



New Trends in
Qualitative
Research



VOLUMEN 20 N°2

DOI:

<https://doi.org/10.36367/ntqr.20.2.2024.e960>

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Submission date: March, 2024

Review date: May, 2024

Publication date: July, 2024

EDUCATING THE "GODS": OPERATIONS, OUTCOMES, AND OPPORTUNITIES IN TREATMENT COURTS

ABSTRACT

Introduction/Frame: Treatment courts (TCs) were developed in the 1980s to address challenges facing individuals with a substance use disorder (SUD) involved in the criminal justice (CJ) system. TCs are an alternative to the punitive nature of the CJ system by joining SUD treatment with the accountability of the judicial system. By design, treatment court (TC) implementations are highly varied. Each implementation adopts the National Association of Drug Court Professionals (NADCP) key components that are consistent with yet bound by their community resources, values, and political realities. **Research Questions/Objective:** Using qualitative community-based participatory research, two case studies and one phenomenological study were conducted with treatment courts in a mid-Atlantic state in the USA to examine successful TC operations. **Methodology:** Using purposive sampling, the analytic plan included individual semi-structured interviews with judges, TC team members, program graduates, and community stakeholders. Interviews were professionally transcribed and coded consistent with thematic analysis procedures. **Results:** Analysis revealed themes of judicial sovereignty juxtaposed with a lack of knowledge of SUDs, the importance of a fully dedicated coordinator to serve as an extension of the judge, and purposeful courtroom set-up and norms conducive to a therapeutic rather than punitive approach. **Final Considerations:** Transferable recommendations to other specialty docket evaluators and teams which can be adopted to fit a variety of dockets, including mental health court, veterans court, and juvenile court include mandatory judicial training, evolving operations norms, values alignment among the TC team, and a TC coordinator to oversee day-to-day operations. In addition, stakeholder engagement to drive an iterative evaluation process converges with the traditions of action research in community settings.

Keywords

Treatment courts; Judges; Substance use; Criminal justice.

1. Introduction

Drug and alcohol problems drive many public health issues in the United States, including unemployment, poverty, and homelessness (Substance Abuse Mental Health Services Administration, 2018). Individual effects of illicit drug and alcohol use include relationship conflict, unstable housing, medical or physical problems, economic distress, and criminal justice involvement (Bruns et al., 2012). Individuals with criminal justice involvement needing drug and alcohol treatment are often incarcerated without access to addiction services. Upwards of 65% of adults currently incarcerated meet the criteria for an substance use disorder (SUD) (Barenie et al., 2022), and 75% will relapse. Compared to non-justice involved persons, those with an opioid use disorder (OUD) are 100 times more likely to die and 12 times more likely to have a fatal overdose within two weeks post-release from incarceration (Yatsco et al., 2020). Yet, only 7.6% of adults with an SUD receive treatment (Substance Abuse Mental Health Services Administration, 2022). Barriers to treatment include unavailability of treatment options, negative social support, and fear of treatment (Rapp et al., 2006).

In the 1980s, drug treatment courts (DTCs), or specialty dockets, emerged as a potential response to drug- and alcohol-related problems for individuals with SUDs involved in the legal system (Von Hirsch, 1998). Identifying the judicial system as an intersection point to decrease societal burden while improving individual wellness has led to other specialty dockets, including adult drug court (ADC), family treatment court (FTC), and juvenile drug court (JDC). These specialty dockets are referred to as problem-solving courts, as they offer an alternative to the punitive nature of the judicial system by joining the accountability of court supervision with evidence-based treatment using a multidisciplinary team approach (Goldkamp, 1994; Kaiser & Holtfreter, 2016; Marlowe & Carey, 2012).

A specialty docket team consists of a judge, prosecutor, defense attorney, probation officer, and treatment provider (Von Hirsch, 1998). These teams meet regularly for case staffing on each specialty docket participant. The case staffing meeting allows team members to provide input on participant progress, successes, and barriers (Lowenkamp et al., 2005). Problem-solving courts, like DTCs, follow ten key concepts: evidence-based addiction treatment, nonadversarial approach, identification of participant eligibility, availability of a continuum of treatment services, frequent drug screenings, provision of rewards and sanctions, ongoing judicial involvement, monitoring and evaluation of the program, continuing education for drug court team, and community partnerships (Bureau of Justice Assistance, 1997).

