New Approaches to Social Problems Treatment

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NEW APPROACHES TO SOCIAL PROBLEMS TREATMENT
RESEARCH IN SOCIAL PROBLEMS
AND PUBLIC POLICY

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NEW APPROACHES TO SOCIAL PROBLEMS TREATMENT

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CONTENTS

LIST OF CONTRIBUTORS ix

PART I: INTRODUCTION

NEW APPROACHES TO SOCIAL PROBLEMS REMEDIES
Stacy Lee Burns and Mark Peyrot 3

PART II: NEW FORMS OF DEVIANCE

HATE CRIMES AND THEIR CRIMINALIZATION
Tim J. Berard 15

PART III: SEXUAL OFFENSES

CREATING VICTIM-CENTERED CRIMINAL JUSTICE PRACTICES FOR RAPE PROSECUTION
Amanda Konradi 43

FORGOTTEN VICTIMS, UNFORGIVEN PERPETRATORS: SOCIAL PROBLEMS WORK WITH ADULT MALE SEXUAL OFFENDERS WHO PURPORT TO HAVE BEEN SEXUALLY VICTIMIZED AS CHILDREN
Michael Petrunik and Adina Ilea 77
PART IV: VIOLENCE AND SCHOOLS

THE COLUMBINE EFFECT AND SCHOOL ANTIVIOLENCE POLICY
Glenn W. Muschert and Anthony A. Peguero

THE GANG’S SCHOOL: CHALLENGES OF REINTEGRATIVE SOCIAL CONTROL
Robert Garot

PART V: SUBSTANCE ABUSE IN THE COURTS

LOSING HOPE: THE PRODUCTION OF FAILURE IN DRUG COURT
Mitchell B. Mackinem and Paul Higgins

STANDARDIZING SOCIAL PROBLEMS SOLUTIONS: THE CASE OF COURT-SUPERVISED DRUG TREATMENT
Stacy Lee Burns and Mark Peyrot

PART VI: CORRECTIONAL TREATMENT

RECOVERY AND PUNISHMENT: RECONCILING THE CONFLICTING OBJECTIVES OF COERCIVE TREATMENT IN CORRECTIONAL SETTINGS
Holly Ventura Miller, J. Mitchell Miller, Rob Tillyer and Kristina M. Lopez

EX-INMATES WITH PSYCHIATRIC DISABILITIES RETURNING TO THE COMMUNITY FROM CORRECTIONAL CUSTODY: THE FORENSIC TRANSITION TEAM APPROACH AFTER A DECADE
Stephanie Hartwell
PART VII: CONCLUSION

SOCIAL PROBLEMS AND PUBLIC POLICY: A THEORETICAL OVERVIEW OF POLICY ISSUES AND IMPLICATIONS

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287
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PART I
INTRODUCTION
NEW APPROACHES TO SOCIAL PROBLEMS REMEDIES

Stacy Lee Burns and Mark Peyrot

The societal institutions for dealing with social problems are in a constant state of change. New problems are “discovered,” old problems are redefined, and new remedies are implemented (Peyrot, 1984). Each of these changes is worthy of attention in its own right, as are the larger trends within which these individual changes occur. Many of the contributions in this volume of Research in Social Problems and Public Policy address social problem solutions that are collaborative, interdisciplinary, and interinstitutional in nature. These contributions reflect a larger societal trend toward the medicalization of social control, especially the increasing role of mental health practitioners within the criminal justice system. Some contributions reflect an increasing social control function in institutions outside the criminal justice system, for example, the schools. In the latter situations, social control efforts can become routine features of institutional practice. Although such social control efforts may not increase the role of criminal justice agents per se in schools, they often employ school personnel in law enforcement and judicial capacities (e.g., campus police who enforce laws and campus regulations [especially related to students’ use of alcohol and drugs] and judicial administrators who adjudicate student (mis)behavior and mete out “appropriate” punishments [e.g., mandatory participation in campus alcohol intervention programs]).

This collection presents insights into recent developments in the sociological study of social problems, social problems work, and social problems
solutions in contemporary society. The chapters address the transformation of social control today in the context of criminal justice, mental health, and core community institutions (schools). The authors use a range of methodological approaches and theoretical perspectives to examine these diverse settings and institutions, yet collectively reflect a trend toward the use of various “treatment” initiatives within formal disciplinary systems and as part of legalistic social control strategies.

This collection is divided into several distinct sections. The first section consists of one chapter that examines the theoretical foundations of a new category of problem – hate crime; this chapter also examines the courtroom implementation of laws designed to regulate hate crimes. The next section examines two approaches to sexual offenses. One chapter examines efforts to incorporate consideration of victims’ issues into the processing of rape/sexual assault cases, and another chapter examines the paradox of how to handle rehabilitation of those who are both victims and perpetrators of sexual offenses. The following section examines school-based approaches to social problems. These are the only two chapters not directly involved with the criminal justice system and contribute to a broader perspective on approaches to social problems. The next section focuses on court-supervised treatment for substance abuse. It includes one chapter focusing on social problems work within an existing, well-developed organizational structure and another chapter looking at a recent policy innovation that calls into question many of the assumptions of the existing structure. The final substantive section focuses on two incarceration-based treatment approaches (one pre-release, one post-release), examining operational issues and program outcomes. Finally, the concluding chapter examines the policy-related implications of the earlier chapters in terms of a comprehensive model of the development of public policy regarding social problems.

In the first section of the collection, Berard considers hate crime legislation as a relatively new policy approach focused on victims and community justice values. Berard’s work draws attention to the sad history in the United States of hate crimes in which certain groups and persons have been targeted for violence. The chapter develops a law-in-action perspective on how such laws are implemented “in text and talk” and serve to define and officially recognize new crimes by designating certain specified (yet evolving) categories of victims, offenses, and offenders. Although original consideration of hate crime legislation often focuses on the issue of whether such legislation would (or should) criminalize acts that were not previously defined as crime, the author notes that in practice the major impact of hate crime legislation has been on sentencing procedures, with stronger
punishment for existing crime categories when there is a hate crime component to the offense being considered. The author considers how such legislation might impact the deterrent function of law and of criminal justice sanctions. An implication of this chapter is that new laws are needed to protect additional categories of people who are singled out for hate crimes based on their actual or perceived characteristics, but are not yet covered by existing legal protections against hate crimes.

The next section examines innovative approaches to sexual offenses, one focusing on victims who are survivors and another focusing on victims who are also perpetrators. The chapter by Konradi takes a “victims’ need” approach to address measures to reduce barriers to survivors/witnesses testifying in rape prosecutions. The chapter raises key questions about the right of survivors to be treated fairly and whether existing criminal justice procedures serve to sanction rapists or victimize survivors. The author’s research suggests that there are several trends in changing court procedures, but that many of these are not based on a valid understanding of the survivors’ perceptions and experiences of court operations. The author’s research-based sociological insights suggest several ways in which court procedures might be modified to facilitate effective participation of survivors without victimizing them further.

Konradi’s contribution offers provocative reflections on the different understandings of prosecutors and victim-survivors about the role of victims in rape prosecutions. Similar to “no-drop” prosecution policies in domestic violence cases, this chapter shows how the meaning of “protection” as a desired and expected prosecution outcome is distinct for victims and prosecutors. The study suggests that current prosecution practices often advance the goal of condemning rape in the larger society, more than prioritizing the experiences and needs of victim-witnesses who are assisting in rape prosecutions and responding to their perceived understanding of protection.

The chapter by Petrunik and Ilea discusses treatment initiatives for sexual abuse offenders who purport to have been sexually victimized as children. The authors examine the dual status of victim and perpetrator and how intervention workers privilege the status of offender through a mandate to manage the risks of purportedly high risk offenders, giving limited attention to victim-related issues of victim/perpetrators. The contribution also explores new interventions that incorporate restorative justice initiatives and the experiential concerns of victim/perpetrators. This chapter continues the focus on the lived experience of lay participants in social control activities, which is a core feature of the chapter by Konradi. Konradi’s chapter sees the interests
of victims and perpetrators as conflicting, whereas the chapter by Petrunik and Ilea brings those concerns together in a unique way.

Petrunik and Ilea demonstrate how efforts to reintegrate “offenders” into the community are highly relevant today for the operation of the criminal justice system and social control more generally. The authors point out the limitations of retributive, “desert-based” notions of justice and challenge the ideology of vengeance in the context of criminal justice policies affecting sex offenders who were also victims of child sexual abuse. The dual status of victim-perpetrators calls for those who work in the social control and treatment of such persons to acknowledge the damage they suffered as victims and address how it has transformed their lives by implementing programs and practices to promote the personal growth and community (re)integration of victim-perpetrators.

The two chapters in the following section focus on social problems solutions in the context of schools, dealing with problems of school violence and gangs. These chapters expand this collection’s focus in two ways: they examine social control outside the legal system, and they consider youth as an at-risk population. Muschert and Peguero’s chapter on “the Columbine effect” considers how schools attempt to prevent and handle acts of school violence, describing how various strategies and techniques, including the incorporation of technology, are used as resources for doing student surveillance, assessing risk, and deterring or preempting school violence. The authors note the extension of community control in the schools to discipline and regulate perceived forms of misconduct that may turn out to involve minor and nonviolent infractions. The authors suggest that legalistic disciplinary regimes and punishment in such cases may serve to impair the future welfare of students more than to protect community safety. Indeed, overly legalistic systems to deter and prevent school violence may contradict fundamental societal values and be inconsistent with educational goals. The authors discuss the challenges of balancing measures oriented to ensuring future school safety, while at the same time not creating a school culture dominated by fear, distrust, surveillance, and sometimes mandatory expulsion or suspension of students for minor and nonviolent misconduct.

The contribution by Garot considers the implementation of an alternative “gang’s school” as a solution to the problems of gangs in school. Rather than using a strategy of exclusion (“expulsion”), these schools use an integrative strategy of trying to retain gang members in the school. Indeed, these schools may focus on the members of a single gang, both to reduce conflict among members of rival gangs and to create an educational environment in which members of the school’s gang feel accepted. Garot
describes the “ambivalence” of school staff toward gangs and how staff employ often contradictory practices to both accommodate and monitor their troubled students.

Garot underscores the community’s ambivalence toward “our boys” and reflects how gang members are both similar to and different from more conventional groups in society. Despite involvement in criminal activities, gangs often provide valuable resources and protection to the community. The creation of a gang’s high school acknowledges that gang members are a legitimate part of the community. This unique organizational arrangement may serve as an appropriate institutional response to the dilemmas posed by gang members, who are known to the community as multifaceted individuals and “needy children” who themselves are sometimes the victims of abuse.

Garot’s chapter also highlights the way that an organization can be “captured” by its clients. Earlier work (Peyrot, 1982, 1985) has demonstrated that an agency that is dependent on its clients must be responsive to client-defined wants and needs and is not free to impose its own version of those wants and needs. Conversely, an agency that is not dependent on its clients can base its decisions on other criteria, such as professional definitions of what is in the best interests of clients (e.g., educational or medical orientations) or management definitions of what is in the best interest of the organization (e.g., a mission orientation). Client dependence results when an organization is dependent on clients’ decisions to utilize the organization’s products, and there are not enough clients who compete to obtain the organization’s products. In Garot’s case study, the school strategy is to recruit and retain students from among both gang members and nonmembers, requiring openness simultaneously with control.

The next section examines the relatively recent development of a new social control strategy, “problem-solving” courts (Heward, 2007), and their application to the problem of substance abuse. Problem-solving courts utilize legal authority and “tough love” (Burns & Peyrot, 2003) to coerce and persuade defendants/clients to participate in court-supervised treatment and facilitate treatment compliance and completion. Drug treatment courts represent the “first generation” in a wave of subsequent problem-solving courts and have served as the model for the development and implementation of many other kinds of “second generation” therapeutic and problem-solving courts (e.g., juvenile drug court, domestic violence court, mental health court, family dependency treatment court, veteran’s court, and homeless court). The advent of problem-solving courts as a way to deal with the substance abuse problem reflects a broader social and political
movement, away from reliance on traditional criminal courts and adversarial processes of dispensing justice (with their emphasis on technical legal rights and protections), and toward more “therapeutic” and “restorative justice” approaches.

The contribution by Mackinem and Higgins focuses on the activities of treatment staff in drug court and demonstrates how staff’s reasoning, decisions, documents, and testimony are consequential and matter to the production of success or failure of clients. The authors identify a key point in the client’s career within the drug court program – when staff “lose hope” in the client’s ability to participate in and benefit from the program. The process of losing hope is gradual and not irreversible; clients are not dropped from the program until the process has played out. Typically, isolated events are not enough to trigger the client’s termination, but the interpretation of events influences and is influenced by the unfolding process through which staff come to accept termination as the only reasonable choice for a client. Mackinem and Higgins suggest that many unanswered questions remain about the rhetoric of rehabilitative change and precisely how moral identities are demonstrated in different treatment contexts and how persons ultimately get kicked out of various treatment programs.

The chapter by Burns and Peyrot examines the expansion of court-supervised drug treatment in California after the passage Proposition 36 (The “Substance Abuse and Crime Prevention Act”), which mandates treatment (not incarceration) for most drug possession and use offenses, thereby providing treatment to many more drug defendants than under previous drug court operations. Burns and Peyrot suggest that Proposition 36 was enacted by voters in 2000 and implemented in 2001 as a potentially cost-effective and efficacious rehabilitative response to the massive caseload of drug-related offenses and high rates of recidivism in such cases. The authors argue that this expansion has resulted in dilution of many of the useful features which define the early drug courts and the significant “standardization” of operations in court. In particular, judges have lost some of the discretion and powers that they were able to exercise under previous drug court operations. The authors examine how the changes in institutional structure and organization impact interpersonal processes under the modified program of Proposition 36 courts and potentially influence the outcomes of drug court cases.

The final substantive section of the volume contributes to a well-rounded perspective by focusing on reintegrative initiatives for correctional inmates. The two chapters examine innovative treatment programs for convicted offenders with substance abuse problems and mental health disabilities.
The contribution by Miller and colleagues investigates in-prison treatment programs for persons incarcerated for alcohol-related driving offenses. The existing research evidence regarding the efficacy of correctional treatment programs is equivocal, and the authors investigate one particular program to explore whether and how the coercive nature of the correctional context may negate the rehabilitative intent of treatment behind bars. Their research, focusing on clients’ perceptions of the program, reveals that selection of clients for these programs results in the involvement of unmotivated clients who interfere with the quality of the treatment experience for those who are motivated. Thus, it may be that coercing clients in this context is not only unproductive at the individual level, but it may actually be counterproductive at the program level.

The contribution by Miller and colleagues suggests that prison treatment programs could benefit from procedures to screen potential participants at the outset for “suitability” as well as “eligibility” to participate in treatment programs (Burns & Peyrot, 2003, 2008; Peyrot, 1982). An implication of the chapter is that efforts to induce convicted defendants to become treatment clients should be based on a realistic assessment of the perspectives and motivations of persons who are candidates for specific intervention measures and must take into consideration the coercive context of treatment behind bars. Another implication is that while prison treatment may have an incapacitation effect, it may not specifically deter or reduce substance abuse post-release. Thus, a policy concern is that treatment resources not be entirely dedicated to in-prison services, but that funds be reserved for providing aftercare in the community.

Hartwell’s contribution is a nice companion to the chapter by Miller and colleagues in that it focuses on treatment efforts for persons who have been released from incarceration. This chapter considers mentally ill persons who have become enmeshed in the criminal justice system and the problems, pitfalls, and opportunities of post-release treatment programs and reintegrative efforts for mentally ill inmates recently released from prison. Hartwell’s chapter reminds readers that deinstitutionalization of the mentally ill without adequate systems of treatment resulted in large numbers of mentally ill becoming involved in the criminal justice system and placed in jails and prisons. Thus, the most coercive of criminal justice institutions became the gatekeepers and treatment providers for much of the mentally ill population. Unfortunately, the chapter shows that many such persons are unable to take care of themselves after release and stop taking their medications, ending up homeless, failing to report to parole or probation as required, and committing petty crimes. Hartwell’s research documents the
need for expanding post-release treatment programs to improve reintegration of the mentally ill into the community and reduce the revolving door of incarceration for mentally ill persons. Her research suggests that post-release programs can improve community reintegration outcomes, but the research findings in this area are limited. The author suggests several ways that research in this area could be improved to yield more definitive findings that would be more helpful in refining programmatic efforts.

In the final chapter of the collection, we provide a theoretical overview and synthesis of the policy insights and recommendations of the chapters’ authors and consider emergent commonalities among authors working in very different institutional contexts. We demonstrate that public policies regarding the social problems examined in this collection are at various stages of development. Although all of these remedial approaches are “new” in the sense of being recent innovations, many are only the most recent in a long sequence of policy initiatives. In such situations, the challenges faced by a policy initiative are as much a function of what has come before as they are of their own inherent features.

In the concluding chapter, we identify several larger interrelated trends in social problem public policy. The overarching trend is the expansion of social control institutions and the associated dilution of coercion and control that make the expansion both palatable and affordable. Expansion is accomplished by de-emphasizing coercion in favor of avowedly social welfare strategies such as providing mental health “treatment” and creating “safe” schools. These strategies are implemented through various innovative organizational forms such as problem-solving courts and gang’s schools. The future of social control in modern society depends in large part on the degree to which these innovations are perceived to be successful, leading to their replication across jurisdictions and adoption in multiple institutional sectors. We offer some informed speculation about future directions based on earlier and more recent developments, but only the future will tell whether these speculations are prescient.

REFERENCES


PART II
NEW FORMS OF DEVIANCE
HATE CRIMES AND THEIR CRIMINALIZATION

Tim J. Berard

ABSTRACT

This chapter considers overlapping legal and policy issues related to hate crimes, summarizing the problem with an emphasis on societal responses. The theoretical insight that law can be understood as an expression of societal values is combined with an emphasis on the empirical study of law in action. The approach taken is theoretical and conceptual in nature, but is also informed by relevant case law and various empirical studies and is concerned to suggest how hate crime research can address issues of both theoretical and policy significance by analyzing how hate crime law is practiced. Some of the findings are that hate crime law can be seen to express values in a wide variety of settings and to express values intentionally, neither of which has been properly acknowledged to date. It is important for public policy analysis and practice as well as for theory development to acknowledge the limitations of both rational choice/deterrence approaches and moral education theories in the hate crime policy domain. Instead of understanding criminal law as a type of threat or type of instruction, in the case of hate crimes the law may be practiced and evaluated most realistically without assuming that hate criminals will be attentive to potential legal sanctions or amenable to moral education. The discussion includes elements of literature review, policy debate, theoretical analysis, and methodological reflection suggesting how hate...
crime law can be analyzed as expressive law in action, providing material relevant for students, theorists, policy-makers and analysts, and researchers.

INTRODUCTION: THE HATE CRIMES PROBLEM

The United States has been a leader in contemporary policy approaches to hate crimes, largely by virtue of innovations in American criminal law. In fact, hate crimes as a category of social problems and as a category of law are largely constructions of U.S. identity politics and policy processes, respectively. Interest groups such as the Anti-Defamation League of B’nai B’rith and the Southern Poverty Law Center and social movements such as the victims’ rights movement, the women’s movement, and the gay and lesbian movement were instrumental in informing the public and policymakers about the prevalence and seriousness of hate crimes. These crimes are also known as bias crimes (Lawrence, 1999) and overlap with the related category of ethno-violence (Ehrlich, 2009) but are most widely known and addressed as hate crimes. Politicians at the state and federal level have responded with various legislative measures, most famously in the form of penalty enhancements for offenses motivated by bias. The increased awareness of hate crimes as a social problem and the responsiveness of legislators and policy makers to the concerns of various minority groups should be understood against the backdrop of increasing policy attention to issues of social justice in recent decades, and more specifically in the context of parallel and overlapping developments that have seen increasing concern for crime victims, increasing attention to minority concerns, and the development of antidiscrimination law in various policy domains. Much as in the United States, the relevance of victim politics and identity politics for understanding hate crimes and hate crime policy has been noted in the United Kingdom, as well (Ray & Smith, 2001).

The fact that certain actions such as bias-motivated vandalism or violence are either criminal or not depending on the content and application of the criminal law, and the fact that the content and application of the criminal law is often responsive to political pressures and interests, suggests that there is much more to the understanding of hate crimes than the biased motivation of offenders or the harm to victims. The biases of certain offenders and the distinctive harms caused by these offenses are nothing new to human history. What is new is the category of hate crime as an element of
social problems discourse and as an element of criminal law, meaning that bias-motivated offenses are now understood and dealt with through interpretive and institutional frameworks that have been constructed largely since the late 1970s.

The facts of bias-motivated offenses or minority victimization do not account for the recent emergence of the hate crime category or hate crime policy as social and legal constructions. It will be suggested below that the political, legislative, and law enforcement responses to bias-motivated offenses need to be understood in large part as illustrations of expressive law, and it is important to understand that law comes to express condemnation of hate crimes only when the social and political context becomes conducive to such expression, for example, with society's increasing emphasis on diversity and inclusion. The notion of expressive law will be discussed below, but the essential insight is that the criminal law can be understood not only as an instrument of deterrence or retribution but also as a venue and medium for expressing social values through condemnation. In the case of hate crime, hateful or biased actions are selected for additional condemnation, partly because they target minority communities rather than just immediate victims and therefore pose a divisive threat to social relations and social order in a pluralistic society.

In the following, the nature and history of hate crime as a social problem and policy issue is briefly summarized, followed by further discussion of hate crime legislation considered as expressive law, hate crime policymaking and implementation considered as law in action, and finally some of the public policy implications that follow from these considerations.

HATE CRIMES AND POLICY RESPONSES IN THE UNITED STATES

The term “hate crime” generally refers to offenses motivated by hatred or bias against the victim because of the victim’s membership in a status group, often but not necessarily a minority group such as in the United States, African Americans, and Jews. But the simplicity of the basic idea quickly gives way to complicated and important nuances and distinctions that have to be addressed both academically and in the practice of public policy and criminal justice. The notion of hate crime may be misleading about the actual implementation of hate crime law, because it is not necessary to prove that offenders hold hatred, specifically, toward a victim or the victim’s
group; evidence of bias or prejudice in the commission of an offense, or discriminatory selection of the victim, is much more to the point of the issues raised in the practice of law enforcement, and for this reason, there remains significant dissatisfaction among experts with the very term hate crime.

Another, more challenging problem in policy and academic discourse has to do with the relevance of the criminal law for defining hate crimes. With respect to legal prosecution and in terms of certain academic traditions deriving from American sociology,¹ a behavior or type of behavior is not a crime unless it is punished or proscribed by the criminal law. But the actual criminal code does not criminalize all types of behavior that are actually referred to as hate crimes, for example, because certain groups or statuses are not included or protected by many hate crime laws. Violence against women is perhaps the primary example, because gender categories are not protected categories in many hate crime laws, but many groups besides women, including the elderly and the homeless, are not recognized or protected in much hate crime legislation. Although it certainly makes sense to refer to offenses as hate crimes because they are motivated by bias and share other similarities with official hate crimes, still such offenses are not necessarily established hate crimes in many legal and policy contexts. Even when members of protected categories are victimized, the offenses might not be legally treated or statistically recorded as hate crimes because they are not reported to police, or because police or prosecutors choose not to pursue them as hate crimes, or the prosecution does not lead to a conviction for a hate crime. These issues are related more generally to the fact that hate crime refers not only to a particular type of offense but also to a social process of societal reaction, and more generally a domain of public discourse and public policy. A significant part of the legal and social-scientific attention to hate crimes is devoted to hate crime as a category of public concern or social problem, political debate, legal argument, and policy analysis, which all refer broadly to the societal response to hate crime offenses, rather than to the offenses specifically.² There is often room for much debate about whether a particular behavior constitutes a hate crime, and whether a type of behavior should be considered as a type of hate crime, for example, in terms of which groups (women? gay and lesbian? disabled? military personnel?) should be recognized in the status provisions of hate crime legislation.

Although the United States does not have a monopoly on offenses motivated by hate, bias or prejudice, the history of hate crime as a category of social problem and policy debate essentially starts with the U.S.
Streissguth (2003, pp. 20, 44–45) suggests that what he calls “the modern era of hate-crime legislation” began in 1968 with a federal statute, the purpose of which was to criminalize violent responses to the Civil Rights movement. But it is more common to begin in the late 1970s, for example, with the first state-level hate crime statute, providing for penalty enhancement for conventional crimes motivated by bias, passed by California in 1978 (Streissguth, 2003, p. 20), or the criminalization of hate crime as a particular crime in itself, achieved by Connecticut, also before 1980 (Lawrence, 2006, p. 1). Hate crime as a policy problem thus emerged in the aftermath of the U.S. civil rights movement and at a time when the women’s movement, the gay and lesbian movement, and the victims’ rights movements were all increasingly involved in public discourse about issues of social justice. By the late 1980s, the category of hate crime had been established as a social problem of public concern at the national level. At the federal level, the Hate Crimes Statistics Act became law in 1990, followed in 1994 by the Hate Crimes Sentencing Enhancement Act and the Violence Against Women Act (Streissguth, 2003, pp. 46–49). Currently, the U.S. federal government, almost all states, and many localities have passed legislation against hate crimes. At the federal level, and often at the state level, there are actually multiple laws addressing different dimensions of the hate crime problem.

Hate crime laws can assume various forms. Jenness and Grattet (2001, pp. 80–83) suggest that there are five identifiable legal strategies used in response to hate crimes: (1) criminalization of interference with civil rights; (2) “freestanding” statutes that create new categories of crime such as “ethnic intimidation”; (3) “coattailing” statutes that create hate crimes when previously criminalized conduct (e.g., assault) is motivated by bias; (4) modification of a preexisting statute such that a previously recognized crime (e.g., assault) is classified as a more serious crime when it is motivated by bias or triggers a special mandatory minimum sentence; and (5) penalty enhancement statutes that specify enhanced penalties for previously recognized crimes when they are motivated by bias. Other laws relevant to hate crimes include statutes requiring the collection of statistics or requiring specialized police officer training (Streissguth, 2003, pp. 52–53). Penalty enhancement is the most common form of hate crime legislation (Streissguth, 2003, p. 52), and it is noteworthy also that “coattailing” statutes and modifications of statutes with respect to crime classification or mandatory minimum sentences are very similar types of policy responses, all involving more severe or more certain punishment when previously recognized crimes are committed with biased or hateful motives.
With respect to historical trends, the federal government and almost all states now have hate crime legislation; hence, the initial period of policy development and diffusion appears to be over. According to tracking by the Anti-Defamation League, all but five states in the United States have a criminal penalty for bias-motivated violence and intimidation, and four of the remaining five states criminalize at least institutional vandalism (Anti-Defamation League, 2008). We should expect to see continued legislative activity at the state level, including some mixture of new legislation and the revision, updating, or supplementing of existing legislation, a process that still may result in further “domain expansion” of the hate crime problem (Jenness, 2001), referring to policy rather than the incidence of offenses. At the federal level, also, expansion of hate crime law is subject to ongoing debate, as with the “Local Law Enforcement Hate Crimes Prevention Act” debated again in 2009, which would significantly expand the reach of federal hate crime law in several respects.3

In terms of offense frequency, there is much dissatisfaction with the existing methods of measuring hate crime frequency, but available statistics are useful in some respects. Ehrlich, drawing on Uniform Crime Reporting (UCR) data reported to the Federal Bureau of Investigation (FBI, 2009, p. 22), observes that “the period of rapid increase was from the mid-1980s to the mid 1990s.” Between 1995 and 2006 the number of hate crime incidents fluctuated between roughly 7,000 and 9,000, with the exception of 2001, which saw 9,730 (Political Research Associates, 2008). The national statistics compiled by the FBI indicate that there were 7,624 hate crime incidents in 2007 (FBI, 2008). Judging from the FBI statistics, which provide the standard reference point, and from the academic literature, there does not appear to be any steady rise or decline in the number of hate crimes nationally in the past decade. This relative stability is a significant reference point even if there are many methodological and political reasons for treating the FBI numbers as being much smaller than the numbers which might be achieved with, for example, full reporting of hate crimes to police, and aggressive enforcement and full reporting by police in all jurisdictions.

HATE CRIME LAW AS AN EXPRESSION OF SOCIAL VALUES

The social-scientific and legal analysis of hate crime policy has recognized the use of hate crime legislation to express society’s condemnation of hate
crimes (Beale, 2000; Lawrence, 2006), but most often in passing and without development. In the social sciences, the claim of an expressive nature of law is most often traced to the early French sociologist Emile Durkheim, who suggested that criminal law functions to express society’s disapproval of an offense and to restore a disrupted or threatened social solidarity. The expressive function of law has also been emphasized by a second and larger literature, outside of sociology and more or less located within the bounds of legal and moral philosophy. The most influential contribution in this literature may be Joel Feinberg’s essay on “The Expressive Function of Punishment” (in Feinberg, 1970), but there are many others (Duff, 1986; Skillen, 1980; Primoratz, 1989). This literature is rather noteworthy in an interdisciplinary context for illustrating that the function and justification of punishment is a more interesting, complex, and significant problem than it appears to be in much criminal justice scholarship (although see Hagan, 1983), not least because the expressive dimension of punishment is in many ways understood and appreciated in an ongoing scholarly dialogue.

As Durkheimian theory suggests, the expressive function of law should be most clear where an offense violates deeply held and widely shared social norms, as is the case with many serious crimes such as murder, rape, and terrorism. In such cases the law functions to reaffirm the values offended by way of condemning the transgression. Although hate crimes often inspire the same type of moral indignation, hate crime laws are relatively recent legal innovations, and there is arguably less of a consensual understanding about what hate crimes are, and whether they offend against truly consensual and collective norms, norms shared so widely and strongly as to be referred to, after Durkheim, as components of a single collective consciousness or conscience, Durkheim’s “conscience collective” (1964[1893]). For that reason the hate crime debate is an interesting topic to consider with respect to expressive theories of law and punishment.

When expressive theories of law and punishment were introduced in social theory and philosophy by figures including Durkheim (1964[1893]) and Feinberg (1970), the function or justification for punishment could be described by such terms as “expression” and “communication” without much risk of overstepping disciplinary boundaries. Today we might expect more. Both the social sciences and philosophy have enjoyed significant developments related to what is sometimes called the Linguistic Turn. The social sciences have expanded since Durkheim’s time to include insights from hermeneutics and semiotics; entire traditions of sociological inquiry such as symbolic interactionism, ethnomethodology, and socio-linguistics have developed largely around issues of language, interpretation, and
understanding in social relations. Traditions such as pragmatics and conversation analysis have arisen and flourished, and the relatively new disciplinary field of communication studies has achieved a remarkable size and relevance. In philosophy the importance of language has only grown with the progression of time, in no small part due to the extraordinary influence of Ludwig Wittgenstein's ordinary language philosophy, which offers various conceptual analyses grounded in an appreciation for how concepts are used in natural language. With respect to law, interpretation of legal documents (constitutions, statutes, precedents) has long been a central issue in legal thought, and there are long-standing legal traditions addressed to free speech and harmful speech, but there is also now a branch of socio-legal studies addressed to issues of language and law. So the well-aged observation that law can be analyzed as a mode and site in which society’s values are expressed may appear like a helpful suggestion that has not actually been pursued.

