keeping up with case management, and doing everything the court had asked"); id. (Feb. 26, 2018) (describing a public pre-court meeting in which the judge, case manager, prosecutor, and public defender discussed non-present participants and their performances).

[131] See id. (Mar. 2018) (noting that several participants had a Spanish interpreter and could not speak English).

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description of moments of care, support, and respect, which are all practices that are part of the daily routine of collaborative courts.

A. Care, Dignity, and Participants' Gains

Our court hearing observations captured sustained moments of care, dignity, empathy, and empowerment, including condolences, individualized praise, detailed and clear explanations, use of humor, and affirmation of participants' advocacy—dimensions of procedural justice and implementation of therapeutic jurisprudence principles that many defendants value and appreciate.[132] Because our jottings were handwritten and many conversations paraphrased, verbal quotes in these Sections are mostly reconstructions and not transcriptions. Additionally, many of our jottings were written in the third person. To best capture the verbal quotes as originally said, we have altered them back to first person and made minor changes for subject-verb agreement.

> Judge: "The hard work is what happens outside the court. And that's what you do." (recognizing the difficulty of going to treatment) (Drug Court).[133]
>
> Judge: "I'm so sorry." (condolences for a death in the family) (Drug Court).[134]
>
> Judge: "I'm really proud of the progress you're making." (Reentry Court).[135]
>
> Judge: "The court approves of the plan you came up with." (Drug Court).[136]
>
> A defendant closed his hearing by making a joke about receiving fried chicken and biscuits as a "prize" for completing the program. All parties laughed at the joke. The judge thanked the defendant for adding humor to the situation, stating, "[W]e all needed that." (Reentry Court).[137]

Many participants reflected on the gains they had achieved in the program, noting that the services and resources provided were

[132] See supra note 39 and accompanying text.
[133] Ethnography Fieldnotes, supra note 123 (Sep. 26, 2022).
[134] Id. (Oct. 10, 2022).
[135] Id. (Nov. 15, 2022).
[136] Id. (Nov. 21, 2022).
[137] Id. (Mar. 15, 2022).

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significantly helpful to their lives, stability, health, and well-being. In one case, for instance, a participant reflected on the positive journey he had made so far in the program:

> Participant: "My experience in treatment is the best I've been feeling in years."
> Judge: "You're on a very good path. . . . You're going to move forward very positively."
> Participant: "I'm taking it day by day. . . . I'm enjoying [the treatment program] very much." (Drug Court).[138]

In another case, when the judge asked a participant how he felt about going to the treatment program, he turned to the court staff and said:

> Participant: "At first it was weird, being around people all the time, but in the end[,] I am grateful to be here . . . . [T]his program has really saved my life." (Drug Court).[139]

An additional participant described with emotional openness the process that he had gone through and ended by saying:

> Participant: "Thanks [to] the court for helping me regain my spirituality and health." (Drug Court).[140]

B. From Adjudication to the "Examination": Shifting from the Act to the Actor

Across sessions, the courts consistently elicit a "truth of the self," not only the facts of the case. Judges and professionals ask about feelings, motivation, readiness, and insight, and then convert those assessments into programmatic obligations or rewards; these practices serve as classic markers of Foucauldian examination and power.[141] Judges often praise vulnerability, sincerity, and growth, and encourage participants to be open and share their hardships and emotional struggles. The following jottings capture some exchanges between participants and judges, reflecting the shift from focusing on past criminal wrongdoing to the inner processes of mindset change that participants were expected to go through:

[138] Id. (Nov. 28, 2022).
[139] Id. (Mar. 6, 2023) (emphasis omitted).
[140] Id. (Nov. 21, 2022).
[141] See Foucault, supra note 42, at 191–92 (explaining how examination of one's individual characteristics operates as a form of subjugation).