Two important frameworks all problem-solving courts share are therapeutic jurisprudence (i.e., a focus on the therapeutic application of the law) and procedural justice (i.e., fairness in the processes that resolve disputes). Across all problem-solving courts, judges serve as the principal leaders and base their jurisprudence on the advisement of the broader team. In addition, the judge-participant relationship is an important mechanism in positive DTC outcomes in which the judge honors the participant with a voice, respect, neutrality, and trust (MacKenzie, 2016). The judge's role is to balance public safety with therapeutic jurisprudence and procedural justice in cases involved in treatment courts (Carey et al., 2012).

While researchers have studied the effectiveness of problem-solving courts (Goldkamp, 1994; Lowenkamp et al., 2005; Marlowe et al., 2006), including DTCs, the role of judges in applying therapeutic jurisprudence and procedural justice has not been examined in depth. Further, little research has explored the lived experiences of DTC judges in their application of therapeutic jurisprudence and procedural justice (Frazer, 2006). DTCs have been shown to reduce recidivism, support sobriety, and overall participant functioning (Lloyd, 2015; Logsdon et al., 2021; Marlowe & Carey, 2012). However, the role of the judge in the efficacy of DTCs through their application of therapeutic jurisprudence and procedural justice is not fully understood. This may be due, in part, to these approaches being applied differently by each judge, depending on factors such as the judge's experience, background, training, and philosophy. Our work investigated the role of the judge and its impact on DTC operations and outcomes through three separate studies involving eight treatment courts in the mid-Atlantic United States from 2021-2023. The purpose of this work is to provide results from three qualitative studies (one phenomenology and two case studies) that provide insight into the judges' role in treatment courts.

2. Research Questions/Objectives

In each of our three studies, we sought to examine current judges' experiences presiding over DTCs and understand the experiences of DTC team members. Judges' experiences include the factors that led each judge to serve as a DTC judge, their experience or training (if any) in addiction, and their perspective on how they apply therapeutic jurisprudence and procedural justice. The diversionary justice theory (Cappa, 2006) guided our study. This theory explains the importance of diverting individuals charged with a crime from entering the punitive criminal justice system. The criminal justice system can have negative effects on individuals with an SUD, and they should be offered appropriate services and social support to treat the person as well as the societal problem (i.e., substance use). These practices focus on housing, employment, health, and recovery support (Cappa, 2006).

Our central research question for our phenomenological investigation with nine DTC judges was: "How do judges describe their experiences presiding over drug treatment courts in one southeastern state?" Our research question for our first case study was: "How do team members understand their roles in the Cityville Adult Drug Court, and how does this understanding inform their practice?" Our research question in the second case study was: "How do team members, program graduates, and community stakeholders understand the challenges and opportunities of recruiting and retaining participants in the County Family Treatment Court (FTC)?" Collectively, research questions for each of our three studies guided our ultimate recommendations for improving DTC operations and outcomes.

2.1 Methodology

Interviews were the foundation of our data collection efforts in three studies. Study 1, the phenomenology, explored the lived experiences of nine DTC judges in a mid-Atlantic US state in their application of therapeutic jurisprudence and procedural justice among the participants in DTC. The first case study, Study 2, focused on how personnel (clinicians, judge, DTC coordinator, case managers, attorneys, peer support, probation, and supervisors) experienced their role in a specific DTC. The second case study, Study 3, was also focused on how personnel experienced their role in DTC, but was specifically focused on identifying opportunities for serving more clients. In total, 11 judge interviews were conducted across the three studies. In addition, 21 DTC non-judge personnel were interviewed between the two case studies. Given the dearth of information on judges' experiences, in general, and specialty docket judges in particular, a phenomenological study offered an opportunity for an in-depth and rich exploration of the experiences and perspectives of DTC judges (Kaiser & Holtfreter, 2016). Studies 1 and 2 involved analyzing artifacts, observing DTC staffing meetings and court proceedings, and conducting participant interviews.