Contemporary scholarship leads to new questions and new applications regarding older and untested insights. In social problems theory and research, social constructionist sensibilities have led to increasing attention to issues of language, for example, by conceptualizing social problems in relation to practices of claims-making (Spector & Kitsuse, 1987), parallel to the symbolic interactionist conceptualization of deviance in relation to societal reaction and practices associated with labeling deviance and deviants (Becker, 1963; Erikson, 1964). In legal studies, there has been not only increasing attention to issues of language but also increasing attention to empiricism; hence, the current enthusiasm for empirical legal studies, often addressed broadly to the study of “law in action” rather than law on the books. In policy analysis and political science, there has also been increasing attention to constructionist and rhetorical issues over the past generation. It is no longer sufficient to claim, however correctly, that law has a significant expressive function or dimension. This observation now raises important further questions related to what expressive law actually looks like with respect to empirically observable language-use and social practices.

One of the advances made in social science since Durkheim addressed these issues over 100 years ago is a much increased knowledge and appreciation of the role of human understanding and intention in social relations, associated with a much greater attention to issues of meaning, agency, social action, and social interaction. It is not only possible, but rather important, to observe that the expressive function of law is not merely a theoretical insight related to an abstract view of society’s needs and functions, but an element of practical knowledge and practical interest for many of those
engaged in debating or even applying hate crime law. This is sometimes acknowledged in studies and policy analysis (Ray & Smith, 2001, pp. 213–214), but it is also abundantly clear from reading legislative testimony concerning the establishment or revision of hate crime laws. For example, Representative John Conyers has noted that hate crimes “send a message of intimidation to an entire community of people” (Congressional Record, 1988, p. 11393) and has argued that hate crime legislation carries “an important message, that the Nation is committed to battling the violent manifestations of bigotry” (U.S. Congress, 1985). Thus, hate crimes can be understood as expressive crimes and hate crime legislation can be understood as expressive law; both offenders and policymakers can intend their actions to convey a message to society. When law is understood in action, and empirically, rather than in the context of a theoretical system, the role of people and their values becomes visible and also central for understanding social problems and policy responses. Legislative law-making is just one type of context in which the expressive nature of law can be observed and explored, although legislative law-making does provide opportunities for policymakers to address directly what proposed legislation means, what message it sends to whom. Other legal contexts such as the enforcement of law by police and prosecutors and the reconsideration of law by appeals courts (arguably another form of law-making) are also deserving of consideration.

In their seminal book Making Hate a Crime, Jenness and Grattet (2001, p. 3) recognize the expressive dimension of hate crime law, observing that “Hate crime policies are also partly justified on symbolic grounds. They are designed to transmit the symbolic message to society that criminal acts based upon hatred will not be tolerated.” Similarly, Jacobs and Potter (1998, pp. 65–78) argue that hate crime legislation is best understood as symbolic politics; they observe that “In the campaigns that lead up to passage of federal and state hate crime laws, there was inevitably much talk of ‘message sending’” (p. 67). Although it is perhaps most conventional to speak of criminal legislation as sending a message to criminals or potential criminals, consistent with deterrence and moral education theories, Jacobs and Potter (1998, p. 67) note that “hate crime laws send messages to at least three different audiences of which offenders is probably the least important.” The other audiences mentioned include, first, lobbyists and the minority groups they represent, and second, the general public.

Jacobs and Potter (1998, p. 70, quoting a Senate Report from 1989) also provide illustrative evidence for the expressive intent of hate crime legislation, quoting relevant Congressional testimony by several figures, and also
quoting a Senate Judiciary Committee report on the proposed Hate Crimes Statistics Act of 1990, in which the committee notes that “The very effort by the legislative branch to require the Justice Department to collect this information [on hate crime incidence] would send an additional important signal to victimized groups everywhere that the U.S. Government is concerned about this kind of crime.” But these are just some of the possibilities for suggesting the relevant audiences and messages and for suggesting what hate crime legislation expresses. Another example is that Representative Charles Schumer argued in reference to the Hate Crimes Sentencing Enhancement Act of 1994 that sentencing enhancement was important partly as “a message that relates to the survival of this country as the leading country of this world” (1998, p. 76), suggesting an international audience and an expression of moral leadership. And Jacobs and Potter (1998) suggest another reading that hate crime legislation can be understood as an expression of identity politics in the realm of criminal law. What exactly hate crime laws express and to whom and with what consequences are pivotal considerations which deserve much more research and analysis.

THE LAW BEHIND HATE CRIME LAW: LAW-IN-ACTION

Challenges to Hate Crime Law

In part because hate crimes can have such an expressive component, one of the primary debates about hate crime policy is whether the criminalization of hate crimes, such as through sentencing enhancements, encroaches upon first amendment rights, especially the freedom of expression. A common objection is that a sentencing enhancement involves punishing an offender for his or her motive, on top of the punishment for the criminal act (a conventional crime such as homicide, arson, vandalism, assault, or intimidation). A related controversy addresses whether the law can assess motives, how well, and whether the attempt is appropriate or not. A similar set of controversies exists in the legal literature on antidiscrimination law, with respect to what role intent does play and should play in antidiscrimination law. In both contexts, although for different reasons and from different quarters, there is much criticism of the legal emphasis on using legal judgments of intent or motive to determine legal issues of guilt or
sentencing. Critics suggest such judgments are difficult or inappropriate, if not both.

With respect to sentencing enhancements in the hate crime context, the issue was put very succinctly by Lynn Adelman, attorney for Todd Mitchell, a convicted hate criminal whose enhanced sentence was ultimately reviewed (and upheld) by the U.S. Supreme Court in *Wisconsin v. Mitchell* (*Wisconsin v. Mitchell—Oral Arguments, 2009*). Mr. Adelman argues in his opening statement in oral arguments:

> This statute punishes thought, thought which the Government disapproves. Todd Mitchell got 2 years for aggravated battery and he got 2 more years on top of that because he was biased against white people. This bias is a crude and ugly one, but it was nonetheless a viewpoint. And if we punish Todd Mitchell’s viewpoint we have to be prepared to condone punishment of any viewpoint. (*Wisconsin v. Mitchell – Oral Arguments*)

By this view, hate crime law involving sentencing enhancement is indeed an expression, but an expression of censorship, an expression of thought control, which opens the floodgate for policing all types of viewpoints, not just “crude and ugly” ones. Previous analysis has already suggested the rhetorical and practical importance of such floodgate-type arguments in the opposition to hate crime law (*Berard, 2005a*). It should be noted that in the *Wisconsin v. Mitchell* case, Mitchell’s attorney was stating an objection that had been accepted by the Wisconsin Supreme Court, which saw the state’s statute as punishing “offensive thought” and punishing motive.

Two of the legal arguments for the constitutionality of sentencing enhancements for hate crimes are simply that hate crimes involve more than simply expression and that it is actually an accepted convention for the law to consider and judge ostensibly subjective matters such as intent and motive. Both these arguments are made in the course of the U.S. Supreme Court ruling in *Mitchell*, which upheld the sentence enhancement for Mitchell. With respect to the first argument, the Mitchell ruling quoted *Roberts v. United States Jaycees* (1984) as a precedent: “[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative impact…are entitled to no constitutional protection.” In the case at hand, the victim of Mitchell’s hate crime, a young white boy who happened to walk by directly after Mitchell had discussed “moving on” some white people, was severely beaten and did not regain consciousness for several days. Hence, although the crime may have expressed bias against whites, or retaliation against whites, it also produced a special harm distinct from the communicative impact, removing the
constitutional protection normally afforded for the expression of ideas. The ruling also observes that “Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentence to impose on a convicted defendant…. The defendant’s motive for committing the offense is one important factor.” Later the court noted as well that “The First Amendment, moreover, does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent.” Both of these arguments are discussed in more detail by Lawrence (1999) in his book *Punishing Hate*. Lawrence concludes his discussion of the constitutionality of hate crime laws by suggesting that “Properly understood, bias crime laws punish motivation no more than do criminal proscriptions generally” (p. 109).

In Garfinkel’s (1956, p. 420) often-cited article “Conditions of Successful Degradation Ceremonies,” he literally begins by stating that status degradation ceremonies are based ultimately not on what persons have done, not on their behavior, but on their motives. If one considers the moral distinctions between a fatal shooting by accident, a fatal shooting for self-protection, a fatal shooting during the course of a legal execution, a fatal shooting by a paranoid schizophrenic, a fatal shooting by a five-year old, a fatal shooting in the course of a suicide or mercy-killing, a fatal killing by a soldier on a battlefield, and a fatal shooting of a politician in a successful assassination bid, the significance of the point may be appreciated. The appropriate societal reaction can range from increased custodial supervision to life-imprisonment or execution, depending entirely on issues of motive and related questions related to so-called mental states (intent, competence, mental health, etc.). The point is perhaps most consistently recognized in moral philosophy, which thrives on various unusual or counter-intuitive hypotheticals suggested above. Feinberg (1970, p. 117) observes simply that “the moral gravity scale would have to list as well motives and purposes, not simply types of overt acts, for a given crime can be committed in any kind of ‘mental state,’ and its ‘moral gravity’ in a given case surely must depend in part on its accompanying motive.” McHugh (1970, p. 61), somewhat bridging the insights of interpretive sociology and ordinary language philosophy, observes “It makes a difference…whether an act had to occur or not…and whether an actor knows what he’s doing or not, whether the actor can be said to have intended to do what he did.” This widespread moral convention of privileging matters of motive and intent is suggested in American criminal law in the fact that criminal intent is a constituent element in many crimes; lacking criminal intent, the crime itself might be lacking, even in the case of significant harm. As Jacobs and Potter (1998, p. 6) note,
this is precisely what is involved in sentencing enhancements for hate crimes: “Hate crime laws recriminalize or enhance the punishment of an ordinary crime when the criminal’s motive manifests a legislatively designated prejudice like racism or anti-Semitism.”

The constitutional debate has influenced the manner in which much hate crime law is expressed, especially by leading to an emphasis on discriminatory selection of victims rather than on the values or beliefs of perpetrators (Jenness, 2001, pp. 297–298), but hate crime law in general has survived these legal challenges and is now an established element in U.S. law. It has been put into action by the legislation and kept in action by the practical efforts of government lawyers who have defended the laws on appeal and appeals court justices who have largely upheld the constitutionality of hate crime laws.

**The Application of Hate Crime Law**

The previous literature on expressive law is focused almost entirely on issues of passing criminal legislation and the punishment of convicted criminals, neglecting many issues of law enforcement which fall in between. This is understandable because the primary question with respect to law enforcement is often whether it is effective at lowering crime rates, rather than what it symbolizes. In the social scientific literature on hate crime law, the early emphasis was upon the legislative process, rather than the criminal justice process. Studies of hate crime law enforcement by police have been an important addition to the social scientific literature over the past 10 years, but policing has been subject to less study than policy-making, and prosecution even less than policing (Phillips, 2009). Attention to law enforcement might predictably focus more on the pragmatics of solving cases and crime reduction, and these concerns are illustrated in one of the most prominent studies, Bell’s (2002) *Policing Hatred*. Bell’s study starts off by suggesting that nonenforcement of hate crime laws would reduce hate crime statutes to empty symbolic gestures, consistent with the view that the intended effect of hate crime legislation is related to crime reduction (p. 3). By this view, “Appeals to law are useful only if the law is meaningfully carried out by those charged with its enforcement” (p. 6). But in concluding her study, Bell seems to have shifted to a more interpretive approach to hate crime legislation. She argues, against those who suggest that hate crime statutes duplicate existing criminal law, that “The passage of hate crime laws…signals that we, as a society, particularly disdain the selection of an individual for
criminal attacks because of race, religion, ethnicity, or sexual orientation” (p. 185). Ultimately, her case study leads her to suggest that the effectiveness of hate crime units is unclear with respect to stopping or deterring hate crimes, but “Listening to victims and investigating hate crimes is one way, albeit a small one, of officially recognizing that racist, anti-Semitic, and antigay and lesbian violence is real, and harmful” (p. 190). With this we are back in the realm of expressive law, even with respect to law enforcement.

Other studies of hate crimes in the context of policing have also addressed the institutional frameworks within which hate crime law is either enforced, or not, and the role of discretionary decision-making in the application of hate crime laws by police. In one early study, Martin acknowledges that the application of hate crime law in practice involves the police in the social construction of hate crimes. This clearly does not mean that the underlying offenses are fabricated but that their legal meaning is a product of discretionary decision-making and processes of investigative work, in which, for example, different types of evidence and different organizational considerations figure into decisions about whether a given complaint or offense should be pursued as a hate crime. She argues that “hate crimes, like other types of crimes, ultimately emerge through police definitions of situations and interpretations of laws and policies” (Martin, 1995, p. 323). In the conclusion of her case study of Baltimore County Police, Martin, also, raises the issue of expressive law when she concludes that the hate crime program “is designed less for crime control than for affirmation of community values” (p. 322). Cronin, McDevitt, Farrell, and Nolan (2007) have similarly emphasized the significant role of discretionary police work in their comparative study of bias crime reporting across eight U.S. police departments. A recurring theme in the literature is the ambiguity of many offenses and practical difficulties in judging the motives of suspects, questions which necessarily call for discretionary decision-making. The relevance of expressive law is suggested yet again when Cronin et al. (2007, p. 229) suggest that “Most important, by conducting an investigation of all cases, the department sends a message to victims of bias crimes that it cares about this type of violence.” Whether the analysts tend toward the celebration of successful enforcement (Levin & Amster, 2007), an identification of best practices from among a mixed field of case studies (Cronin et al., 2007), or a rather critical assessment of police practices (Martin, 1995), there is widespread agreement that public relations or public communication is a crucial element of hate crime law and policy even with respect to policing and that hate crime laws are enforceable, despite early arguments to the contrary.
In a recent article, Grattet and Jenness (2008) make an important argument in relation to law enforcement, drawing on the distinction between the symbolic dimensions of law and the instrumental impacts of law. Whereas hate crime law has frequently been criticized as symbolic (Jenness, 2009, pp. 525–526), Grattet and Jenness note that symbolic law is not necessarily merely symbolic law – law can be symbolic and instrumentally effective at the same time, under the right local conditions. Grattet and Jenness focus especially on institutional and community contexts relevant to whether police officially record hate crime events (or not). Practices of reporting again inevitably involve discretionary judgment and decision-making by police, although certainly discretionary judgment can be informed and guided by the type of contextual factors identified by Grattet and Jenness. The attempt to identify best practices in hate crime investigations and reporting is an important and ongoing dimension of hate crime policy implementation, but this is true not only for purposes of crime reduction or criminal justice, it is also important in that enforcement or nonenforcement of hate crime laws is evaluated partly with respect to what message is being sent by police with their responsiveness or lack of responsiveness to perceived hate crimes. Whether the available hate crime laws are actually put into action by police and prosecutors is an important dimension of the expressive content and value of hate crime law. Research to date suggests that there are many laws and police policies that symbolically suggest a condemnation of hate crimes, and there are successful procedures and practices for enforcing hate crime law, but at the same time enforcement seems to be very inconsistent across departments, and even in the more responsive jurisdictions, police and prosecutors may have various good organizational and legal reasons for being conservative in their labeling of hate crimes, considering the added difficulties and expenses involved in deciding on and prosecuting an offense as a hate crime, especially with respect to establishing a biased motive.

**RECURRING QUESTIONS REGARDING HATE CRIME POLICY**

The most widely understood, and arguably the most influential, purposes of the criminal law are overlapping purposes related to public safety and punishment, including deterrence, retribution, and incapacitation. Deterrence, especially, continues to be a common and influential argument
for novel or more severe criminal penalties. Although the deterrence of crime is a laudable ideal, the supposed deterrent function of punishment is the subject of much informed skepticism. In all three of the classical schools of sociological theory, the Marxist, Weberian, and Durkheimian, with their corresponding literatures in the sociology of law, there is unanimous agreement that coercion or intimidation is a very flawed and limited mode of social control. Durkheimian scholars, starting with Durkheim, rightly treat punishment as a last resort, for the control of individuals outside the fold of normative consensus, socialization, or integration; scholars informed by Durkheim can be explicitly critical of the ostensible deterrent function of punishment (Garland, 1990, pp. 74–81; Cotterrell, 1999, p. 78). Weberian theory emphasizes the importance of legitimacy, and Marxist and neo-Marxist theory (much of the latter drawing partly on Weber) has increasingly stressed the importance of ideology and, following Gramsci (2000), hegemony, especially to explain the role of the working class and poor in the persistence of capitalist class relations. Foucauldian theory suggests the increasing importance of disciplinary regimes and discourses that define normality and enlist subjects in their own regulation (Foucault, 1979; Garland, 1990, pp. 131–155). Sheer force or threat of force may be an efficient or necessary mode of social control in some contexts, including our own current context (Garland, 1990, p. 75), but it is a poor solution to the problem of social order. The most stable forms of social control are all in various ways related not to the effective use of force but to the effective communication and inculcation of norms and normative orientations to authority, which ideally prevents the need for coercive social control.

Jacobs and Potter express the skepticism with respect to the deterrent potential of hate crime legislation quite pointedly. Speaking of hate criminals and potential hate criminals, they suggest that members of this particular audience

will not be enthused or inspired by the legislators’ hate crime message. Undoubtedly, potential hate crime offenders are already well aware that the majority of our society, especially its elites, strongly opposes racial, religious, and gender prejudices. Indeed, the potential hate crime offender, feeling alienated and defining himself as an outcast or a rebel, may hold his prejudice in spite of or in protest against the values of mainstream society. The message that hate crime laws communicate to this group is just one of a constant barrage of condemnation and threats beamed at criminals. It would take some heroic assumptions to believe that bigoted and anti-social criminals, if they are listening at all, will be any more responsive to this message than they have been to all the other threats and condemnations contained in criminal laws that they regularly ignore. (Jacobs & Potter, 1998, p. 68)
Indeed, one of the relevant criminological insights is that deterrence should be most effective with instrumental crimes, such as embezzlement, which are chosen more or less rationally as a means to achieve an end, and least effective with expressive crimes, which are almost by definition unplanned and spontaneous (Liska & Messner, 1999). If one point has been made by critics of hate crime legislation, it is that hate crimes are often expressive crimes. Hate crime legislation and hate crime offenses constitute a communicative exchange, of a kind, with expressive crimes being condemned by expressive law. But is either side of this exchange really speaking to the other? Or listening to the other? Isn’t it closer to the truth that both hate crimes and hate crime laws are expressing their messages more to the audience of those individuals and groups targeted by hate crimes?

There may be an instructive element in hate crimes law, consistent with moral education theories of punishment, but the people and groups most likely to take this instruction are not hate crime offenders or likely hate crime offenders, whether they are incorrigible bigots or drunken teenagers. Almost nobody suggests that hate crime law can change values, even among those who acknowledge that hate crime law expresses and reinforces changing social values. Ray and Smith (2001, p. 213) observe that “The justifications for hate crime laws, then, are less in terms of deterrence…than in the affirmation of the values of pluralism and diversity.” The threat of punishment is simply not an effective instrument of moral education, even if it provides some measure of social control. In fact, some concern has been expressed that hate crime law will lead to a backlash that will further victimize the minority groups who are the primary beneficiary and audience for hate crime law. Morgan (2002, p. 43), for example, argues that “there are dangers in using too heavy a stick (the law) to shift attitudes, not the least of which is the human propensity for resistance. Countermovement positions in the US are largely articulated in terms of freedom of speech and thought.” An important category of hate crime, against individuals perceived to be walking or driving or working or living where they ostensibly do not belong, has been analyzed as a backlash against integration (see Bell, 2002, pp. 33–36, with respect to housing), and in this vein legislation against hate crimes suggests the possibility for an unfortunate downward spiral of social reprisals. Blee (2007, p. 262) suggests that, far from being concerned to avoid condemnation, some members of hate crime groups are motivated partly by “the exhilarating possibilities of defying the norms of conventional adult society.” Such motivation obviously raises again the question whether punitive hate crime policy may be counter-productive, at least with respect to the ideal of deterrence.
In comparative perspective, it is important to note that other countries rely comparatively less on criminal justice institutions in attempting to manage the hate crime problem. Where the United States and Britain rely heavily on criminal justice institutions, Germany places comparatively greater emphasis on countering right-wing extremism through selective assistance to civil society groups and France places comparatively greater emphasis on educational efforts (Bleich, 2007; Rabrenovic, 2007, p. 147), both of which are premised on prevention rather than punishment. Morgan (2002) suggests that mediation, arbitration and community education are relatively more utilized in Australia than in the United States. In the United States, there are certainly many groups in civil society working to prevent hate crimes and to reduce prejudice and discrimination more generally, and there are groups focused specifically on teaching tolerance and inclusive values, and there are some efforts (partly responsive, partly pro-active) to address hate crimes through restorative justice (Coates, Umbreit, & Vos, 2006), but the national emphasis is really on criminal justice policy. Another response, which has been very effective at times but in a relatively small number of cases, is the legal strategy of “hate torts” (Koenig & Rustad, 2007), in other words civil legal actions, possibly against individuals but often against hate groups, which can lead to financial compensation for harms suffered and potentially punitive damages as well, which can be high enough to effectively destroy the organizational base of hate groups. Koenig and Rustad (2007, pp. 302, 306) suggest that hate torts may have some deterrent function, but in civil law as well, the expressive or symbolic function of a successful hate tort action is repeatedly noted, and although the message of condemnation may be directly targeted at a hate group, it is expressed publicly, and the public is in many ways the audience for the condemnation.

CONCLUSION: TOWARD UNDERSTANDING HATE CRIME LAW AS EXPRESSIVE LAW-IN-ACTION

The earliest interest in expressive law was associated with the functionalist sociological theory of Emile Durkheim, an association which does not facilitate a renewed appreciation among contemporary scholars. The presumption that law and law enforcement express a consensual morality and have little or nothing to do with politics or group conflict (including conflict related to class inequality, racial tensions, cultural diversity, and
xenophobia) is for good reason rejected today as either reflecting a conservative political bias, a naivete, or perhaps most charitably, an irrelevantly historical and old-worldly standpoint. Garland (1990, p. 51) puts the criticism in terms both diplomatic and pointed: “in focusing upon this interface between society and the individual, Durkheim neglects another major axis of social life and social conflict – namely the relationship between competing groups.” The same basic objection has been raised and sustained for some time now (see e.g., Becker, 1963, p. 7), even by the most sophisticated and charitable among Durkheim’s readers (see e.g., Cotterrell, 1999). The fact of group conflict, Garland notes, has important consequences for the reception of Durkheim’s treatment of law. One of these consequences is that:

in most societies the conscience collective may be a much more problematic category than Durkheim allows, and that even where such an established moral order does exist, it does so by virtue of a successful struggle against competing forms of order. An individual is thus socialized not into ‘society’ as such, but into a specific form of social relations which has come to dominate over alternative forms. We should perhaps talk of a ‘ruling morality’, or a ‘dominant moral order’, rather than the conscience collective. (Garland, 1990, p. 52)

A second consequence is the relevance of an historical understanding of why and how a particular moral order has become dominant, and in this respect Garland suggests that law plays an important role. Specifically, Garland (1990, p. 54) argues that “the moral sentiments which are internalized by individuals do change over time, as new normative codes are legislated and new generations are socialized in relation to them.” By this view, law cannot be seen simply as expressive of collective values, “since laws are themselves an important force in the construction and organization of the latter” (p. 54). Of course we need to guard against reification, remembering that when we speak about law, what we are ultimately speaking about is a composite of legal actors, legal actions, and legal texts and communications. For the law to have any influence on morality, the morality of those who construct the law must be distinguishable in some significant way from the morality of those who are influenced by the morality expressed in law, which illustrates yet again the importance of investigating who speaks for the law when the law expresses its moral content, and who is their audience.

Even with respect to hate crime, a topic on which many educated readers may presume a moral consensus, it is important to recognize that hate criminals do not represent a lack of values so much as they represent subcultural values, values that are not matters of individual pathology but
which are typically learned and shared with others, consistent with the insights of multiple traditions of criminological theory such as Sellin’s cultural conflict theory (1938), Gusfield’s social problems approach (1970), and Cohen’s theory of delinquent subcultures (1955), a seminal contribution to a sizeable and important criminological literature (e.g., Downes & Rock, 2003, pp. 141–176). This point has been raised before, including with respect to hate crimes, but it is well worth raising it again and pressing for increased recognition of the frequent coexistence of multiple cultural or subcultural groupings, all subject to the one national legal system but with quite varying degrees of influence over the content and enforcement of the criminal code.

Jacobs and Potter (1998), consistent with their analysis of hate crimes legislation as a variety of identity politics, understand that hate crimes are related to prejudices and that prejudices are related to social conflicts. They argue a rather Durkheimian line, not in favor of hate crime laws but against hate crime laws. They contend:

Crime ought to be a social problem that brings together and unites all Americans. All law-abiding citizens oppose criminality and sympathize with crime victims. By condemning and punishing criminals, Americans ought to be affirming the values and norms that they share. However, bias crime laws and their enforcement redefine crime as one more arena for intergroup conflict. The hate crime laws and their enforcement have the potential to undermine social solidarity by redefining crime as a subcategory of the intergroup struggle between races, ethnic groups, religious groups, genders, and people of different sexual orientations. (Jacobs & Potter, 1998, p. 144)

Jacobs and Potter understand that bias crime laws have a symbolic nature, but they understand this symbolic nature not as an expression of consensual morality but as a problematic attempt to use the criminal law as an instrument of moral education in the absence of a moral consensus. Although there are significant differences between hate crimes and drug use, a comparison of the attempt to legislate morality with respect to hate crimes and the attempt to legislate morality with respect to drug use (see, e.g., Duster, 1970) is instructive with respect to the perils of legislating morality in the absence of a moral consensus.

Skillen (1980, p. 523), in a rather more philosophical vein, raises some similar issues:

Expressionists often write, even in these days, as if punishment represented ‘the community’, a cohesive entity disturbed only the ‘the current rash of thuggery’. But are there such ‘communities’, or is the ‘expression’ part of a bid to establish them? What is the relation of the person punished to these values? Does he share them? Or is the ritual, in that case, empty or merely hostile to him. What is communicated then? There seems to be a problem here: if the punished respects the rules and the punishing agent,
punishment is expressively redundant; criticism or admonition would do. But if these conditions are absent the punishment merely expresses alien hostility – merely functions as a demonstration of strength. Then again, crime has an ‘expressive’ dimension too – the whole thing is getting out of hand.

Skillen’s insight relates to the slippery slope of proliferating interpretations of law’s expressed meanings. Indeed there is a slippery slope when we consider all the plausible claims that might be made about what law expresses. This point is both alluded to and arguably represented by one of the more recent contributions on expressive law, applied to the topic of equal protection (Hellman, 2000). But after realizing the potential for a slippery slope, important and modest analytic constraints can be adopted to prevent undue slippage. One type of constraint is empirical: What does it look like when the law expresses? What are the words which express the law, or which explain the intent or significance of the law, where do they appear, and who writes them, speaks them and interprets them? Such questions productively and constructively channel attention to law-in-action, to empirical legal studies, to the observable social practices and communications that construct the law as a social fact. The actual content of speech and texts can be an important constraint on interpretive approaches to law, consistent with methodological principles of relevance most commonly associated with conversation analysis. Another type of constraint is normative, but also susceptible to empirical specification. What are the rules and conventions, whether legal or cultural or socio-linguistic, by which different people or different collectives, in different contexts, are enabled to, or constrained from, speaking for the law, and doing so authoritatively?

Social problems theory and research, along with related traditions in the sociology of deviance and criminology, have not been blind to the relevance of Durkheimian themes, but neither have these traditions of inquiry attended carefully to Durkheimian scholarship to gauge its full relevance and potential. The fact that law can express morality, for example, is at once central and trivial; if we do not examine this insight carefully, it could be appreciated superficially without a deep understanding of its full value. With all the attention paid to issues of interpretation, language, communication, discourse, and symbolism in the social sciences since the 1960s, including in the sociological traditions of symbolic interactionism, social constructionism, ethnomethodology, and social problems theory, it is indeed remarkable that the expressive function of law, first emphasized by Durkheim, is today discussed much more in the fields of legal philosophy and legal studies than in studies of social problems, social deviance, or criminal justice policy. The potential relevance of ethnomethodology is an important case in point.
Although there have been and continue to be various ethnomethodological scholars studying issues of law with a theoretically informed and empirically based sensitivity to issues of language and communication, the convention has been to avoid grand, macro-social theories such as Durkheim’s, rather than to address how important theoretical insights or contentions from other traditions might inform and be informed by contemporary empirical scholarship on law and public policy.

Not only does Durkheim’s emphasis on expression and symbolism and morality resonate nicely with the increasing recognition across the social sciences of the importance of language and culture, but the increasing sophistication, breadth, and cumulative knowledge of interpretive social science give us new resources for pursuing and refining Durkheim’s insights at the same time that their relevance should be increasingly clear. Current scholarship is immeasurably better equipped than early twentieth-century sociology to respecify expressive theories of law with benefit of current insights into the relationship between social institutions and communicative action. Not only are we in a position to integrate or qualify Durkheimian insights with the benefit of alternative traditions of theory and research, as Garland (1990) has done quite successfully in his theoretical study of punishment, but we are also in a position to relate theoretical interests and insights to empirical research on legal language and texts in a manner that was inconceivable in Durkheim’s time or even in the early years of the law and society movement, or the development of public policy studies, or the development of social problems theory.

By attending to the observable, micro-sociological details of the expressive dimension of law, with reference to who is expressing law, what they say when they express law, where and when law is expressed, why law is expressed, and especially how law is expressed, we stand to push the heuristic potential of social problems scholarship to an entirely new level. The insight that social problems could be analyzed with respect to claims-making was revolutionary, as were the related insights that deviance could be analyzed with respect to societal reaction and labeling, although these insights do have some foundation in Durkheim’s writings on punishment. But the full potential of these revolutionary insights will not be apparent until we take stock of the many disciplinary and interdisciplinary resources we have for analyzing social problems and societal reactions, including various theoretical insights and various methodological innovations which currently remain outside the scope of the social problems tradition and outside conventional policy analysis. Arguably the most promising types of resources will shed light on the interactional and communicative foundation of
societal reactions to perceived social problems, including how it is that social values and collective institutions of social control can be observed in the lived experience of law and its subjects.

NOTES

1. Most notably, social constructionism (Berger & Luckmann, 1967), and in social problems research the “strict” constructionist approach (Holstein & Miller, 2003), and symbolic interactionism, especially in labeling theories of deviance, and particularly the “constitutive” variety of labeling theory, for example as discussed in ethnomethodological scholarship (Pollner, 1978).

2. Formulations of the hate crime problem that suggest an emphasis on societal reaction include, for example, Lawrence’s (2006) discussion of legal responses to hate crimes as “the hate crime project,” Jenness’ (2001) discussion of “the hate crime canon,” and James Short’s (2000) suggestion that “we are in effect engaged in a controversial and ongoing legal and social experiment.”

3. This most recent federal hate crime legislation was passed and signed into law in late 2009, while the chapter was being prepared for publication.


REFERENCES


PART III
SEXUAL OFFENSES
ABSTRACT

Purpose – To assess how well varied policy initiatives address rape survivors’ difficulties participating in criminal prosecution.

