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**HOW ARE YOU MEASURING SUCCESS?**

A SOCIOLOGICAL LENS ON EVALUATING  
RECOVERY COURTS AND THE OPIOID MISUSE  
CRISIS IN APPALACHIA

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## INTRODUCTION

This comment began as a research proposal to use applied sociological research methods to measure judicial efficiency given the ongoing opioid misuse crisis in Appalachia, specifically in East Tennessee until a field practitioner posed fundamental, astute questions about the proposed methodology. The need for the research is still present, but the questions presented highlighted a fundamental problem with the literature on which the initial project was based: How are you measuring success?

Extensive research exists detailing the effectiveness of problem-solving courts for addiction rehabilitation and diversion from the criminal courts. However, the traditional patterns of problem-based treatment may not address the unique social and cultural issues present in Appalachia because research suggests that drug court evaluations are “most concerned with overall performance, particularly regarding re-arrest rates, days spent incarcerated, and other objective findings, rather than the effectiveness of specific treatment methods.”<sup>2</sup> “This is important because medication-assisted treatment (“MAT”) for opioid addiction is ideologically contested in problem solving courts, despite strong evidence of its effectiveness.”<sup>3</sup>

This comment discusses the use of sociological research methods as a valid means of conducting legal research, particularly when social and cultural barriers impact judicial decision making. This is an important distinction in legal research because the majority of existing research on the effectiveness of recovery courts uses methodologically unsound research to justify and inform judicial and legislative decision making. Without accurate measures of program outcomes, including residual benefits, judges do not have adequate information on which to base decisions. To provide context for the sociological basis for this research, this paper will discuss the current state of recovery court research, and the effect of intersectionality in Appalachian culture and society on the opioid misuse crisis

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<sup>2</sup> Barbara Andraka-Christou, *What is “Treatment” for Opioid Addiction in Problem-Solving Courts: A Study of 20 Indiana Drug and Veterans Courts*, 112 STAN. J. OF C.R. & C.L. 189, 192 (2017).

<sup>3</sup> *Id.* at 189.

and its resulting effect on judicial decision making and its implications for addressing the opioid misuse crisis regionally. The paper will conclude with a call for an interdisciplinary approach to legal research based on sociological research methods to better inform judicial and legislative decision making.

## I. A CASE STUDY

While the entire nation has experienced a public health crisis involving opioid misuse, some geographic regions have experienced the crisis more drastically than others.<sup>4</sup> Providing effective treatment of substance use problems in rural Appalachia is complex due a variety of interconnected issues.<sup>5</sup> These issues include a lack of access to health professionals because of cost, insufficient health insurance coverage,<sup>6</sup> lack of access to qualified health care providers as a result of travel distance, lack of training in evidence-based and evidence-supported treatments, lack of trust in health professionals to provide effective treatment, and lack of educational and economic opportunity contributing to systemic poverty.<sup>7</sup> Despite this, people who

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<sup>4</sup> Katherine M. Keys, Magdalena Cerdá, Joanne E. Brady, Jennifer R. Havens & Sandro Galea, *Understanding the Rural-Urban Differences in Nonmedical Prescription Opioid Use and Abuse in the United States*, 104 AM. J. OF PUB. HEALTH 52, 52 (2014).

<sup>5</sup> Amanda M. Bunting, Carrie B. Oser, Michele Staton, Katherine S. Eddens & Hannah Knudsen, *Clinician Identified Barriers to Treatment for Individuals in Appalachia with Opioid Use Disorder Following Release from Prison: A Social Ecological Approach*, 13 ADDICTION SCIENCE & CLINICAL PRAC. 1 (2018).  
<https://ascjournal.biomedcentral.com/track/pdf/10.1186/s13722-018-0124-2>.

<sup>6</sup> Robert R. Davis & Shelly Cole, *Healthcare in Appalachia and the Role of the Federal Government*, 120 W. VA. L. REV. 1001, 1001 (2018).

<sup>7</sup> Lara Moody, Emily Satterwhite, and Warren K. Bickel, *Substance Use in Rural Central Appalachia: Current Status and Treatment Considerations*, 41 RURAL MENTAL HEALTH 123, 124 (2017),  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5648074/pdf/nihms867871.pdf>.

experience opioid misuse issues or opioid use disorder (“OUD”) are often provided identical treatment in recovery court as people with other types of addiction, irrespective of differing effectiveness and prognoses.<sup>8</sup> Recovery courts manage people who misuse opioids and are also involved with the criminal justice system, usually through an arrest or a referral. These courts began as a specialized court program in Florida in 1989 as an alternative to traditional criminal courts for select offenders; usually, first-time, nonviolent offenders who abused drugs, specifically marijuana, and/or alcohol.<sup>9</sup>

Program graduation rates, according to a preliminary literature review, are the leading metric of program success for recovery court programs. According to the most recent literature (2009), the Knox County Recovery Court program has a “success rate” of about 27%.<sup>10</sup> Because opioid misuse has reached epidemic proportions and is severely impacting families and communities in East Tennessee, this reported success rate fueled the initial impetus to find a more successful paradigm.

However, the director of the Knox County Recovery Court,<sup>11</sup> Mr. Ron Hanaver, derailed the initial line of research when he asked: How are you measuring success? Are you measuring how quickly people enter and leave the system? Or how often they come back? Are you talking about the “easy” clients, the ones most likely to graduate? Or are you talking about the clients no one wants reflected in their

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<sup>8</sup> Barbara Andraka-Christou, *What is “Treatment” for Opioid Addiction in Problem-Solving Courts: A Study of 20 Indiana Drug and Veterans Courts*, 112 STAN. J. OF C.R. & C.L. 189, 192 (2017).

<sup>9</sup> John Kip Cornwell, *Opioid Courts and Judicial Management of the Opioid Crisis*, 49 SETON HALL L. REV. 997, 1002 (2019).

<sup>10</sup> RICHARD GRIMM & ASHLEY SELF, PERFORMANCE VISTAS, INC., TENNESSEE STATE WIDE DRUG COURT AND EVALUATION AND TRAINING PROJECT (2009), <http://www.knoxdrugcourt.org/wp-content/uploads/2016/03/Tennessee-Statewide-Drug-Court-Training-and-Evaluation-Project.pdf>. This resource was compiled under a former judge, and the comments and statements referenced in the research should not be used to make inferences about the current judicial administration.