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> Participant: "I feel more prepared for the final phase because [the court doesn't] want to just erase everything, but also change the way that you think about things and the way that you handle the situations that you find yourself in today."
> Judge: "Thank you for that, Mr. [*X*]. Those are powerful words; not only for us, your team, but also for your peers." (Veterans Treatment Court).[142]
>
> * * *
>
> Judge: "I'm going to say I'm really glad you're still with us. . . . [T]hat's my way of saying I had my doubts."
> [Defendant appears to agree but looks uncomfortable.]
> Judge: "Do you feel differently than when you started?"
> Defendant: "I've been doing things the right way for once[,] and that's good." (Drug Court).[143]
>
> * * *
>
> [The judge asks a graduating participant how he feels about graduation and the program in general.]
> Participant: "I have found the court helpful, having [the court] to watch over me has kept me accountable and straight." (Drug Court).[144]

The court's focus on ongoing personal transformation is consistent with the Foucauldian transition from judging acts to classifying and normalizing individuals.[145] Participants are "assessed" and "examined" by the extent of their moral and personal alteration. Sometimes it even seemed that participants' functioning in the program was taken as a proxy for how the rest of their life was going to be: when they were inconsistent, court staff threatened termination and said this behavior would lead to negative consequences. However, if defendants were acting positively, the court staff would echo how they would succeed in the future:

> Judge [confronting the participant]: "You have been very inconsistent in the program, sometimes being engaged and sometimes not being engaged."

[142] Ethnography Fieldnotes, supra note 123 (Mar. 25, 2023).
[143] Id. (Sep. 26, 2022).
[144] Id. (Nov. 21, 2022).
[145] See Foucault, supra note 42, at 189–91.

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> Participant [seeming reflective]: "Sometimes it's me, sometimes life smacks me over the head."
> Judge: "Here's my perspective on things. Even though life can create some curveballs, you are able to get a hold on things and create some stability for you. This program is not only for drug addiction treatment, but to get some stability in one's life."
> Participant [thanking the court]: "You want me to do good." (Drug Court).[146]

Honesty and vulnerability are commended in the court, so it makes sense that a defendant who is very open emotionally with the court is called a "star":

> Judge: "You are the star of your treatment program[!] . . . [A]re [there] any words of wisdom for others?"
> Participant: "If you mess up[,] don't be afraid to tell [others]. . . . [W]orking in a program was a big thing for me."
> [Judge sealed the participant's record.]
> Judge: "Most importantly, it seems like you have a hold on your life right now. . . . Go forth and prosper." (Drug Court).[147]

Some participants' narratives reflected the internalization that they were "worthy" of the opportunities provided by the court only when they were completely sober, thus being respected and treated as capable of reform. An example is a case of a participant who told the court he went to check whether his enrollment in drug treatment had expired while he was incarcerated, but luckily it had not.[148] While speaking with the judge about the possibility of moving into "life house," which is a sober living environment, he said: "I want to get past and over everything holding me back. I just want to start enjoying my life like a good person." (Drug Court).[149]

C. Normalizing Judgment: Phases, Rituals, and "Success" Talk

Our observations revealed how the court repeatedly stages progress and failure as normalizing judgments—public rituals of praise, promotion, and disappointment that rank participants along ladders of compliance.

[146] Ethnography Fieldnotes, supra note 123 (Oct. 24, 2022).
[147] Id.
[148] Id. (Nov. 28, 2022).
[149] Id.

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Judges, as the court team leaders, use "carrots and sticks" to convey their validation, appreciation, or dissatisfaction to participants. When participants seemed to meet the court's expectations, they were cheered up and commended by the court staff.