Method – The evaluation takes a victim-centered perspective, rejecting the assumption that retraumatization is a necessary or inevitable by-product of prosecution. It accepts decision-making powers granted to law enforcement and prosecution practitioners to “found,” charge, prosecute, and plead cases, but questions the means adopted to achieve immediate goals. The evaluation considers legislative, procedural, and extra-criminal proposals such as restorative justice (RJ) conferencing and prosecutorial behavior modification. The evaluation draws on empirical investigations of case attrition, law enforcement, and prosecutorial decision-making, interorganizational collaboration in case processing, RJ, and survivors’ experiences with criminal prosecution.

Findings – Many of rape survivors’ difficulties with criminal prosecution stem from legal actors’ lack of knowledge about survivors’ purposes for participation and strategies to maintain ownership of a conflict that has been appropriated by prosecution, the conflicts survivors’ preexisting
social relations pose, how lack of information about and experience with courtroom roles and norms produces anxiety and defensive behavioral strategies, and how survivors interpret and experience inconsistent messages about their role in and power over prosecution. The criminal justice process can directly reduce the causes of retraumatization and achieve procedural justice in ways that have positive implications for better substantive outcomes.

Practical implications – Instituting practices accommodating users’ behavioral orientations should increase the perception that reporting and prosecuting are viable options. Following Taslitz (1999), improving the effectiveness of rape survivors’ communication will increase gender equity generally.

For decades, feminist scholars and activists have worked to bring attention to the gap between the occurrence and reporting of sexual assaults, the prosecution of a limited range of sexual assaults, the attrition rate of rape cases from report to trial, devaluing women’s victimization through plea bargaining, low conviction rates, and the emotional toll of prosecution on rape survivors. They have argued that the criminal justice process fails instrumentally and symbolically with respect to rape. Rapists do not fear swift and severe justice and are not deterred from further assaults. Community members are not challenged to confront either the full scope of sexual violence in society or to assess their own stereotypic thinking about the crime, making them questionable jurors. Finally, many rape survivors do not initiate the justice process assuming it will lead to their revictimization.

Legislative accomplishments of the 1970s and 1980s widened the scope of cases that could be pursued and led more rape survivors to have positive reporting experiences (Frazier & Haney, 1996; Martin, 2005). In spite of this, police and prosecutors continued to pursue cases on the basis of corroborating physical evidence of penetration and survivors’ race, age, and emotional response to the attack (Kerstetter, 1990; Spohn & Horney, 1992). Their emphasis on extralegal features of sexual assaults has been explained as a conscious effort to accommodate community and judicial attitudes (Frohmann, 1991, 1998). In the context of scarce resources, cases that are not jury worthy, even if they meet the legal criteria for rape, are dismissed or pled down, rather than developed for trial. Additionally, rape shields offer limited protection to survivors, because the flexibility of language allows defense attorneys to work their way around content prohibitions if and
when the judiciary apply the shields (Berry, 2002; Kessler, 1992; Matoesian, 1993).

In the following two sections, I will closely examine two of the evolving solutions to problems with rape prosecution: statutory reform that expands victims’ rights vis-à-vis state actors and procedural reforms intended to protect rape survivors from victimizing courtroom dynamics. My goal is to present the logic of these solutions and identify their limitations in light of my interview-based research with rape survivors who have been involved with prosecution (Konradi, 1996a, 1996b, 1997, 1999, 2007; Konradi & Burger, 2000). I will then discuss an alternative agenda for reforming organizational processes based on my findings. Finally, a few concluding remarks are given.

**STATUTE REFORM TO EXPAND THE CRIME VICTIM’S ROLE**

In the 1970s, victim’s rights organizations began to lobby state and federal legislators to provide compensation for “crime victims” and a greater opportunity to participate in the trial process (Weed, 1995). In 1984, the federal Victims of Crime Act established the Office for Victims of Crime (OVC) to direct federal funds to state-based Victim Compensation and Victim Assistance (VCVA) programs. In turn, they support rape crisis centers (RCC) and victim service units in law enforcement agencies, prosecutors’ offices, hospitals, and social service agencies providing counseling, crisis intervention, criminal justice advocacy, and emergency transportation. State compensation funds also cover reporting victims’ lost wages, medical costs, and counseling (Office of Victim Compensation [OVC], 2009). All rape survivors benefit from having RCC in communities. Rape reporters benefit from the pro-victim stance of Sexual Assault Nurse Examiner (SANE) programs and victim-witness advocates’ provision of prosecution-related support, and can apply for compensation.

Victims’ activists also lobbied for state laws increasing “crime victims” participatory rights within the criminal justice process. They argued that crime victims who were more involved would cooperate more with prosecutors and be more satisfied with outcomes. Many state legislatures responded positively. By 2008, 32 states amended their constitutions to encompass one or more basic rights for victims (National Center for Victims of Crime [NCVC], 2007), including to be heard at parole and sentencing hearings, informed about case developments, consulted about pleas, and treated with dignity and compassion.
At minimum, awareness of legal rights to be informed and consulted leads crime victims to expect contact by legal personnel before major decisions. However, victims’ rights statutes leave the critical issues of what constitutes “informing” and “consultation” undefined. They do not specify how frequently contact should occur between legal personnel and victims, in what form it should occur (written, face-to-face, or by telephone), or by whom contact should be made. The right to be consulted also implies that one’s perspective on critical legal decisions, such as pleas, will be heard, but the statutes do not specify how legal personnel are to weigh or even respond to victim’s contributions. In short, despite the rhetoric of participation, victim’s rights statutes do not alter prosecutorial control over charging, pleading, and making sentencing recommendations or judicial control over sentences. Only victims in Oregon, where a constitutional amendment guaranteeing a right of appeal for crime victims was passed in April 2008, may have recourse (National Victims Constitutional Amendment Passage [NVCAP], 2009). Victims elsewhere have to confront the ways in which different prosecutorial organizations have interpreted victims’ rights laws and put them into practice on the local level.

Although a greater opportunity to participate in and influence the criminal justice process could improve rape survivors’ experiences as victim-witnesses, they have to contend with the vagaries of the crime victims’ statutes. In the following two sections, I will turn to rape survivors’ involvement in the plea process (Konradi, 2007) and sentencing (Konradi, 2007; Konradi & Burger, 2000) to consider what legislatively expanding the crime victims’ role accomplishes.

How are Rape Survivors Involved in Plea Negotiation?

Plea agreements are negotiated settlements that formally define the legal injury for which defendants are accountable and, through specification of a sanction, place a value upon it. Pleas are thus major decision points in the criminal justice process and offer legal actors the opportunity to include crime victims. But do they include victims? In the following, I will describe the patterns I found in prosecutors’ initiation of dialog with rape survivors about pleas and then discuss rape survivors’ experiences of the plea process.

During the investigative phase, prosecutors infrequently had face-to-face contact with survivors before charges were filed and initiated telephone contact only slightly more often. Most did not meet survivors before their
first court appearances. Given this lack of contact, few gained first-hand knowledge of survivors’ investment in prosecution and developing feelings of case ownership. As a result, they had no urgent reason to involve the women in plea negotiations. In contrast, when defendants indicated a willingness to plead guilty at the onset of court events and survivors were physically present, they could not be easily ignored. At the very least, prosecutors had to explain the delay – why survivors were not being called to testify or why jury selection was not proceeding. I found that when plea negotiations commenced at court, prosecutors engaged all the affected women in some sort of discussion about the terms of the plea.

Survivors’ testimony in preliminary and grand jury hearings exposed prosecutors to their investment in and commitment to the case and to some of their desired outcomes. However, when plea negotiations commenced later, survivors were no longer physically present and prosecutors were freer to ignore their expressed interests while pressing forward to resolve cases. Prosecutors consulted with survivors after probable cause hearings when they already had a well-established rapport, the woman persistently maintained contact, or the prosecutor conveyed that victim-witness statutes required such consultations.

I found that before completing plea deals, prosecutors contacted a much larger proportion of the women attacked by men they knew than those attacked by strangers. They also more frequently contacted survivors before they substantially reduced charges – from felony sexual assault to misdemeanors or nonsexual charges – than when they made small reductions. It appears that prosecutors considered that downgrading felony charges to misdemeanors or nonsexual charges was a possible affront to survivors and a source of anger or other bad feelings. They may also have hoped that they could mitigate expected negativity by leading survivors to see the plea as a benefit. Research on prosecutors’ behavior in intake interviews suggests this is likely (Frohmann, 1991, 1998). Also, the narratives of a number of survivors whose cases were substantially downgraded indicate that this was the form their plea consultations took. Prosecutors used face time to convince them to adopt the view that a particular plea agreement was necessary and valuable, a better alternative to a trial or possible dismissal.

Women who had contact with legal personnel during the investigative phase and established rapport or prepared for and participated in probable cause hearings were most interested in shaping plea agreements. The same factors that limited women’s interest in investigation at the time of reporting depressed their interest in being involved in plea negotiations. For example, fear of recalling memories of childhood sexual molestation, revisiting the
trauma of the attack, and a desire to sustain hard-fought emotional distance from the rape led survivors to reject involvement in plea negotiations.

Most survivors whose cases were tried after the passage of victims’ rights legislation were given some official state literature intended for victim-witnesses by police, rape crisis advocates, or victim-witness advocates. However, their use of literature was varied, and the literature itself was vague about the weight of victims’ opinions.

No women reported anticipating the eventuality of a plea and probing either their legal contacts or prosecutors for information about the way it would unfold or what their role might be. When prosecutors sought input, survivors had to rely on the guidance of those who were physically present. However, prosecutors frequently conducted face-to-face conversations about pleas in private witness waiting rooms in courthouses, and only officially recognized rape crisis or victim-witness advocates were invited in. Survivors rarely had their support teams assembled when prosecutors telephoned. As a result, friends and family with legal knowledge and experience, who may have shaped survivors’ participation in the investigation and their preparation for court, infrequently contributed to plea negotiations.

When women were aggressive about their desire to testify at preliminary hearings, prosecutors appeared to recognize that the testimony might provide greater leverage in future negotiations. Because prosecutors expended little effort for the potential benefit, they could defer negotiating until the preliminary played out. Survivors who were presented with plea initiatives at or after the preliminary hearings were completely unable to convince prosecutors to continue, probably because their offers to testify at trials did not offer a comparable gain. Trials presented prosecutors with more work and more uncertainty, while a guilty plea allowed them to dispose of a case and claim a win.

Rape survivor satisfaction with pleas reflected their responses to the charges and sanctions that were formalized and the nature of consultation as well as the way in which the plea fit with their desires to use the criminal justice process to confront the defendant. Survivors’ concerns with the plea terms were focused on the adequacy of penalties – were they fair – and on whether the charges conveyed their experience of the rape event. For example, one survivor (Megan) was dissatisfied because she equated the community penalty her assailant received with shoplifting snack food, not a violent crime:

Megan: He [the defendant] said he would plead no-contest if they lowered it to misdemeanor, statutory rape, and they did. […] Let’s see, he got fined $1200, he has to work at a rape crisis center, and he’s on probation for two years.
Amanda: How do you feel about that?

Megan: Really pissed off. The charges are so incredibly watered down from forcible rape, which is a felony – you can go to jail for year – to a misdemeanor statutory. I mean, you’re on probation for God’s sake. And a little fine. […] And that just really didn’t seem fair. […] The charges…it’s like taking a candy bar.

Another survivor noted that the plea, which documented the fact that her assailant kidnapped her, denied his sexual assault. She was unable to negotiate away her experience of rape despite the prosecutor’s decision not to maintain the charge.

No I wasn’t involved in that [determining the plea] at all, I was still a minor. […] That bothers me because sometimes my thoughts when you hear about a plea-bargain are, it is a bit of a compromise. […] My first position was reality. I was kidnapped and I was raped and I had to give some of that up. That wasn’t a negotiating point [for me].

Consultation was not expected or desired by all women, but was a particular source of dissatisfaction when it was expected and absent, or when it took a form that they found manipulative. Carmela angrily recalled being asked to weigh in after a decision was made to negotiate and then having terms that she grudgingly accepted overturned:

They got me into this little side room, she said to me, the assistant state’s attorney, she said that he doesn’t have any prior convictions. “He said he’ll plead guilty and we’ll give him twelve month supervision, how does that sound to you?” And I think I asked her what supervision was, and um, and I got really angry, ‘cause I said, “Well, he does have a prior conviction.” I said, “that battery.” […] Nobody told me that when you go to court to see the judge, you might not see the judge, and you might have to make a deal. […] It really upset me ‘cause they got me in there, […] and then they just pull this rabbit out of the hat, and it was like, here, you gotta take it. […] But then the thing that really pissed me off too. […] They brought me back in, and then she said to me, “He said he’ll take 6 months.” […] I said, “Since when is he callin’ the shots?” And then I just had a fit.

Sara strongly desired to hear the rapist, who choked and beat her about the head, take full responsibility for his actions. Regretfully, she described capitulating to intense verbal pressure from the prosecutor and advocate to accept the defendant’s plea of guilty to a lesser nonforcible sex crime.

What was most important to me wasn’t the amount of time that he [the defendant] served as much as it was for him to stand up in court and say, “I raped her, I did this to her.” So I was willing to go through the whole thing [trial], just to have him say that and just to have it on record. […] I held out and held out […] and they [the prosecutor and advocate] kept […] saying, “The judge wants a decision now, the judge wants a decision now.” […] I think I did feel that I had made a decision, that was my initial response and
I think that that was the response that should have been accepted. But [...] the victim advocate, and the prosecutor just kept, kept it up. It’s like look, you know, we’re gonna play devil’s advocate, and this went on from like, you know, like 9:00 in the morning until about 4:00 in the afternoon [in a courthouse waiting room]. [...] As far as I’m concerned you know, I was willing to take the stand and to go through with this, but I really felt that you know, I was all alone. [...] They kept saying, “Why do you want to put yourself and your family through this? Once you get on the stand of course, you’re not gonna be the victim anymore.” Then they started talking about the public defender. [...] He had a very, very abrasive style, and was a screamer, and would just rip me to shreds if they got me on the stand. Still, I felt that I could deal with it, and that I was willing to go through it. [...] So um, I held out until about 4:00, and finally … they said, “If he agrees to this, if you agree to this, we know for sure that he’s gonna get a minimum of two years. And if it doesn’t matter to you how much time he serves then go for this. [...] It’s gonna go on his record forever, so just do it.” And so I finally said, “Okay, I’ll do it.” [...] I felt that I was being badgered to um, do it their way, not do what I felt was best, and I really regret it.

Sara’s comments underscore the fact that victim-witness advocates, who were present when prosecutors initiated discussion of pleas, did not reliably help survivors communicate their viewpoint to prosecutors. Even independent advocates must maintain good relations with prosecutors to keep avenues of information open and probably recognize that supporting a woman’s contrary views can be interpreted as a violation of work relations.

When rape survivors were pressured to adopt a perspective that a negotiated resolution was necessary and valuable and plea terms significantly undermined their claims of injury, the interaction was fundamentally problematic. It strongly resembled the rape dynamic described by Winkler (2002), wherein the perpetrator imposes his meaning on his victim. Hence, as suggested by Madigan and Gamble (1989), well-intentioned prosecutors inadvertently became the means through which the rape survivors experienced revictimization.

Did participating in the plea process as a result of prosecutorial consultation increase feelings of capability in survivors? For those to whom plea terms were satisfactory and who achieved desired nonlegal outcomes, participation was positive. However, discrepancy between survivors’ expectations and the participatory options offered were problematic. Those who attempted to reorient prosecutors to their preferences but were unable to do so found participation troubling at best and degrading at worst. Those who were the targets of prosecutors’ reorientation efforts reported feeling confused, frustrated, angry, depressed, and abused. In short, they felt revictimized.
How are Rape Survivors Involved in Sentencing?

My interviewees involved themselves in sentencing to achieve procedural and substantive justice, consistent with primary reasons for participation reported by Villmoare and Neto (1987): expressing feelings to a judge, performing one’s duty, and achieving a sense of justice. But, I also found that rape survivors attend sentencing hearings to attempt to rectify an interpersonal power imbalance with the defendant (Konradi, 2007; Konradi & Burger, 2000). In this situation, where they had more control than the witness stand, they were able to confront their assailant with their anger as well as their own version of events and counter his domination of them. For example, Barbara explained that she attended the sentencing hearing to speak to the stranger who attacked her:

Um, at the time I felt like I wanted to confront him, that I wanted the last word with this guy, and he was sitting in the courtroom, and that’s what I wanted, I wanted the chance, even though I was addressing the court, I wanted him to see that um, he couldn’t intimidate me. I mean he had intimidated me but that he wasn’t getting the last word, I wanted the last word. […] I knew he was a captive audience, kind of like I had been a captive audience.

Like others studying crime victims, I found that the right to speak at sentencing was used by fewer rape survivors than the opportunity to write the court or simply attend hearings (Erez & Guhlke, 1988; Erez & Tontodonato, 1990; McLeod, 1987). Survivors’ lack of participation in sentencing resulted from their lack of knowledge and from others’ active discouragement, while support for their participation was associated with involvement, especially speaking. Arlene, who spoke at sentencing, explained,

Um, I was encouraged to go to the hearing. … I was told that this new law had been passed that allowed victims of crimes to get up and address the judge before defendants were sentenced, and I was encouraged to do that if I wanted to, uh, and I was told that I could write a letter.

Mary traveled hundreds of miles to attend the sentencing, because the judge asked her to:

When J— pled guilty, … the judge asked me at that point to come back to the sentencing. He says, “I’ll let you know, or we’ll let you know when the sentencing is and I want you here.” … So I went back in August.

Rape survivors’ participation in sentencing was also related to their earlier involvement in the case. Both prior failure to meet specific goals/ desires and success in doing so shaped how they directed their behavior.
Anna chose not to attend the hearing or write the judge because these acts would not alter the terms set forth in the plea agreement to which she was not a party. In short, her participation in sentencing could not change the substance of the justice process:

Someone called me […] She said, “you have the right to be there, you have the right to say something to the judge, or to write something.” And I said, you know, this is my feeling at the time, “I may have that right but what good is it going to do? Is he [the judge] going to reverse his [the prosecutor’s] decision? Is he [the judge] going to give him [the defendant] some more jail time? Is he [the judge] going to give me back my life? No, no, no, and no. So what good is it going to do?”

When fulfilling their primary desire seemed unlikely (or it had already occurred), some women focused on fulfilling another goal through sentencing; others curtailed their involvement with the justice system altogether. Louisa explained that following a plea agreement, her input was not necessary: “When I think about it, I really don’t need to go [to sentencing], you know, because more or less, they’re gonna give him the 6 years.”

Almost all the survivors who chose to write letters and speak and attend hearings expressed satisfaction with their participation when their motivation was to secure procedural justice or to resolve emotional issues. No one reported increased fear upon seeing their assailant or a greater sense of loss. All but one who stood up and confronted their assailants silently or verbally reported obtaining a feeling that they had moved beyond the rape event in some emotional way. Those who heard judges call their assailants animals or describe the rape as serious reported feeling vindicated, even when the charges for which their assailant was convicted were not reflective of their experience. Bernice, who was stabbed and raped by a nocturnal intruder in her house, explained,

I remember that the judge called him like an animal, and I remember being really glad that he said that. I was very glad the judge spoke to him and told him what a horrible person he was […] and condemned him for what he had done and in particular for the malicious thing [he did and], mentioned at that point the repeated stabbing of me. It was like […] having someone stand up for me. So that was a real, that was the real important thing.

Yet because the court cannot control the defendant’s presentation of self, the defendant can impact how a rape survivor experiences the sentencing hearing. When an assailant’s public performance is inconsistent with what a woman thinks is appropriate for a convicted criminal, she may not successfully resolve the power imbalance established through the rape.
My findings suggest that rape survivors’ socioeconomic status and age may be important factors in shaping their sentencing participation. Because survivors are not subpoenaed for sentencing, employers are not obliged to grant them time off or compensate them for work missed, making participation a great sacrifice for hourly workers, especially those paying for daycare. Even if the personal sacrifice is justifiable, these survivors may have difficulty convincing similarly situated others to attend with them and, as a result, feel less safe about speaking. Thus, educated and salaried survivors or those financially supported by others may disproportionately benefit from crime victims’ rights.

**PROCEDURAL REFORM TO ALTER ADJUDICATION PROCESSES**

The lack of evidence that rape shields positively impacted the attrition of rape cases or substantially improved the experiences of rape survivors called to testify has led to less procedural activism. However, this approach is not absent from the current rape reform agenda. It takes two forms: adding measures to alter courtroom dynamics for rape survivors and removing sexual assault/rape cases from the conventional criminal justice process. In the following two sections, I will consider both of these reforms.

*Altering Courtroom Dynamics for Rape Survivors*

Legal scholar and former prosecutor Andrew Taslitz (1999) proposes that the participation in trials of victim-witnesses must be *meaningful*. Their testimony must have the capacity to influence jurors, and they must experience the activity of testifying as communicating *their* perspective. He argues that under current trial procedures, rape survivors’ participation is not meaningful in either way. Jurors lack accurate background knowledge to adequately interpret and fairly evaluate rape survivors’ narratives. Defense attorneys also disrupt rape survivors’ acts of telling by halting direct examination through objections and tactically cutting off rape survivors’ answers in cross-examination. They break rape survivors’ narratives into bits that are incomprehensible to jurors and greatly fluster rape survivors, making it difficult for them to form statements they feel are intelligible to others.
Taslitz has proposed making three changes in trial procedures to protect rape survivors’ ability to convey their reality to jurors and to limit their experience of being under attack by defense attorneys. First, he has suggested that rape survivors be allowed to describe the rape event without interruption in direct examination. Second, he has recommended that an intermediary be introduced into cross-examination to lessen defense attorneys’ ability to dominate rape survivors through the way they ask questions. This individual with social service training would “translate defense counsel’s questions into less abusive forms” (Taslitz, 1999, p. 115). To avoid a perception of procedural bias and unfairness, the intermediary would, however, also be used in direct examinations. Third, Taslitz has urged the passage of legislation to enable the use of a new type of expert in rape trials to counter the negative impact of pervasive cultural stereotypes. Prosecutors would introduce them to provide jurors with information about the social context of rape, women’s indirect communication styles, and how human reasoning processes – such as those upon which jurors rely – tend to block the development of empathy for victims.

Taslitz grounds his proposals in the “external costs” that are currently associated with rape trials. He argues that the language practices currently in use in these trials “constitute the practice of subordination itself” (Taslitz, 1999, p. 112) and induce “linguistic trauma” (p. 125) that reduces the reliability of rape survivors’ testimony. Less reliable testimony in conjunction with jurors’ typical reliance on stereotypes results in a failure to convict when other evidence strongly supports conviction. This deprives the state of security. Furthermore, when a rape victim’s broken testimony does not effectively convey her experience of violation, jurors leave courtrooms as misinformed about the realities of rape as when they enter them. However, the impact of linguist trauma does not end there. The failure of prosecution to convict in individual cases sends messages to all women about the narrow scope of behavior that is acceptable for them. These messages place limits on women’s liberty, especially on their full participation in the public sphere. When women do not fully participate in the public sphere, the impact they can have on public deliberation is reduced, and the full airing of their concerns about any subject is unlikely. This limits the development of a society in which women are fully equal. In short, Taslitz’s premise is that altering trial procedures in rape cases serves the ultimate end of greater gender equality.

Taslitz’s recommendation that rape survivors be given the opportunity to testify in an uninterrupted fashion should enhance the likelihood that they perceive their testifying as meaningful. Likewise, introducing expert
witnesses as a general practice to provide a context for making sense of rape survivors’ testimony should help jurors reach conclusions of guilt. However, if these procedural changes are only applied in trials, the larger number of rape survivors who testify only at preliminary hearings will be left unprotected. Furthermore, defensive behaviors that survivors adopt to protect themselves at trial, as a result of their preliminary examination experiences, can make it difficult for prosecutors to pursue their agendas at trial (Konradi, 2007).

Introducing intermediaries in direct examination and cross-examination at trial may also produce some unintended negative consequences. An intermediary certainly would be a buffer between a rape survivor and her historic adversary, the defense attorney, but the intermediary would also be a buffer between her and her potential ally, the prosecutor. Specifically, this would limit a prosecutor’s ability to assist a rape survivor’s emotion management. Prosecutors could not engage in the largely nonverbal interaction they presently use to assist rape survivors with crafting a narrative that reduces the likelihood of becoming emotionally overwhelmed (Konradi, 2007). In addition, an absent prosecutor could not physically impose himself or herself between the defendant and the rape survivor to reduce intimidation. In sum, adding an intermediary to the courtroom, one the survivor does not know and with whom she has no rapport, may result in her greater emotional isolation as well as increased difficulty fulfilling her testifying obligations.

Furthermore, rape survivors monitor prosecutors’ nonverbal responses to their testimony, and this affects how they construct subsequent answers in both direct examination and cross-examination (Konradi, 2007). Rape survivors recognize that they are witnesses for the state and often seek to strengthen the state’s case. Removing the prosecutor removes a source of feedback for rape survivors that may lead them to rely further on observing supporters in the courtroom or even to try to “read” the intermediary.

Finally, if the process is altered to incorporate intermediaries without the physical removal of any other actors – the defendant, prosecutor, and defense attorney – then rape survivors will have another interaction to manage. Some will be involved in simultaneously carrying on four or five interactions, further complicating their work as witnesses (Konradi, 2007).

The theory that survivors’ problems in court result from the defense attorney’s behavior during cross-examination justifies employing intermediaries in the courtroom. My research shows, in contrast, that the difficulties many rape survivors have in court, and their feelings of oppression and, consequently, dissatisfaction, emanate from the nature of the interactions
they have (or fail to have) with prosecutors. In short, intermediaries will not improve their testifying experiences because they do not impact the source of their problems (Konradi, 2007). In fact, the vast majority of rape survivors whose cases are resolved through pleas will not benefit from this procedural shift.

**Removing Rape Survivors from Courtrooms**

A second significant procedural change involves diverting sexual assault cases from the criminal justice process into restorative justice (RJ) conferencing. At present, RJ conferencing is used as a diversion with juvenile sexual offenders in youth courts in South Australia and New Zealand and with adult sexual offenders in the Tucson, Arizona RESTORE program and at the Phaphamani Rape Crisis Counseling Center in South Africa (Koss & Achilles, 2008). In an RJ “conference,” the crime victim and the offender are brought together with a moderator in the presence of a small relatively equal number of supporters for each party to discuss harm and seek a resolution (Strang et al., 2006). Although RJ programs focused on sexual assault are few in number and primarily outside the United States, the broader RJ movement has momentum in the United States and the potential to expand rapidly should funds become available. It is essential to understand their potential and possible drawbacks to avoid unintended consequences should a push arise to institute them more widely.

Proponents of using diversionary restorative justice (DRJ) in cases of sexual assault advance several arguments: Case attrition will be reduced through DRJ because cases that prosecutors would normally dismiss will receive an official response (Daly, 2006, 2008; Hopkins & Koss, 2005). The processing of cases will speed up, because fewer defendants will maintain their innocence when they have an option to acknowledge guilt for a misdemeanor that can later be removed from their record. All first-time offenders will get treatment and complete some recognizable penalty, because DRJ programs can mandate minimal requirements for all participants (Koss, Bachar, & Hopkins, 2003; Koss, Bachar, Hopkins, & Carlson, 2004; Koss & Achilles, 2008). In addition, conferences will give rape survivors the opportunity to present their experience of violation in their own words, to receive acknowledgment of the harm they experienced from the offender and others, and make requests of direct forms of compensation from the offender (Daly, 2006; Hopkins & Koss, 2005), all without having to undergo cross-examination with its implicit threat of
revictimization. Finally, advocates of DRJ argue that formally processing a broader scope of sexual violations and involving the community in the process will lead to a reduction in community acceptance aggressive masculinity and tolerance of violence against women (Daly, 2006; Hopkins & Koss, 2005; Koss et al., 2004).

DRJ programs for sexual assault have a common structure. Before the conference, the parties meet independently with a representative of the DRJ program to prepare (Koss et al., 2003, 2004). This representative and the victim discuss how to state the harm the victim experienced as a result of the offender’s actions, who the victim would like to attend the conference for support, and what the victim would like from the offender as a form of redress. The representative explains that the way DRJ programs are situated within the criminal justice process constrains the scope of victim’s redress requests: incarceration and actions directed specifically to “shame” the defendant are off the table, but restitution, community service, treatment, counseling, letters of apology, and so on are within limits (Koss et al., 2003, 2004). When a DRJ representative meets with offenders, they discuss the obligation to acknowledge and take responsibility for harm. As part of preparation, DRJ officials may also ask to meet with the supporters of each party alone and with the offender or victim present.

Once preparation is complete, the conference is called. Conferences involve three phases: the offender acknowledges harming the victim, the victim and her supporters speak and confront the offender with the extent of harm/injury his behavior has created, and a redress plan is created (Koss et al., 2003; Daly, 2006). Generally, the victim states desired outcomes in addition to any required components of the diversion program. Although DRJ conferences allow for a face-to-face confrontation between victim and offender, this does not always happen, because a victim may opt out and another party may read a statement of harm to the offender and convey redress requirements (Koss & Achilles, 2008; Daly, 2006).

DRJ conferences are confidential and not recorded in any way (Daly, 2006; Koss et al., 2004) for philosophical and practical reasons. A central tenant of RJ is that honest communication must occur between victims and offenders. Either party’s concerns that their statements will leak back into the criminal justice process or into small communities is generally viewed as an obstacle to achieving this goal. In addition, defense attorneys in Tucson, who were consulted when RESTORE was designed, reported that they would not encourage their clients to participate unless the potential for leakage was eliminated (Koss, 2006). Thus, the redress plan is the only document that emerges from DRJ conferences; after the offender
completes his diversion, the criminal record that gave rise to participation is expunged.

There are differences among existing DRJ programs. Those for juveniles in South Australia offer offenders conferencing irrespective of the crime victims’ desire to participate (Daly, 2006; Daly & Curtis-Fawley, 2006). RESTORE offers conferencing to adult victims in prequalified cases and if they accept then offers it to offenders (Koss et al., 2003). The victim’s involvement with the offender ends with the conference in the Australian programs (Daly, 2006). The RESTORE program uses a Community Board to track offenders’ progress in completing their obligations and informs victims of compliance. The Community Board also holds a final “reintegration” meeting for the offender and the victim is welcome to attend (Koss et al., 2003; Koss & Achilles, 2008).

To date, evaluation research has been conducted only on juvenile DRJ programs outside the United States. Researchers have found that the success of conferencing sessions depends a great deal on the skill of moderators and the support for victims that they can derive from other individuals present in the conference room. In a close reading of two cases, Daly and Curtis-Fawley (2006) document how variability in familial support and conflicting allegiances can undermine sexual assault survivors’ efforts to successfully claim the victim position. Daly (2006) also reports that in spite of making an admission of criminal activity to participate in diversion, offenders may resist fully acknowledging the accounts of harm related by victims during RJ conferences.6 In other studies, defendants’ lack of admission of harm has been found to associate with lower levels of victim satisfaction. In terms of offender outcomes, Daly (2006) reports that reductions in reoffending by DRJ participants are more closely tied to receiving treatment than being confronted with the harm the victim experienced.