The purpose of our qualitative phenomenological design (i.e., Study 1) was to examine common themes from shared lived experiences (Maxwell, 2013). The qualitative process involves using the transcripts and recordings of interviews to develop a conceptualization and a set of common themes through reflection and analysis. This reflection allows meaning to be derived from the experiences of the individuals, in this case, DTC judges (Moustakas, 1994). An advantage of this approach is the opportunity to develop a detailed exploration of a phenomenon anchored in the study participants' worldview and context-specific experiences (Denzin & Lincoln, 1994).

For study 1, a purposive (Patton, 2015, p.53) snowball (Creswell, 1998) sampling approach was used to recruit participants. Knowledge of judges in Central Virginia with information-rich experiences were identified which aided in finding the nine participants included. Overall, 10 judges were invited to participate in this study and nine interviews were conducted to reach saturation. Participants were 78% (n = 7) White, 22% (n = 2) African American, 7 male, and 2 female. Age ranged between 45 to 75 (M = 53). Knowledge of these participants and experience with DTC prior to selection necessitated the use of a transcendental phenomenological approach to purposefully bracket any intersecting experiences (Creswell & Poth, 2018; Moustakas, 1994).

Utilizing Moustakas's (1994) transcendental phenomenology, common themes were identified that provide a basis for reflection and analysis. To derive the essence of the lived experience of these participants, semi structured in person interviews were conducted. Research questions included inquiries regarding background, experience, and training of the judges and their experience with therapeutic jurisprudence, procedural justice, and public safety. Finally, the judges were asked about barriers and facilitators to DTCs. Interviews were audio recorded and transcribed. To identify salient themes, the modified van Kaam method by Moustakas (1994) was utilized.

Our two case studies followed Yin's (1984) approach. The focus of these studies was to conduct individual interviews with the drug court team, program graduates, and community stakeholders and observe the drug court pre-staffing and docket meetings. Consistent with thematic analysis procedures (Braun & Clarke, 2006), semi-structured interviews were conducted (eleven in the first case study, twelve in the second case study). The interviews were professionally transcribed, and themes were identified to guide program delivery and implications for practice, including transferable lessons learned for other DTCs.

Participants were recruited from two DTCs in a mid-Atlantic state as part of a federal grant program evaluation. The inclusion criteria for our case studies included the following: (a) current drug court team member in a single drug court, program graduate, or community stakeholder (b) 18 years of age or older, and (c) attends both pre-staffing meetings and drug court proceedings. In determining the selection criteria for our two case studies, the research team wanted to ensure that sufficient interviews were conducted to saturate themes. For our first case study, the participants consisted of 8 men and 3 women. Eight participants identified as non-Hispanic White and the 3 identified as African-American. All participants lived in the central region of the mid-Atlantic state. The mean length of time on the drug court team was 25.8 months (SD = 31.70; range: 3–96 months). Three participants held a juris doctorate (law degree), three participants held a graduate degree (e.g., MSW), four held a bachelor's degree, and one a General Education Development (GED). For our second case study, participants were 92% (n = 11) White and 8% (n = 1) African American and were 83% (n = 10) female and 17% (n = 2) male. Participants ranged in age from 30 to 51. Half of the participants (n = 6) had an advanced degree (master's degree or law degree), and three participants held a bachelor's degree.

Phenomenological researchers across various disciplines agree on some basic guidelines for a phenomenological design; however, they also assert that these methods and designs should be flexible and able to be modified in response to the phenomenon under investigation (Giorgi, 1994). Data analysis for all three studies was based on a modified Van Kaam method by Moustakas (1994). The modified van Kaam approach includes listing and grouping, reduction and elimination, clustering and thematizing, validation, individual textual description, individual structural description, and textual-structural description. In sum, this process has four analytical steps and three descriptive steps. One outcome of this research is the identification of themes concerning DTC judges' experience with procedural justice and therapeutic jurisprudence among participants in DTC.

2.2 Procedures

Approval from the university Institutional Review Board (IRB) was obtained prior to recruitment and data collection for the studies. Two members of our research team (i.e., first and second author) identified and recruited eligible participants for the first case study. They provided an overview of the project to the drug court team following the docket meeting in July 2022 to present the study and answer questions about its purpose and rationale. Afterward, they scheduled a one-on-one interview to begin data collection. Eleven team members were invited to participate, and all consented. Once an interview date was scheduled, informed consent was obtained.