<sup>11</sup> KNOX COUNTY RECOVERY COURT & KNOX COUNTY VETERANS TREATMENT COURT, <http://knoxdrugcourt.org/about-us/> (last visited Dec. 13, 2019).

reporting statistics because they have complex histories which delay graduation?<sup>12</sup>

Mr. Hanaver's questions are fair, especially given the nature of opioid misuse, OUD, and the life barriers experienced by people in Appalachia generally, and in East Tennessee, specifically.<sup>13</sup> Opioid use disorder is "[a] problematic pattern of opioid use that causes significant impairment or distress. A diagnosis is based on specific criteria such as unsuccessful efforts to cut down or control use, or use resulting in social problems and a failure to fulfill obligations at work, school, or home, among other criteria."<sup>14</sup>

Socio-economic variables such as poverty, access to health care in rural communities, access to affordable housing, and reliance on unskilled or service sector employment all impact treatment decisions and access. While TennCare, the Tennessee Medicaid program, a health insurance program for low-income children and families, provides medication-assisted treatment,<sup>15</sup> access to the health insurance program is limited, and all eligibility levels have income and resource limitations.<sup>16</sup> Eligibility restrictions further reduce access to treatment for people experiencing OUD. Additionally, opioid misuse, OUD, and opioid-related fatalities follow geographic and regional

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<sup>12</sup> Interview with Ron Hanaver, Director, Knox County Recovery Court (Nov. 13, 2019).

<sup>13</sup> *N.B.*, Due to a dearth of academic research on East Tennessee in particular, generalizations in this comment are made about East Tennessee through its association in the geographic region of Appalachia.

<sup>14</sup> Center for Disease Control and Prevention, Opioid Overdose: Commonly Used Terms, *Opioid Use Disorder (OUD)*, <https://www.cdc.gov/drugoverdose/opioids/terms.html> (last visited Feb. 6, 2021).

<sup>15</sup> STATE OF TENNESSEE, DIVISION OF TENNCARE, TENNCARE'S OPIOID STRATEGY, <https://www.tn.gov/tenncare/tenncare-s-opioid-strategy.html> (last visited Feb. 6, 2021).

<sup>16</sup> STATE OF TENNESSEE, DIVISION OF TENNCARE, TENNCARE MEDICAID: ELIGIBILITY, <https://www.tn.gov/tenncare/members-applicants/eligibility/tenncare-medicaid.html> (last accessed Feb. 6, 2021).

trends,<sup>17</sup> which cannot be accounted for by chance.<sup>18</sup> Unfortunately, as a person's opioid misuse increases, a person's interaction with the criminal justice system is also likely to increase.<sup>19</sup> Since there are social, cultural, and regional differences in opioid misuse and opioid related fatalities,<sup>20</sup> with a higher prevalence in Appalachia,<sup>21</sup> having a differentiated response opioid misuse in the Appalachian region reflects modern sensibilities of fairness and justice.

Judge Chuck Cerny with the Knox County Recovery and Veterans Court graciously allowed a direct observation of the recovery court model used in Knox County, Tennessee.<sup>22</sup> While the majority of the pre-court session meetings resembled drug court models described in the

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<sup>17</sup> Rebecca L. Haffajee, Lewei Allison Lin, Amy S. B. Bohnert, et al., *Characteristics of U.S. Counties with High Opioid Overdose Mortality and Low Capacity to Deliver Medications for Opioid Use Disorder*, 2(6) JAMA NETWORK OPEN 1 (2019), doi:10.1001/jamanetworkopen.2019.6373; Elinor R. Schoenfeld, George S. Leibowitz, Yu Wang, Xin Chen, et al., *Geographic, Temporal, and Sociodemographic Differences in Opioid Poisoning*, 57(2) AM. J. PREV. MED. 153, 154 (2019), <https://doi.org/10.1016/j.amepre.2019.03.020>.

<sup>18</sup> Lyndsey A. Rolheiser, Jack Cordes, S.V. Subramanian, *Opioid Prescribing Rates by Congressional Districts, United States, 2016*, 108 (9) AM. J. PUBLIC HEALTH 1109, 1214–1219 (Sept. 1, 2018), <https://doi.org/10.2105/AJPH.2018.304532>.

<sup>19</sup> National Institute on Drug Abuse, *How is Opioid Use Disorder Treated in the Criminal Justice System?*, Medications to Treat Opioid Use Disorder, <https://www.drugabuse.gov/publications/medications-to-treat-opioid-addiction/how-opioid-use-disorder-treated-in-criminal-justice-system> (last accessed Feb. 6, 2021).

<sup>20</sup> David J. Peters, Shannon M. Monnat, Andrew L. Hochstetler, & Mark T. Berg, *The Opioid Hydra: Understanding Overdose Mortality Epidemics and Syndemics Across the Rural-Urban Continuum*, 85(3) RURAL SOCIOLOGY 589, 3-7 (Sept. 2020), <https://doi.org/10.1111/ruso.12307>.

<sup>21</sup> Christine A. Schalkoff, Kathryn E. Lancaster, Bradley N. Gaynes, Vivian Wang, Brian W. Pence, William C. Miller, & Vivian F. Go, *The Opioid and Related Drug Epidemics in rural Appalachia: A Systematic Review of Populations Affected, Risk Factors, and Infectious Diseases*, 41 SUBSTANCE ABUSE 35, 35 (2020).

<sup>22</sup> Court observation, Knox County Recovery Court, Knoxville, Tennessee (Nov. 16, 2019).

literature involving a multi-disciplinary team and individual case reporting, the interaction within the courtroom during the recovery court session did not.

Judge Cerny takes the therapeutic jurisprudence model on which drug courts are based and mixes in a strong dose of empathy and human dignity for the person. In a geographic area which has been plagued with generational poverty, incarceration, and drug misuse, Judge Cerny meets people where they are. Ultimately, his goal is to help people stay sober and develop the character and skills necessary to address the issues often found at the root of addiction. Judge Cerny leads this effort through encouragement, respect, and compassion. During the court observation, Judge Cerny would regularly tell program participants things like: “What is important is that you grow as a person and become a better human”; “Be honest with the guy in the mirror”; and “There will be times when you feel like you can’t do this. Please call staff. We are here for you.”<sup>23</sup> The overall message in Judge Cerny’s Recovery Court is consistently and unequivocally, “Try again.”