Daly (2006) argues that the juvenile DRJ programs in South Australia expand the scope of cases processed and the seriousness of the sanctions offenders receive in comparison to cases processed through the criminal justice process. In this way, they are an improvement over existing practices and convey to the public that sexual violence is a serious matter. Daly’s argument of a better outcome hinges on comparing cases processed through DRJ to the entire body of cases handled through the criminal justice system and on extrapolating from general studies of victim satisfaction with RJ and conventional processing. Critics of DRJ, Cossins (2008) in particular, reason that diversion from conventional processing constitutes a plea bargain, and as such, the appropriate comparison group in the criminal justice process is other cases that are pled out. Cossins points out that satisfaction studies
comparing victims whose cases are pled and those handled through DRJ have yet to be conducted to determine whether participating in DRJ benefits survivors more than conventional pleas. In addition, she asks why restorative programs are not offered after regular criminal justice processing, if treatment is what leads to reduction in offending (Cossins, 2008).

Koss and Achilles (2008) report that RESTORE received 65 referrals from prosecutors in 24 months despite many hundreds of rape reports. Seventy-one percent of survivors they were able to contact chose to participate and 82% of the offenders chose to opt in. Ultimately, 20 conferences were held, but not all survivors attended them. Of the four cases returned to prosecutors for noncompliance, none were followed up. No systematic assessment of satisfaction or reoffending has been published.

Should there be interest in expanding DRJ within the United States, replicating the RESTORE model, which is based on a strong theoretical foundation, will prove to be difficult. Despite the commitment of academics and mental health and criminal justice professionals, it took years of collaboration to implement the program (Koss, 2006; Koss et al., 2004). Where there is no history of cross-agency collaboration, establishing processes to move rape survivors smoothly out of the criminal justice process appears unlikely. In fact, if DRJ programs are established in communities without existing collaborative alliances, it would be wise to assume co-optation. Umbreit, Vos, Coates, and Lightfoot (2005) warn that poorly designed programs with no preparation for victims and untrained moderators are a likely result and will lead to systematic revictimization of crime survivors.

Diversionary programs created to expand the formal handling of violence against women do not always have this effect. In the context of limited criminal justice resources, Frohmann (1991) argues that prosecutors seek to avoid charging in cases of rape. Rauma (1984) found that in the presence of a diversion program, prosecutors shifted prosecutable but “lesser” battering cases out of the criminal justice process. It is possible that legal personnel presented with DRJ, in the absence of a cross-agency alliance, would view it as a resource to offload their workload – as a tool to limit the passage of difficult rape cases into the criminal justice process – or to build up their win/loss record.

Can DRJ programs be insulated from selective pressures if rape survivors, not prosecutors, make the choice? If survivors receive paid legal guidance in making their decision, as they do in RESTORE, this may be possible (Koss et al., 2004). Even so, by the time survivors are offered the choice to pursue RJ, they have had multiple encounters with law enforcement, medical personnel, and possibly prosecutors. My research and other studies show
that legal personnel actively try to influence rape survivors to withdraw from the criminal justice process before significant resources are expended on investigation and arrests are made, and actively seek to alter their perspectives on plea terms that are under discussion (Frohmann, 1991, 1998; Kerstetter & Van Winkle, 1990; Konradi, 2007). Thus, it seems likely that some legal personnel will work to guide, if not pressure, rape survivors whose cases fit the participatory criteria for DRJ programs to make early decisions to commit to the alternative process. Such guiding would not be random, but rather focused along the lines of existing practice and thus express race, age, and ethnic biases.

A matter of debate among RJ proponents is whether face-to-face offender–victim conferences are even appropriate for cases of violence against women (Cameron, 2006; Daly & Stubbs, 2006; Curtis-Fawley & Daly, 2005; Hopkins & Koss, 2005; Hudson, 2002; Koss & Achilles, 2008; McAlinden, 2005). Put another way, some are concerned about whether RJ conferences can be carried out in a manner that sexual assailants cannot dominate their victims verbally or physically, reproducing the trauma of the attack. RESTORE has incorporated special seating arrangements to create physical distance between survivors and assailants, provides a safe entry into and exit from conferences for survivors and their families, and holds conferences in a location in which police backup is immediately available. The RESTORE facilitators are also trained to address abusive language or offender responses that place blame on survivors (Hopkins & Koss, 2005; Koss & Achilles, 2008). Together, these procedural responses seem adequate.

On the contrary, proponents of RJ widely share the perception that within the context of domestic violence, established patterns of manipulation by the battering partner may allow the offender to dominate his victim in ways that even a trained facilitator cannot identify and cannot stop (Hudson, 2002). A conference in which a batterer dominates and revictimizes a survivor emotionally would be fundamentally at odds with its purpose. Additionally, any redress plan that comes out of such a conference is suspect. The creators of RESTORE resolved this dilemma by excluding rape cases involving defendants who were intimately connected with their victims.

RESTORE is structured to direct first-time offenders, including rapists who have employed minimal force and who are deemed to have potential for rehabilitation, into treatment and into a dialog about their offending. The unique attributes of survivors that make them likely to benefit from the opportunity to confront their assailant are not a guiding force. It is
postulated that women who know their assailants but whose relationships have ended by virtue of the assault can participate without fear of revictimization while those who were intimate cannot. In short, women raped without excessive force by men with whom they have had long relationships are required to negotiate the criminal justice process if they wish the offender to be processed. Within the criminal justice process, these particular cases face high odds of success. In my view, this strategy undermines claims that DRJ is about expanding survivors’ choices.

Some features of the restorative conferencing model may not correspond well to certain sectors of the survivor/defendant population. Specifically, conferencing works when families are geographically close to support both defendant and survivor. This is usually the case for juveniles who live with or near their guardians, but is less likely for young adults who travel to find work opportunities or pursue their education. Although “communities” can certainly be created in such settings as colleges, they may not include the significant others who are central to survivors’ and defendants’ conceptions of self, which are deeply associated with shame (Scheff, 2003). And, if the participation of one’s parents is a prerequisite for participation in DRJ, then assailants whose families cannot meet the financial burden of travel will be excluded. Thus, once again, survivors’ choices to participate will become moot.

The confidential nature of both what offenders admit doing and the penalties they receive works against DRJ programs achieving community change. Such secrecy does not increase community awareness of sexual assault/rape and its consequences. Furthermore, despite Daly’s (2008) argument that cases handled through DRJ in Australia result in greater consequences for juveniles, the appearance that sexual assault is receiving lesser justice remains a concern. This is especially so when cases are selected for processing on the basis of extralegal features, such as relationship with one’s assailant.

No one appears interested in opening DRJ to all survivors because some sexual offenders inflict extreme injuries and the power of diversionary programs to compel admission from offenders, in general, lies with the threat of criminal prosecution and incarceration. Well into the future, few survivors will have a choice to opt out of the criminal justice process and into RJ because programs will not emerge rapidly. Only a minority of jurisdictions have formed the multiagency collaborations necessary to make development of a program like RESTORE possible. Moreover, present federal funding parameters do not allow funds to combat violence against women to be spent on offenders (Koss & Achilles, 2008). Many individuals
living in jurisdictions with DRJ will find that the assault they experienced does not fit within program parameters or the defendant does not wish to participate despite their desire to do so. Finally, some eligible rape survivors will place a high priority on the state’s ability to incapacitate their assailant through incarceration and to bestow a validating criminal label on their experience of victimization and be unwilling to forgo these options to achieve other goals.

**REFORMING CRIMINAL JUSTICE PROCESSING: AN EVIDENCE-BASED POLICY AGENDA**

My focus in the rest of this chapter is on the kinds of organizational practices that could immediately improve rape survivors’ experiences in the criminal justice process and have an immediate positive impact on the success of prosecution. They are based on close analysis of the dynamics between prosecutors and rape survivors in the victim-witness role in and out of court and attention to the personal motivations and investments contextually situated survivors have (Konradi, 1996a, 1996b, 1997, 1999, 2007; Konradi & Burger, 2000). These practices could be implemented through interagency alliances focused on humane processing (Martin, 2005).

*Adopting Humane Interpretive Frames*

Pat Martin has emphasized the importance of organizations’ adopting interpretive frames that are responsive to rape survivors (Martin, 2005; Martin & Powell, 1994). Such frames acknowledge explicitly that the rape survivor is an injured person when making a report and remains so despite the legal transfer of the injury to the state. They also recognize that the rape survivor’s recovery from injury is ongoing and important to the prosecutorial agenda. State practices, therefore, must not contribute further harm or unnecessarily prolong the rape survivor’s recovery period. Andrew Taslitz (1999, p. 116) has also urged prosecutors to change their domineering approaches and “treat rape victims as equals”. At minimum, an orientation toward equality requires that parties who control prosecution acknowledge that rape survivors are not indifferent to the trial process – they have interest in the prosecution of their injury and have the intellectual and emotional capacity to be involved. Although Taslitz makes his recommendation in a discussion about preparing for trial, I see no reason
not to extend it to the entire scope of interactions prosecutors have with rape survivors. However, more completely treating rape survivors as equals requires that criminal justice practices be developed with an understanding of their full humanity. This would involve recognizing that they engage the criminal justice process like any other human activity, despite the oppressive circumstances that lead to the need for it (Blumer, 1969). A criminal justice process that recognizes the full humanity of rape survivors would:

- provide information and support that maximizes their ability to meaningfully fulfill their testifying obligations;
- incorporate practices that continuously prioritize their well-being and facilitate their use of existing confrontation opportunities to regain their social position and obtain moral satisfaction; and
- incorporate practices that consciously minimize the impact of social inequalities on their ability to engage with the criminal justice process fully. Such inequalities include, class, race/ethnicity, and age.

In the remainder of this section, I will make a case for a number of victim-centered policy initiatives: early contact, detailed preparation, transparency around plea bargaining, facilitating involvement in sentencing, vertical prosecution, multiagency alliances, and written material.

*Early Contact*

After rapes are reported, there is often a comparatively long period before survivors are called to fulfill their testifying responsibilities. On the basis of contacts that occur and their absence, rape survivors evaluate state investment in the case (Konradi, 2007). Women who draw negative conclusions about legal personnel as a result of not being contacted as well as difficult interactions are likely to form a defensive orientation toward their testifying responsibilities. Alternatively, legal personnel who make early contact build the rapport that is necessary for trust and to encourage survivors to openly communicate concerns that could be an impetus to control information.

Prosecutors should assume that survivors will seek to fill in perceived gaps in their legal knowledge and do what they believe is necessary to win the case. They will carry out appearance work, rehearse their testimony, work on managing their emotions, build courtroom teams, research their roles, and procure evidence, all to enhance the strength of the case and their ability to perform their witness roles (Konradi, 1996a, 1996b, 2007). When guided
by a different understanding of the issues involved in the case, their efforts can work at cross-purposes with prosecutors’ plans. Legal personnel who educate survivors about the prosecution process are more likely to become aware of their initiatives and be able to guide their activity so that it reinforces rather than undermines the prosecutorial agenda. Those who learn of rape survivors’ initiatives are also positioned to gain additional but unanticipated relevant evidence (Konradi, 2007).

Contact that makes legal personnel aware of rape survivors’ precourt initiative also enables them to reevaluate initial impressions they have formed. I found that women whose experiences were least consistent with stereotypes and hesitated the longest in making reports to police were among the most active in working toward prosecution (Konradi, 1996a, 1996b, 2007). They devoted time, energy, and personal funds to have the opportunity to hold their assailant legally accountable for his actions. These findings suggest that dropping charges or quickly negotiating pleas when rape survivors delay in making police reports or know their assailants excludes individuals from criminal prosecution who would be very committed to it.

Rape survivors’ involvement in early court events – bail hearings, arraignments, and motions of various kinds – can also be facilitated by legal personnel who establish and maintain contact with them. Although the rape survivor is not necessary for prosecution purposes, these court events offer venues for them to confront their assailants as crime victims and begin to overcome feelings of domination. Rape survivors’ progress in reconstituting themselves before probable cause hearings and trials has the potential to reduce anxiety about testifying and to reduce the impact of the defendant in the courtroom, thereby increasing their ability to manage emotions, interaction, and information as needed (Konradi, 1999, 2007). Opportunities to confront defendants in early court events might also lessen feelings of personal loss associated with plea negotiations that take place before survivors have an opportunity to testify at probable cause hearings or trials. Attending court events also showcases the “doing of justice” and thus may contribute to survivors’ assessments that the process was fair.

**Detail in Precourt Preparation of Rape Survivors**

Preparation of participants is essential to the success of DRJ conferences (Koss et al., 2004); it is also critical to making rape survivors testimony “meaningful” (Taslitz, 1999). Sometimes prosecutors prepare rape survivors
well ahead of court events, but many times, important information is not provided until court events are in process, if at all (Konradi, 1997, 2007). The typical “witness” that is constructed before the majority of probable cause hearings and a large minority of trials is, thus, anxious. She is not knowledgeable about the situation she is entering or about her ability to control the question–answer interaction and, as such, is open to attack by the defense attorney (Konradi, 1997). Additionally, lack of discussion about how to manage the discomforting aspects of testifying leaves the rape survivor easily overwhelmed by emotion in direct examination and cross-examination (Konradi, 1997, 1999). Her lack of general and case-specific information sets her up to be revictimized. From the standpoint of securing meaningful testimony leading to convictions, this is counterproductive.

It is urgent that prosecutors rethink their relationship to rape survivors with respect to interaction management and information management (Konradi, 2007). If survivors do not see prosecutors as resources, with concrete capabilities to protect them from what they fear during court events, they will manage problems that occur in court by themselves and their strategies may not be aligned with those of prosecutors. In particular, prosecutors must recognize the potential negative ramifications of letting unprepared witnesses endure preliminary hearings so that they can assess their fortitude and the strength of the evidence. This is a recipe for heightened self-protective behavior in all of its manifestations, and the rape survivor who has the tenacity to continue with prosecution is likely to interpret the prosecutor’s failure to act as lack of capability or interest (Konradi, 1997). Once a survivor has a negative view of a prosecutor, it is an uphill battle to produce a single collaborative strategy at trial.

Before court events, rape survivors should be fully informed about the witness role, the roles of others with whom they will interact, and the formal and informal rules of interaction. Providing rape survivors with detailed information about defense attorneys’ questioning practices and the possible ways they make constructing answers difficult acknowledges fear of a second assault. Disabusing survivors of any expectation that cross-examination will have the “normal” ritual qualities of conversation should assist them in avoiding or at least anticipating feelings of shame, embarrassment, and hurt. Discussing problems openly also sets the stage for prosecutors to explain how they will participate in cross-examination. Survivors should to be told how and when the prosecutor is likely to interject into their testimony with objections and what protection they can reasonably expect under the state’s rape shield. These discussions must be tailored to the known specifics of cases, as rape survivors’ relationships with
defendants will expose them to various questions. A matter-of-fact conversation about potential conflicts between the obligations of the witness role and survivors’ social identities can be used to solicit survivors’ concerns about self. Should survivors indicate concerns, prosecutors should develop strategies to address them. These include facilitating access to nonfamilial courtroom supports during the periods when testimony is perceived to be troubling and collaboratively drafting questions to safely lead survivors through minefields.

Prosecutors will benefit from matter-of-factly discussing the ways in which rape survivors might independently respond to interaction problems or threats to their presentations of self during cross-examination. Once they address the full scope of resistance strategies – accommodating defense attorneys’ behavior, manipulating, and halting interaction – and their potential pitfalls (Konradi, 2007), prosecutors are positioned to introduce preferred ways to handle problems. Prosecutors can also describe nonverbal ways for survivors to communicate “Help me, I am being shut down,” so that they know how to request assistance in protecting their speaking turns or an opportunity to release suppressed emotion.

The defendant and the defense attorney are sources of intense feeling which compete for a rape survivor’s attention whether or not they are in conversation with her (Konradi, 1999). Thus, prosecutors should ensure that testifying survivors always have friendly eye contact available in the courtroom. They can identify seats that are out of the line of sight of the defendant for survivor’s supporters and even position a victim-witness advocate adjacent to the stand in preliminary hearings to allow a survivor to physically turn away from the defense attorney (Konradi, 1999).

Finally, within the context of the courtroom, my interviews suggest that prosecutors are primarily concerned with surface expressions of emotion – such as tears, tones of voice, and facial expressions – that are available to the judge and jury and give the appearance of feelings of pain, terror, and anger. Likewise, they appear to be interested in controlled emotional displays: tears without convulsive weeping and tears that can be brought to a halt through the application of tissues, water, and short breaks from testifying (Konradi, 1999, 2007). A desire for surface-level expression of emotion is inconsistent with the emotional intensity of many survivors’ testifying experiences. The pain, anger, and terror associated with seeing one’s assailant, reliving the assault, seeing one’s parents’ pain, and so forth are intense and rape survivors expend a great deal of energy to manage these feelings to carry out the responsibilities of their witness role (Konradi, 1999, 2007). Survivors are not dispassionate but achieve an apparent “rationality” and calm demeanor
to protect themselves and others. In some cases, their successful cultivation of anger may be what stands between their coherent testimony and incoherent sobbing. For example, Arlene let herself experience rage to suppress anxiety about testifying and created an emotional space in which she had control.

I had a good idea of how to create a kind of space for myself. Not only by what I did, but how [I felt]. I was very nervous and um, found what it was to like [to] let my rage take over. I wasn’t like enraged at all, on the stand, I was very clear. A couple of times I got angry, but um, I was able to stay very focused on why I was there and very clear about what I was doing and not let my feelings get in the way.

Note that Arlene distinguishes between feeling rage in a controlled way and displaying it to the court – that is, being “enraged.” Those who chose to embrace their anger or to let themselves become angry were shielded from defense efforts to arouse other types of emotion in them and to break their self-control.

Prosecutors can inform rape survivors of the emotional displays that are most likely to sway a jury, but they must accept that survivors will, out of necessity, work to protect themselves (Thoits, 1996). Prosecutors should avoid contributing to sudden rushes of emotion by showing rape survivors photographs and other physical evidence before they testify and honoring rape survivors’ cues that they need an emotional break or assistance during cross-examination. These mitigation tactics will not eliminate the surface expression of emotions from the courtroom; however, they should make the management of interaction somewhat less difficult for rape survivors.

**Transparency and Formalization of Opposition in Plea Bargaining**

Although plea bargaining impacts the majority of rape survivors whose cases are formally charged, scholars and activists concerned with rape prosecution have not engaged in a robust discussion about it. Standing behind the legal construction of state ownership of crime, prosecutors maintain their discretion to negotiate pleas and effectively conflate rape survivors’ interests with state interests. However, a criminal justice process that is responsive to victims cannot be achieved while setting aside the plea component.

Following Taslitz’s line of argument about the broad impact of silencing women in trials, we need to recognize that negating the meaning of their testimony at any stage in the process subverts the cause of a justice for all.
women. When it is organizational practice for prosecutors to file complaints with the maximum possible compliment of charges that can be derived from the rape survivor’s report to police, charge reductions achieved through negotiations are quite obvious. However, when felony complaints are filed “open” (i.e., with charges of lesser value than the account a survivor has given police – often to encourage early pleas), the fact that prosecutors’ starting points are reductions goes unacknowledged.

Although the logic for offering pleas may rest on widely held cultural stereotypes, the specific terms of plea offers should not be based on extralegal features of cases. Charges in rape cases should not be reduced substantially more than those in comparable nonsexual assaults and robbery. Nor should defendants in sexual assault/rape cases be extended a greater plea benefit in terms of official label, type of sentence, or sentence length, due to their selection of victim or their mode of attack. When the version of victimization that state representatives formalize in plea agreements is substantially different from the experience a rape survivor has formally conveyed, the plea process functions to silence all women.

Audits of charges and pleas for sexual assault and comparable crimes need to be implemented to document if patterns of bias exist. For the purposes of auditing, sworn testimony should trump initial charges. This means that after a survivor testifies in a probable cause hearing, a plea to a prior lesser open charge should be recorded as a reduction.

Toward the goal of treating rape survivors as equals, prosecutors should inform them in a timely way that plea discussions have been opened, tell them what terms are being offered and how they differ from initial charges, and provide an opportunity to ask questions. However, prosecutors should not be required or expected to achieve rape survivors’ agreement to plea terms, because the structural lack of authority rape survivors have makes this a recipe for interactions they experience as dominating and assaultlike. Yet, while leaving room for prosecutors’ discretion, formal practices should be created to hold them accountable when they negotiate pleas that result in the elimination of the sexual component of the crime or when they maintain reduced charges after a rape survivor has given sworn testimony of a more serious crime. Before prosecutors finalize plea agreements, rape survivors should be given an opportunity, accompanied by their chosen advocate, to convey their concerns to prosecutors’ supervisors.

Rape survivors who object to plea agreements should also be invited to communicate their opposition to renaming or devaluing their injury publicly in court as well as in writing, before a judge officially accepts the plea and
validates the prosecutor’s discretionary decision. Encouraging rape survivors to express their opposition to legal reconstruction of their experience initiates public discussion of the reality of rape that is suppressed when they do not have an opportunity to testify. It also challenges procedural mechanisms that deny to the public women’s reality, which Taslitz suggests violate women’s collective 14th and 1st Amendment rights. Furthermore, presenting public opposition in the context of a formal hearing reasserts the responsibility that the judiciary has to secure a just process. If bias is persistent in plea agreements, it occurs because judges condone it. Rape survivors’ public expressions of opposition to pleas are one small step toward holding the judiciary accountable.

To acknowledge rape survivors’ experiences of victimization fully, it is logical also for prosecutors to present all disputed plea agreements to the court in ways that recognize differences in the state’s and the rape survivor’s interests. This will work against plea hearings being a shaming ritual for the rape survivor (Combs, 2007; Daly, 2008). Prosecutors should not claim that they pursued a plea to meet a particular victim’s need for a speedy case resolution or to avoid testifying unless the rape survivor truly made those requests. Instead, they should acknowledge that their decision to negotiate reflects organizational needs, including an interest in avoiding the costs and time associated with trial. Prosecutors should be free to publicly acknowledge the claim of victimization that initiated the justice process and specify that their decision to negotiate does not reflect their own personal beliefs about a rape survivor’s credibility.

Facilitating Rape Survivors’ Involvement in Sentencing

Many of the rape survivors who participated in my research did not give more weight to obtaining substantive justice than to resolving the emotional impact of the rape event (Konradi, 2007, Konradi & Burger, 2000). In fact, some women who sought to equalize the imbalance of power with the defendant or achieve emotional closure did not express any interest in obtaining a lengthy sentence. Furthermore, if a desired period of incarceration seemed unlikely, even if desirable, women participated in sentencing to achieve other ends.8

Rape survivors’ efforts to use the sentencing process to achieve procedural and substantive justice, reduce the imbalance of power with the defendant, and overcome the emotional impact of the rape should be encouraged. First, legislative activism should focus on broadening crime
victims’ rights to encompass speaking and writing the court in all jurisdictions. Second, rape survivors should be enabled to use all legal means to participate in the process. Everyone must be informed of their legal right to participate, and social conditions that work against the participation of particular groups of survivors must be addressed. Instead of relying on prosecutors to pass on information, RCC, victim-witness advocates, churches, and other social organizations must be part of the information chain. Third, following findings of guilt or decisions to plead cases, prosecutors should acknowledge rape survivors’ continued interest in cases and encourage them to put their stories on record.

**Vertical Prosecution**

Early contact, detailed preparation, development of a courtroom strategy, and honest and complete communication about pleas are not possible when prosecutors are not able to develop rapport with rape survivors. The best hope for achieving this comes from so-called vertical prosecution, in which one prosecutor handles a case from filing the complaint through to resolution (Frohmann, 1991). He or she gains an opportunity to see a rape survivor develop a sense of the victim-witness role and understand motivations to participate. The rape survivor also has an opportunity to see the prosecutor demonstrate competence, caring, and commitment (Konradi, 2007). Yet, vertical prosecution in the context of scarce resources can lead prosecutors to concentrate their energy on cases that are further along in the process, consequently negating its potential as an avenue to rapport (Konradi, 1997, 2007). Thus, expanding state funding of prosecution may be crucial.

**Multiagency Alliances**

I discovered widespread social recognition of rape expertise residing outside the criminal justice process among survivors and their supporters, affecting when and how they reported and how they treated their bodies postrape (Konradi, 2007). This finding supports Martin’s (2005) argument that working relationships should be established and interdepartmental training should be conducted between rape crisis, law enforcement, prosecution, victim-witness, and medical organizations. In particular, it would be advantageous for rape crisis advocates as well as victim-witness advocates
to receive detailed training about the basics of plea bargaining, courtroom roles and rules of interaction, and methods of responding to domineering questioning strategies, because survivors already incorporate them into their courtroom teams.

Victim-witness and rape crisis advocates offer a solution to the social conflicts posed by many would-be team members. They are concerned, but not personally invested supporters. Furthermore, agency advocates can commit to survivors throughout the lengthy process of a criminal case, whereas friends or family members may not be able to make such a commitment due to work or other obligations. Given the important contributions advocates make to survivors’ comfort in the courtroom and ability to carry out their victim-witness roles, the scope of their work should broaden to encompass supporting rape survivors during plea discussions and attending arraignments, change of plea, and sentencing hearings.

Written Material

Accomplishing the goal of educating rape survivors requires not just a commitment on the part of prosecutors to view them as collaborators or providing access to advocates, but also relevant written materials to guide discussions that rape survivors can retain and review at their leisure. Two kinds of written material are necessary for survivors’ meaningful participation in the criminal justice process. First, district attorneys’ offices in collaboration with jurisdictional allies need to prepare common documents regarding pleas and sentencing. Second, material is being developed to assist rape survivors with understanding the dynamics of adversarial questioning. Amanda Parriag and Edward Renner have analyzed the false logic at the base of defense questioning strategies, and in three publications, suitable for adaptation for witnesses and prosecutors, they explain how rape survivors can respond to particular types of questions that are intended to challenge their credibility as victims (Renner & Parriag, 2002a, 2002b, 2002c). A third kind of document is necessary to facilitate public dialog about rape and processing. In a manner similar to corporate and nonprofit yearly reports, district attorney’s offices should be called to generate documents that track plea bargaining and attrition rates for key crimes, including rape. The analytic work can be done by allied organizations or local universities, but accountability for the results should rest with the district attorney.
CONCLUSION

This chapter addresses the continued problems of rape prosecution that result in case attrition, low conviction rates, and revictimization of rape survivors. I have described and evaluated the potential of statutory reforms that expand victims’ rights vis-à-vis state actors and procedural reforms intended to protect rape survivors from unpleasant court dynamics. Drawing on findings from intensive interviews with rape survivors, I have argued for a strategy that focuses on changing prosecutorial practices in ways that acknowledge rape survivors as invested and intelligent collaborators in the process.

Some of my recommendations require the development of interagency alliances, some require district attorneys to exercise leadership and enable prosecutors to develop new more time-consuming practices of engaging survivors, and some require additional funds. They are needed to support the creation and dissemination of documents, including collecting and analyzing data for reports, expand the availability of victim-witness advocates through the court process, increase the availability of vertical prosecution, employ experts who can place rape survivor’s testimony in context, and prepare written material.

Prosecution is an essential feature of the societal response to sexual assault although it is not a solution to violence against women. It will continue to rely on rape survivors’ willingness to testify, even if RJ programs are developed. The criminal justice process must be a continued focus of change, because it is unjust for sexual assault survivors to bear a greater burden for reporting criminal victimization.

NOTES

1. This is still a problematic area (Monroe et al., 2005).
2. My analysis is based on open-ended interviews with 47 women that explored their experiences from sexual assault through reporting, investigation, probable cause hearings, plea bargains, trials, and sentencing. The volunteer sample was collected by soliciting through brochures, newspaper articles, direct mail from a district attorney, personal referral by prosecutors and counselors, and working as a witness advocate. It includes survivors raped by strangers, acquaintances, and past and present intimates; white women and women of color; upper and middle-class women and those supporting themselves on marginal work or state aid; women with college degrees and high school educations; teenagers; and women over 50 years. Sixty-two percent of the women were involved in prosecuting cases in California, 59% of those took place in a large northern urban county. Four each came from
Arizona and Louisiana, and the rest were spread between Virginia, Illinois, Iowa, Montana, New Jersey, Kansas, and Washington. The only common experience among the survivors is sexual violation – an intrusion on their physical being and sense of personal safety – that presented them with a common problem. Each woman had to define what had happened and decide whether a criminal justice response was warranted. And, ultimately, each did. Rape survivors’ accounts were transcribed verbatim and I developed my analysis by systematic coding. I sought to understand how women involved in a particular kind of forced sexual interaction come to interpret it as a criminal event and claim to a role in the criminal justice process. I assumed that rape survivors behaved on the basis of what they knew and believed as a result of their membership in particular social worlds. I also assumed that police, prosecutors, defense attorneys, and judges shared a common understanding of the criminal justice process as a result of their training and working together daily. I sought to learn how the extent that a survivor did or did not share the meanings common to criminal justice personnel shaped her strategies for interacting with them and the success of her interactions. Likewise, I sought to learn how the extent of a rape survivor’s knowledge of the specialized rules of interaction that govern courtroom conduct shaped her strategies for engaging with the attorneys who questioned her there. Following the logic of analytic induction, my goal was to develop an analysis with maximum fit. See Konradi (1994) and Konradi (2007) for further methodological discussion and comparison to relevant populations.

3. Although only some of my interviewees testified after victim’s rights legislation was passed, understanding the dynamics of interaction between prosecutors and survivors is relevant to understanding how “rights” are operationalized.

4. This discussion concerns literature limited to sexual assault. For a broader discussion, see Braithwaite (2002), Daly (2002), Strang et al. (2006), and Umbreit et al. (2005).

5. Upon the choice of the victim, A and B may be reversed.

6. See also Strang et al. (2006), Dignan et al. (2007), and Cook (2006) about the interactional dynamics of RJ conferences.

7. Many RJ-related statutes in the United States specify that conferencing must be confidential (Umbreit et al., 2005).

8. Judith Herman (2005) reports similar findings.

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FORGOTTEN VICTIMS, UNFORGIVEN PERPETRATORS: SOCIAL PROBLEMS WORK WITH ADULT MALE SEXUAL OFFENDERS WHO PURPORT TO HAVE BEEN SEXUALLY VICTIMIZED AS CHILDREN

Michael Petrunik and Adina Ilea

ABSTRACT

Purpose – This chapter explores claims of social problem workers in criminal justice and mental health with regard to how to manage males who are identified as or self-identify as both victims and perpetrators (V/Ps) of sexual abuse. We also examine the claims of V/Ps with regard to how they manage their dual status.

Methodology – This chapter is based on an action research project on intervention services for V/Ps in Ontario, Canada. Our data include literature reviews, interviews with intervention professionals, V/P narratives, and a transcription of a stake-holder’s workshop.
Findings – Intervention workers whose mandate is offender risk management state they give little attention to victimization-related issues of V/Ps, whereas workers in victims’ services often state that adult V/Ps are not covered under their mandate. This suggests that the status of offender is the master status for adult V/Ps. Our V/P narratives recount efforts at self-management and some V/Ps and intervention professionals have expressed interest in the possibility of developing programs specially designed for V/Ps.

Practical Implications – An examination of issues related to the dual status of sexual abuse V/Ps suggests that V/Ps may require special services that cannot be provided by existing programs for perpetrators and victims.

Originality/Value of Paper – Studies of social problem work might benefit from considering not only professionals’ viewpoints but also those of their clients. This chapter explores new intervention models (GLM and RJ) that incorporate ethical concerns based on a rights perspective (‘‘moral repair’’) and the experiential concerns of V/Ps.