> Judge: "How are you?"
> Participant: "Same old, same old."
> Judge: "Same old, same old is the same old way of following the program, reporting to everyone, and doing everything right. . . . [I]f you keep up the same old[,] you will graduate[!]" (Drug Court).[150]
>
> * * *
>
> Judge: "I don't know if you can see it[,] but there are thumbs up and hands all over! You're on phase two[,] congratulations[!]" (Veterans Treatment Court).[151]
>
> * * *
>
> Judge: "If you keep up this great work[,] you are going to be eligible for graduation at your next court date. That shows just how much progress you have made over a very short period of time . . . . [Y]ou've been making such good progress[,] that is great . . . ." (Drug Court).[152]
>
> * * *
>
> [Defendant had lost a tooth to infection.]
> Judge: "Tooth pain is terrible, but I'm so proud of you[,] and you're doing such a great job!" (Veterans Treatment Court).[153]

Judges use rituals during monitoring hearings, including asking participants to write essays to the courts.[154] In one case, for instance, a participant wrote to the court, describing how she kept getting arrested, was scared, and thought she was going to lose everything forever.[155] Since the court gave her a chance, as her essay explained, she takes her

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[150] Id. (Oct. 24, 2022).
[151] Id. (Oct. 14, 2022).
[152] Id. (Mar. 6, 2023).
[153] Id. (Oct. 14, 2022).
[154] Donald Farole, Nora Puffett & Michael Rempel, Ctr. for Ct. Innovation & Francine Byrne, Cal. Admin. Off. of the Cts., Collaborative Justice in Conventional Courts: Opportunities and Barriers 29–30 (2004), https://courts.ca.gov/system/files/2024-10/collaborativejustice.pdf [https://perma.cc/7C3N-DEFW].
[155] Ethnography Fieldnotes, supra note 123 (Sep. 26, 2022).

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medication, she is clean, and she is focused and working to become a detox specialist.[156] She said she never thought she would get there, but explained that "[n]ow every day I have coworkers telling me I'm a bright summer sunshine!"[157] The judge dismissed all her charges based on her success in drug court.[158] She then began to cry, as did others in the courtroom.[159] Referring to the participant's past charges for stealing cars, the judge remarked: "The only car I want to see you in again is your own."[160]

When staff considered accepting new participants into the program or identified setbacks in a participant's progress, judges generally responded by articulating clear and direct expectations. In one instance in reentry court, the judge made it clear to the defendant up front the expected schedule for recovery.[161] In another instance, a defendant acknowledged experiencing "ups and downs," but emphasized that he was doing well at the present moment.[162] The exchange implied that the participant had recently faced legal trouble.[163] Despite the participant's assertion—and the judge's confirmation—that there were no positive drug tests, the judge made it clear that the program's requirements extended beyond simply avoiding substance use; the court expected participants to maintain overall stability in their lives.[164] Nevertheless, the participant was advanced to the next phase of the program, which the judge marked as a celebratory occasion.[165] Recognizing this milestone, the judge described it as a "clapping moment" and invited the entire staff to join in applause and share smiles, blending accountability with public acknowledgment of achievement.[166]

These representations reflect institutionally crafted narratives of "success" that may hide underlying structural issues. Collins notes that courts define "success" using selective metrics.[167] As Sousa's ethnographic work in a drug court shows, participants are guided through

[156] Id.
[157] Id.
[158] Id.
[159] Id.
[160] Id.
[161] Id. (Apr. 2, 2023).
[162] Id. (Oct. 24, 2022).
[163] Id.
[164] Id.
[165] Id.
[166] Id.
[167] Collins, supra note 36, at 1609–14.

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phases toward social reintegration under the court's normalizing perspective, with discipline framed as therapeutic.[168] Our observations support critics' concerns that, despite their supportive tone, court processes can become performative, blurring judicial neutrality with motivational coaching.