A male participant in his mid-30s, shared his testimony with the other participants at the close of the observed session.<sup>24</sup> He shared how his “demon” had taken over his life, and it was not until Judge (Cerny) treated him like a real person that he managed to find his own worth and begin to make amends for the things he had done. This participant was employed, paying his bills, and seeing his children regularly for the first time in years. Given the very real evidence of recovery and character development for clients, utilizing old statistics that suggest Knox County Recovery Court is only 27% effective is, frankly, misleading.

Fundamentally, social science is not a crystal ball offering the ability to predict the future. However, the methods of sociology, in an attempt to apply sociological research methods to the lived experiences of the courts and the humans who work in them can help explain the ways Appalachian society and culture interact and are impacted by the criminal justice system. Therapeutic jurisprudence

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<sup>23</sup> Court observation, Knox County Recovery Court, Knoxville, Tennessee (Nov. 16, 2019).

<sup>24</sup> *Id.* The participant’s name is not disclosed in order to protect his privacy.

and the development of problem-solving courts, such as drug courts,<sup>25</sup> attempt to address the specialized needs of people who misuse drugs. However, the existing research does not provide methodologically sound means to evaluate the effectiveness of such programs, because the primary metric used to evaluate “success” - graduation rates - does not reflect the entire scope of the program and its residual benefits. The metrics used to evaluate program success do not include socio-economic and cultural factors which impact and derail a client’s successful completion of the program.

## II. LEGAL RESEARCH AND THE SOCIOLOGICAL LENS

*I believe sociologists are often at their best when they confront analytic or social problems that other scholars already believe have been solved. The sociologist enters the fray and says, wait, let’s think about this problem from another vantage point or let’s review what evidence we really have on this issue. What can occur under these conditions is that the sociologist finds out the conventional wisdom is flawed, unsupported by the evidence, which can in turn lead to that conventional wisdom getting turned on its head.<sup>26</sup>*

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<sup>25</sup> NB, Tennessee refers to drug courts as Recovery Courts. This comment prefers the use of the term recovery courts as it focuses on the solution to the problem, rather than the over broad description of the underlying problem. State of Tennessee, Department of Mental Health and Substance Abuse Services, *Recovery Courts in Tennessee*, <https://www.tn.gov/content/tn/behavioral-health/substance-abuse-services/criminal-justice-services/recovery-drug-court-programs-in-tn.html> (last accessed Feb. 6, 2021).

<sup>26</sup> Calvin Morrill, John Hagan, Bernard Harcourt, & Tracey Meares, *Punishment and Crime: Seeing Crime and Punishment through a Sociological Lens: Contributions, Practices, and the Future*, 2005 U. CHI. LEGAL F. 289, 323 (2005).

## A. SOCIOLOGY IN CONTEXT

Sociology differs from other social sciences in that the field focuses on relationships, interactions, social processes, and contexts by looking at dynamic patterns of behavior and relationships among human social groups and institutions and how those patterns reflect the values of the broader society.<sup>27</sup> Sociologists begin their research at the social level, rather than with individual lived experiences, so their perspective on social forces and institutions is, by default, different from those conducting research from inside the trenches.<sup>28</sup> Usually, this analysis occurs through the context of power differentials among different social groups, or within different hierarchies in social institutions.<sup>29</sup> These expressions of power are expressed by tensions and conflict along racial, ethnic, gender, social class, or organizational lines.<sup>30</sup>

One of the tools utilized by sociologists is the sociological perspective, a means by which we observe general social patterns at work in our individual lives. The sociological perspective begins with the idea that human society, and its constructs, did not spring forth out of a vacuum. The “sociological imagination” helps us to make sense of the connections between history, biography, and place.<sup>31</sup> As such, sociology helps us see the “strange in the familiar” and the “general in the particular,”<sup>32</sup> in that people usually understand their problems in reference to their own personal life story and they are not always aware of the complex links between their own lives and the intersection of the rest of the world’s complex social forces.<sup>33</sup>

Applied sociology attempts to use sociological theories, research methods, and understanding of patterns of behavior to “produce positive social change through active

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<sup>27</sup> *Id.* at 295.

<sup>28</sup> *Id.* at 301.

<sup>29</sup> *Id.* at 296.

<sup>30</sup> *Id.* at 297.

<sup>31</sup> C. WRIGHT MILLS, *THE SOCIOLOGICAL IMAGINATION*, 6 (Oxford U. Press, 1959).

<sup>32</sup> JOHN J. MACIONIS, *SOCIOLOGY*, 2-5 (2001).

<sup>33</sup> Mills, *supra* note 31, at 5.

intervention.”<sup>34</sup> Applied sociologists work in a continuum;<sup>35</sup> from those who use basic empirical methods in collecting information to shape informed decision making,<sup>36</sup> to those who use their knowledge of sociological concepts and theories to help others better understand a narrowly defined issue.<sup>37</sup> Sociologists bring to the research model “an attention to context: the attempt to situate phenomena in their social, cultural and political environs, and to a lesser extent in their historical and economic contexts”<sup>38</sup> to understand how institutions, like the criminal justice system, can reproduce or create social inequality.<sup>39</sup>

Professional sociologists seek to bring as much scientific rigor to the process of understanding human behavior as possible, because while “[i]t is easy to detect subjectivity in social research. It is impossible to confirm objectivity.”<sup>40</sup> Because we, as a society, have agreed unfettered experimentation on humans is, fundamentally, a bad idea,<sup>41</sup> sociological research and experimentation cannot be as objectively rigorous as traditional hard sciences. “Sociological research methods fall into broad categories of quantitative and qualitative approaches, but studies frequently use ‘mixed methods’ incorporating both. Quantitative methods include measurement by sample surveys, statistical modeling, social networks, and demography. Qualitative methods include interviews, focus groups, observation, and textual analysis.”<sup>42</sup> Still, “[s]ociologists often display a deep commitment to empirical analysis: in essence to closely examine what is actually going

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<sup>34</sup> John G. Bruhn, *Introductory Statement: Philosophy and Future Statement*, 1 SOC. PRAC. 1, 1 (1999).

<sup>35</sup> Joseph R. DeMartini, *Applied Sociology: An Attempt at Clarification and Assessment*, 6 TEACHING SOC. 331, 333 (1979).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 335.

<sup>38</sup> Geoffrey Samuel, *Is Law Really a Social Science? A View from Comparative Law*, 67 CAMBRIDGE L. J. 288, 295 (2008).

<sup>39</sup> *Id.* at 298.

<sup>40</sup> MARTEN SHIPMAN, *THE LIMITATIONS OF SOCIAL RESEARCH*, 18 (4th ed. 1997).