INTRODUCTION

In constructions of sexual abuse as a social problem, two major categories of problem person (victims and perpetrators) appear, for each of which there are favored intervention strategies. Typically, victims are said to require some form of therapy and restitution to address the harm they purport or are purported to have suffered, whereas convicted or otherwise identified perpetrators are said to require some combination of punishment, incapacitation, monitoring and treatment to reduce their risk of further offending. The question of intervention, for those with a claim to membership in the categories of both victim and perpetrator (V/P)\(^1\) of sexual abuse, poses interesting questions from a constructionist social problems work perspective (Holstein & Miller, 1989, 1990, 1997; Best, 2008).

In this chapter, we explore the claims of social problems workers in criminal justice and mental health with regard to how they deal with or propose to deal with males who claim, or have imputed to them, the dual status of sexual abuse V/P.\(^2\) We also examine how V/Ps claim to make sense of, manage, and try to transcend their circumstances, challenge expert opinions, and advocate alternative approaches. In each instance, we
consider various contextual matters, for example, constructions related to the gender, sexual orientation and age of putative perpetrators, victims, and V/Ps, attributions of potentially mitigating conditions such as dysfunctional family of origin, mental disorder, cognitive disability, the potency of the stigma attached to sexual offending against children in contemporary societies, and the stigma attached to being a male victim of a sexual offense particularly by another male.³

We begin with a discussion of the origins of this chapter in an action research project for Phase 2 (Reconciliation and Healing) of the Cornwall, Ontario Public Inquiry (CPI) on allegations of sexual abuse, the kinds of data we were required to collect, and the restrictions placed on data collection by the inquiry’s mandate and by time and budget limitations. We continue with a literature review on the phenomenon of male sexual abuse V/Ps and a brief overview of the social problems work perspective. We then conclude with an analysis of social problems work carried out by both intervention professionals and by those who identify themselves (or are identified by others) as V/Ps as they seek to deal with issues associated with the typically conflicting statuses of victim and perpetrator.

**ORIGINS OF STUDY AND DATA SOURCES**

This chapter attempts to make analytic sense of materials we compiled during the course of our research for the CPI on issues related to the provision of services in eastern Ontario, Canada, for individuals designated as perpetrators of sexual abuse who purported (or were purported by others) to have been victims of sexual abuse as children or youth (Petrunik, Ilea, & Love, 2008).⁴ Our data came from three sources.

First, we conducted a literature review on the victim-to-perpetrator cycle and the role played in this cycle by individual differences in vulnerability and resiliency.

Second, we reviewed the literature on models of intervention with perpetrators and victims, interviewed intervention practitioners working with sex offenders and/or with sexual abuse victims/survivors, and subsequently held a workshop in which many of those who were interviewed participated.⁵ Transcriptions of this workshop were a useful data source for the views of both V/Ps and intervention professionals.

Third, in the original research that provided the materials for this chapter (Petrunik et al., 2008), we obtained seven accounts from convicted sex offenders through our contacts with the John Howard Society (a prisoner...
aftercare agency) and Circles of Support and Accountability (CoSA). Although all seven narratives inform our analysis, we give particular attention to the narratives of Carl and Paul, each of whom read drafts of this chapter and expanded on the narratives they provided for the original study. In all instances where excerpts from narratives are cited, pseudonyms are used and specific identifying information is excluded.

CONCEPTIONS OF SEXUAL OFFENDERS AND VICTIMS AND THE PROBLEMS ASSOCIATED WITH DUAL STATUS

Men who are imputed, or who claim for themselves, the designation of both victim and perpetrator of sexual abuse manifest various tensions and conflicts related to their dual status. This section addresses the major issues and challenges faced by male offenders, victims, and victim/offenders of sexual abuse.

To be imputed the status of sex offender (especially when it is associated with child victims) involves having to manage one of the most powerful and “sticky” of deviant identities (Lofland, 1967), one that has implications for virtually every area of life (Hudson, 2005). In much popular clinical and criminal justice discourse, a disposition to offend sexually (in clinical discourse, a type of paraphilia) is a nonhuman agency (Weinberg, 1997) that is hard for the person so afflicted to resist and difficult to treat, necessitating life-long risk management through various strategies (Petrunik, 2002; Hudson, 2005; McAlinden, 2007). As a perpetrator, one is considered to deserve punishment and require incapacitation or the use of risk management strategies such as registration, community notification, and legal orders prohibiting association with vulnerable persons such as children and mentally disabled adults, access to employment with vulnerable populations, and restrictions on being in public places (schools, parks) where vulnerable persons might reasonably be expected to be present. Treatment is largely viewed as a process of risk management in which designated offenders, depending in part where they are placed on the spectrum of risk, are taught cognitive behavioral strategies, subjected to phallometric or polygraph assessment, and prescribed anti-androgens to minimize the likelihood they will offend (Hudson, 2005; Bradford, 2001; Bradford & Greenberg, 1998; Saleh, 2009).

Persons identified as having offended sexually against children garner little sympathy and much revulsion from the general public and the police...
Professional intervention workers in mental health, while generally more likely to see the humanity of their clients, vary with regard to their views on the capacity of sex offenders to change. Because some treatment professionals view the deviant preferences of their clients as hard-wired, they hesitate to use the word “cure” and instead favor such terms as “in remission” when speaking about what can be achieved through sex offender treatment. Furthermore, distrust of persons identified as sex offenders on the basis of claims that they tend to be devious, manipulative, and prone to cognitive distortions (Hudson, 2005; Petrunik, 2002) is not uncommon among professionals as well as the public. Of significance in this regard has been the use of various screening procedures such as measurements of personality disorder (e.g., the Psychopathy Checklist), phallometric assessment, polygraphy, visual response time measurement, and virtual reality screening approaches to get underneath the statements of accused or convicted sex offenders and thereby obtain a supposedly more objective reading of their “deviant” preferences and desires and the nature and degree of the risk of harm they might pose to others (Hudson, 2005; O’Shaughnessy, 2009; Fedoroff, Kuban, & Bradford, 2009; Abrams, 1991; Abel & Wiegel, 2009; Axford, 2008). The notions of the hard-wiring of deviant preferences and the proclivity for cognitive distortions and deviousness, in addition to a pervasive concern with sex offender risk are reasons why many mental health professionals not only favor a combination of treatment, criminal justice controls, and cautious measures by the community such as careful screening of volunteers but also take on an active role themselves in the assessment and monitoring of individual risk.

In contrast to persons imputed the status of sexual abuse perpetrator, those who purport (or are purported) to have been victimized sexually, while perhaps subject to some degree of stigma based on a profaning of their innocence through unclean acts, take on the status of victim or survivor that not only is a label signifying innocence but also serves to explain and mitigate somewhat various behaviors/experiences, which might otherwise be stigmatizing, including substance abuse and various departures from norms governing age, gender, and sexual orientation (Davis, 2005). As a victim, one is typically considered to merit sympathy, restitution, mental health treatment (e.g., individual and group psychotherapy), and support in the form of entitlement to social services. However, individuals who claim to have been victimized sexually but have not had this claim officially validated through a criminal conviction or charge against the purported perpetrator may find that others may respond differently to such a claim depending on
various contingencies such as the reported age, gender, and sexual orientation of the parties allegedly involved and various factors shaping perceptions of believability.

Those in the category of both victim and perpetrator are often not recognized by the public and even certain service providers as legitimate victims. For instance, identified sexual abuse perpetrators claiming to have been sexually victimized themselves have sometimes found it difficult to have their claims treated seriously by correctional workers and therapists as well as by victims and their family members. A reason commonly given for this is that sex offenders offering accounts of their own victimization may be seeking to minimize their responsibility for the offenses they have perpetrated.9

Nils Christie’s (1986, p. 18) concepts of “ideal offenders” and “ideal victims” are useful here in analyzing constructions of victim/perpetrators. Although “ideal offenders” are viewed through a lens of guilt and are considered to have a high degree of responsibility for their actions, “ideal victims” are viewed through a lens of innocence and as lacking significantly in agency and responsibility when they are the object of a crime or other misfortune. Although all children purported to be “sexually abused” would supposedly fit the ideal victim category, research has shown that in cases of reported sexual abuse, alleged male victims are less likely than alleged female victims to be recognized as legitimate victims of abuse (Finkelhor, 1979, p. 68; Bolton, Morris, & MacEachron, 1989, p. 11; Mendel, 1995, p. 14; Denov, 2004). For those who subsequently offend sexually in adulthood, whatever victim status they may have possessed until then is stripped away or downplayed as their offender status takes precedence. Although Christie (1986, p. 25) argues that persons identified as both offenders and victims tend to be considered as neither “ideal offenders” nor “ideal victims” because of difficulties many people have in grasping the nuances and ambiguity inherent in persons with double status, the status of offender is most often dominant, certainly in the case of adults.

Although legitimatization of their purported victim status might ostensibly benefit men identified as perpetrators on the basis that identification as a victim should allow them to access the services and resources to which victims are considered to be entitled, such a designation might actually hinder them in various ways. “Ideal victims” tend to be considered as vulnerable, dependent, and subordinate as is the case for example with young children, handicapped persons, and the elderly (Christie, 1986; Best, 1990). Being considered an offender (and thus imputed agency and accountability) as well as being considered a victim, however,
creates ambiguity even when characteristics (such as dependency and vulnerability) that are associated with ideal victims are present. This is the case because the status of offender almost inevitably becomes the master status and the status of victim the auxiliary one when both statuses are seen to be present (Becker, 1963; Christie, 1986; Best, 1990).

LITERATURE REVIEW

Our review of the clinical and social science literature focused on the following issues: the prevalence of sexual abuse among male children and adolescents, the effects of sexual abuse, the forms abuse takes (e.g., coercion versus grooming), the alleged link between being victimized and becoming a sexual perpetrator and the prevalence, and effects of other forms of abuse such as emotional abuse and neglect in the lives of those who do become abusers, the prevalence of sexual abuse experiences of sexual offenders, sexual orientation issues, and the differences between those victims who become offenders and those who do not, in terms of degrees of resilience and conceptions of masculinity.10

Research estimates of the prevalence of sexual abuse among male children and youth range from 2.5% to 33% (Mendel, 1995, p. 41). Sexual abuse in childhood and adolescence has often been reported to have serious psychological and behavioral consequences, including depression and anxiety, diminished self-esteem, social withdrawal, post-traumatic stress symptoms, self-destructive behavior such as substance abuse, self-injury or suicide attempts, and age-inappropriate sexualized behavior and sexual offenses (Sneddon, 2003, p. 3).

Child sexual abuse can be deemed to be either coercive (involving actual or threatened force) or noncoercive as in the form of grooming. In the case of the latter, Prendergast (2004, pp. 181–182) describes a supposedly prototypical sequence in which a victim-to-offender cycle occurs: an early sexual seduction that is not discovered or reported; a pleasurable sexual experience including orgasm and other pleasant elements such as being made to feel special; friendship and gifts; an abrupt end to the relationship because of a change of address or school with resultant feeling of emotional loss; a trigger event in which the earlier pleasurable experiences are reactivated with a child victim and the former victim now in the role of older perpetrator; obsessive thoughts and compulsions to repeat the pleasurable behavior; and behavioral and life-style changes (often related to family dysfunction or separation from family) that help perpetuate the offending behavior.11
Although evidence put forward suggesting a direct causal link between being sexually abused and becoming a sexual abuser has been subject to dispute (Fedoroff & Pinkus, 1996), a considerable body of research nonetheless suggests that a significant number of male children and adolescents who report having been sexually abused, particularly when contingencies such as other forms of abuse or neglect are said to have been present, become perpetrators of sexual offenses in adolescence and adulthood (Dutton & Hart, 1992; Lalumiere, Seto, & Jespersen, 2007). Stirpe and Stermac (2003, p. 10) found that, of the three offender categories they studied (offenders who sexually victimized children, violent offenders, and nonviolent offenders), those known to have offended sexually against children reported experiencing the most childhood sexual victimization. Estimates are that between 32% and 70% of sex offenders identified in criminal justice and clinical research report experiencing some form of childhood sexual abuse (Groth, 1979; Simons, Wurtele, & Heil, 2002, p. 1298). Groth and Burgess (1979) found that 32% of identified child sex offenders, compared to 3% of a control group, stated they had experienced “sexual trauma” in their childhood (as cited in Araji & Finkelhor, 1986), whereas a recent study of convicted sex offenders found that 70% of the child molesters reported one or more incidents of childhood sexual victimization (Simons et al., 2002). A study by Cohen et al. (2002) used an experimental design to compare the frequency of reports of childhood sexual abuse by 20 identified pedophiles and a control group of 24 “normal” males. Seventy-five percent of the former reported being sexually abused versus 22% of the latter. Discrepancies in findings between studies can be attributed to a number of factors including differences in definitions of sexual abuse, differences in reporting rates, and the reluctance of male children and youth to report noncoercive and even coercive sexual activities with older persons (both males and females, but for different reasons), even if they are Criminal Code violations.

Research has also found that reports of childhood sexual abuse are frequently associated with various other kinds of individual and familial dysfunction including substance abuse, mental disorder, physical and emotional abuse, and neglect (Connolly & Woolons, 2008; Lee, Jackson, Pattison, & Ward, 2002). This suggests that childhood sexual abuse may be part of a constellation of interrelated factors that heightens the risk of both further victimization and becoming a perpetrator (Bolton et al., 1989, pp. 68–80). Although most males who report being sexually abused as children do not later become identified as sexual abusers themselves, a substantial number are. Furthermore, research indicates boys reporting such abuse have a greater likelihood than boys who do not, of various
psychosocial problems including substance abuse, disturbed adult sexual functioning, alternating emotional constriction and lability ("the wobble"), gender and sexual orientation identity confusion and rigidity, and poor adjustment in various social spheres (Watkins & Bentovim, 1992; Beitchmann et al., 1992; Lisak, Hopper, & Song, 1996; Kendall-Tackett, Williams, & Finkelhor, 1993). They are also more likely to be regarded as socially isolated, to be self-destructive, and to have anxiety attacks, problems sleeping, and difficulty trusting others (Briere, 1984 cited in Browne & Finkelhor, 1986).

To assess why only some men who report experiencing childhood sexual abuse are later found to sexually offend in adulthood, research has looked for key differences between these two groups. Differences between known or suspected sexual abuse offenders and those assumed to be nonoffenders have been found in how they described their abuse and the feelings they had about it, the process of abuse (coercion versus grooming), the duration of abuse and effects suffered, and the level of support received from friends and family (Burgess, Harman, & McCormack, 1987; Bagley, Wood, & Young, 1994; Briggs & Hawkins, 1996; Lambie, Seymour, Lee, & Adams, 2002). One striking finding is that, although many men who report being victimized as boys, both offenders and nonoffenders, state that they accepted their supposed abuse as "normal," "enjoyable," or "inconsequential," the known or suspected offenders were significantly more likely than the presumed nonoffenders to report having enjoyed some or all of the alleged sexual abuse (Bagley et al., 1994; Briggs & Hawkins, 1996; Lambie et al., 2002).

Further differences have been found in the social interactions "offenders" and "nonoffenders" report having with other persons. Those men who reported being sexually abused as children or youth, but who did not go on to be charged with or convicted of a sexual offense, typically describe having more friends, more social contacts and more social support (Lambie et al., 2002, p. 39). Reports of emotional abuse and/or familial neglect have also been found to be differentiating factors, and there is research indicating that the combination of sexual with physical and emotional abuse and neglect is a strong predictor of "deviant sexual interest" among boys (Bagley et al., 1994, p. 690, 695).

Another significant finding relates to self-identification with regard to sexual orientation. Males who report having been sexually abused as children or adolescents are four to seven times more likely than males who do not allege a history of sexual abuse to report having engaged in same-sex erotic activities as adults and to self-identify as bisexual or homosexual (Finkelhor & associates, 1986; Bolton et al., 1989). It is possible that male
perpetrators may target boys they believe show signs of homosexual or bisexual orientation or they may simply target boys they perceive to be emotionally needy or to have poor attachments to parents (which may in fact be the case for some boys dealing with sexual orientation and gender identity issues). Sexual perpetrators may “groom” these boys by giving them gifts and bestowing upon them the attention and affection that these boys otherwise lack.

Moreover, men who were victimized sexually during childhood or adolescence by male perpetrators have the added burden of dealing with the issue of sexual orientation or perceived sexual orientation. These male victims may be wary of reporting sexual abuse by male perpetrators for fear of being perceived as homosexual and may indeed be confused themselves about their sexual orientation.

Other research (Grossman, Sorsoli, & Kia-Keating, 2006; Kia-Keating, Grossman, Sorsoli, & Epstein, 2005) has focused on the role conceptions of masculinity play in male victims’ resiliency and the way they make sense of their abuse histories in adulthood. Resiliency has been defined (Grossman et al., 2006, p. 434), as “an attribute of an individual who is doing better than expected on some quantitative measures of functioning…in spite of the existence of a number of risk factors in their lives.” This research found that those men identified as victims of childhood sexual abuse who were considered to be resilient were more likely to ascribe meanings to masculinity that did not involve child sexual abuse or other forms of abusive control over others (Bremer, 2006; Grossman et al., 2006; Kia-Keating et al., 2005, p. 179).

**SOCIAL PROBLEMS WORK**

The notion of social problems work derives from the social constructionist perspective toward the identification of social problems, the implementation of policies and procedures, and the management of social problems in everyday life by those involved in particular problems as victim, victimizer, intervention professional, or concerned community member (Miller & Holstein, 1989; Holstein & Miller, 1990, 1997; Best, 2008). Social problems work can be characterized most generally as the forms of interpretive activity used to constitute particular putative conditions, experiences, and events as social problems, to constitute particular persons or categories of person as problem persons (e.g., perpetrators or victims, persons suffering from mental disorder), to constitute particular programs, policies, and
practices as putative remedies or solutions, and to resist or challenge particular understandings of problems and how they might be remedied (Petrunik & Weisman, 2005, p. 77).

According to Best (2008, pp. 227–228), social problems workers are those whose jobs or other significant life activities (e.g., volunteer work) involve implementing policies, organizational mandates, and ideologies in the course of their work with types of behavior and types of persons deemed to be problematic. The subjects of social problems work are those deemed to embody in some way aspects of particular social problems as victims, victimizers, heroes, villains, and fools. The nature of social problems work can range from punishment and surveillance to various kinds of treatment and social support or some combination thereof. Social problems workers can be professionals or volunteers and can work either in administration or frontline. There is also the possibility that those who identify themselves as having a particular problem may engage in social problems work on behalf of themselves and others in a particular social problem category. Often such social problems work will focus on issues such as human rights, the management of stigma, and the need for treatment and support. We draw special attention to issues related to this possibility later in the chapter.

Speaking of the putative conditions and perceived contingencies that social problems workers identify in the course of carrying out their work, Best (2008, p. 228) notes:

Social Problems workers find themselves squeezed between...expectations and mundane reality....[They usually]...operate within broad-based institutions-such as medicine or the legal system-that state both general principles and specific rules that should govern the social problems workers' actions....The activities of different social problems workers are governed by various institutional...[and organizational]...sets of rules-professional codes of conduct, standards for appropriate behavior, and so on. These rules provide...[a]...layer of expectations that govern how social problems workers shall act....The combination of cultural, institutional, and organizational expectations...[press]...social problems workers from above...[and]...the realities of the particular people and situations they encounter press them from below.

An important aspect of professional social problems work is claims-making to advance claims made on the basis of the perspective of the agency, organization, or profession one represents and to challenge claims made from competing perspectives. For those who are the objects of social problems work, some key issues are how does one advance claims about one’s experiences and needs that others will find persuasive, how does one deal with being a member of a stigmatized category, to what extent does one cooperate with or conversely challenge the agenda of social
problems workers, and what are the consequences of resisting the claims and expectations of those designated as experts.

MODELS OF INTERVENTION WITH VICTIMS AND PERPETRATORS OF SEXUAL ABUSE

Intervention workers who deal with perpetrators and/or victims of sexual abuse vary significantly in their approaches depending on their professional training and professional ideologies on their views with regard to the mental health and chronological and developmental ages of their clients. We identified five major intervention models on the basis of our literature review and our discussions with intervention practitioners.¹²

The Multidimensional Biomedical Model

The intervention workers we interviewed from psychiatric settings presented a multidimensional biomedical (MBD) model (P. Fedoroff, 2008, personal communication). Biomedical treatment per se can be defined as “the use of pharmacological treatment or neurosurgery for the purposes of altering sexual fantasies, impulses, and behavior” (Coleman et al., 1996, p. 8), but the multidimensional approach favored in many mental health centers uses various other approaches as well as strictly biomedical ones; these include cognitive behavioral group therapy, individual counseling, and sexuality education.¹³ What sets this model apart from other intervention approaches is that it assumes that offenders’ risk of re-offense can be diminished through a combination of medications, cognitive behavioral interventions, individual and group therapy, sexuality education and monitoring. A key aspect of this model is the ability of psychiatrists to prescribe and administer pharmacological agents as a part of treatment to diminish the intensity of deviant sexual thoughts and impulses. In the case of sex offenders, this can include the use of antiandrogens or selective serotonin re-uptake inhibitors (SSRIs) to reduce sexual desire and sexual fantasizing. Advocates of a biomedical approach claim that antiandrogens can offer men a break from the obsessive grip sexual thoughts have over them and enable them to better benefit from cognitive behavioral therapy and psychotherapy (Bradford, 2001; Bradford & Greenberg, 1998; Saleh, 2009). Purported victimization issues of adult perpetrators tend not to be given much attention on the basis that the acquisition of risk management skills might be impeded.
The Risk/Needs/Responsivity Model

In Canada, clinicians and correctional officers working with offenders of whatever kind most often employ the Andrews and Bonta risks/needs/responsivity (RNR) model (Andrews & Bonta, 2003; Bonta & Andrews, 2007; Andrews & Dowden, 2008; Ward & Maruna, 2007; Ward, Mann, & Gannon, 2007) of offender rehabilitation and crime prevention. This model, which underlies virtually all intervention programs in federal corrections in Canada, takes an evidence-based approach that targets the major factors (criminogenic needs) that empirical research has linked to various kinds of criminal behavior, uses primarily actuarial methods to assess risk of committing different kinds of offenses over various periods of time, and develops an intervention plan that takes into account the differential responsivity of individuals to treatment in terms of factors such as age, gender, cognitive abilities, learning styles, mental disorder, and cultural background. Andrews and Bonta (2003, 2007) advocate strongly that intervention workers not focus on needs such as “self-esteem” that empirical research indicates are not associated with the risk of offending. Treatment based on the Andrews/Bonta RNR model is primarily cognitive behavioral in nature and generally conducted in group settings led by psychologists, sometimes with the assistance of persons trained in other disciplines such as social work or criminology. Little attention in practice is given to the purported victimization experiences of offenders although in principle in this model they might be included as criminogenic needs or risk factors.

The Good Lives Model

An important challenge to the RNR model of intervention is an offshoot of “positive psychology” (Linton & Joseph, 2004) known as the “Good Lives Model” (GLM) of sex offender treatment. The GLM proposes that assessment and treatment services be developed not only to deal with criminogenic needs, risk of re-offense, and responsivity to cognitive behavioral interventions but also to meet the offender’s “personal goals and needs” in the quest to live a fulfilling prosocial life (Ward & Mann, 2004, p. 604; Ward, 2002; Ward & Marshall, 2004; Ward & Brown, 2004; Ward & Maruna, 2007; Ward & Moreton, 2008; Marshall et al., 2005; Ward, Melser, & Yates, 2007; Eccleston & Ward, 2006; Collie, Ward, & Whitehead, 2007). The assumption is that when treatment and related support services and accountability mechanisms are customized to meet
individual needs and risk factors in a manner that motivates sex offenders to engage actively in treatment, better results, for both public safety and individual well-being, are more likely. The stated goal is to improve the offender’s social and personal functioning not only to help him desist from offending but also to help him “achieve greater satisfaction and well-being” (Ward & Mann, 2004, p. 606).

Walker’s theory of entitlement to “moral repair” as a human right for harm suffered (Walker, 2006; Ward & Moreton, 2008) provides a philosophical framework for intervention workers dealing with sex offenders who have themselves been victimized sexually in childhood or adolescence. Ward and Moreton (2008, p. 317) argue that sexual abuse can interfere with normative values and skill acquisition in victims and lead to a rupture in a victim’s “values and beliefs concerning the safety of the world and trustfulness of caregivers and others.” Therapists are considered to have an ethical obligation and responsibility to help clients who hold the dual status of sex offender and victim of sexual abuse, so that they can deal with their own victimization while also encouraging them to take responsibility for their wrongdoing. At the same time, the argument is made that V/Ps should be assisted to access resources that can help them improve the skills necessary for leading better lives and therefore decreasing their chances of re-offending (Ward & Moreton, 2008, pp. 317, 318).

According to the notion of moral repair that is inherent in the GLM, a person’s status as victim should be taken into account, irrespective of whether this person went on to offend against others or not (Ward & Moreton, 2008, p. 312). In other words, having the status of offender is regarded as neither minimizing the victim/offender’s experience of victimization nor excusing therapists’ ethical obligation toward him. For Ward and Moreton (2008, p. 311), to ignore victimization issues or to treat these issues as inconsequential based on the person’s dual status of victim and offender is ethically problematic and can be considered to “inflict a second injury” on victims because victims need recognition and acknowledgment of their experiences (Ward & Moreton, 2008, p. 311). Furthermore, proponents of the GLM contend that helping sex offenders to deal with their own reported victimization issues does not contradict the facilitation of risk management; on the contrary, there is a claim that dealing effectively with offenders’ past victimization can actually reduce offenders’ risk of re-offense (Ward & Moreton, 2008, p. 318).

The emphasis on human rights central to the notion of moral repair is said to be a way of reminding therapists that as victims of sexual abuse, V/Ps should have the same rights as any other people with regard to achieving
their goals (as long as these do not interfere with or hurt anyone else) (Ward & Moreton, 2008, p. 315). At the same time, proponents of this approach say it can help therapists envisage a plan to help those who hold the dual status of victim and offender to become more motivated to improve the skills considered necessary to lead better lives (Ward & Moreton, 2008, p. 317).

**The Restorative Justice Model**

The restorative justice (RJ) approach is another alternative to the multidimensional biomedical approach and the RNR model. RJ approaches such as CoSA (Hannem & Petrunik, 2004, 2007; Petrunik, 2007) offer the possibility of a degree of redemption and transcendence for persons who have offended sexually and in other ways but who demonstrate in words and deeds remorse for past wrongdoing and the desire to not re-offend (Yantzi, 1998; Maruna, 2001; Linton & Joseph, 2004; Ward & Maruna, 2007).

The RJ model assumes that both victims and offenders experience harm as a result of their experiences and that both can heal from these experiences through dialogue and facilitated discussion. The main principle of this model is that of interconnectedness: the assumption that all people are part of a community and have obligations toward each other (Zehr, 2002, p. 19). RJ advocates state that their approach aims to reduce recidivism through a collaborative process where the victim, the offender, and the community are involved in devising a plan that involves accountability, restitution, and sometimes forgiveness (Zehr, 2002, p. 20). This model also focuses on the ability of individuals to transform themselves by taking responsibility for their actions, seeing the impact of their actions, and by empathizing with victims (Zehr, 2002, p. 28).

**Victim-Oriented Mental Health Approaches**

Victim-oriented mental health approaches take the view that being a victim of abuse often results in serious harm that can lead to various pathological adaptations. The primary assumption is that victims of abuse, whatever the level of coercion or manipulation involved, suffer serious short- and long-term effects in the form of intimacy and relationship problems, substance abuse, self-esteem issues, gender and sexual orientation identity issues, alternating emotional lability and rigidity ("the wobble"), and increased risk of further victimization and becoming a perpetrator of abuse. An important
assumption of many victim-oriented mental health approaches is that trauma or other severe psychological damage is an almost inevitable consequence of being abused that requires intensive treatment (Daigneault, Tournigny, & Cyr, 2004; Davis, 2005). Cognitive behavioral relapse prevention and pharmacological forms of intervention, alone or combined, are seen as partial or superficial measures that are insufficient to resolve issues emanating from deep-seated trauma associated with a combination of sexual, physical, and emotional abuses and familial neglect. Practitioners of victim-oriented mental health approaches claim that what is needed is intensive group and individual psychotherapy to break through defenses, express emotional needs, garner insights, and learn to develop healthier ways of relating to self and others.

**Dueling Intervention Models: Constructing Perpetrators, Victims, and Victim/Perpetrators**

In this section, we compare constructions of sexual offending and sexual victimization and that of the V/P by proponents of the different intervention models outlined earlier. These models are best understood as ideal types. Although the actual agencies we looked at emphasized one or another of these types, individual social problem workers within these agencies did not necessarily neatly fall entirely into one or other of these models to the exclusion of others. Indeed there was some recognition that features of other models in some instances might usefully be incorporated into one’s own dominant model or perhaps offer a complementary useful service.

The interviews we conducted with intervention practitioners and our recording of discussions in a stake-holders’ workshop held several months after the interviews focused on two major sets of issues: (1) approaches to intervention with perpetrators, victims, and V/Ps, including the treatment model they used and the degree of emphasis they placed on perpetration versus victimization issues; (2) claims with regard to how a future V/P program should be approached, including who should deliver the treatment, what training should be required, and what an appropriate site for the treatment would be.

The biggest gap was between intervention workers whose primary mandate was managing offender risk (those working from the MDB model and those working from the RNR model) and those working from a victim mental health orientation who either chose not to work with those who had perpetrated sexual abuse as adults or looked at child and adolescent
perpetrators of abuse through a victims lens stressing trauma recovery. Those working from a GLM or RJ perspective differed from those working from the MDB model or the RNR model in that they accepted the importance of looking at both victim issues and perpetrator issues. Although proponents of the GLM primarily focused on offender treatment and considered victimization issues only to the extent they were found to be present in cases of perpetrators, those taking a RJ perspective tried to give relatively equal weight to perpetrator and victim issues.

Both the MDB model common to psychiatric settings and the RNR model used in correctional settings placed emphasis on the management of offender risk with little attention to victimization issues. Interestingly, both downplay the link suggested in the research literature that being sexually victimized increases the likelihood of becoming a sexual abuser. P. Fedoroff (2008, personal communication), a psychiatrist working in a forensic psychiatric facility cited one of his own articles (Fedoroff & Pinkus, 1996), suggesting the absence of a causal link and recounted giving a presentation where he received a standing ovation from a group of self-identified male victims of sexual abuse to whom he stated being sexually abused did not mean they would be likely to abuse others.

A psychologist working in a correctional setting who followed the Andrews/Bonta model noted that although many of the sex offenders he works with have suffered various forms of abuse in childhood, he generally avoids victimization issues in the therapy groups that he runs, on the basis that his primary mandate is to treat offenders in such a fashion as to minimize the risks they pose to public safety. He stated that while having been abused may be one of several factors influencing offending behavior, childhood abuse per se is not a statistically significant risk factor.

These views are in line with those expressed by all clinicians working with adult V/Ps in prisons or psychiatric facilities whom we interviewed who stated that the status of offender was the master status of the two and hence should be prioritized in treatment. One psychologist working in a correctional setting stated that focusing on victimization issues could “open up a can of worms” by increasing psychological instability that might increase an individual’s risk of re-offending. Another psychologist working in a correctional setting expressed similar concerns arguing that dealing with purported victimization issues in depth could encourage dual status men to “wallow in their victimhood” as opposed to encouraging them to develop capacities to move on in life.