D. Judicial Leverage, Ultimatums, and Paternal Tones: Between Coercion and Voluntariness

Collaborative courts blend encouragement with firm leverage, which critics describe as maintaining coercive court control through judicial collectivism and expanded discretion. Judges used their authority to push participants to adhere to the treatment program, sometimes using a paternalistic tone. For example, in one case of a reacceptance request for a participant who had quit the program, the judge approved the request, but "only if he stays in the program for 90 days."[169] In another case during a drug court calendar, the judge noted a positive report, but heard the defendant's request to pause treatment for two weeks to cover night shifts, adding that the treatment center had already approved the break.[170] With two weeks left in the program, the judge reluctantly agreed: "I will allow that, but if it had been up to me, I would not have let you step out of treatment two weeks too early."[171]

In some cases, judges emphasized that participation in the program is not mandatory and that defendants have alternative options, which they must be aware of and consider. Such attention drawing can be understood as affording defendants an opportunity to exercise their choice and ensure that their participation is truly voluntary.[172] Yet it can also be read as signaling to defendants that the alternative available to them is a return to the punitive criminal justice process. This serves as a reminder of the sanctioning threat in the background, which may, in turn, create pressure to remain in the program due to concerns about the alternative.

> Judge: "How has it been going at [S]econd [C]hance?"
> Participant: "Uhhh . . . Okay I guess."
> Judge: "What else can we do to help you?"

[168] Sousa, supra note 63, at 189–91.
[169] Ethnography Fieldnotes, supra note 123 (Nov. 28, 2022).
[170] Id. (Sep. 26, 2022).
[171] Id.
[172] See id. (Oct. 10, 2022).

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> Participant: "I don't know to be honest. I need to find a job right now, I'm having issues where the mother of my son won[']t let me talk to him. I don't think you can help me with that. Stay on me, keep me on the right track[,] I suppose."
> Judge: "Okay. . . . We want you to be successful in drug court[,] but we also want you to know what your options are. . . . [W]e do see you're trying, but we'll get you connected to your lawyer." (Drug Court).[173]

The courts emphasize choice, but the conditions of participation and the language of "opportunity" can render voluntariness ambiguous. In one case, a participant joined with his defense attorney, who recommended that he be allowed to join the veterans treatment court.[174] The judge turned to the participant, who had listened to several sessions before his turn, and asked if he thought he should join the program.[175] The defendant agreed.[176] The rest of the staff accepted him into the program, and the judge said: "You have a special opportunity[,] and you should take advantage of it."[177] Making the defendant feel grateful for the opportunity could be seen as a strategy to encourage him to comply. In another case, a participant had just gotten out of the emergency room, where she was diagnosed with strep throat.[178] When she appeared in court for the judicial review hearing while she was sick, the judge gave her a strict warning:

> Judge: "We need to set an ultimatum . . . because you're either in [S]econd [C]hance doing inpatient treatment and testing, or you're in court . . . . If you don't want to[,] we can send your case back[,] but I have a feeling a part of you really wants to be in drug court."
> Participant: "I do." (Drug Court).[179]

Judges also employ more direct penal threats to motivate participants to adhere to the program's requirements. At a reentry court hearing, the court addressed a participant who had failed to appear and had been avoiding the program for about a year.[180] The case manager noted the participant, who had struggled to join the virtual proceeding, had recently

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[173] Id.
[174] Id. (Oct. 28, 2022).
[175] Id.
[176] Id.
[177] Id.
[178] Id. (Sep. 26, 2022).
[179] Id.
[180] Id. (Mar. 7, 2023).

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been in contact, was progressing well, and seemed "willing to engage."[181] After some back and forth, the judge agreed to reschedule the hearing, while maintaining a previous warning that if the participant did not appear soon, then the judge would "send out a warrant for an arrest."[182]

In a few cases, judges reminded participants that the program's requirements are, in fact, not excessively burdensome relative to the offenses they committed. The implied message is that if participants proceed through the mainstream criminal process, they will likely face significantly heavier sanctions; therefore, it is in their best interest to comply with the program's conditions.