<sup>41</sup> Joseph H. Fichter & William K. Kolb, *Ethical Limitations on Sociological Reporting*, 18 AM. SOC. REV. 544, 544-50 (1953).

<sup>42</sup> American Sociological Association, *Research Methods*, <https://www.asanet.org/topics/research-methods> (last accessed Feb. 6, 2021).

on in the world.” This sometimes leads to confusion as to the role of social science research within the judicial context because “[o]btaining social science research has been cumbersome and sometimes controversial; evaluating research has been frustrating and uncertain; and establishing stable judicial views of particular empirical findings has proven elusive.”<sup>43</sup> However, given the complex nature of the intersection of people, place, and social institutions at play when discussing Appalachia, opioid misuse, and the criminal justice system, mixed methods research provides the most comprehensive opportunity to discover what is going on in recovery courts and the communities they serve.

## B. SOCIOLOGICAL JURISPRUDENCE

“Treating law as a social science offers the opportunity to challenge the usefulness of court decisions and pieces of legislation from an external and often empirical perspective.”<sup>44</sup> Unfortunately, there is a fundamental disconnect between legal scholars and social science researchers leading to hesitation within the legal profession to give credence to the validity of social science research to inform application of the law within the courts.

Judges do, and must, make law.<sup>45</sup> Justice Benjamin N. Cardozo argued there are four means of legal analysis: (1) logic, the application of reasoned thought and analogy in order to preserve consistency and predictability; (2) precedence, that is the historical context of decisions; (3) custom, where social expectations and settled practices guide decision making; and (4) sociology, which looks at reason, justice, utility, and social welfare.<sup>46</sup> He posited that sociology was the methodology of choice: “[f]rom history and custom, we pass therefore, to the force which in our day and generation is becoming the greatest of them all, the power of

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<sup>43</sup> John Monahan & Laurens Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 124 U. PA. L. REV. 478, 477-517 (1986).

<sup>44</sup> Samuel, *supra* note 38, at 288-321.

<sup>45</sup> BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 78 (1921).

<sup>46</sup> *Id.* at 30-31.

social justice which finds its outlet and expression in the method of sociology.”<sup>47</sup> Thus, sociological thinking is ultimately a means-end analysis: “We are thinking of the end which the law serves, and fitting its rules to the task of service.”<sup>48</sup>

Sociological jurisprudence, therefore, is a functionalist methodology in that it alters the emphasis “from the content [conception] of the precept and the existence of the remedy to the effect [function] of the precept in action and the availability and efficiency of the remedy to attain the ends for which the precept was devised.”<sup>49</sup>

### III. RECOVERY COURTS, PROMISE AND PROBLEMS

Opioid misuse and OUD are disproportionately high among people who experience contact with the criminal justice system.<sup>50</sup> Providing treatment for people who experience both opioid addiction and the criminal justice system is necessary to offset the nearly \$69.9 billion in societal cost attributable to criminal justice involvement.<sup>51</sup> This cost is high because the needs of people with opioid addiction are often more complex than people with other types of addiction.

“Many people with opioid use disorders also have co-occurring mental illnesses: in one study, 80 percent of patients receiving methadone treatment also had a

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<sup>47</sup> Richard Langone, *The Science of Sociological Jurisprudence as a Methodology for Legal Analysis*, 17 *TOURO L. REV.* 776, 769-800 (2016) (quoting Justice Benjamin N. Cardozo).

<sup>48</sup> Cardozo, *supra* note 45, at 104.

<sup>49</sup> Langone, *supra* note 47, at 778-79.

<sup>50</sup> Jennifer Bronson, Jessica Stroop, Stephanie Zimmer & Marcus Berzofsky, U.S. Department of Justice, Bureau of Justice Statistics, *Special Report: Drug Use, Dependence, and Abuse among State Prisoners and Jail Inmates, 2007-2009*, 3 (2017).

<sup>51</sup> Emanuel Krebs, Darren Urada, Elizabeth Evans, David Huang, Yih-Ing Hser & Bohdan Nosyk, *The Costs of Crime During and After Publicly-Funded Treatment for Opioid Use Disorders: A Population-Level Study for the State of California*, 112 *ADDICTION* 838, 840 (2017); U.S. DEPARTMENT OF JUSTICE, NATIONAL DRUG INTELLIGENCE CENTER, *THE ECONOMIC IMPACT OF ILLICIT DRUG USE ON AMERICAN SOCIETY*, xi (2011).

psychiatric disorder.<sup>52</sup> Because the opioid misuse crisis is also “a mental health crisis,”<sup>53</sup> research shows that medication-assisted treatments (“MAT”) and other treatment options are most effective when combined with counseling and therapy services,<sup>54</sup> such as an integrative care model which, alongside MAT, provides wrap-around services including counseling, case management, housing, psychiatric evaluations, and treatments, occupational therapy, vocational training, and family engagement, among others.<sup>55</sup>

There is not a national model for drug or recovery courts. Depending on jurisdiction, recovery courts generally follow one of two models: “pre-plea” or “post-plea” courts; the primary difference being that in the “post-plea” model, “the defendant is required to plead guilty to criminal charges, but their sentence [] [is] deferred or suspended while they participate in the drug court process.”<sup>56</sup> This builds-in incentive to complete the program in order to avoid criminal consequences. The problem arises when recovery courts fail to understand the nature of opioid misuse, the process of recovery, and the need to account for potential relapses. In many jurisdictions, when “individuals fail to meet the requirements of the drug court (such as a habitual

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<sup>52</sup> Tea Rosic, Leen Naji, Monica Bawoe, Brittany B. Dennis, Carolyn Plater, David C. Marsh, Lehana Thabane & Zainab Samman, *The Impact of Comorbid Psychiatric Disorders on Methadone Maintenance Treatment in Opioid Use Disorder: A Prospective Cohort Study*, 13 NEUROPSYCHIATR. DIS. TREAT. 1399, 1399 (2017).

<sup>53</sup> Mattie Quinn, *Is America Talking about Opioids the Wrong Way?*, GOVERNING (JULY 2017), <https://www.governing.com/topics/health-human-services/gov-opioid-epidemic-conversation-countries.html>.

<sup>54</sup> Kay Miller Temple, *What’s MAT Got to Do with It? Medication-Assisted Treatment for Opioid Use Disorder in Rural America*, THE RURAL MONITOR, <https://www.ruralhealthinfo.org/rural-monitor/feed/> (last accessed Feb. 6, 2021).