Intervention workers with offenders also argued that paying too much attention to victim issues could be seen as an attempt to minimize or avoid
responsibility for the offending behavior. In this case, it was not an offender’s victim status per se that was of concern, but rather the fact that bringing up victimization issues in group treatment could derail the intensive work of relapse prevention. For example, the co-director of a program for sex offenders in a forensic hospital setting argued that focusing too much on victimization would roll the clock back twenty years in sex offender treatment to a time before the onset of relapse prevention and anti-androgen therapy when a variety of techniques (such as psychodynamic therapies) were used that had little impact on reducing sex offender recidivism.

He contended that the programs used then were not effective on their own in reducing recidivism and not enough attention was paid to factors that produce and maintain the processes involved in pedophilia and rape. Although he acknowledged the importance of social skills programs and various community support services, he stressed the centrality of biomedical intervention saying that other intervention services were at best “adjunctive treatment” with the primary emphasis necessarily on determining what initiates and sustains pedophilic acting out and rape and what can abate these actions.

Some of the clinicians in psychiatric settings were also critical of approaches to sexual victimization that assumed that trauma was a virtually inevitable outcome of any abuse. One psychiatrist argued that individuals differ considerably in their vulnerability to trauma with the result that some individuals who experience patently horrific abuse come through it relatively unscathed, whereas other persons who experience what seems to observers to be a milder form of abuse are badly scarred by it. This view contrasted with that of the director of a program “with a trauma lens” for adult males of sexual abuse who contended that virtually all of his clients likely suffered some form of trauma. Another clinician took the view that not all persons who had been sexually abused (e.g., those who had been groomed rather than coerced) necessarily suffered trauma but noted that individuals who report enjoying their sexual experiences as children with older persons may later come to realize how harmful such experiences were in their impacts on attitudes toward sexuality and on sexual identity.

In contrast to the majority of psychologists treating sex offenders in Canada who work with the Andrews/Bonta RNR model or similar approach, some psychologists working with sex offenders have begun to modify their approach to take into account some of the concerns of the GLM. A psychologist who ran a moderate intensity treatment for sex offenders in a medium security federal penitentiary in eastern Ontario stated

MICHAEL PETRUNIK AND ADINA ILEA
that, although he agreed with much of the Andrews and Bonta RNR model, he did not think a strict behaviorally oriented relapse prevention program was very effective and that he personally placed a lot of emphasis on addressing individuals' emotional needs in the therapy process.

Two of the psychologists working with offenders in a federal prison setting and one of the psychologists working in a provincial hybrid/correctional psychiatric setting asserted that although risk management and relapse prevention were of primary significance, it was also important to enhance individuals' capacities to fulfill their needs in emotionally meaningful ways and to find positive sources of motivation to enhance commitment to program goals.

Two psychologists working under contract with Correctional Services of Canada (CSC) indicated that a strict RNR relapse prevention model was too focused on proximal factors related to offending and on placing restrictions in individuals' lives. One of them (an internationally recognized pioneer of cognitive behavioral treatment for sex offenders in Canada) stated he was more concerned with dealing with background factors that made individuals vulnerable to offending rather than on proximal or immediate situational factors. He stated that what is central to understanding and working with abusers is various forms of emotional damage in their lives: all the factors that influence self-confidence, trust, capacity to cope, vulnerability, and resilience. Noting that it was important to identify the presence or absence of resilience and to seek ways to cultivate resilience, this psychologist noted three significant obstacles: failure to take into account positive strengths, low self-esteem, and the degree of shame versus guilt over one's wrongdoing and shortcomings. These comments suggest that at least some intervention workers with CSC are moving away from a strict relapse prevention approach and are beginning to use the notion of comprehensive self management associated with the GLM to differentiate what they do from the RNR model.

However, a psychologist running a high-intensity program for sex offenders at the CSC Ontario Regional Treatment Centre offered the view that the GLM is more suitable for use with low to moderate risk offenders (for example, pedophiles and incest offenders with no history of violence and no indication of a generalized criminal life-style) and less suitable for high risk offenders, many of whom have extensive criminal records for nonsexual offenses as well as sexual ones. He added that most of his clients are diagnosed with various concurrent problems such as personality disorders, developmental disabilities, substance abuse, and major mental illnesses such as bipolar disorder and schizophrenia. He expressed the
opinion that high-risk offenders typically have too many deficits to make good use of the GLM. He stated that the high-risk offenders in his program never functioned very well and hence cannot be “restored” to something they never had. He further argued that focusing more than peripherally on their victimization issues would risk distracting from the major purpose of the program, which is relapse prevention and public safety.

Additionally, the co-director of a sex offender treatment program in a psychiatric facility stated that although relapse prevention programs focus on risk management, they are not as rigid as GLM and RJ critics argue. He stated that programs focusing on recidivism reduction only began to occur with greater success when more explicit attention was given to risk management, including the use of pharmacological treatment in some cases. He noted that, with individuals considered to be hypersexual, strictly psychological treatments were usually not effective and pharmacological treatment in combination with cognitive behavioral therapy was often warranted. His co-director noted that pharmacological treatment was a useful but temporary treatment that allowed men to take a “vacation” from their sexual urges and fantasies and give them greater readiness to profit from cognitive behavioral and other forms of psychotherapy.

In addition to assessing how claims makers deal with V/P issues in their treatment practices, we sought these professionals’ opinion on how a future V/P program should be organized: (i) the kinds of training and experience necessary to deliver effective treatment to victim/perpetrators; (ii) the most appropriate site for the treatment program.

A psychologist with an agency working with adolescent V/Ps and their families said that the ideal for him would be a comprehensive mental health model that would cover all kinds of persons who had offended sexually and look at the issues of sexual victimization or inappropriate sexualization in childhood and adolescence as part of their treatment.

Several clinicians who had dual status offenders in their case loads advocated a “balanced” approach to dealing with their clients. They argued that treatment for men with the dual status of victim and offender would best be delivered by professionals who have training and experience with both victims and offenders. Although they spoke of a “balanced approach,” these professionals in fact typically gave more weight to offender issues than to victim issues. Most of these professionals expressed the opinion that, if those working with V/Ps do not have adequate experience and training in recognizing signs of risk, an actual treatment program for these men could do more harm than good. Additionally, they asserted that those trained and experienced in working only with victims could actually endanger public
safety by failing to recognize the signs that re-offense was imminent. Thus, while not dealing with a client’s victim status would be unfortunate, not adequately dealing with his offender status could be dangerous to the public.

This opinion was shared by other intervention professionals besides those working with offenders. A social worker running a program for adult male victims of sexual abuse argued that professionals who have no specialized experience working with sex offenders would not be ideal to work with V/Ps because such therapists might overlook issues specific to sex offender populations. Additionally, those working with a community-based RJ initiative and those working with agencies dealing with child and adolescent victims, perpetrators, and V/Ps all voiced a concern over having programs for adult males with dual status in the same space or at the same time programs for victims of any age were offered. It seems then that the offender status becomes the master status even for intervention workers who primarily deal with victims in their work and is not exclusively a bias of intervention practitioners who work with offenders in correctional or psychiatric settings.

The psychiatrists and some of the psychologists who worked with offenders contended that men who have the dual status of victim and offender would best be dealt with in a psychiatric facility at least partly on the basis that some of these men could benefit from pharmacological treatment in combination with behavioral approaches. One psychiatrist argued that this was necessary because strictly psychological treatments were usually not very effective with individuals with a low degree of volitional control and a high frequency of sexual fantasizing. This opinion echoes popular clinical and criminal justice discourse that a disposition to offend sexually is a nonhuman agency (Weinberg, 1997) that is hard for the person to resist. Another advantage that psychiatrists noted for having a program for V/Ps in a psychiatric facility is that hospitals have already hired staff and taken measures to accommodate persons seen as posing a potential risk to the public. They noted furthermore that such a setting is not one to which children have access, which would allow V/Ps who have legal prohibitions against coming into contact with children, to access hospital services without undue concern.

Advocates of victim-oriented community-based mental health services for sexual abuse victims and V/Ps contended that psychologically-based treatment in a community setting could help sexual abuse victims overcome the trauma they experienced. The social problems workers we interviewed who worked with victims’ agencies or agencies dealing with both child and adolescent V/Ps tended to focus on mental health issues and generally
favored this model. This was the case with both the two mental health agencies working with children and adolescents and the agency working with adult males.15

Several clinicians who worked with child and adolescent V/Ps were critical of the Andrews/Bonta and other cognitive behavioral relapse prevention approaches favored by many therapists working with offenders. One psychologist who worked with adolescent V/Ps and their families (Worling, 1998) cited as significant a major evaluation study of sex offender treatment programs in California (Marques, 1999) in which relapse prevention therapy was not found to have a statistically significant impact on the recidivism rates of sex offenders.

Similarly, some intervention workers (including a psychologist sympathetic to the GLM) contended that V/Ps would receive more effective treatment from psychologists and social workers than by psychiatrists in a mental health centre. This psychologist expressed a concern that psychiatric hospitals might rely on pharmacological treatment in cases where such an approach might not be necessary or even be counter-productive. Still other intervention workers argued that the professionals best suited to work with V/Ps would be psychologists and social workers outside a psychiatric setting. This opinion was shared by representatives of an agency working with child victims and by a psychologist running a moderate intensity program for sex offenders in a federal correctional setting.

However, a social worker who deals with adult male victims from a trauma recovery perspective who did not share the opinion that men with dual status would necessarily benefit from treatment in a psychiatric setting, conceded that some sort of loose affiliation with a psychiatric hospital would be ideal. In his view, however, a V/P program should be community-based, so that a broad spectrum of men could access the program, not just persons who have come through correctional or psychiatric programming. He stated that psychiatric hospital staff might provide clinical diagnosis, risk assessment, and medical treatment in instances where a V/P suffered from an illness requiring treatment through the use of prescription drugs.

The portability and flexibility of community-based programs were cited as further advantages of having programs for V/Ps outside of a psychiatric setting. It was also noted that this would be beneficial in replicating such programs in smaller communities that did not have a major mental health center. However, some intervention workers argued that having a treatment program run out of a community-based setting such as a YMCA could be problematic since many sex offenders are legally prohibited to be in places where children below 14 years might reasonably be expected to be present.
Representatives of the RJ agency we interviewed claimed they offered a more holistic approach than that typically offered in corrections or mental health agencies. These intervention workers were very concerned about the use of special labels for their clients and the services they offered, on the basis that fixating on certain identities (victim, survivor, offender, perpetrator) could impede their clients from moving forward. The agency’s REVIVE (a purposely nonspecific acronym) program serves adults who have offended sexually and/or been victimized sexually at some point in their lives. REVIVE’s services involve the provision of co-facilitated support groups run by volunteers trained in RJ philosophy and practice, and the various issues related to having offended sexually and/or having been victimized sexually.

Some of the service providers we interviewed argued that a RJ model may be an appropriate framework for a treatment program for men with the dual status of victim and offender. A program based on RJ principles, according to this view, would have the advantage of its flexibility, psycho-educational versus clinical approach, and its basis in a community setting outside of a professionally driven medical or clinical approach. Another claimed advantage of this model was that it may be less stigmatizing for clients to access the services in a community setting rather than a psychiatric hospital setting. It was stated that this approach might counteract the concern that a V/P program might encourage either a victim mentality or an offender mentality to prevail. Another advantage noted was that a program based on a RJ model could be viewed as less coercive or manipulative than treatment programs in other settings. It was also noted that such an approach might encourage more voluntary participation from V/Ps as opposed to a program that uses identifying labels and a more forceful approach. REVIVE programs’ staff and volunteers claimed that they “invited” people to change rather than coercing or manipulating them to do so.

However, other service providers noted that RJ programs lacked a focus on risk management in that no clinical records were accessed, no actuarial assessments, phallometric testing or polygraphy assessments were carried out, and there was a reliance on self-reports of clients that could involve cognitive distortions and be manipulative and self-serving. This led one critic to suggest the likelihood of a bias toward lower risk, lower needs cases. Concern was also expressed regarding a lack of an institutional base for delivering services in some geographical locations and regarding the often diminished capacity of poorly funded RJ programs and services to conduct evaluation research.
Some intervention practitioners noted that the question of what kind of treatment V/Ps should be provided was complicated by factors such as chronological and developmental age and differences in cognitive and emotional capacities that could affect the type of treatment offered and who could offer it. Social problems workers dealing with child or adolescent perpetrators of sexual abuse argued that with younger clients, the focus is not on relapse prevention or risk management but on trauma and understanding a host of victimization, family dysfunction, and individual psychopathology issues. However, the issue of age was not as straightforward for some intervention workers. Although some noted their agencies have chronological age cut offs (the age of 18 is usually the age below which one is treated by children’s and adolescent services, and above which one is treated by adult services) for those to whom they provide treatment, they made the point that such age delineation was arbitrary because one’s cognitive or emotional age could be different from one’s chronological age. Some clinicians argued that the 18–21 age group is the most difficult to deal with because individuals in this category fall into a “gray area” between youth and adult approaches to intervention. One clinician stated that some countries such as Japan recognize this gray area by treating those aged 18–21 as a distinct category meriting special consideration.

For some intervention workers, treatment of children and adolescents who were V/Ps was not always necessary and could even do more harm than good if the identity of a problem person was internalized. A psychologist with a consulting practice delivering treatment to inmates in federal and provincial prisons argued that very few child or adolescent offenders will go on to offend as adults since sex offending in childhood and early adolescence is a developmental problem that is often resolved without professional intervention. He expressed a concern about labeling and treating prepubescent boys as sex offenders because this could have the unintended and undesired effect of reinforcing attitudes and behaviors associated with offending.

THE V/P SPEAKS

The V/Ps whose narratives we collected (Petrunik et al., 2008) differed somewhat in their views from intervention professionals with regard to the importance of discussing victimization issues in therapy for offenders in correctional and mental health settings. Four of the seven purported V/Ps emphasized the need for victim issues to be discussed in treatment. Although
they acknowledged the benefits of risk-management-oriented approaches in correctional programs, they argued that ignoring of victim issues impeded their full recovery. The other three purported V/Ps who provided narratives, in contrast, expressed less concern with the victimization they experienced or were purported to have experienced. Two reported some instances of explicitly coercive activity but noted that they were generally quite willing as children to indulge in sexual experimentation with older males and did so on many occasions. One designated V/P (John), whose clinical file described him as a victim of child abuse through grooming on the part of an adolescent boy, stated that he had never felt abused or coerced and that he had largely enjoyed the sexual activity to which he had been introduced. He described being a reluctant participant in therapy while in prison and resisted the urging of the CoSA volunteers working with him to seek therapy for his “victimization issues” (Petrunik et al., 2008).

Four self-identified V/Ps (Carl, Paul, Richard, and Dick) stated that although they benefited from the programs offered during their incarceration, their victimization issues were not addressed. Dick reported being helped to heal after prison by being a core member of a CoSA. Paul stated that he “needed to heal from that...[sexual]...abuse as much as any other man would” but had to do it largely through his own efforts. Carl noted:

While incarcerated, the facts of my own personal experiences of sexual abuse were not discussed by treatment providers. I was permitted to demonstrate knowledge of the necessary skills to employ relapse prevention strategies, but I was not permitted treatment for the victimization issues that contributed significantly to my offending behavior in the first place.

Carl stated that this lack of acknowledgement of his victimization issues hindered his rehabilitation:

I could be empowered to control myself, but not so as to begin a work towards true healing. I was able to relate some of what I’d learned in treatment to my own experiences of being abused, but I had no medium through which to validate my experiences or the conclusions I was coming to about them.

Both Paul and Carl argued that treatment must focus on allowing the V/P to move forward in life and not focus exclusively on his offense history. Carl stated that sex offender treatment should focus not only on the negative but also on the positive aspects in a person’s life and on one’s short- and long-term goals. He added:

If I spend all my days fixating on old and negative thinking and behaviors, how can I know liberation from that bondage? Fundamentally, I am neither a victim, nor a perpetrator. There was a significant portion of my life when I was terribly abused. I used
what I had to cope with that. I did not do well. I also chose to bring harm to others. That was then. I have not lived that way for some time. I have no plans for returning to my old way of living.

Arnold stated: “I feel I have to deal first and foremost with my own survival to have any hope of not re-offending. None of the programs I have ever taken, however, have dealt with my sexual abuse survivor issues.” Many of the views expressed by V/Ps whose narratives we collected are congruent with the trauma recovery approach that emphasizes the need to heal old wounds to move on and with the GLM that advocates a focus on the positive aspects on one’s life instead of on the negative aspects. Beyond healing the effects of the sexual abuse they reported experiencing as children, the V/Ps argued that dealing with victimization issues in treatment would also be beneficial for society. Paul stated that “If society truly desires to prevent the sexual victimization of children, then we must do all in our power to bring about high quality treatment for V/Ps.”

Carl emphasized the need for a peer support group treatment, in which survivors “can claim a sense of validation within the safety of the support group.” He argued that treatment in a support group can facilitate validation among survivors of abuse, something that is:

not always straightforward [and] is often elusive because the perpetrator has never accepted responsibility for his crime. We do not require validation from the perpetrator for recovery, but such an acknowledgment is helpful. Our loved ones may fail to appreciate or minimize the significance of our suffering, or even hold us responsible for what we suffered as children. These failures can rob a survivor of the means by which he can reconcile his past with his present, find validation, and renew broken relationships from a position of confidence that grows with closure.

CONCLUSION: INTERVENTION WITH CHILD SEXUAL ABUSE V/PS AS SOCIAL PROBLEMS WORK

Child sexual abuse V/Ps pose a number of interesting issues for the study of social problems work. Of key importance is that social problems workers can often be professionally distinguished in terms of whether their clients are imputed perpetrator status or victim status. Most social problems workers in contemporary Canadian corrections, even those working as therapists, see their primary mandate as public safety. They consider their role to be assessors and managers of risks whose task is to prepare clients for release into the community with a minimum of risk to vulnerable members of the public such as women and children. Clients who present with victims issues
pose a problem for these professionals because the status of offender, according to their professional mandate, is a master status that transcends the status of victim. In part, this is a matter of time, resources, and efficiencies. With many offenders to be assessed and administered treatment programs, limited numbers of trained therapists, and a limited period of time, intervention workers in correctional settings put the greatest emphasis on assessing risks and teaching relapse prevention skills. This is in keeping with the favored intervention model in Canadian corrections: the Andrews/Bonta RNR model. This model can be most clearly seen in the statements of psychologists working in federal corrections. And although the Andrews/Bonta model is not specifically part of the discourse of psychiatrists and psychologists in outpatient psychiatric hospital programs there is also considerable emphasis in such programs on demonstrably criminogenic factors, actuarial assessments of risk, and concerns with responsivity. There is also a biomedical emphasis seen in phallometric testing and the use of pharmacological agents such as anti-androgens.

A contrast can be seen in the statements of psychologists who expressed reservations about the value of a biomedical model and a strict focus on risk reduction. They advocated greater attention to individual needs for personal growth and self-fulfillment on the basis that too rigid a concern to negative as opposed to positive factors (not doing things deemed to be bad versus seeking to do things deemed to be good) puts greater pressure on offenders to relapse.

Nonetheless, none of the social problems workers specializing in intervention with offenders gave as much attention to “victim issues” as to issues associated with offending. Several asserted that emphasizing concerns with personal victimization could enhance “cognitive distortions” and lead offenders to minimize their responsibility for their actions. Some made references to the dangers of a focus on “victimhood” that could detract from relapse prevention efforts and even make some offenders worse. Also of significance was the response of sex offender therapists who questioned the value of research suggesting that previous sexual victimization as a child or youth, in the case of males but not females, could (especially if certain other factors were present) increase the likelihood one would subsequently perpetrate sexual abuse. Indeed, most of the sex offender therapists we talked to cautioned against even emphasizing the possibility of such a linkage particularly on the basis that it might encourage some individuals seeking to minimize their offending. All the intervention workers dealing with offenders asserted that any new program of intervention for V/Ps not only had to give primary emphasis to relapse
prevention but also needed to use therapists trained in and experienced in working with sex offenders. These practitioners working with sex offenders argued that those intervention workers specializing in victims’ issues could at best play a secondary role under the tutelage of sex offender specialists.

Social problems workers dealing primarily with victims’ issues all expressed some reservations with a biomedical model and a strict focus on relapse-prevention in working with V/Ps and tended to put a greater emphasis on mental health issues. This was particularly the case with intervention workers dealing with children and adolescents. In the two programs for youth that we examined, intervention workers treated all children and adolescent clients, whether victims, perpetrators, or victim/perpetrators, as individuals needing treatment for mental health problems. For these intervention workers, concerns with risk management were clearly secondary to the treatment of individuals and members of their family. Also of interest was that intervention workers in agencies specializing in victim concerns were less apt to make such a strong demarcation between clients on the basis of chronological age. Several argued that persons over the age of 18 years with limited cognitive abilities and poor emotional and volitional controls due to developmental disability ought not to be grouped with adult offenders for the purposes of correctional intervention and that such individuals tended to be closer to the victim end than the perpetrator end of the deviant person spectrum.

Age was a crucial factor with regard to eligibility for treatment services in the only intervention service for adult male victims we looked at. A program for adult male victims of abuse explicitly rejected adult males for victims’ services in a group setting if these men who had been sexually victimized in childhood were known to have offended sexually while over the age of 18. In contrast, males sexually victimized in childhood who offended sexually before the age of 18 were eligible for group treatment services. Ironically, this age-related stricture applied only in the case of sex offenses. One could commit any other offense, presumably even murder, while over the age of 18 and still be eligible for victims’ services if one had been abused sexually before the age of 18.

Although intervention workers using a RJ frame made a point of downplaying essentializing labels, they nonetheless maintained a policy of offering separate groups for perpetrators of sexual abuse and for victims of sexual abuse on different evenings ostensibly to ensure the physical and emotional safety of participants. That this dichotomy was problematic in terms of RJ ideals, however, was acknowledged, and the possibility of various other options was noted. In one instance, a mixed group of selected
perpetrators and victims who were considered to have sufficiently dealt with their respective issues were combined in an innovative study group (Yantzi, 1998).

The narratives we obtained from convicted offenders claiming to have been abused themselves bring out an important dimension often missing from professional accounts: the subjects of expert discourse speaking back and either concurring with or challenging various expert interpretations. Perhaps the most important difference that can be ascertained in these narratives is that although the V/Ps acknowledged that they initially required intervention to deal with the factors that put them at risk of offending, they also contended that this does not mean that such issues should again take center stage in considering community-based treatment for their victimization-related troubles. Here we have a plea – or more forcefully a claim to a right – to “moral repair,” that is, not to be considered as second class victims but to receive the same treatment to which all other victims merit or are entitled (Walker, 2006; Ward & Moreton, 2008). Self-identified V/Ps such as Carl and Paul ask: are my experiences of victimization any less real because I later perpetrated an offense, is my pain, my need for healing any less because I victimized others? In short, the argument being made is that, in the context of treatment for V/Ps, the status of victim or survivor and not that of offender should be the master status.

Another point that emerged from the narratives involves the role of the V/P who is recognized to have or claims to have achieved a degree of insight and healing in helping other men who have undergone similar experiences. This notion of peer self-help, if not explicitly disavowed, was minimized by many intervention experts working with either victims or offenders on the basis that expert, professional knowledge was necessary in dealing with matters central to public safety and sensitive to public perception. Several of our V/P narratives make the claim that V/Ps who have successfully dealt with their issues provide an important piece to add to the puzzle of effective intervention for other persons in their situation.

GENERAL IMPLICATIONS FOR THE STUDY OF SOCIAL PROBLEMS WORK

Finally, what might be some of the implications of research on victim/perpetrators for social problems work more generally? First, studies of
social problems work would do well to go beyond the work of social problems professionals and to take into account the perspectives of those who are the targets of such work who often claim expertise of their own based on personal experience. Second, the imputation of categories such as “victim” and “perpetrator” or in combination “victim/perpetrator” are highly fluid, shifting with context and perspective and contingencies associated with whether or not there is a recognition of such factors as chronological and mental age, gender, sexual orientation, and diagnoses of disability and mental disorder that might diminish or exacerbate the degree of agency and responsibility to which one is imputed (Holstein & Miller, 1990; Davis, 2005). Third, the common notion that the status of offender must necessarily take precedence over the status of victim, certainly in the case of adults to whom are imputed both statuses, is open to challenge. In our study such a challenge was most prominent in the work of adherents of the GLM concerned with the obligation of moral repair as a right for all persons suffering harm, in the work of RJ agencies emphasizing the importance of looking at the whole person, and most especially on the part of some so-called V/Ps speaking on behalf of the whole person underlying multiple imputed social problems categories, challenging the heavy burden of the stigma imposed upon them, and demanding a right to treatment on moral or ethical grounds.

NOTES

1. Finding a short form term for the particular population combining the statuses of victim and perpetrator has been problematic. Some critics react negatively to the terms “victim,” “survivor,” “perpetrator,” “victimizer,” and “offender” (or combinations of these terms such as “victim/perpetrator”) on the basis that their use confers an enduring and essentializing master status for individuals long after the occurrence of the events that led to these terms being used in the first place. Other critics have problems only with the use of the term “victim,” arguing that its replacement by the term “survivor” is helpful in psychological recovery. Our response is pragmatic. Except in the context of trauma recovery approaches where the term survivor is used, we will use the term victim in speaking of someone who reports, or is purported by others to have been sexually abused, or to have had sexual experiences as a minor with an older person. Depending on the context, we will alternate between the terms perpetrator, offender, victimizer, molester, and abuser when speaking of someone who has been convicted of or admitted committing a sexual offense against another person. And, finally, we will use the terms victim/perpetrator, abused/abuser, or victim/victimizer in speaking of someone who claims to have been or is purported to have been victimized sexually and
subsequently been convicted of or admitted to committing a sexual offense or an act considered to be child sexual abuse even if not clearly illegal, against another person.

2. Males identified as victims as well as perpetrators of sexual abuse may be doubly damaged not only because of the abuse they ostensibly suffered but also because of the consequences for them of the abuse they inflict, or have been accused of inflicting, on others. This can be the case even when sexual contact with others has been noncoercive as in cases of playful sexual experimentation. These consequences can include severe stigmatization and social exclusion with which they must live the remainder of their lives. In Canada, being apprehended for sexual crimes against children and youth can lead to criminal justice prosecution, imprisonment and correctional supervision, court-mandated treatment including phallometric testing and the use of anti-androgens, and various postsentence legal restrictions such as sex offender registration and Criminal Code of Canada Section 810.1 orders affecting their privacy and freedom of movement and association.

3. Although there are various reasons why males do not report “sexual abuse” by either females or males, homophobic stigma appears to be a particularly strong factor in the reluctance of many males to report having had a sexual contact in childhood with an older male.

4. We did our research under the auspices of Circles of Support and Accountability (CoSA), a restorative justice initiative for designated high-risk sex offenders released into the community. We also worked closely with the director of The Men’s Project, an eastern Ontario agency providing mental health services for male victims of abuse. Both organizations had expressed concern that there was a lack of services available to males who fit the categories of both sexual abuse victim and offender.

5. The CPI’s mandate and time and budget limitations imposed on us precluded interviews with intervention practitioners at a national or international level. However, those persons selected for interviews were among the most prominent in their respective fields in eastern and central Ontario and, in some instances, internationally renowned. Eight of the persons interviewed were directors of the agencies for which they worked. The interviews were carried out between August and October 2007 with the following: (1) four clinicians (one of whom pioneered cognitive behavioral sex offender treatment in Canada) delivering services for sex offenders in federal correctional institutions; (2) three clinicians/researchers (two psychiatrists and one psychologist) working from a medical perspective and affiliated with psychiatric facilities; (3) three clinicians (one social worker and two psychologists) carrying out a sex offender treatment program for sex offenders in a provincial corrections/hospital facility for mentally disordered offenders; (4) two clinicians from an agency delivering mental health services to child victims and perpetrators of sexual abuse and the families of these children; (5) a team of clinicians (one psychologist and ten social workers) from an agency delivering mental health services to adolescent victims and perpetrators of sexual abuse and the families of these youth; (6) the director of a program for adult male survivors of sexual abuse who is a social worker; and (7) the director and three staff members of a restorative justice initiative providing services to both perpetrators of sexual abuse and victim/survivors of such abuse.
6. Six of the seven men (Carl, Paul, Richard, Dick, Arnold, and Ron) claimed the dual status of sexual abuse victim and perpetrator. A seventh convicted offender (John) did not claim victim status for himself but was viewed by correctional officials and therapists as a victim who had been groomed as a child by an older individual to participate in sexual acts which were arguably illegal.

7. According to Spencer (2009, p. 222, 223), these restrictions confer on the sex offender an outsider status where he is “…physically in the community, but is…not of the community”. The sex offender’s status is that of ‘homo sacer’ or ‘bare life’ in that his rights as a citizen have been removed but he is still subjected to the laws of that community.

8. Others take a more optimistic view of the possibility of curing paraphilias such as pedophilia based on the notion of “neuroplasticity”, the capacity of the central nervous system to change both structurally and functionally as a consequence of medical interventions and life experiences (Doidge, 2007; P. Fedoroff, 2008, personal communication).

9. Of interest in this regard is that some research using polygraph assessment has found that the number of convicted sex offenders who report having been abused drops when responses to questions are subject to polygraph measurement (Ahlmeyer, Heil, McKee, & English, 2000; Abrams, 1991).

10. We are restricting our focus to sexual contact between males although various sources suggest sexual abuse of male children and adolescents by females is under-reported and downplayed by social problem workers in policing, social services, and mental health (Finkelhor, 1979; Bolton et al., 1989, p. 91; Mendel, 1995, p. 14). Finkelhor (1979, p. 68) contends that the existence of a double sex role standard judging boys as aggressive, active, and in control and girls as weak and passive has “hindered the recognition of sexual abuse of boys” by female perpetrators. For more on female perpetrators of sexual abuse, see also Matthews (1996); Denov (2004).

11. For examples of the grooming of boys and their subsequent “sexualization” by older males and the implications of this, see Bagley et al. (1994); Briggs and Hawkins (1996); Salter (2003) and the narrative accounts in Briggs (1995).

12. Our discussion of intervention professionals’ practices and perceptions are based on notes, separately prepared by the two authors, of interviews and on transcriptions of presentation and discussions at the stake-holders workshop. By comparing the two sets of notes, the authors were able to prepare a single consistent set of notes. Because of the length and repetitious nature of these notes and the summary form in which they were transcribed, we will use direct quotes in only a few instances and present our findings primarily in the form of summary statements extracted from our interview notes and the transcriptions of the workshop discussions.

13. Although interdisciplinary teams consisting of psychiatrists, psychologists, social workers, nurses, and occupational and recreational therapists carry out the work of intervention, this is clearly a hierarchical model with psychiatrists exercising the greatest power.

14. A psychiatrist working with offenders in a psychiatric hospital concurred, explaining his view that a program should be separate for V/Ps through a metaphor showing the need to provide different kinds of treatment for various subcategories of
cancer patients. In his metaphor, V/Ps can be construed to be like cancer patients who also have immunosuppressant problems as well as cancer. Although V/Ps have many of the issues common to victims of sexual abuse, they are different in important ways from those who have just been victims but have never offended sexually against others. Just as those who have cancer but do not have immunosuppressant problems and those who have cancer plus immunosuppressant problems need to be segregated from each other in the interest of the safety and effective treatment of the latter, so too do V/Ps have to be isolated from other victims both for their own good and to protect victims of sex offenses who have been traumatized or otherwise harmed by their experiences of victimization. He added that, even if V/Ps do not address their victimization, they are not statistically more likely to re-offend than are sex offenders who have not been victimized sexually.