> Judge: "You're doing alright[,] but you must [take a] drug test once a week, and join an outpatient treatment once a week. . . . [T]his isn't much for someone with a felony charge." (Drug Court).[183]

In another case, the judge told the participant he was doing "very well" but wanted to discuss "positive tests," despite the participant having made significant progress.[184] The judge explained that these tests were the reason the participant would not proceed to the next phase:

> Judge: "I hope to see you cross the finish line[,] and you're so close, but I want you to come back so I can make sure you're on the right track."
>
> Unidentified staffer: "I look forward to seeing you on the finish line. . . . We expect this from you. You expect it from yourself." (Veterans Treatment Court).[185]

Such communications reflect a supportive and caring approach, yet with a paternalistic tone. They echo the microphysics of power that Foucault describes: continuous corrective pressures, often framed as treatment.[186] The parental role of the court was also reflected in the requirement that participants get approval for new jobs and other life decisions while attending the program.[187]

Exiting (or not entering) the program is possible, but the result is typically entering a mainstream criminal court, highlighting the complex

[181] Id.
[182] Id.
[183] Id. (Sep. 26, 2022).
[184] Id. (Oct. 14, 2022).
[185] Id.
[186] Foucault, supra note 42, at 222.
[187] See, e.g., Ethnography Fieldnotes, supra note 123 (Nov. 21, 2022).

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nature of "choice" in therapeutic governance.[188] Of all the cases we observed, only one involved an individual's clear refusal to enter the program—a case of a veteran who was referred to the veterans treatment court and appeared extremely offended by this referral.[189] Accompanied by his defense attorney, he addressed the court and said:

> Participant: "I have principles. Regardless of what happens[,] I don't care. I'm one of the healthiest people I know. I refuse to participate in this program. . . . Please do not do this to me." (Veterans Treatment Court).[190]

E. Governing by File: Hierarchical Observation, Uneven Expertise, and Diffused Oversight

The team model relies on continuous reporting by case managers and treatment providers—a practice the judge explicitly invokes, indicating a hierarchical structure that shapes power and discretion. Observation is not merely passive; it is organized and routinized, creating a dossier-based decision process. Foucault's case file comes alive in these interactions:

> Judge: "I heard one word from your caseworker—'awesome.'" (Drug Court).[191]
> Judge: "There's one word I heard about you from your case worker—He is on it." (Drug Court).[192]
> Judge: "[T]he thing I learned is that you're trying." (Drug Court).[193]
> Case manager (to participant): "I know everything that happens in [H]ealth[R]ight 360 . . . ." (Drug Court).[194]

The concerns about limited external oversight are echoed in the weight given to staff narratives that defendants cannot easily contest, as reflected in the last example. At the same time, the court's reliance on external treatment programs creates uneven expertise and variable quality, resonating with the critique of unregulated institutional growth and diffuse oversight. In one case, the judge acknowledged that he "really doesn't know anything about [the external program]," but instructed the

[188] E-mail from Gavin O'Neill, supra note 92.
[189] Ethnography Fieldnotes, supra note 123 (Oct. 28, 2022).
[190] Id.
[191] Id. (Oct. 24, 2022).
[192] Id.
[193] Id.
[194] Id. (Oct. 10, 2022).

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participant to "continue the good work."[195] In another case, a participant was referred to an "out of county program"; the judge said he had "no control over" it, but "[a]s long as you're in treatment it's okay."[196] In an additional case, the participant reported receiving treatment on Treasure Island, and the judge said: "I 'wish' I were there because it sounds 'idyllic.'"[197]

Participants sometimes compared and contrasted programs, while it was unclear if court professionals were familiar with the specific details that participants mentioned. In one case, a participant discussed his new program that was "better-staffed, better funded, and [where] people seem[ed] to care" when compared to his previous one.[198] Foucault's judges of normality—experts whose knowledge authorizes interventions[199]—are present, but the knowledge base is uneven. Where expertise is thin or external, judicial power persists through the form of compliance (being "in treatment") rather than substantive program quality and compatibility with participants' needs. When a participant shared concerns about the incompatibility of her residential treatment with her needs, the judge nonetheless encouraged continuation:

> Judge: "From your perspective[,] how is your program[?]"
> Participant: "I feel there is favoritism[.] . . . [A] lot of the people in the program aren't trying to get clean[.] . . . I take it very seriously."
> Judge: "[T]his is the time for you to put your blinkers on and focus on [yourself] . . . . Keep doing it until it becomes untenable." (Drug Court).[200]

F. Time, Work, and the Daily Costs of Compliance

Compliance requirements create demanding schedules that can collide with employment, childcare, and personal health, illustrating how disciplinary power governs daily life. On the record, minimum expectations are recited, such as the following:

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[195] Id. (Sep. 26, 2022).
[196] Id.
[197] Id. (Oct. 24, 2022).
[198] Id. (Nov. 28, 2022).
[199] Foucault, supra note 42, at 304.
[200] Ethnography Fieldnotes, supra note 123 (Sep. 26, 2022).

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> Judge: "Be engaged in a program, stay in contact with a case manager, enroll in mental health therapy, substance abuse treatment, and[,] finally[,] get tested twice a week." (Veterans Treatment Court).[201]

Participants themselves voice the strain when judges press for treatment-first scheduling:

> Judge: "How has it been going at [S]econd [C]hance[?] . . . What else can we do to help you?"
> Participant: "I don't know[,] to be honest. I need to find a job right now . . . . Stay on me, keep me on the right track I suppose."
> Judge [seeming disappointed]: "Okay . . . ." (Drug Court).[202]

When a participant explained that he could secure only monthly mental health appointments—despite the court's expectation of twice-monthly sessions—while maintaining his job, the judge reiterated the same message:

> Judge: "Please prioritize your treatment and testing . . . . [I]f you don't do that everything else will fall away. If that means you have to reschedule some other things in your life[,] you'll have to do that." (Veterans Treatment Court).[203]

Such a response can come across as dismissive of the practical difficulty of finding a provider with capacity on top of employment demands. In another case addressing missed tests and limited program involvement, the judge made it clear that adhering to the program's requirements should be the participant's first priority.[204] While the case manager in this case went out of her way to assist with scheduling, it was still evident that the participant struggled to manage day-to-day commitments with compliance:

> Judge: "A lot of times people in the program have to work for income, but they start to lose sight of treatment . . . . You can have a job[,] but you must focus on treatment." (Drug Court).[205]

Together, these moments operationalize the concern that court-centered help can crowd out non-carceral supports and generate

[201] Id. (Oct. 14, 2022).
[202] Id. (Oct. 10, 2022).
[203] Id. (Oct. 14, 2022).
[204] Id. (Oct. 24, 2022).
[205] Id.

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opportunity costs that remain off the ledger of "success." They reveal that courts govern beyond adjudication by coercing life-organizational decisions under the rubric of treatment.

G. Substance Rules and "Reverse Screening"

Abstinence expectations can produce reverse moral screening, sanctioning those least able to comply while rewarding those who are more functional in a manner consistent with critics' concerns.

> Participant [with chronic pain]: "Yeah, I smoke weed once or twice a week. . . . [I]f you guys don't accept that[,] I will never complete this program." (Drug Court).[206]

While framed as treatment integrity, these scenarios may risk penalizing health-related coping strategies and extending supervision. The undesired result might be carceral intensification via ostensibly therapeutic rules.