<sup>55</sup> Kenneth B. Stoller & Mary Ann C. Stephens, American Association for the Treatment of Opioid Dependence, *Integrated Service Delivery Models for Opioid Treatment Programs in an Era of Increasing Opioid Addiction, Health Reform, and Parity*, 3 (2016), 8-9, <http://www.aatod.org/wp-content/uploads/2016/07/2nd-Whitepaper-.pdf>.

<sup>56</sup> *Id.* at 1003.

recurrence of drug use), they will be returned to the traditional criminal court to face sentencing on their guilty plea.”<sup>57</sup>

The complexities of the recovery court model in Appalachia are exacerbated by the inherent limitations of rural communities. Nashville Tennessee Criminal Court Judge Seth Norman states rural areas have fewer community-based resources, such as inpatient treatment providers. This limits rural areas’ access to effective use of recovery courts because rural recovery courts must often rely on community-based resources.<sup>58</sup> Additionally, self-help groups, such as twelve-step groups, which are frequently based on a spiritual framework, are almost always required for recovery court participants and since “[n]on-spiritual self-help groups are limited and largely inaccessible”<sup>59</sup> there is a potential concern for constitutional problems, because “. . . participants’ due process rights may be affected if they are unable to waive their rights to attend twelve-step meetings, or if participants do not have the opportunity to waive their rights because they are unaware of the religious nature [of] twelve-step programs”.<sup>60</sup>

#### A. THERAPEUTIC JURISPRUDENCE

Therapeutic jurisprudence (“TJ”), as an approach to legal scholarship and law reform,<sup>61</sup> was introduced in 1987 by Professor David Wexler as interdisciplinary academic approach<sup>62</sup> which interrogated “the study of the role of law

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<sup>57</sup> *Id.*

<sup>58</sup> Stacey Barchenger, *Drug Court ‘Probably the Worst Best Thing That’s Ever Happened to Me’*, TENNESSEAN (Mar. 26, 2017) <http://tnne.ws/2oj6wTh>.

<sup>59</sup> Andraka-Christou, *supra* note 2, at 189.

<sup>60</sup> Peggy Fulton Hora & Theodore Stalcup, *Drug Treatment Courts in the Twenty-First Century: The Evolution of the Revolution in Problem-Solving Courts*, 42 GA. L. REV. 717, 759-61 (2008).

<sup>61</sup> Bruce J. Winick & David B. Wexler, *Symposium: The Varieties of Therapeutic Experience: Excerpts from the Second International Conference on Therapeutic Jurisprudence: Drug Treatment Court: Therapeutic Jurisprudence Applied*, 18 Touro L. Rev. 479, 479 (2002).

<sup>62</sup> Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 PSYCH. PUB. POL. AND L. 193, 193 (1995).

as a therapeutic agent.”<sup>63</sup> The idea was proposed to account for the impact mental health has on the legal process.<sup>64</sup> Later this process was refined to describe the use of social science, specifically, the fields of psychology, psychiatry, clinical behavioral sciences, criminology, and social work<sup>65</sup> in order “to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people [] affect[ed]”<sup>66</sup> thereby providing the theoretical framework of problem-solving courts. TJ’s focus is on the emotional and psychological impact of law and the legal process, and assessing them as therapeutic (beneficial) or non-therapeutic (non-beneficial).<sup>67</sup> This process of evaluating the law and its consequences provides a framework within which to analyze outcomes, on both the legal and personal level.<sup>68</sup> Taking underlying causes for problematic behavior into account<sup>69</sup> is necessary to develop new policies and procedures in order to provide for a more beneficial system.<sup>70</sup> The ultimate goal being an applied method of legal reform based on finding creative ways to address complex social issues<sup>71</sup> without compromising underlying public policy.<sup>72</sup>

Problem-solving courts, such as recovery or drug courts, are not identical to TJ but apply many of its

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<sup>63</sup> David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125, 125 (2000).

<sup>64</sup> Peggy Fulton Hora, et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 442 (1999).

<sup>65</sup> Wexler, *supra* note 63, at 129.

<sup>66</sup> Slobogin, *supra* note 62, at 196.

<sup>67</sup> Wexler, *supra* note 63, at 125.

<sup>68</sup> *Id.* at 126.

<sup>69</sup> *Id.* at 129-30.

<sup>70</sup> *Id.* at 129.

<sup>71</sup> Hora, *supra* note 64, at 445 (noting that “[t]herapeutic jurisprudence analysis will generally reveal important and previously unrecognized considerations on legal issues. Inevitably, these issues should be placed into a comprehensive legal equation to balance them with or against the other meaningful and pertinent legal and social values that drive the enactment and enforcement of laws.”).

<sup>72</sup> *Id.* at 444.

principles.<sup>73</sup> “Although drug treatment court developed independently, it can be seen as taking a therapeutic jurisprudence approach to the processing of drug cases inasmuch as its goal is the rehabilitation of the offender. It uses the legal process, and the role of the judge in particular, to accomplish this goal”<sup>74</sup> through the application of research-based best practices<sup>75</sup> to address “entrenched needs such as drug addiction and mental illness, which drive reoffending.”<sup>76</sup> Drug courts, therefore, “provide an interface between human and social issues, and the law and criminal justice, by developing therapeutic spaces to foster rehabilitative outcomes among[] individuals with complex needs.”<sup>77</sup> As such, “TJ principles allow courts to become holistic and engage in shaping new services to ensure client successes.”<sup>78</sup>

There are limitations to this theoretical approach, particularly within the context of recovery courts because poorly designed and executed research studies fail to provide meaningful data on program effectiveness. For example, studies show U.S. drug courts reduce criminal activity, with most models demonstrating a reduction of approximately

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<sup>73</sup> Bruce J. Winick & David B. Wexler, *Symposium: The Varieties of Therapeutic Experience: Excerpts from the Second International Conference on Therapeutic Jurisprudence: Drug Treatment Court: Therapeutic Jurisprudence Applied*, 18 *Touro L. Rev.* 479, 479 (2002).

<sup>74</sup> Bruce J. Winick & David B. Wexler, *Drug Treatment Court: Therapeutic Jurisprudence Applied*, 18 *Touro L. Rev.* 479, 481 (2015).

<sup>75</sup> David B. Wexler, *Therapeutic Jurisprudence and the Culture of Critique*, 10 *Contemp. Legal Issues* 263, 268 (1999). *But see* Cecilia Klingele, *The Promises and Perils of Evidence-Based Corrections*, 91 *NOTRE DAME L. REV.* 537 (2015) (discussing problematic methodological issues when evaluating evidenced-based programming in correctional facilities).