15. Interestingly, the agencies working with children and adolescents viewed child and adolescent perpetrators of abuse as essentially victims of mental disorder and chaotic and dysfunctional families.

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PART IV
VIOLENCE AND SCHOOLS
THE COLUMBINE EFFECT AND SCHOOL ANTIVIOLENCE POLICY

Glenn W. Muschert and Anthony A. Peguero

ABSTRACT

Purpose – This chapter explores the problem of school shootings as a source of anxiety and fear in schools. Such fear has generated calls for security in schools and has been a catalyst for the development and deployment of antiviolence policies in schools.

Methodology/approach – The chapter begins by examining the development of the Columbine Effect, which is a set of emotions surrounding youth social problems, particularly violence in schools. This Columbine Effect is then explored in relation to its role in the development of policies to mitigate the problem of school violence. These purposes are linked using a multilevel typology of school violence and their sources, created by Henry (2009).

Findings – The chapter explores the levels of violence addressed by six antiviolence policies: crime prevention through environmental design (CPTED), zero tolerance, anti-bullying programming, emergency management planning, peer mediation, and school climate programming. The analysis indicates the level(s) of violence each type of policy is designed to address and identifies research evidence regarding the efficacy of each policy. The analysis also focuses on the unintended consequences
of school antiviolence policies, especially those which reduce violence on one or more levels, while exacerbating the problem on other levels.

Research limitations/implications – The analytical approach was selective, rather than exhaustive. Nonetheless, the analysis has suggested a number of ironies concerning the unintended consequences of antiviolence programming in schools. This suggests the need for broader analysis in this area.

Practical implications – The analysis identifies a number of detrimental effects that have resulted from school violence policy initiatives ranging from the socialization of youth toward a society of control and authority. In addition, the chapter helps to clarify the (often negative) effects of hype about violence in schools.

Originality/value of chapter – Although not often connected, this chapter explores the intersection between the discourse of school violence (typically, a social problems framing concern) and the development of school antiviolence policies (typically, an applied social scientific concern).

INTRODUCTION

Over the past decade, given the continued occurrences of school-related shootings, it has become widely understood that schools may be risky places for youth. In the same year that the Columbine shootings occurred, Beck (1999) posited the emergence of a world risk society, one in which our technological and social systems were out of control. Thus, each member of society is potentially at risk for human or technical accidents that are the “normal” outgrowth of complex social systems. While traditional conceptions of such fears derived from moral panics connected to a group of folk devils (see e.g., Cohen, 1972 or Goode & Ben-Yehuda, 1994), a new conception developed which viewed terrible events as deriving from systematic complexity (Ungar, 2001). From this point of view, school shootings are something that people have to live with and tolerate. Thus, the best that can be done is to reduce the risk of such events or to deal with them more effectively when they occur. Although school shootings are undoubtedly very rare events, they nonetheless exert strong leverage on the discourse about and responses to school violence. While school shootings remain a source of fear, the risk tolerance for these events is very low, if not nil. Such a general consensus about the intolerability of
school shootings has led to wide-scale policy treatments for managing this and related social problems.

This chapter examines school violence from the point of view of the fear and anxiety it motivates, particularly related to school shootings. Our primary foci lie in the examination of the fear generated by school shooting events and in exploring how that fear has been translated through the development of policy outcomes. In this regard, there is much to tell about what is sometimes termed the “Columbine Effect,” a term that refers to how rampage shootings change the way we think about school violence and security. These changes have deep impacts on the way we conceptualize the juvenile delinquent and his or her act and are associated with an increased level of fear about such attacks.

One development is that this fear serves as a potent motivator for implementation of school antiviolence policies, although as we shall demonstrate there is often mixed evidence that such policies are efficacious. Often, although certainly not always, such policies have been punitive, as opposed to restorative or aimed at mediation, in their efforts to control violence. In the sociology of social problems, scholars have noted that policy makers tend to search for a “silver bullet” solution, one that will solve problems without causing unintended consequences (Marx, 1995). To the contrary, sociologists as far back as Max Weber have pointed out that social policies have, almost invariably, latent unintended consequences. Indeed, one grave irony comes when those policies intended to ameliorate the problem are themselves the cause of an increase in the violence or fear they are entrusted to control (Marx, 1981). In this chapter, we examine a number of school antiviolence policies at various levels and examine the unintended negative consequences of these policies.

THE DISCOURSE OF SCHOOL VIOLENCE AND RISK

Of course, Columbine is not the only cause of increased fear in schools, although the Columbine Effect may be part of this dynamic. In a longitudinal study of mass media framing, Altheide (2002) noted that news discourse about children converged with the discourse of fear, peaking in 1994. This timing coincided with well-documented high rates of violence crimes perpetrated by youth (Office of Juvenile Justice and Delinquency Prevention, 2008). Shortly thereafter, in 1997, rampage-type school shootings gained salience as a social problem of national proportions, peaking in 1999 with the Columbine shootings (Muschert & Carr, 2006).
Given these preconditions, when the Columbine shootings occurred in 1999, it was not only something of a media spectacle but also the catalyst for a national discussion about the state of American society, and the ascendant social problem of school violence.

As one of the most closely followed stories of the late 1990s (Pew Research Center for the People and the Press, 1999), the discourse about Columbine became a battleground for efforts to define the problem of school violence in the public arena. Following the O. J. Simpson car chase, Columbine was the second most closely followed emergent news story in the 1990s (Muschert, 2002). Some scholars concluded that the mass media tended to associate the problem of school violence with insufficient control of firearms (Haider-Markel & Joslyn, 2001; Lawrence & Birkland, 2004), and that the mass media has acted as a catalyst for the occurrence of such events (Lawrence & Birkland, 2004; Samuels, 2000). Although the exact framing of the problem, and thus solutions, for school violence was contested, Columbine still looms large as a “problem-defining event, as it has come to characterize the problem of youth violence and the general understanding of youth social problems” (Muschert, 2007a, p. 351).

Examining Columbine’s role in problem definition of youth violence teaches sociologists of social problems and public policy “how dramatic news events are defined in the news in ways that contribute to the social construction of public problems” (Lawrence, 2001, p. 92). In this chapter, we discuss Columbine not as an historical event but as metaphorical “keyword for a complex set of emotions surrounding youth, fear, risk, and delinquency in 21st century America” (Muschert, 2007a, p. 365).

Since Columbine, other events have occurred that mesh with this Columbine-centered discourse of fear. Altheide (2009) argues that the discourse of fear surrounding school violence has merged into an overarching discourse of control about terrorism. For example, the 2001 terror attacks on U.S. soil raised fears that schools might be selected as targets in terror attacks (Casella, 2003), such that many schools combined internal security efforts with antiterror efforts. Despite the institution of antiviolence policies, school shootings continue to happen in the United States, and they also seem to be spreading to other countries, including Australia, Argentina, Canada, Finland, and Germany. Although this chapter focuses on the policies instituted in primary and secondary schools in the United States, we also observe school shootings seem to be occurring more commonly at universities, which are also active in the development of antiviolence policies (Fox & Savage, 2009).

Given that many causes for these events stem from combinations of relatively “garden variety” social conditions (see Muschert, 2007b for a
review), perhaps some of these anxieties about the risks of school rampages may not be entirely unfounded. However, the annual number of fatalities (including both homicide and suicide) in all U.S. primary and secondary schools combined has steadily remained between 20 and 50 per year, over the last quarter century (Dinkes, Cataldi, Kena, Baum, & Snyder, 2006, p. 7). Nonetheless, fear of victimization in schools remains, and the findings of recent studies about such fear may seem counterintuitive. A quasi-experimental study of U.S. students aged 12–17 found that the fear of crime in schools was not significantly different after Columbine (Addington, 2003), and another study drawing from 1,500 schools indicated that students felt that their own schools were safer than other schools (Chapin & Coleman, 2006). If school-aged children are not overly fearful for their own safety, school antiviolence policies are frequently developed as administrators respond to concerned parents’ calls to schools (Snell, Bailey, Corona, & Mebane, 2002). Thus, parental concern for children’s safety in school seems to drive much policy development in this area.

An apparent conundrum lies in the discrepancy between the low level of tolerance for risk in schools and the comparatively higher acceptance of risk for children in other areas, such as abuse at home by family members. Some conceptual exploration might serve here to clarify the difference. One useful distinction is between compositional risk, which is an evaluation of the frequency of events, and degree of risk, which refers to the severity of misfortune that will result should the risk be realized. For example, compositional risk of airplane crashes is low, but the degree of risk is perceived to be extremely high. In comparison, the compositional risk of auto accidents is higher than for plane crashes, while the degree of risk for auto accidents is lower than for plane crashes. School shootings seem to fit in the category of events similar in risk perception to plane crashes where the chance of their occurrence is low, but the effect of the occurrence is horrific. When school shootings have occurred, numerous people may die, and this degree of risk is viewed as intolerable.

THE “COLUMBINE EFFECT” AS CATALYST FOR SOCIAL CONTROL

Although we may generally live in a risk society (Beck, 1992, 1999; Furudi, 1997), no risk is tolerable when it comes to children in schools. Taken together, fear and the expectation of risk are common features of
contemporary public life (Altheide & Michalowski, 1999), but fear in schools is reflexively driven by a low tolerance for this variety of risk. This drives a call for safety in schools (where safety is defined as “an acceptable level of risk”) through the institution of school security measures (where security is defined as the “process of achieving acceptable levels of risk”; Vestermark, 1996, p. 108, cited in Addington, 2009). In popular terms, this process has sometimes been called the “Columbine Effect” and seems the catalyst for development of many recent school antiviolence policies.

The term “Columbine Effect” first appeared as the title of a December 6, 1999, article in Time magazine in which the author discussed the post-Columbine movement toward increased punitive measures in schools (Cloud, 1999). Later, the term was prominently featured on a Time cover for an issue discussing the March 5, 2001, high school shooting in Santee, California. The cover featured a picture of a blue backpack typical of many used by American students. In the backpack’s open pockets were books, a pen, a pencil, and a handgun. Such an image suggested the cultural discord about extreme forms of violence in schools, implying that the implements of schooling and the implements of violence should not exist in proximity. Since that time, the term has appeared in numerous places in the news media, popular presses (e.g., Matera, 2001), and academic discourse (e.g., Addington, 2003).

Although the idea represented by the term “Columbine Effect” may seem discordant at first glance, it is useful to illustrate the symbolic confluence of two previously unrelated cultural currents. Empirical research has indicated that there has been an association between the discourse of fear and the concept of youth (Altheide, 2002). In this context, the backpack with a gun is not so discordant at all but stands as a visual depiction of the “complex set of emotions surrounding youth, fear, risk, and delinquency” (Muschert, 2007a, p. 365). In fact, terror (as an emotion separate from the current connotation about terrorism) was an important component of the media coverage of the Columbine shootings (Muschert, 2002). Surprisingly, discussion of terror was not associated with the suffering of the victims and the community. Rather, references about terror and other emotional words were associated with reactions to the shootings that were occurring in various communities across the United States (Muschert, 2009). Thus, the terror of Columbine referred to the anxiety that it generated in communities across the nation. In such an emotionally charged context, the larger fear of youth as potential victims and victimizers (especially in schools) allows mechanisms of social control to expand.
There may be various catalysts for control mechanisms to expand within the context of the Columbine Effect, and these include various overlapping and potentially contradictory dynamics. The first dynamic may involve the perceived spread of school violence from urban areas to suburban and rural areas. Before the Columbine shootings, the spatial framing of school violence as a social problem was localized (Muschert & Carr, 2006), but the expansion in the problem frame to include a national scope coincided with highly publicized school violence incidents (mostly school shootings) that occurred in suburban and rural locales. Thus, the perceived migration of school violence into new areas is related to the development of antiviolence policies to mitigate the putative spatial expansion in school violence.

Second, the cultural shifts related to the increasing complexity and scale of society stimulate anxiety and systematic responses to threats to public safety. Bureaucratic practice in complex systems leads to an increasing focus on mitigation of risk through a crisis management approach. Thus, school safety increasingly becomes an issue of crisis management, which includes a multiple-stage focus on prevention and response to threats to school security. This dynamic includes the related, if often contradictory, trajectories about the control of risk and the beneficent desire to protect and nurture youth. Beyond this, school districts have an organizational interest in controlling liability, and as a result may apply an actuarial logic when approaching school safety. Here, in an effort to keep all threats to safety and accidents within controllable parameters, the focus may fall on security and social control.

As an overlapping issue, there is a sincere concern for the well-being of children. For example, school staff members maintain a bona fide interest in the caring and nurturance of pupils in their communities. In addition, parents and other community members may express fear for the safety of children in school, especially when they are exposed through mass media to shocking crimes in other, similar schools. Communication between parents and school staff often is related to their shared concern for the youth in their care, and school antiviolence policies are most commonly instituted after discussions between administrators and parents (Snell et al., 2002)

The difficulty in understanding the catalysts for school antiviolence policy development is that the line between caring and undue control is unclear. Socially, we have seen little legal or ethical debate concerning what sort of limitations we should place on efforts to maintain security in schools. In the next sections, we explore a number of school antiviolence policies and their outcomes. Although the policies examined are not entirely in response to
high profile school shootings, events such as Columbine do exert a high leverage in the discourse about school violence.

CONCEPTUALIZING SCHOOL VIOLENCE

The discussion of the Columbine Effect leads to a discussion of various antiviolence policies implemented in response to violence within schools. There is an interactive relationship between school violence and the policies implemented, and we draw on Stuart Henry’s (2009) multilevel framework to define and understand school violence and the associated school antiviolence policies. However, it is essential to first discuss the relative and constructed definition of school violence. The National Institute of Education (NIE) (1978) Safe School Study report to Congress is one of the first studies to focus on assessing the level of violence occurring within U.S. schools. The landmark Safe School Study suggests that violence occurring within schools is not prominently committed by “outsiders” but rather the students themselves. Thus, the NIE Safe School Study clearly denotes that the school administrators and policymakers can indeed implement policies to ameliorate violence occurring within schools and among members of the school community. The Safe School Study suggests policies that can facilitate an administrator’s objective of reducing violence at school. These include increasing efforts in student governance and rule through enforcement, treating students fairly and equally, improving the relevance of subject matter to suit students’ interests and needs, and reducing class size. The study also presents results reflecting that unemployment, poverty, and neighborhood conditions are not imperative factors toward the violence occurring within a school, but rather, school characteristics such as size of student enrollment, student–teacher ratios, principal’s fairness, firmness, and consistency of discipline are more relevant in reducing school violence (Champion 1997; Lawrence, 2006; NIE, 1978).

Since the 1978 NIE Safe School Study report to Congress, researchers have continued to explore the possible causes, related factors, and consequences of school violence. As researchers began to scrutinize the landmark study, the relative definitions of school violence and the associated policies have changed. Conventional research, such as the 1978 NIE Safe School Study, utilized a definition of school violence that is founded on legal statutes of crime such as murder, rape, assault, robbery, and theft. However, many argue that the definition of school violence that typically applies to the adult realm is an inappropriate framework toward
identifying, understanding, and addressing youth violence within schools. Given different psychological and sociological circumstances, the effects of victimization and harm from violence that youth endure are comparatively more damaging to children’s development than to adults (Finkelhor, 2008; Henry, 2000). Research clearly indicates that youth have limited mental capacity and are less able to defend and protect themselves than adults (Finkelhor, 2008). Thus, a less severe instance of harm of victimization may cause a child to suffer emotional, mental, and physical injury where an adult would not (Finkelhor, 2008). This new perspective from developmental researchers draws into question the school’s culture of tolerance for behaviors such as school bullying and sexual harassment. Such behaviors are consequently no longer tolerated as a normal part of the childhood school experience, but rather tend to be more strongly scrutinized than in the past (Olweus, 1993; Olweus & Limber, 1999; Spivak & Prothrow-Stith, 2001).

Although many research studies still follow the conventional wisdom established by the NIE (1978) Safe Study that school violence falls strictly within the purview of the school, many scholars argue it is also quite important to examine the forces external of the school contributing to the occurrence of violence within schools (Henry, 2000). Because the definition of school violence varies across schools and communities in this nation, we utilize a framework conceptualized by Stuart Henry (2009) to discuss a comprehensive view of school violence and the antiviolence policies implemented in response to the various forms and levels of school violence.

Levels of School Violence

Henry (2000, 2009) is critical of the conventional definitions of violence within schools that construct their definitions concentrating on overt student-on-student or student-on-teacher physical violence. Because subtle harm and injury for youth can seriously impede their emotional and educational development, a broader understanding and definition of school violence is necessary to conceptualize effective policies to address the many forms and levels of school violence. Henry (2009) suggests there are five levels of school violence, spanning from the individual to the societal/cultural level.

Individual violence (Level 1) encompasses behavior that originates specifically from the student, teacher, or administrator and includes actions such as fighting, vandalism, theft, or harassment with the victims either
being fellow students, faculty, administration, staff, or the school. The defining characteristic of violence on this level involves the individual use (or abuse) of power by an individual student, teacher, or administrator toward another individual or group.

Group school violence (Level 2) stems from a collective or group. This group can be a clique or group of students who collectively bully other students, teachers, and staff. This also includes groups of teachers who cooperatively victimize other students, parents, teachers, and staff. Examples of group school violence are school faculty and staff neglect, prejudice, or discriminatory behavior in interactions with parents and parents’ verbal abuse of school faculty, administration, and staff.

Institutional/organizational school violence (Level 3) refers to institutional practices that may injure individuals or groups. For example, such violence may reinforce societal oppression, marginalization, and privilege based on race, ethnicity, gender, sexual orientation, and ability that can undermine students’ educational success and social progress. Institutional harms may include creating a prisonlike environment of control within a school and instituting invasive disciplinary practices. On a cultural level, the organizational exclusion or suppression of cultures, identities, beliefs, and views, while the privileging of others reflected in the curriculum and sanctions practices as a result of the local school board also exemplifies this level of violence. For example, when a local school district denies students permission to form “gay straight alliances” or organizations to curb and address the harassment and bullying of lesbian, gay, bisexual, and transgender (LGBT) students, the local school district is committing additional harm, injury, and victimization of LGBT youth within schools.

Communal/neighborhood school violence (Level 4) is reflective of the political, social, and economic tensions between the school and the community/neighborhood. Educational policies, juvenile justice policies, and local business exploitation of students are some examples reflective of this level of school violence. For example, many researchers, educators, parents, and community stakeholders have clearly protested against the No Child Left Behind Act of 2001 (NCLB), a U.S. federal law, because it can marginalize some youth within U.S. public schools and their communities/neighborhoods. There are a number of ways reported that NCLB has victimized public schools and the associated students, families, and communities that they serve (see Meier & Wood, 2004 for further details). Underfunding of a number of extracurricular programs and detrimental educational effects on disabled and students with limited English proficiency is associated with NCLB (Meier & Wood, 2004).
Societal and cultural school violence (Level 5) is defined as the harmful cultural or social processes that may pervade each of the preceding four levels. This level of school violence highlights the historical, structural, systemic, and the overarching discourse our nation has in relationship to school violence. Such factors include the glorification of masculinity and infamy in popular culture, the widespread availability of guns, and the promotion of competition in school environments. As suggested earlier in this chapter, the Columbine Effect has thrust the phenomenon of school violence into a higher level of salience, such that it is perceived as a serious social problem threatening this nation’s youth. In this sense, the Columbine Effect operates on this level and is intimately linked to policy developments intended to mitigate the victimization of youth on levels one through four of the multilevel model. The fear of harm, injury, and victimization by children, parents, faculty, and all stakeholders in the educational system is overarching and ubiquitous in our society. Thus, the importance of providing a safe school for children is often perceived as an urgent issue, and exploration of school policies in the following section helps to clarify how school antiviolence policies may be understood through this multilevel framework.

**EXPLORING SCHOOL ANTIVIOLENCE POLICIES**

School antiviolence policies are initiatives instituted to prevent, control, or mitigate violence in schools. While many such policies concentrate on student-based violent behavior (Level 1), we also consider antiviolence policies to include programs designed to address victimization on one or more of Henry’s (2009) five levels, including programs designed to reduce psychological and symbolic harm. For illustrative purposes, we explore a number of school antiviolence policies that address the varying levels of school violence, including environmental design, zero tolerance, anti-bullying programs, emergency management planning, peer mediation, and initiatives to influence school climate. Following a discussion of some unintended detrimental consequences of such policies, we conclude the section with a reflection on the evolution of antiviolence policies in schools.

*Crime Prevention through Environmental Design*

Crime prevention through environmental design (CPTED) is an antiviolence approach founded on the notion that the physical environment is a
significant predictor of crime in a given location (Crowe, 1990, 2000; Newman, 1972; Wilcox, Augustine, & Clayton, 2006) – in this case, the school. CPTED primarily addresses four aspects of school physical environment associated with Levels 1 and 3 school violence: surveillance, access control, target hardening, and territorial reinforcement.

Control through surveillance is based on the assumption that potential offenders will be deterred because their acts can be quite observable. Enhanced visibility can be addressed in a number of ways by a school: for example, school buildings can be designed with clear lines of sight and monitoring across the structure. Given greater visibility, the possible occurrence of violence can be identified and addressed expeditiously. The process of enhancing visibility can of course also be supplemented using electronic surveillance measures in school common areas.

School access control is based on the concept that restricting access to potential victims of violence maintains greater safety among all in the school. For instance, school buildings can be designed to implement a centralized point of entry. This controls the access of the school because visitors must enter and leave through the same entrance, which directs any visitors through or near the administration area.

School target hardening is enhancing the physical defense of school participants while on school grounds. This can be accomplished through window locks, security bars over classroom windows, alarms for unauthorized opening of school doors, school fences and gates that border campus, and metal detectors. Similarly, the school territorial reinforcement suggests that all these CPTED factors must be clearly visible to deter potential offenders. The physical presence and visibility of these safety and antiviolence measures promotes a perception of control that discourages violence. In other words, such measures are effective as target hardeners, when it is clearly visible that the school territory is reinforced and protected.

Although a number of researchers have suggested that implementing CPTED antiviolence policies within schools would be effective (Crowe, 1990, 2000; Schneider, Marschall, Roch, & Teske, 1999; Toby, 1994), few scholarly studies have specifically focused on the implementation of CPTED antiviolence policies within schools. Astor and colleagues (Astor, Meyer, & Behre, 1999; Astor & Meyer, 2001) hypothesize there are “subcontexts” or “hot spots” within the school where the incidence of crime is relatively higher due to physical and environmental characteristics, including hallways, cafeterias, and parking lots. Because these high traffic locations on campus have higher rates of violence, increased monitoring and restricted access can mitigate violence in these locations. Astor and colleagues
(Astor et al., 1999; Astor & Meyer, 2001) report that these school areas are perceived as “unowned” by students or school faculty, and administration, a perception that may facilitate violent behavior in these locales.

In an extensive analysis of the effectiveness of CPTED on school violence, Wilcox et al. (2006) reveal limited relationships between CPTED and the occurrence of violence on school grounds. They suggest that the social structure (i.e., student enrollment, percent free lunch, percent racial and ethnic minority, and percent male) of the school is more relevant in terms of the occurrence of school crime (Wilcox et al., 2006). Moreover, they find that the school physical structure (i.e., main office territoriality, hallway territoriality, exterior territoriality, and surveillance in the main office, hallways, and exterior areas), after controlling for school social structure, is not related to student-based measures of school crime. However, the school physical structure is related to teacher-based measures of school crime. Teacher-witnessed misconduct is negatively associated with hallway territoriality and exterior area surveillance, and in contrast, hallway territoriality and exterior area surveillance are found to be the only features of the physical environment to be (negatively) associated with teacher-based perceptions of school crime after controlling for school social structure (Wilcox et al., 2006).

Zero Tolerance Policies

No other school antiviolence policy has received as much social scrutiny as zero tolerance (Verdugo, 2002). Zero tolerance school antiviolence policy attempts to ameliorate Level 2 school violence by establishing clear and transparent guidelines of student punishment. Zero tolerance school antiviolence policy intends to restrict the discretion from school administrators and faculty to ensure unbiased application of student discipline punishments for violent acts within school (Arum, 2003; Morrison & Skiba, 2001; Skiba, Michael, Nardo, & Peterson, 2002; Verdugo, 2002).

Similar to mandatory sentencing guidelines implemented within the criminal justice system, zero tolerance school policies are intended to remove, or at least minimize, discretion from school administrators and faculty to ensure unbiased application of the punishments associated with school antiviolence policies (Arum, 2003; Morrison & Skiba, 2001; Skiba et al., 2002; Verdugo, 2002). The U.S. Customs Agency developed zero tolerance in the 1980s to target the booming drug trade (Martinez, 2009; Skiba et al., 2002; Verdugo, 2002). In partial response to the tragic events
that occurred at Columbine, this zero tolerance philosophy and policy was legislatively indoctrinated into this nation’s public school systems during President Clinton’s administration with the Gun-Free Schools Act (Martinez, 2009; Skiba et al., 2002; Verdugo, 2002). Congress passed this law to address the issue of school violence, requiring schools to institute a zero tolerance policy for students and enforcing a minimum of 1 year of expulsion to students who bring a firearm on campus; otherwise, schools lose federal funds that the Elementary and Secondary Education Act (1965) provides (Martinez, 2009; Skiba et al., 2002; Verdugo, 2002); hence, the pervasiveness of zero tolerance school antiviolence policies has grown exponentially since.

It is estimated that over 90% of public schools have a zero tolerance antiviolence policy in place (Verdugo, 2002; Skiba et al., 2002). Most state and local school administrators have established zero tolerance antiviolence policies with mandatory expulsions or suspensions (Verdugo, 2002). Violent or criminal behaviors such as fighting, rape, assault, indecent exposure, sexual assault and harassment, vandalism, and destruction of school property often result in mandatory student expulsion or suspension (Arum, 2003; Kupchik & Monahan, 2006; Morrison & Skiba, 2001; Verdugo, 2002). Zero tolerance school antiviolence policies, however, also encompass nonviolent student misbehavior. For example, gambling, spitting, verbal harassment, disobedience, truancy, and obscene language fall within some zero tolerance antiviolence policy parameters that mandate expulsion or suspension for the aforementioned student behavior on school grounds (Arum, 2003; Kupchik & Monahan, 2006; Morrison & Skiba, 2001; Verdugo, 2002). Schools across the nation have implemented zero tolerance antiviolence policies that are not entirely in response to school shootings but more in response to various less severe events.

The effectiveness of zero tolerance antiviolence school policies is questionable at best. Even though school administrators continue to practice zero tolerance antiviolence policies, there is minimal research to support that the amelioration of school violence results from this antiviolence school policy. It is reported that zero tolerance school antiviolence polices do make students, teachers, staff, and school community participants “feel safer” and thus may have and influence improved behavior among school participants (Martinez, 2009; Verdugo, 2002). As with many antiviolence school policies, however, the majority of evidence that is utilized to promote the success of zero tolerance antiviolence policies are based on testimonials from schools and school administrators who advocate for the continued use of zero tolerance (Martinez, 2009; Morrison
& Skiba, 2001; Skiba et al., 2002; Verdugo, 2002). On the contrary, there is evidence that suggests zero tolerance school antiviolence policies are not only ineffective but problematic. Even though zero tolerance antiviolence policies are common place since the past decade, the rate of seriously injured victims of violence occurring within schools remains consistent (Kupchik & Monahan, 2006; Martinez, 2009). On the contrary, expulsions and suspensions have exponentially increased as a result of zero tolerance antiviolence policies (Martinez, 2009; Morrison & Skiba, 2001; Skiba et al., 2002; Verdugo 2002). Zero tolerance school antiviolence policies socialize and marginalize students toward social exclusion, educational failure, and economic depression (Kupchik & Monahan, 2006; Morrison & Skiba, 2001; Noguera, 2003; Verdugo, 2002; Wacquant, 2001).

**Bullying Prevention Policies**

Bullying has two key components: repeated harmful acts and an imbalance of power. It involves repeated physical, verbal, or psychological attacks or intimidation directed against a victim who cannot properly defend himself or herself because of size or strength, or because the victim is outnumbered or less psychologically resilient (American Association of University Women Educational Foundation, 2001; Olweus, 1993; Olweus & Limber, 1999; Smith, Twemlow, & Hoover, 1999). Basically, bullying occurs when a student being victimized is exposed repeatedly over time to intentional injury or discomfort inflicted by one or more other students. It may include physical contact, verbal assault, making obscene gestures or facial expressions, and being intentionally excluded.

In recent years, there has been an effort to scrutinize traditionally defined minor forms of victimization, such as bullying and harassment within schools, and to redefine them as forms of school violence. Although conventional wisdom often portrayed bullying as normative within the youth experience, research findings indicated that many victims of bullying sustained long-lasting detrimental social, psychological, and educational effects (American Association of University Women Educational Foundation, 2001; Olweus, 1993; Olweus & Limber, 1999; Smith et al., 1999). Thus, bullying prevention policies are designed to send a message that bullying violence will not be accepted or tolerated. Addressing Levels 1 and 2 categories of school violence, well-designed and implemented bullying prevention programs are based on educating staff and students to recognize and respond to instances of bullying.
The Olweus Bullying Prevention Program (OBPP) is the most prevalent blueprint that school antiviolence policies have utilized to address school bullying. The OBPP is a school-based program designed to prevent or reduce school bullying violence, identifying and focusing on three levels of the school to decrease bullying: school-wide, classroom, and the individual. At the school level, the first step of the program is to identify bullies and bullying victims. School faculty and staff administer the Olweus Bully/Victim Questionnaire to students to assess the prevalence and characteristics of bullying occurring among the student body. Then, school faculty and staff establish a committee to implement training for all faculty and staff members to address bullying. Finally, faculty and staff develop curricula for all students that highlight the school-wide rules against bullying, while promoting the importance of mutual respect and healthy relations among students. Within the classroom, teachers deliver a number of anti-bullying lessons or oversee student meetings about school bullying and peer relations. Teachers also extend communication and discussions about school bullying violence with parents. On the individual level, students may be individually identified as a bully or bullying victim to have regularly scheduled meetings to discuss and address why the bullying is occurring and what can be done to resolve the violence. Through these mechanisms, the OBPP school antiviolence program attempts to reorganize the existing school climate to decrease the occurrence of bullying violence (Olweus, 1993; Olweus & Limber, 1999; Smith et al., 1999).

Although the OBPP is generally viewed by school administrators as successful, there have been limited studies that examine the effectiveness and the limitations of anti-bullying programs, and inconsistent findings in these studies are common (see, e.g., Mishna, 2008; Smith, Ryan, & Cousins, 2007). Because the definition of bullying is complex and relative (Crick & Grotpeter, 1995; Hand & Sanchez, 2000; Vaillancourt et al., 2008), the OBPP may not address all forms of perceived bullying. In this context, the perception of violence, injury, and victimization is primarily based on adult definitions and understandings of bullying, which may lead to under- or over-monitoring of violent student behavior (Safran, 2007; Vaillancourt et al., 2008). In other words, school administrator, faculty, and staff interpretations may influence the utilization of bullying prevention policies. Intimidation based on race, ethnicity, gender, religion, socioeconomic status, social class, physical ability, and sexual orientation is sometimes excluded from definitions of bullying and are therefore not addressed by anti-bullying policies (Espelage & Swearer, 2003, 2004; Simmons, 2002). For instance, there are reports of schools underutilizing bullying definitions that
include homophobic harassment among the student body for fear of the perception that parents and community will interpret this action as supportive of homosexuality (Swearer, Turner, Givens, & Pollack, 2008). Furthermore, there is a clear gender gap between how bullying is defined, identified, and addressed by male and female faculty as well as a variation by the gender of the bully and bullying victim (Espelage & Swearer, 2004). Of course, this may be complicated by the relative and subjective definitions of each student, teacher, administrator, and parent’s view of bullying. Thus, a “universal” or standardized approach toward addressing bullying behavior is difficult to maintain (Espelage & Swearer, 2003).