VI. PROPOSED DESIGN COMMITMENTS TO ADDRESS RISKS WHILE PRESERVING THE BENEFITS OF COLLABORATIVE COURTS

Our observations depict collaborative courts that care and control at the same time. Foucauldian techniques, consisting of hierarchical observation, normalizing judgment, and documented diagnosis,[207] structure everyday practice through files, phases, and feelings. Our notes are aligned with the depiction of collaborative courts as cultivating and defending their legitimacy through success stories, metrics, and preservation of leverage while posing some structural costs (judicial collectivism, net-widening, and reverse screening). The result is not simply adjudication but governance: courts coordinate observation, translate it into judgments about the person, and ratify those judgments with enforceable orders, often accompanied by genuine support, empathy, and meaningful benefits. This dual reality of supportive care nested within a dense web of compliance reveals the promise and peril of therapeutic justice. While collaborative courts provide defendants with access to welfare support and resources, which can indeed save their lives, they also

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[206] Id. (Nov. 28, 2022).
[207] Foucault, supra note 42, at 170.

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cast a web of social oversight that subjects them to the disciplining force of penal control.

Building on our ethnographic observations and critical literature, we propose several design commitments below to preserve the caring, dignity-affirming features of collaborative courts while mitigating the forms of penal overreach identified by Foucault and contemporary critics. The animating idea is voluntariness with substance: participation is meaningful only if defendants can see, compare, and revisit their options without being coerced into making a decision. In practice, this entails front-loading information and allowing time for reflection by adopting a neutral, independent, defense-led orientation across all possible pathways—program, traditional track, community diversion—coupled with a short cooling-off period. While in the program, participants should be offered a menu of clinically credible modalities rather than a single track, and they should be informed of confidentiality limits for what is said in treatment.

A second commitment concerns the procedural architecture of decision-making. Where courts retain supervision, legitimacy is enhanced when power is exercised transparently and proportionately. Sanctions and major condition changes may be best understood and experienced as reason-giving acts: brief, on-record explanations tied to verified conduct, and accompanied by a necessity-and-proportionality check, should be used regularly to ensure such measures remain procedurally fair and legitimate. Because treatment termination or incarceration can be especially consequential, an elevated evidentiary threshold and a rapid, written review may help cabin discretion. Team meetings—long a site of off-record influence—can be brought into view by circulating succinct memos to defense in advance with space to contest factual predicates. Preserving defense independence at sanction or termination junctures, including access to independent evaluations with equal procedural weight, may guard against the "judicial collectivism" described by critics,[208] without abandoning collaboration.

A third commitment is to avoid net-widening and unnecessary time under supervision. A "community-first" triage that screens eligible cases for non-court diversion or health system referral before enrollment may be a step that respects the boundary between adjudication and the desired social policy. Where court governance remains appropriate, time-boxed

[208] See, e.g., Hoffman, supra note 73, at 2090.

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supervision with presumptive caps—and substantiated findings required for extensions—may prevent drift. Starting with minimal conditions compatible with safety and care, and structuring reviews around de-escalation ("What can be removed today?"), may limit the tendency to ratchet compliance upward. Crucially, participation is made possible by the reliable availability of support—flexible evening and weekend scheduling, transit assistance, remote check-ins when appropriate, and the meaningful involvement of trained peer mentors and community partners. These supports can reduce practical barriers to engagement and make compliance feasible in everyday life, enabling the program to operate without resorting to surveillance and sanctions as its principal tools of governance. In this model, accountability is sustained less through monitoring and punishment than through access, responsiveness, and relationships that help participants show up, stabilize, and persist. Everyday language also matters. Courtroom discourse can either amplify paternalism or foster agency. A shift toward autonomy-supportive dialogue ("Here are several options. What aligns with your goals?"; "How do you see your progress?"; "Is there anything else that could help you at this stage?"), brief participant-articulated goals at the start of review hearings, and a teach-back close in the participant's own words are low-cost practices aligned with procedural justice values. Simple, recurring questions consistently incorporated into hearings—such as whether the participant had adequate time with counsel, understood the decision, and felt heard—can translate dignity into a program metric rather than leaving it as an abstract slogan. At the program level, transparent reporting that includes not only graduations but also entries, opt-outs, terminations, and average time burdens (with disaggregation by salient demographics), when coupled with prespecified measures and independent evaluation, may address the concern that success can be curated rather than demonstrated.