<sup>76</sup> PHIL BOWEN & STEPHEN WHITEHEAD, CENTRE FOR JUSTICE INNOVATION, *PROBLEM-SOLVING COURTS: AN EVIDENCE REVIEW* 3, <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/problem-solving-courts-an-evidence-review.pdf> (last visited Feb. 6, 2021).

<sup>77</sup> Paul Gavin and Anna Kawalek, *Viewing the Dublin Drug Treatment Court through the Lens of Therapeutic Jurisprudence*, 11 *IJCA* 1, 2 (2020).

<sup>78</sup> Bowen, *supra* note 76.

35% to 40%, when measuring recidivism rates.<sup>79</sup> However, these findings are impaired by flawed methodological research strategies,<sup>80,81</sup> including few randomized studies,<sup>82</sup> premature evaluation,<sup>83</sup> and lack of scientific rigor, such as poorly constructed control groups<sup>84</sup> and “cherry-picked” quasi-experimental groups.<sup>85</sup> Inconclusive or flawed research methods lead to concerns regarding program evaluation, and therefore, overall effectiveness.<sup>86</sup>

These methodological issues highlight a struggle experienced by all researchers: are researchers measuring what they think they are measuring (research reliability), and whether observed changes in behavior can be attributed to program effectiveness, or some other factor (internal validity). For example, in the case of “cherry-picked” quasi-experimental groups, was a high participant graduation rate because the program was effective, or was it because the participants were primed to succeed because of insurance, education, or financial status variables? Research reliability,

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<sup>79</sup> Christopher T. Lowenkamp, Alexander M. Holsinger, & Edward J. Latessa, *Are Drug Courts Effective: A Meta-Analytic Review*, 14 J. OF COMM. CORR. 5, 5 (2005).  
[https://www.researchgate.net/publication/288951455\\_Are\\_drug\\_courts\\_effective\\_A\\_meta-analytic\\_review](https://www.researchgate.net/publication/288951455_Are_drug_courts_effective_A_meta-analytic_review).

<sup>80</sup> 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. OF CRIM. JUST. 60, 60 (2012).

<sup>81</sup> Leticia Gutierrez & Guy Bourgon, Public Safety Canada, *Drug Treatment Courts: A Quantitative Review of Study and Treatment Quality 2009-04*,  
<https://www.publicsafety.gc.ca/lbrr/archives/cn8399-eng.pdf> (last viewed Feb. 6, 2021).

<sup>82</sup> Mitchell, *supra* note 80, at 63.

<sup>83</sup> *Id.* at 61.

<sup>84</sup> Wayne Hall & Jayne Lucke, *Legally Coerced Treatment for Drug Using Offenders: Ethical and Policy Issues*, 144 CRIM. & JUST. BULL. 1, 4 (2010).

<sup>85</sup> Mitchell, *supra* note 80 at 63, 70.

<sup>86</sup> Steven Belenko, National Center on Drug Addiction and Substance Abuse at Columbia University, *Research on Drug Courts: A Critical Review: 2001 Update* (2001) 6-7.  
[https://www.researchgate.net/publication/252200843\\_Research\\_on\\_Drug\\_Courts\\_A\\_Critical\\_Review](https://www.researchgate.net/publication/252200843_Research_on_Drug_Courts_A_Critical_Review).

in turn, refers to Mr. Hanaver's question, "How are you measuring success?"

## B. CRIMINALIZATION OF CARE

As an example of flawed research which impacted legislative decision making in Appalachia, Tennessee, in 2014, became the first state to criminalize women for the *in-utero* transmission of illegally obtained narcotics to a fetus during pregnancy.<sup>87</sup> The legislation was tied to existing state assault statutes<sup>88</sup> and avoided legal challenges about whether a fetus was "another"<sup>89</sup> by stating:

Notwithstanding subdivision (c)(1), nothing in this section shall preclude prosecution of a woman for assault under § 39-13-101 for the illegal use of a narcotic drug, as defined in § 39-17-402, while pregnant, if her child is born addicted to or harmed by the narcotic drug and the addiction or harm is a result of her illegal use of a narcotic drug taken while pregnant.<sup>90</sup>

The statute did allow a complete defense to prosecution if the mother submitted to an addiction recovery program before, during, and after childbirth, and successfully completed the program regardless of whether her child was harmed by the transmission of narcotic drugs while pregnant.<sup>91</sup>

"Characterizing criminal sanctions as incentivizing defendants to cease engaging in illegal behavior and choose

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<sup>87</sup> 2014 Tenn. Pub. Acts 820 (expired July 1, 2016); Tenn. Code Ann. § 39-13-107 (2014) (relevant sections expired July 1, 2016).

<sup>88</sup> Tenn. Code Ann. § 39-13-101(a)(1)-(2) (2019).

<sup>89</sup> Of note, the current statute, "Fetus as Victim," states: "For the purposes of this part, "another," "individuals," and "another person" include a human embryo or fetus at any stage of gestation in utero, when any such term refers to the victim of any act made criminal by this part. Tenn. Code Ann. § 39-13-107(a) (2019).

<sup>90</sup> Tenn. Code Ann. § 39-13-107(c)(2) (expired July 1, 2016).

<sup>91</sup> Wendy A Bach, *Prosecuting Poverty, Criminalizing Care*, 60 WM. & MARY L. REV. 809, 842 (2019); Tenn. Code Ann. § 39-13-107(c)(3) (expired July 1, 2016).

more positive paths is not unusual.”<sup>92</sup> What is unique about this statute is that the legislative record demonstrates the mental gymnastics supporters used to justify creating a crime and the ability to prosecute the crime in order to compel treatment under the justification that treatment would not otherwise be available.<sup>93</sup> Here, not only was treatment available through TennCare, the state health insurance program for low-income women and children, as early as 2008, the State had multifaceted treatment programs in place, including medication assisted treatment.<sup>94</sup>

This approach to compulsory treatment for mothers who misused opioids, was problematic on a number of constitutional grounds. Private health information was used to provide probable cause for prosecution. While “the law provides extensive protections against the use of confidential medical information in the prosecution of a crime, [it also] carves out exceptions in cases of potential abuse.”<sup>95</sup> While there are questions about whether the patients involved understood this exception to confidentiality and privacy, the line between health care providers collecting information necessary for appropriate medical care and collecting information as agents of the state was wide and blurred.<sup>96</sup> Additionally, nearly all of the women arrested under Tennessee’s fetal assault qualified for indigent defense.<sup>97</sup>

This punishment of mothers who misused opioids had the unintended consequence of deterring women from seeking prenatal care, with East Tennessee Children’s Hospital reporting only one infant diagnosed with Neonatal Abstinence Syndrome (NAS) who had not received prenatal care in the quarter before the law took effect, to a high of

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<sup>92</sup> *Id.* at 844.