The third author conducted one in-depth interview with each participant lasting approximately 90-130 minutes over a three-month period from July 2022 to October 2022. All interviews were conducted in-person, audio recorded, and professionally transcribed. Participants were not compensated for their participation in the interviews.

2.3 Instruments

Prior to the individual interviews, our research team created the interview guides. Each interview guide was modified slightly in the case studies depending on the participant's DTC role. The interview guides were developed iteratively, allowing for revisions throughout our studies. Our research team reviewed the guides for appropriate content, language, and flow. In the first case study, the guide consisted of 11 questions, with 22 follow-up probes, beginning with a general background question to ensure that the participants were at ease, to more direct questions about knowledge of the DTC model and the concepts of therapeutic jurisprudence and procedural justice. Most of the interviews were held in private rooms at the treatment agency. Three interviews were held in the offices of the drug court team members (judge, prosecutor, probation officer).

The interview moved from broad topics to more specific questions about knowledge and background in DTC, working across a multidisciplinary team, and understanding their role on the team. The interviewer used clarification and probed to allow the participants to express their perspectives accurately. From July 2022 through October 2022, the third author met with each study participant for one individual audio-recorded interview. All interviews were conducted in person. In addition, the research team attended drug docket meetings and pre-staffing in July and November 2022.

The second case study followed a similar methodology. Twelve participants were approached to complete the semi-structured interviews, and all consented. The interviews were held in private, comfortable rooms at the treatment agency and child welfare agency from January through June 2023. The interviews were audio recorded and professionally transcribed. Participants were not compensated. Individuals were asked 10 open-ended questions, and follow-up probes were used to develop an in-depth understanding of FTC team members' lived experiences working in FTC.

For the phenomenological study, 11 judges were invited to participate, and nine consented. An interview guide was constructed with 10 questions and 17 follow-up probes. Like the case studies, the interviews were professionally transcribed and participants were not paid to be in the study. Two interviews were completed in-person and the remaining seven were conducted through a virtual meeting platform. All interviews lasted between 60-90 minutes.

2.4 Analytical Approach

Our two case studies and phenomenology followed a constructivist-interpretivist framework. This framework focuses on the intrinsic value of lived experiences (Ponterotto, 2005).

The DTC judges' and team's unique personal experiences guided our data collection and subsequent analysis. A case study method structured the research design (Yin, 1984). We chose Yin's method as he defines a case study as "an empirical inquiry that investigates a contemporary phenomenon (the 'case') in depth and within its real-world context" (p.16). Notably, our research team was interested in Yin's application of the case study as the primary evaluation method where the phenomenon being evaluated becomes the case.

Specifically, the case in the second study was the DTC team's understanding of their roles and responsibilities and how their understanding informs their practice. This approach was selected to address "how" and "why" research questions focused on a contemporary phenomenon. The case study typology was both descriptive and explanatory. Yin's case study process (Yin, 1984) was followed: What is my case study about? What is the form of my question (who, what, where, why, or how)? Our research team collected evidence (e.g., participant interviews, observation of court processes, artifact review) and analyzed data to compose a case study report (Yin, 2014).

We organized the data gathered from the participant interviews through coding. The research team identified categories and subcategories through a flexible and creative process. We outlined categories, subcategories, discrepant data, and potential themes. We wrote memos and journaled to reflect ideas, reactions, and thoughts. We met weekly to review our ideas and share our reflections to increase trustworthiness. All data, including memos, were stored on password-protected devices.

Each interview was audio-recorded, professionally transcribed, and coded to capture a semantic and conceptual meaning of the data (Braun & Clarke, 2006; Zablowksi & Milacci, 2012). We analyzed the data for themes by collating the coded data related to each theme. Themes were reviewed, defined, and named as our research team asked "What story does this theme tell?" and the essence of each theme was identified and named. We utilized an iterative process of transcript review. The codes were revised, retained with their original definition, or a new code was created when concepts were not described by an existing code. The coding team consisted of the first and second author, with the third author triangulating the data to increase trustworthiness and reduce subjective bias (Zablowksi & Milacci, 2012).