Finally, a Foucauldian perspective on the process of examination suggests that courts should be cautious about collecting excessive information and should restrict how that information is used or shared. Data minimization and purpose limits, such as collecting only what is needed for the participant's chosen care plan and prohibiting punitive reuse of clinical narratives, can reduce the risk that treatment becomes surveillance by another name. Basic file hygiene (time-limited retention of treatment notes in court files and access logs for non-court readers) and obtaining consent for the use of risk/needs tools can help keep expertise

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in the service of care rather than control. Institutional learning mechanisms, such as structural awareness training for staff, periodic sanction review conferences to ensure proportionality and consistency, and a publicly posted Participant Bill of Rights, can create feedback loops that sustain these commitments over time.

These suggested strategies and practices could reorient collaborative courts toward care without capture—a mode of governance that keeps empathy, recognition, and support with accountability at the center while narrowing the channels through which leverage, opacity, and normalization can become ends in themselves.

CONCLUSION

Our ethnographic data show that many drug court participants experience dignity, empathy, tangible services, and meaningful legal relief. Yet the same practices that enable stability—files, phases, testing, and frequent check-ins—also extend governance beyond adjudication, translating observation into judgments about the person and enforcing those judgments through leverage. The result is a double-edged system: supportive care nested within a dense web of compliance.

Taking that duality seriously clarifies a more profound critique. Rather than displacing incarceration, collaborative courts often function as adjuncts to the carceral system, widening its reach to low-level infractions and social problems (e.g., poverty, addiction, homelessness) under the banner of help. Compliance is policed by the persistent threat of criminalization and jail; therapeutic language can repackage punitive control instead of retracting the penal net. In this sense, problem-solving courts risk operating as "Band-Aids" that absorb reform energy while leaving the structural drivers, such as housing scarcity, fragmented health systems, and economic precarity, largely intact.[209]

Abolitionist and power-redistributive perspectives press this point: social services and welfare support should be community entitlements, not rewards contingent upon pleas or compliance. When access to treatment or housing is conditioned on criminal legal involvement, courts entrench a gatekeeping role that stigmatizes individuals and communities.

[209] For comprehensive engagement with the duality characterizing this model, see generally Peter Dixon & Hadar Dancig-Rosenberg, The Multi-Hatted Court: Community Courts as Boundary Organizations, 120 Nw. U. L. Rev. 1259 (2026).

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One must first bear the "offender" label to receive aid.[210] This architecture deepens governing through crime, crowds out non-carceral systems, and risks normalizing the criminal justice system as the default site of welfare.[211]

Our recommendations aim to hold both truths at once. Within collaborative courts, we propose making voluntariness substantive (neutral, defense-led orientation; real time to decide), exercising power transparently and proportionately (reason-giving, elevated thresholds, rapid review), preventing net-widening (community-first triage, time-boxed supervision, de-escalating conditions), supporting participation without surveillance (flexible scheduling, transit help, remote check-ins, peer mentors), and treating information as care rather than control (data-minimization, purpose limits, consent for assessment tools). These reforms do not abandon collaboration; they discipline it, surface backstage inputs, preserve defense independence, and measure dignity (voice, understanding) as a performance metric rather than a slogan.

But institutional design alone is not enough. If collaborative courts are to remain, they must complement, not replace, systems. A community-first architecture would route eligible cases to health and social services outside the criminal process and reserve court governance as a last resort. In that configuration, collaborative courts can retain what is most valuable—tangible help with care—while narrowing the channels through which care hardens into control and keeping the horizon squarely on structural reforms that render penal gatekeeping unnecessary.

[210] Levin, supra note 85, at 530–31.

[211] See, e.g., id. at 531; Collins, supra note 36, at 1625; Tiger, supra note 61, at 49; Thompson, supra note 3, at 63.