<sup>93</sup> *Id.* at 846.

<sup>94</sup> American Society for Addiction Medicine, *Medicaid Coverage of Medications for the Treatment of Opioid Use Disorder: Tennessee*, [https://www.asam.org/docs/default-source/advocacy/State-medicare-reports/State-medicare-reports\\_tn.pdf](https://www.asam.org/docs/default-source/advocacy/State-medicare-reports/State-medicare-reports_tn.pdf) (last accessed Feb. 6, 2021).

<sup>95</sup> Bach, *supra* note 91, at 863.

<sup>96</sup> *Id.* at 864.

<sup>97</sup> Khiara M. Bridges, *Race, Pregnancy, and the Opioid Epidemic: White Privilege and the Criminalization of Opioid Use during Pregnancy*, 133 HARV. L. REV. 772, 814 (2020).

seventeen infants who had received no prenatal care during the third quarter of 2015.<sup>98</sup>

Finally, the women subjected to prosecution under this compelled treatment statute were frequently punished, and treatment was seldom, if ever, provided.<sup>99</sup> In the meantime, women who already experienced poverty and addiction were expected to fund the court, probation, jail fees, and taxes well beyond their ability to pay, with criminal justice system supervision and potential for sanctions to continue until expenses were paid in full.<sup>100</sup>

### C. HOLISTIC REPRESENTATION

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright*<sup>101</sup>, the Sixth Amendment requires states to provide competent defense attorneys to indigent defendants charged with felony crimes. By 1972, the Court held the right to indigent defense counsel was to include any crime punishable by imprisonment.<sup>102</sup> Since then, judicial curtailment of the post-*Argersinger* Court both “filled in *Gideon*’s gaps while also limiting its scope.”<sup>103</sup> This curtailment occurred during a “historically and geographically unprecedented rise in incarceration. [Therefore t]he right to counsel was not a nominal part of the mass incarceration story, but rather a significant feature of it,”<sup>104</sup> with mass incarceration “a de facto poverty management program that is disproportionately racial in its operation.”<sup>105</sup> This is important because the majority of

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<sup>98</sup> Bach, *supra* note 91, at 862.

<sup>99</sup> *Id.* at 866.

<sup>100</sup> *Id.* at 867-75.

<sup>101</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>102</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Scott v. Illinois*, 440 U.S. 367 (1979).

<sup>103</sup> Shaun Ossei-Owusu, *The Sixth Amendment Façade: The Racial Evolution of the Right to Counsel*, 167 U. PA. L. REV. 1161, 1212 (2019).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 1214.

criminal defendants in the United States receive the assistance of court appointed counsel.<sup>106</sup>

As a result of social pressure and public policy, a variety of defense models have since emerged in addition to traditional attorney-client models, each with notable differences<sup>107</sup>, but all reflect the need for a client-centered, collaborative, interdisciplinary partnership to advocate for the client's identified best outcome.<sup>108</sup>

Thus, holistic defense, or the holistic representation model, emerged in the 1990s as a legal reform addressing the needs of indigent defendants. "Holistic defense as a philosophy views the criminal defense attorney as having a responsibility not only to provide representation in the current criminal case, but also to attempt to address the antecedent circumstances that lead clients to come into contact with the criminal justice system in the first place,"<sup>109</sup> through interdisciplinary teams which facilitates communication between public defenders, social workers, and other community support organizations.<sup>110</sup> "The holistic model puts client priorities front and center, which means that these defenders may be more willing to sacrifice better outcomes in the criminal case if doing so would serve some other client interest."<sup>111</sup>

The research on holistic representation is not robust. There is only one large scale rigorous evaluation of holistic representation on criminal justice outcomes<sup>112</sup> and none addressing the intersection of opioid misuse and recovery

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<sup>106</sup> Caroline Wolf Harlow, U.S. Dep't of Justice, Bureau of Justice Statistics, *Defense Counsel in Criminal Cases*, 2 (2000) <https://www.bjs.gov/content/pub/pdf/dccc.pdf> (last accessed Feb. 6, 2021).

<sup>107</sup> Sarah Buchanan & Roger M. Nooe, *Defining Social Work within Holistic Public Defense: Challenges and Implications for Practice*, 62 SOC. WORK 333, 334-37 (2017).

<sup>108</sup> *Id.* at 334.

<sup>109</sup> James M. Anderson, Maya Buenaventura, & Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 HARV. L. REV. 819, 825 (2019).

<sup>110</sup> Robin Steinburg, *Heading Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961, 991-94 (2013).

<sup>111</sup> Anderson, *supra* note 109, at 826.

<sup>112</sup> *Id.*

courts. Existing research primarily consists of limited sample sizes which further fail to control for external factors, leading to a collapse of internal validation in the research design.<sup>113</sup>

One of the few exceptions to this literature finding is a longitudinal study utilizing ten-years of data in a quasi-experimental research design where participants were randomly assigned to a holistic defense team or a legal aid defense team in New York City.<sup>114</sup> The study reported that holistic defense does not affect conviction rates, but it does reduce the likelihood of a custodial sentence by 16 percent and expected sentence length by 24 percent, without adversely affecting public safety.<sup>115</sup> However, the research suggests “that the holistic approach may enable the criminal justice system to solve an information problem.”<sup>116</sup> The holistic representation team appears to function as a “superior information-gathering mechanism, helping defense attorneys to identify persuasive mitigating features of their cases and then convey those features convincingly to prosecutors, judges, and juries.”<sup>117</sup> When addressing the complex needs of people who misuse opioids and are also engaged with the criminal justice system, information may very well be the key to developing meaningful – successful – outcomes.

#### IV. HOW DO WE MEASURE SUCCESS?

“Appalachia is a region with mercurial definitions and boundaries, which, in its broadest iteration, includes all of West Virginia and spans parts of 12 other states: Maryland, Pennsylvania, New York, Ohio, Kentucky, Virginia, North Carolina, Tennessee, South Carolina, Georgia, Alabama, and Mississippi.”<sup>118</sup> The Appalachian region contains approximately 12.72 percent of the United States population, with 6.72 million people in Tennessee as

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<sup>113</sup> *Id.* at 828.