3. Results

Just as the purpose statement and theoretical framework guided these research studies, the data analysis was directed by the research questions and the theoretical framework. For the phenomenology, data analysis revealed three primary themes: judges' experiences with drug court participants, judges' experiences with the drug court team, and judges' experiences as drug court learners. Each theme had three subthemes. The first theme of judges' experience with drug court participants contains the subthemes of prolonged engagement with the judge (compared to traditional court), the judge as a reinforcer for treatment success, and judges' relationship with drug court participants. The second theme, judges' experiences with the drug court team, comprised several subthemes. The subthemes of the strength of differing team perspectives, guidance from treatment experts, and the judge as the decider emerged from Theme 2.

The third theme, judges' experience as drug court learners, elicited subthemes of each judge's experience shapes their approach with drug court participants, each judge has pursued their own learning about drug court/addiction, and judges have evolved through experiential learning.

Multiple themes emerged in our first case study, converging around training, team dynamics, and a therapeutic vs. adversarial approach (Smith Ramey et al., 2023). When probed to discuss initial and ongoing training, participants shared that they received training on the drug court model primarily through attendance at state and local conferences and training facilitated by the local DTC coordinator. Participants varied in the specific training on SUDs. Not surprisingly, the treatment staff received more addiction training compared to non-treatment members (e.g., judge, prosecutor). Two team members recommended additional training on SUDs for the team.

A universal theme of belief in DTC participant respect, voice, and choice among the DTC team emerged. Agency is operationalized by procedural justice (i.e., the idea of fairness in resolving disputes). Procedural justice contains four concepts: voice, neutrality, respectful treatment of participants, and trustworthiness (Tyler, 2006). Voice is an opportunity for each participant to tell their story. Neutrality focuses on decisions made without bias. Respectful treatment involves engaging with participants courteously. Finally, trustworthiness is demonstrated by sincere expressions of concern and a benevolent approach. Procedural justice supports a recovery approach consistent with the DTC team philosophy. A recovery model suggests having relationships and social networks that provide support, friendship, love, and hope, which will foster resilience and recovery (Substance Abuse Mental Health Services Administration, 2022).

Analysis revealed the physical make-up of the courtroom to be conducive to a traditional court compared to a problem-solving court. More specifically, the physical location where team members sit in the court suggested that the seating arrangement supports an adversarial rather than a therapeutic approach. DTC participants who were being sanctioned in drug court or who were not adherent to their treatment plan were placed in the jury box. This placement may stigmatize individuals by highlighting their failures. The DTC participants sit in the back of the courtroom, signifying a "less than" hierarchical courtroom environment. This approach was based on the judge's observations (training) of another court. From an operational standpoint, verbal reports on DTC participants' progress by DTC team members were often lengthy and may include overly personal information about participants shared in open court. In sum, the courtroom's operations and physical set-up confirm an adversarial rather than therapeutic approach.

In the second case study, our analyses resulted in three main themes: purpose of FTC, diffusion of responsibility, and FTC as a needed program. All themes were present in at least 50% of the 12 transcripts. Themes were organized into two superordinate categories based on themes' function: leadership and staff roles. The leadership category included the role of an FTC coordinator, marketing of FTC to potential participants, and management of the FTC prestaffing meeting. The staff roles category included role clarity and referral management, including (1) an all-inclusive list of potential FTC participants, (2) assertive recruitment of potential FTC participants, and (3) resources allocated to support FTC.

Apparent in all of the interviews was a misunderstanding of the roles, particularly within the court's leadership. Specifically, more than half of the interviewees highlighted how their personal leadership contribution was "the thing" in making the court function effectively. The judge, lacking training and sufficient mentorship, voiced frustration over diagnosing and resolving court operational issues.

We found several areas of convergence across our three qualitative studies on DTCs in the mid-Atlantic region of the United States. Taken together, our three studies point to the overarching key to DTC success: the judge. More specifically, our case study analyses revealed that DTC team members found the judge compassionate and fair with participants while simultaneously holding DTC participants accountable to program requirements. Our finding is consistent with DTC literature, suggesting that DTC participants who felt respected and heard by the judge had higher success rates than participants not involved in DTC (Fessinger et al., 2019).

Our case study findings align with the phenomenology on the lived experiences of DTC judges as our results underscore the importance of a therapeutic rather than adversarial approach and converge with existing literature emphasizing the relationship with the judge as a critical factor in the success of DTC (Gottfredson et al., 2007; Kaiser & Holtfreter, 2016). Relationship development between judges and DTC participants is key to successful outcomes for individuals involved in specialty dockets. Relationship development is enhanced through more informal judicial interactions with DTC participants. For instance, the judge may address DTC participants by their first name and clap or shake hands with the individual when they receive a reward or move up to the next phase in the program.