<sup>114</sup> *Id.* at 823.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 824.

<sup>118</sup> Jill C. Engle, *Improving Outcomes in Child Poverty and Wellness in Appalachia in the “New Normal” Era: Infusing Empathy into Law*, 120 W. VA. L. REV. 1047 (2018).

of July 1, 2017.<sup>119</sup> “At \$47,836, median household income in Appalachia, was 83 percent of that of the rest of the United States (\$57,652) during the 2013-2017 period.”<sup>120</sup> Educational attainment in the region shows 54 percent of adults age 25 and over had graduated high school, but had not completed a post-secondary degree, with 14 percent failing to attain a high school diploma.<sup>121</sup> This region has historically experienced intergenerational poverty, exploitation from mineral extracting companies, and lack of urbanization which could help provide pathways out of poverty.<sup>122</sup>

The region also experiences geographic discrimination, “where U.S. citizens receive disparate treatment from other citizens or the government solely because of where they live or self-identify as home,”<sup>123</sup> which “remains largely legal under U.S. law.”<sup>124</sup> Geographical discrimination includes the mixed social-physical concept of distance,<sup>125</sup> which is particularly relevant because the rural isolation in Appalachia brings with it “less government benefits and spending through less political representation, which negatively impacts the efficacy of education, healthcare, and transportation in the region.”<sup>126</sup> This type of discrimination leads to the widening health disparity experienced in the region.<sup>127</sup>

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<sup>119</sup> Kelvin Pollard & Linda A. Jacobsen, *Appalachian Regional Commission, The Appalachian Region: A Data Overview from the 2013-2017 American Community Survey*, 8 (2019).

<sup>120</sup> *Id.* at 114.

<sup>121</sup> *Id.* at 56.

<sup>122</sup> Matthew H. Walker, *Comment: Discrimination Based on National Origin and Ancestry: How the Goals of Equality have Failed to Address the Pervasive Stereotyping of the Appalachian Tradition*, 38 DAYTON L. REV. 335, 336-37 (2013).

<sup>123</sup> William Rhee & Stephen C. Scott, *Geographic Discrimination: of Place, Space, Hillbillies, and Home*, W. VA. L. REV. 531, 535 (2018).

<sup>124</sup> William Rhee & Stephen C. Scott, *Geographic Discrimination: of Place, Space, Hillbillies, and Home*, W. VA. L. REV. 531, 535 (2018).

<sup>125</sup> *Id.* at 536.

<sup>126</sup> Walker, *supra* note 122.

<sup>127</sup> Davis, *supra* note 6, at 1001.

Several factors contributing to higher rates of opioid misuse and overdose deaths converge in Appalachia. Higher rates of injury-prone employment, aggressive marketing of prescription pain medications to physicians, and an insufficient supply of behavioral and public health services targeting opioid misuse contribute to higher rates of opioid misuse and mortality in the Region. These factors, coupled with limited access to treatment and high rates of poverty, create a multifaceted public health threat.<sup>128</sup>

As a whole, the Appalachian region has a lower percentage of primary care physicians than the national average, with the areas of lowest supply being rural Appalachia, central Appalachia, and distressed counties in Appalachia.<sup>129</sup> Also, the number of rural hospitals has plummeted since 2010 due to lower operating margins and a higher reliance in government funding than hospitals located in non-rural areas.<sup>130</sup> This health disparity has significant outcomes in relation to opioid misuse treatment. If a patient lacks access to care, then a patient cannot get health care, regardless of insurance coverage.

The complex nature of Appalachia gives rise to the question: How does one reliably and validly measure the impact of opioid misuse intervention within the criminal justice system while accounting for the intersection of race, gender, sexual orientation, income, education, and the effects of place? There is not an easy answer, and further, the existing research available to assess the effectiveness of recovery courts in addressing the opioid misuse crisis is inadequate to the job.

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<sup>128</sup> East Tennessee State University & NORC at the University of Chicago, *Creating a Culture of Health in Appalachia: Disparities and Bright Spots; Issue Brief: Health Disparities Related to Opioid Misuse in Appalachia: Practical Strategies and Recommendations for Communities*, 3 (2019).

<sup>129</sup> PDA, Inc., Cecil G. Sheps Center for Health Services Research & the Appalachian Regional Commission, *Creating a Culture of Health in Appalachia: Disparities and Bright Spots; Health Disparities in Appalachia*, 216-18 (2017).

<sup>130</sup> Davis, *supra* note 6, at 1003.

In order to have reliable research which produces valid results, basic sociological research methods dictate the sample size must reflect the population being studied and contain no fewer than thirty-three participants. This means that if there are 100 participants in a particular recovery court, there must be thirty-three participants whose race, sex, gender, education level, income level, drug of choice, and involvement with the criminal justice system reflects what occurs in the larger population. In order to reduce selection bias, or “cherry-picking” the people selected to participate must be chosen so that every person in the population has an equal chance of being selected.<sup>131</sup>

Because the inherent nature of an inquiry into the intersection of Appalachian social groups and the recovery courts is so complex, a mixed-methods approach to research design would provide the most meaningful data. While a quantitative study alone would provide tidy statistics, which are easily reported on grant applications and legislative actions, a single number, or sets of numbers, cannot tell the whole story of an experience. A qualitative study could tease out the details missed by a quantitative study. For example, the man mentioned at the beginning of this paper had not graduated from Knox County Recovery Court, but was sober, holding down a job, paying his bills, and actively parenting his children, in effect, he was a contributing member of society. That, to most people, is a measure of success that is far more important than whether enough boxes are checked to qualify someone for “graduation” from recovery court.

Further research from a multi-disciplinary team of researchers is required to provide meaningful data from which judges and legislators can make informed decisions about people who misuse opioids and are engaged with the criminal justice system in Appalachia. Because of the social and cultural pressures experienced by people in Appalachia, developing a culturally sensitive program is more likely to have better long-term results for the communities affected by opioid misuse than trying to force models which do not

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<sup>131</sup> *Generally*, William M.K. Trochim, *Probability Sampling*, Research Methods Knowledge Base, <https://socialresearchmethods.net/kb/probability-sampling/> (last accessed Feb. 6, 2021).

reflect the lived experience of Appalachia onto our courts and people.