Findings from our three studies strongly suggest specialized training in addiction and mental health disorders is imperative for DTC judges. One judge stated, "Mental health, substance abuse, domestic violence. We don't have the appropriate training for it. And yet, that's a large part of what we do." Training should include the etiology of SUDs, signs and symptoms, trauma-informed care, and evidence-based interventions. Another judge in the study echoed the need for judicial SUD training: "There's a lot you don't know. And as you know, the drug court experience turned out to be more of a pinball machine in the long term. And I probably know more than the average Joe about these things, but I don't know the same as therapists. Not even close. And one of the things that I think that they should do is give judges a sense of training on some of this stuff when they come in because of how little you do know." We recommend that initial and ongoing addiction training be mandatory to serve as a DTC judge.

Relatedly, our three studies revealed the need for the judge to establish a courtroom environment conducive to a therapeutic approach rather than a traditional courtroom. For example, the prosecution and defense attorneys should not sit on opposite sides of the courtroom as they do in traditional court. This seating arrangement implies an adversarial approach. As the leader of DTC, the judge should consider therapeutic courtroom norms and operations in the physical seating of the DTC team and participants. Further, court reports by DTC team members should be brief and concise, and avoid extraneous information about DTC participants—this system of reporting increases procedural justice and DTC participant agency.

We posit that lacking a dedicated, full-time coordinator is related to challenges in a coordinated referral system for DTCs. This finding is consistent with the work of multiple scholars (Gallagher et al., 2015; Heideman et al., 2016; Marlowe & Carey, 2012) who linked judicial leadership to the success of an FTC. Because an FTC judge often presides over traditional dockets in addition to an FTC, a full-time coordinator is needed to provide consistent, visible, and dedicated leadership and service to the FTC. The coordinator should serve as an extension of the FTC judge by executing the court's day-to-day operations.

4. Final Considerations

The societal impact of addictive substances remains one of the largest health concerns in our country. One intersection point to combat this epidemic is our justice system, and the salient contributors are treatment court judges. The judge-participant relationship has been well researched as a predictive factor to positive outcomes in DTC, but little research incorporates the judge's experience.

Utilizing a three-study approach, our research confirmed previous findings emphasizing the significance of judicial sovereignty in DTC operations. This study enhances prior research by including input from participants, treatment teams, and judicial perspectives. All three studies suggest the judge's ability to establish a therapeutic relationship is linked to positive DTC participant outcomes. The relationship between the judge and the participant is most effective when it allows participants to express themselves while maintaining fairness, respect, and trust. The judge must also establish a physical layout of the courtroom conducive to fostering therapeutic norms. Other recommendations include having a dedicated DTC coordinator to serve as a link between the judge, DTC team, and participants, as well as mandatory training for DTC judges on SUDs.

We propose future research to extend the information gained from these studies. For example, studies can use a qualitative methodology to explore narrative analysis of the courtroom dialogue between DTC judges and DTC participants. Transcript review may allow additional insight into a therapeutic vs. adversarial approach. Future researchers should consider using a focus group to present the findings of the interviews to increase trustworthiness through member checking of the data. Research should explore the perspectives of individuals who did not engage in DTC to understand barriers and opportunities from their perspective and how judicial interaction may improve participant engagement. Critical Discourse Analysis (CDA) could have enhanced the participants' discussions about their experiences

Several limitations may exist when interpreting these findings. These studies were specific to nine DTCs in a mid-Atlantic geographical location in the United States. Thus, transferring these findings to other DTCs must be done cautiously, as other drug court teams may have a different team composition and culture than the DTCs in these studies. The findings from these studies are based on specific DTCs and are not meant to be generalized beyond this research sample which could have been mitigated by CDA and snowball sampling. This study did not include potential DTC participants who did not engage in DTC. Thus, their voices are missing from these findings. These factors may affect how the study findings can be transferred.

Additionally, participant bias may be present, as the study participants may have shared mostly positive feedback because of social acceptability (Bergen & Labonté, 2020). Lastly, we did not present our findings to the entire sample of study participants for respondent validation.


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