*Emergency Management Planning*

Given contemporary risk perception in general, schools have become sites of anxiety for a number of threats, including natural disasters, terrorist attacks, and of course violent attacks. At the time of the 2001 terrorist attacks on the United States, schools were comparatively well prepared for attacks, due to the perception that school rampages were palpable risks in schools (Muschert, 2007b). Such awareness has led to the development of crisis management plans in schools, as 97% of schools have in place a plan to prepare for, respond to, and recover from a major crisis, and 87% of schools with plans provided training on crisis response to faculty and staff in the past 2 years (Schuster, 2009). Emergency readiness is intended to address the sources of violence on the institutional plane (Level 3), when implemented on the level of the individual school. When implemented on the community scale, crisis management plans address the sources of violence in communities (Level 4).

Although many such plans have not been tested in practice, there are some indicators that suggest the presence of such plans may not be solution to extreme threats they are intended to be. For example, 51% of school resource officers (SROs) surveyed indicated that the emergency management plans in place were inadequate, and 67% indicated that the emergency plans were not practiced on a regular basis in their schools (Schuster, 2009). Despite these possible challenges, the National Institute of Justice continues to provide resources and training related to critical incident responses including a school safety plan generator, resources for creating a critical incident response team, and how to deal with an on-campus active shooter. Following the 2007 Virginia Tech shootings, the perception of such risk on postsecondary campuses has grown, and numerous universities have formed
similar crisis management plans and have formed campus-wide incident response teams. On all levels of education, faculty, staff, and administration are typically aware of the existence of emergency management plans; however, students are often unaware that such plans exist.

**Peer Mediation Policy**

Although a number of school antiviolence policies exclude student voices in addressing violence in their own environments, there is a growing implementation of peer-led school antiviolence policies. Peer mediation programs are negotiation-based conflict resolution strategies that promote student mediators as a means of resolving disagreements among peers. This variety of policy centers on students as conflict managers who apply problem-solving strategies to assist peers in settling disputes and is intended to address the sources of violence on Level 1, the individual level. Peer mediation cultivates an alternative set of skills that students use to avoid violent situations and, with effective implementation and oversight, helps provide students with alternatives to violence in solving personal problems or resolving interpersonal conflict (Bodine & Crawford, 1998; Johnson & Johnson, 1996; Trujillo, Bowland, Myers, Richards, & Roy, 2008).

Peer mediation policies have been implemented in response to a number of Level 1 school violence situations; however, there are variations. Some peer mediation only addresses informal violent situations among students (e.g., minor school yard harassment), while others have implemented approaches to bring peer mediation programs into the classroom for resolving student disputes. Some schools have utilized formal and structured approaches with peer mediation such as establishing a “mediation office” in which all mediation occurs. Although there are various ways that these programs have been implemented, there are three common elements to peer mediation: First, **planning**, before implementing a peer mediation school antiviolence policy and program within a school. This involves choosing students, the structure and scheduling of the peer mediation, clear and transparent objectives for peer mediation, and the type of violence and conflict that fall within the scope of the program. Second, programs require **training**, in which students learn the basic principles of conflict resolution and how to implement these principles in a respectful and effective manner. This aspect is vital toward the success of a peer mediation program. Third, the program requires **on-going implementation**, involving monitoring and evaluation of the efficacy. Beyond these three commonalities, most
iterations of peer mediation fall within two broad categories: the cadre approach, in which a few students receive training to serve as peer mediators for an entire school, or the holistic school approach, in which all students in a school or in a class are taught how to manage conflicts constructively and are given the opportunity to be a mediator (Bodine & Crawford, 1998; Johnson & Johnson, 1996; Trujillo et al., 2008).

As with many other school antiviolence policies, there is limited research evaluating the effectiveness of peer mediation across schools. Commonly, individual school or district administrators laud the successes of peer mediation. Some programs dictate that only students who are enrolled in peer mediation elective courses can serve as mediators, thus limiting the number of mediators and restricting the schedule of times during which mediation can be offered (Lupton-Smith, Carruthers, Flythe, Goettee, & Modest, 1996). Additionally, the depth of training and frequency of support for mediators and coordinators may face structural pressures on resources (Lupton-Smith, 2004). Johnson and Johnson (1996) argue that for peer mediation school to be effective, a “holistic” approach must be implemented, in which all students are taught the conflict resolution methods and all have the opportunity to become mediators. They further note that the strength of the holistic approach to mediation is that each student learns about managing conflict and violence constructively. Through this channel, schools can facilitate inclusive peer mediation programs that reduce violence in schools by socializing and teaching students to negotiate and mediate conflict in more healthy and creative ways (Johnson & Johnson, 1996).

School Climate Policy

Gottfredson and colleagues (Gottfredson & Gottfredson, 2001; Gottfredson, Gottfredson, Payne, & Gottfredson, 2005) argue that creating strong communal school organization is an effective and efficient approach toward providing a safe and healthy school climate for students. Defined as the organization of a school as a community, key characteristics include supportive relationships among teachers, administrators, and students all of whom share a common set of goals and norms, collaboration, and involvement (Gottfredson & Gottfredson, 2001). Strong communal school organization is found to reduce student drug use, delinquency, misbehavior, and dropouts and to increase levels of student academic interest, motivation, achievement, and interpersonal empathy (Gottfredson & Gottfredson, 2001; Gottfredson et al., 2005; Payne, Gottfredson, & Gottfredson, 2003;
Payne, 2008; Phaneuf, 2006). The importance of establishing good relationships among all school members is a relatively new approach to ameliorating the school violence; however, it is not a new approach within educational research.

Bryk and Driscoll (1988) argue that schools are a “community” because they reflect many of the social mechanisms, bureaucratic practices, cultural values (e.g., focus on education), and behavioral patterns present in communities at large. As in communities, school participants share common activities, routines, and symbiotic interactions that influence one another and an “ethos of caring” (Bryk & Driscoll, 1988). Collective relationships between administrators, teachers, and students create a sense of trust and belonging for a larger school community that influences a school’s overall climate, effectiveness, efficiency, and safety (Battistich & Solomon, 1997; Payne et al., 2003). Verdugo and Schneider (1999) highlight that there is a fine line between creating safe and quality schools and the risk that schools with a culture centered on security and control will have detrimental consequences for all participants. Schools with increased security and control may promote distrust among all participants because they are fearful of violence, thereby distracting administrators, parents, teachers, and students from focusing on educational progress (Noguera, 2003; Verdugo, 1999; Verdugo & Schneider, 1999).

This recent holistic school antiviolence policy approach, as a means of addressing the occurrence of school violence on multiple levels (here, Levels 1, 2, and 3), has yielded early positive research results. Epstein (2002) indicates that “healthy” and functional relationships between school administrators, teachers, students, parents, and the community are influential upon the overall climate and effectiveness of that school. Hazler (2000) indicates that schools that implement programs that promote social issues awareness (e.g., AIDS, violence, or homelessness) have yielded positive results such as increased school attachment, bond, attendance, and engagement among all members of the school community. Hoy and Sabo (1998) note that teachers and administrators who focus on establishing a learning climate that strives for academic excellence often positively influence the school’s cultural attitude toward learning. That pursuit of academic excellence is argued to be “contagious” among students, teachers, and administrators in schools that promote such scholastic virtue (Hoy & Sabo, 1998). Epstein and Sanders (1998) discuss how relationships between the school administrators, teachers, and the students directly and indirectly promote learning and safety. School policies and programs that focus on promoting the importance of educational achievement, attainment, and
success improve the overall school climate as well as making it safer (Noguera, 2003; Payne et al., 2003; Payne, 2008; Skiba & Peterson, 2000).

**IRONIES IN THE DEVELOPMENT OF SCHOOL ANTVIOLENCE POLICIES**

While our review of school antiviolence policies in the previous section has been selective, we nonetheless note some unintended consequences resulting from these efforts to mitigate the problem. Indeed, many of these ironies are best understood as situated within the historical development of school antiviolence policies.

*Reflecting on the Evolution of School Antiviolence Policies*

The development in school antiviolence policies in recent decades reveals that policies are not monolithic, and their implementation is not uniform. The implementation, utilization, and enforcement of school antiviolence policies and subsequent school punishment are influenced by school characteristics (e.g., size, locale, region, demographics, and economic affluence) and student factors (e.g., race, ethnicity, gender, and socio-economic status) (Arum, 2003; Kupchik & Monahan, 2006; Morrison & Skiba, 2001; Verdugo, 2002; Skiba et al., 2002). As school size increases, so does the number of school antiviolence policies instituted, and although school antiviolence policies have been adopted across all schools, urban schools have the highest proportions of school antiviolence policies relative to schools in rural and suburban locations. Regionally, school antiviolence policies are practiced more in western and southeastern regions of the country, and schools with higher proportions of racial and ethnic minority students have more school antiviolence policies. Furthermore, schools with higher levels of students who receive free or reduced price lunches also have increased likelihood of having school antiviolence policies in place.

Regarding individual student characteristics, racial and ethnic minority, poor, and male students are more likely to be suspended or expelled from school as a result of zero tolerance policies. These findings suggest that school antiviolence policies, as well as the associated school violence discourse, have a longer history in urban areas within racial and ethnic minority and poor communities. As suggested earlier in this chapter, however, it is also evident that the school violence discourse and subsequent
antiviolence policies have more recently seized suburban, predominately white, and affluent schools.

It is not surprising that the definition, parameters, and implementation of school antiviolence policies and programs vary because the phenomenon of school violence is a complex, socially constructed, historically contingent, and politically driven issue influenced by myriad of diverse factors. The social construction and the perception of school violence fundamentally stemming from students is apparent in many school antiviolence policies and programs; however, it is also evident that there is growing consensus that indicates multilevel, holistic, inclusive, and community approaches toward addressing the many forms of school violence is vital. “At the end of the day all violence prevention programs come down to relationships: our ability to listen to ourselves, to recognize others’ experience and use this information to solve problems, to learn and be creative together” (Twemlow & Cohen, 2003, p. 121).

Clearly, the broad categories of school violence vary significantly across schools as well as which types of violence are defined as a clear and present danger to all school participants that needs to be addressed. Of course, one school antiviolence policy cannot address all the variegated aspects and levels of the issue. Thus, a singular and populist view that students are the sole source of violence occurring within schools leading to the social and physical control of students as a practical antiviolence response has detrimental consequences.

Some Unintended Consequences

The policies we have reviewed here certainly address school violence on various levels; however, we do note that a policy designed to address the sources of violence on one level may in turn create additional challenges on the same level or on other levels of violence. From our review of selected policies, there are noteworthy ironies. First, CPTED may address some contributing causes of interpersonal violence (Level 1 violence), yet might contribute to an overall prisonlike feel associated with contemporary school design. This prisonlike feel becomes a source of violence on the institutional level (Level 3 violence). Second, zero tolerance policies are intended to reduce discretion in the administration of penalties, and therefore to reduce individual (Level 1 violence) or organizational (Level 3 violence) inequalities that may contribute to violence. In turn, zero tolerance policies might increase inequality by disproportionately affecting certain groups (Level 2
violence) and by contributing to the punitive atmosphere in the institution (Level 3 violence). Third, anti-bullying programs are intended to reduce violence on the individual (Level 1) and group (Level 2) planes. Cultural or individual differences of opinion regarding what constitutes bullying might unfortunately disregard (or amplify) the victimization of vulnerable individuals or groups, thereby magnifying the problem in some senses on the same individual (Level 1) and group (Level 2) planes. Fourth, emergency management planning is intended to address causes of violence emerging from the institution (Level 3) or the community (Level 4). Even when effectively implemented, such plans may stimulate a sense of fear among faculty and staff, emotionally undermining the sense of security such plans might instill. In this case, addressing the sources of violence on Levels 3 and 4 could damage the school environment (Level 3) or individual relationships (Level 1). Fifth, peer mediation programs (intended to reduce violence on the individual and group levels, Levels 1 and 2) if implemented ineffectively might exclude participants from mediation, thereby potentially amplifying violence on the same levels. Finally, school climate policies, intended to address violence on the institutional plane (Level 3), have been demonstrated sometimes to cause mistrust on individual (Level 1) and group (Level 2) planes.

The development of school antiviolence polices have created what has been called the “New American school” as an institution of socialization toward a life of social control and fear (Hirschfield, 2008; Kupchik & Monahan, 2006; Noguera, 2003; Wacquant, 2001). Noguera (1995) argues that schools are increasingly oriented as an institution of control and that implementation of rigid social control measures establishes a “prison-like,” “lock-down” environment for students (Noguera, 1995, p. 190). Wacquant (2001) argues that schools have gradually transformed into “institutions of confinement” that socialize youth for an adult life of control, security, and restricted access. Nineteen percent of high schools and 40% of large urban high schools have full-time law enforcement officials on campus (Heaviside et al., 1998; National Center for Education Statistics, 2005), and the number of schools with full-time SROs is growing rapidly (Beger, 2002: Kupchik & Monahan, 2006). Twenty-five percent of high schools have surveillance cameras and most of new schools built in 2000 are designed with surveillance objectives in mind (Small et al., 2001). Metal detectors, video recording, internet tracking, biometrics, transparent lockers and book bags, and security and drug dogs are just some of the security measures implemented as a result of school antiviolence policies that are becoming part of students’ daily experience (Kupchik & Monahan, 2006; Verdugo, 2002).
Because schools are institutions of education and socialization where youth learn about their current and future roles in society, the school’s environment, in terms of the presence of control and security, may be socializing youth to perceive security, fear, and social control as normative (Kupchik & Monahan, 2006). Indeed, the increasing level of social control (e.g., zero tolerance and security) within schools deteriorates the educational experience of all students (Noguera, 1995). In turn, school antiviolence policies may merely respond to the symptoms of a more pervasive social problem, while ignoring the core issue – the nation’s eroding school communities (Kozol, 1991; Noguera, 2003; Verdugo, 2002).

School exclusion (i.e., suspension and expulsion) has exponentially increased as a result of many school antiviolence policies (Arum 2003; Verdugo 2002; Skiba et al., 2002). Zero tolerance policies are socializing and marginalizing students toward social exclusion, poor educational attainment, and economic disadvantage (Arum, 2003; Kupchik & Monahan, 2006; Verdugo, 2002; Morrison & Skiba, 2001). School exclusions place students on a path toward academic disengagement and failure (Skiba & Peterson, 2003; Skiba & Rausch, 2006; Noguera, 2003; Wacquant, 2001). As a result of being suspended or expelled, students are being deprived of the benefits of the educational system, a process that then detrimentally impacts their life chances (Skiba & Peterson, 2003; Sprague & Walker, 2000; Skiba & Rausch, 2006), and those who are suspended or expelled are also more likely to drop out of high school and terminate education (Skiba & Peterson, 2003; Skiba & Rausch, 2006). Students excluded from school no longer perceive education as a viable institutional mechanism for success, and because of their restricted access, these youth are at increased risk to become involved in misbehavior, delinquency, drug use, and future adult criminality (Dunham & Alpert, 1986; Morrison & Skiba, 2001).

Regarding school security, research findings are inconsistent and potentially counterintuitive. Schreck, Miller, and Gibson (2003) find that a high level of school security is not associated with a decrease in school violence. To the contrary, school security practices such as checking student lockers are related to increased stress, anxiety, and victimization (Schreck et al., 2003). In another study, Wilcox et al. (2006) report that increased school surveillance is not associated with lower levels of school violence, and in fact, some indicate that school security surveillance may instill fear for all members of the school community (Schreck et al., 2003; Phaneuf, 2006). In turn, student fear is associated with school disengagement, avoidance of
particular places within school, psychological and emotional instability, and educational failure (Phaneuf, 2006; Verdugo, 1999; Verdugo & Schneider, 1999). Although there is debate regarding whether school antiviolence policies are achieving their proposed objective to provide safe and healthy learning environment for students, it appears that these policies “facilitate the criminalization of poor students in order to establish and maintain a criminal class to legitimate systems of inequality” (Kupchik & Monahan, 2006, p. 628).

Perhaps a more generalized irony is that the Columbine Effect itself might contribute to school violence. While this review of policy responses does include those addressing the sources of violence on a variety of levels, we note that no policy developments appear oriented toward ameliorating violence on Level 5, the sociocultural level. Henry (2009) notes that various cultural dynamics may operate to exacerbate school violence problems, including mass media hype about violence. The Columbine Effect is as example of mass media hype, and in this case, the dynamic has become pervasive and nestled within the broader context of fear in a risk society. The Columbine Effect is a discourse of anxiety about school violence that acts as a catalyst for antiviolence policy development, much of which is oriented toward control of student behavior. Ironically, we note that as a justification for antiviolence policy development, the Columbine Effect might serve to exacerbate violence on a number of other levels. Notably, we have observed an expansion in the geographical reach and penetration of such policies, and such an expansion leads to the increased expansion of the types of unintended consequences we have illustrated.

The symbolic leverage exerted by Columbine-type events seems strongly related to the institution of policies that have a low threshold in their response to violent behaviors. Although rare in themselves, rampage school shootings are an extreme end on a broad continuum of violent behaviors in schools, one that exerts disproportionate influence on calls for security in schools. As Columbine-type events somewhat typify school violence in the public discourse, the understandably low risk tolerance for school shootings has bled over to other, less grave, forms of school violence. Thus, we observe a high level of sensitivity to school violence, one which elicits a serious and increasingly formal response to school violence on all levels. Our concern remains that many of the most vulnerable students might suffer disproportionately from this sensitivity, although there may be a light at the end of the tunnel as antiviolence policies begin to respond to more comprehensive aspects of the problem.
CONCLUSION

The discourse of school violence known as the Columbine Effect has resulted in an increasing number of school administrators implementing school antiviolence policies as strategies to address school violence (Kupchik & Ellis, 2008; Stanley, Juhnke, & Purkey, 2004). Policies that primarily or singularly focus on responding to the ubiquitous discourse of school violence by increasing control without considering the core problem of eroding school and learning communities will only continue to socially, culturally, and educationally marginalize all students, especially those who are most vulnerable. These school antiviolence policies have suggested that the key to reducing the dilemma of school violence centers on social control to create safe schools; however, most of these policies disregard the importance and allocating resources for improving the overall communal school organization (Gottfredson & Gottfredson, 2001). “Safe” and “learning” environments are not mutually exclusive concepts but rather symbiotic ideas of thinking about providing what school antiviolence policies are ideally pursuing to provide to all students – safe and healthy learning environments that promote educational success as well as instilling the importance of citizenship, respect, and justice for all youth.

Simply “fortifying” schools is not an effective policy toward establishing and sustaining a “healthy” learning environment (Noguera, 1995; Verdugo, 1999; Verdugo & Schneider, 1999). The unfortunate reality within schools across this nation is that, indeed, school antiviolence policies are “normal-izing” control and socializing fear, a dynamic that clearly impedes the educational process and youth development. Additionally, this discourse of the fear of school violence is also impacting the school administrators, teachers, and staff. No longer can administrators and teachers base daily interactions, informal passing by, and hallway chats on the pursuit of establishing rapport and camaraderie but rather are charged with tasks to survey, restrict, and control social behavior. This further erodes the communal school organization by fostering distrust and suspicion (Gottfredson & Gottfredson, 2001; Payne, 2008).

The perceived sense of control derived from efforts to securitize schools may not be worth the negative tradeoffs, and a grave irony is the possibility that in the effort to create safe schools, we may be magnifying risks in other areas. For example, security measures may cause students to experience increased anxiety/angst in general. The potential pitfall here is socializing children toward compliance through efforts to mitigate risk, as the movement toward safety and control in schools may move beyond efforts
to create security. Social control measures often demonstrate a tendency to expand or take on autonomy of their own, a dynamic that may complicate the contradiction between caring and control. We question whether children ought to be treated as objects of control. Scholars of the social problem of school violence and related policies must conceptualize and investigate policies that improve communal school organization as the most effective way to reduce school violence and foster educational success, healthy school relationships, and a safe learning environment for youth. Such policies must balance needs for security on individual, group, and institutional levels with the rights and interests of individual students, particularly those who are most vulnerable.

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REFERENCES


THE GANG’S SCHOOL: CHALLENGES OF REINTEGRATIVE SOCIAL CONTROL

Robert Garot

ABSTRACT

Purpose – This chapter explores a necessarily ambivalent approach to gang members at an inner-city alternative high school, Choices Alternative Academy (CAA), as staff must both accommodate and monitor their often troubled students.

Methodology – The methodology of this study is ethnographic, drawing from participant observation carried out over the course of four years, and 65 informal, semistructured interviews of a theoretical, purposive, snowball sample.

Findings – Staff in schools dominated by gang members must both accommodate and control them, which are often contradictory practices.

Research limitations/implications – As a case study of a single alternative school, the study is limited in scope, but comprehensive in depth, as observations were conducted over a four-year period. Future research may focus on the relationship of teacher experience and expertise to the desire to acknowledge the presence of gangs.
Practical implications — The chapter advocates the utility of an ambivalent approach toward gang members in policy discussions, acknowledging the wide variety of discourses possible in regard to gang members.

Originality/Value of the Paper — While most studies of schools and gangs focus on large, mainstream schools, this study is unique for focusing on a school that specifically serves gang members and the difficulties and dilemmas involved in that task.

During a large regional conference on urban issues in a high-profile hotel ballroom, an African American young man rises, and with tears in his eyes demands to know, “How can you expect us to stay in school with all the gang violence? If you wanna do something about why so many kids leave school, why don’t you look at that?” He stares at the presenters, a hard focused glare, and then sits. After a brief pause, a young man with dreadlocks at the front table responds that violence is a real issue, but the gangbangers are part of the community too, and they also deserve an education.

(excerpt from field notes)

In many people-changing institutions in the United States, social control is disintegrative, punishing deviance through exclusion from community (Braithwaite, 1989). For instance, it is well known that administrators of urban public high schools tacitly encourage students to drop out (Fine, 1991), and actively look for ways to expel disruptive students (Bowditch, 1993), thereby fulfilling the prophecy that “at-risk” students are less likely to graduate. Similarly, Joniak (2005) shows how staff at a homeless drop-in shelter for street kids practice “tough love” (York, York, & Wachtel, 1982), a “therapy” intended to alleviate conflict that paradoxically leads to sustaining conflict and justifying expulsion.

Yet in some social control settings, ongoing efforts are made to integrate even the most apparently socially undesirable clients. For instance, in their study of a neonatal intensive care unit (NICU), Heimer and Staffen (1995) find that mothers with “disvalued attributes” are likely to be viewed positively. According to Heimer and Staffen, such an approach to socially disvalued clients is understood in terms of two factors: the organization’s lack of control over the exit of deviants, and client/staff interdependence. As the authors note, “Labels are applied differently in systems that can evict deviants than in ones that must reform them” (p. 636).

Few clients are more disvalued than gang members in schools, because symbolically, schools and gangs occupy opposite ends of a moral
continuum. At least since the reforming efforts of Horace Mann in 1846, authorities have viewed schools as “islands of order and moral strength in a sea of social chaos,” “deterring delinquency and instilling positive social values” (Anderson, 1998, p. 318). “Gangs,” on the contrary, are portrayed as the progenitors of such chaos, instilling negative social values (Trump, 1996, p. 45; Monti, 1993, p. 383; Schwartz, 1989, p. 323). In this way, “dominant constructions of the school-gang phenomenon ‘imagine’ that the institution is divided into two camps: the ‘insiders’ who conform and the ‘outsiders’ who disrupt” (David Brotherton, 1996, p. 96, citing Pfohl, 1985). If any social group would appear to justify social exclusion, that group would be gang members in schools.

Yet one finds a clear distinction in the literature between those approaches that urge an exclusionary approach to gangs, and those that criticize such an approach.¹ As a clear example of the former, Kenneth Trump (1996) typologizes schools’ responses to gangs on a continuum ranging from lack of awareness to denial, to qualified admittance, to balanced and rational, to overreaction, and advocates that “everyone pull together” to offer a “balanced, rational, efficient, and effective method of managing gang violence” (p. 50). Toward achieving this, Trump proposes that school staff should be aware of “gang” identifiers in school, which he lists as “graffiti, colors, tattoos, handsigns and handshakes, initiations, language, and behavior” (p. 50). Once such behaviors have been identified, school officials “should design a program of combined strategies based on strict enforcement of disciplinary regulations [such as dress codes] and criminal codes; provision of services to intervene with children displaying current involvement or interest in gangs; and the use of education and training for preventing gang growth in the schools and overall school community” (p. 53, also see Huff & Trump, 1996; Burnett, 1999; Bucher & Manning, 2003; Struyk, 2006). Many of the gang accommodation strategies at Choices Alternative Academy (CAA), discussed herein, would appall one who supports the approach to gangs in schools that Trump advocates.

Although Trump’s suggestions may sound reasonable, many researchers point out the negative effects of such policies. David Brotherton provides perhaps the strongest argument in this regard, emphasizing the “anti-educational” dynamics that are set in motion when schools engage in “the gang problem.” For Brotherton (1996, p. 104), the sorts of surveillance practices touted by Trump lead to teachers moving “further away [from students], convinced of the intractable social and cultural distance between them.” Ruth Horowitz (1983, p. 141) also witnessed the fruits of such policies firsthand, finding that “most of the staff worry more about violence
than about education and few help students make academic or career decisions” (also see Thompkins, 2000). For Audrey Schwartz (1989, p. 324), the characterizations that result from such surveillance, “can evoke behaviors on the part of the school community that make the false conception come true … academic failure is the probable consequence of such stereotyping” (also see Padilla, 1992, pp. 69–84). Some, such as Garrett Albert Duncan, suggest that this is precisely the point of such policies (Duncan, 2000). Nonetheless, at CAA, such monitoring and surveillance was seen as integral for maintaining a safe school.

Other researchers may not so clearly link gangs to the surveillance, alienation, and labeling of students, yet they still link gang development to some sort of failing on the part of schools. As Diego Vigil (1988b, p. 422) notes, “indeed, degree of gang involvement can usually be gauged by how severe and deep-rooted the effects of racial and cultural discrimination have been on an individual, or how family and school authorities have failed to influence and guide.” Daniel Monti (1993, p. 399) links such involvement to the lack of activities and esprit de corps in high schools. As he states, “gangs also might be seen, therefore, as doing little more than filling a vacuum created by the absence or ineffectiveness of a more conventional culture in the school.” Regardless of whether they advocate ways to suppress gangs or show how schools de facto create gangs or at least the conditions for gangs, these studies continue to highlight the symbolic divide between schools and gangs, as well as assuming that gang members will oppose and perform poorly in schools.2

Another way to perceive the relationship of a school to local gangs is by emphasizing the ambivalence of school officials’ orientations.3 The work of Sudhir Alladi Venkatesh (1997, 2003) provides an apt model in this regard, as he explores how community members in Chicago’s Robert Taylor Homes are torn between appreciation of the useful services such as security, trash pick-up, and parties, which the gang provides, and resentment of the fear, violence, and drug use that they also bring. At CAA, where this study was conducted, the local gang, “Central,” existed in the neighborhood long before the school was built, and staff members know gang members, and are often acutely aware of and sympathetic toward their familial and personal problems (Heimer, 2001). Moreover, the school’s mission is to serve just such students. On the contrary, gang members are seen to engage in activities outside of school which staff members do not condone, and they cause problems in school as well. The primary problem they cause in the school is to intimidate students from rival gangs, to dissuade them from attending CAA. Yet, rather than transfer students who are harassing,
administrators at CAA transfer those students who are being harassed. In such cases, administrative staff respond to trouble involving gang members not as deviance, but as a conflict between two parties and “are tightly constrained... by practical institutional and situational factors” (Emerson & Messinger, 1977, pp. 129–130).

After describing the setting and methods, I show how an ambivalent approach to gangs, involving both accommodation and monitoring of gang members, was vital in the founding of the school and the treatment of gangs in the classroom. Finally, I examine a dramatic incident that highlights some of the difficulties entailed in this school’s reintegrative policies.

**SETTING AND METHODS**

Urban alternative high schools may seem to share much in common with large urban high schools and homeless drop-in centers, as they serve a similar clientele. Organizationally, however, they tend to be more akin to an NICU. In terms of the two factors Heimer and Staffen emphasized, large high schools and homeless drop-in shelters both exercise significant control over the exit of deviants and are not strongly dependent on their relationships with clients. For instance, as schools’ state funding depends on their average daily attendance (ADA), pushing a student with shoddy attendance to drop-out may boost funding for a large school, and pushing out a student who is a discipline problem may relieve staff work-load. In the drop-in shelters Joniak studied, funding was not strictly dependent on attendance, and they did not suffer a shortage of potential clients. In CAA, on the contrary, administrators depended on the attendance of a small and highly precarious population. Their small size made them vulnerable to funding reductions when students dropped out and more dependent on the students they served.

Over a four-year period, I participated and observed in and around CAA, a small inner-city alternative school designed for young people aged 14–21 who had dropped out of school for 60 days or more, in a six census-tract area with some of the highest crime and poverty in the Western United States. Initially, I was introduced to the school to survey school-to-work transition, and later, I chose it as a setting where I could spend a sustained period of time with young people and be of service to them. Every student at the school has significant experience with gangs. Built from a combination of federal and local funding, CAA is located in a large, highly populous, diverse county. Roughly half the students are Latino, half African
American, and some are from Asian-Pacific islands such as Samoa or Central-American countries such as Belize. Roughly half the students are male, half female. Approximately 300 students are enrolled in the school, and due to attendance problems, approximately 200 show up on any given day. Students who are sent there often have histories of violence, drug use, truancy, dropping out of school, and teen pregnancy. Approximately one-third are on probation, and approximately 30 have infants in the school-supported daycare center. I spent my time in the school hanging out in the classroom and on the yard, tutoring or finding other ways of engaging with young people. I rarely took jottings at the setting, but I did write extensive fieldnotes on the evening of each day’s observations, following practices handed down by Emerson, Fretz, and Shaw (1995). For the nuances of entrée and how I felt accepted by the students, see Garot (forthcoming).

After a number of weeks in the setting, I began to conduct interviews with students away from their classrooms. Eventually, I came to interview 46 students, six repeatedly, plus eleven of the twelve teachers at the school, each of the two administrators, one security guard, and a community activist. I chose the young people I interviewed based on a number of criteria, seeking a racial/ethnic balance that would mirror the neighborhood and represent variation along the continuum from gang-banger to non-gang-banger, nonviolent to violent. I also sought to interview students with various interests, including music, sports, and cars in addition to gangs. I refer to those I interview as “consultants,” as I use their accounts as resources (Heritage, 1984) to report events I was unable to observe firsthand. All names of staff, students, the local gang, gang colors, and schools are pseudonyms.

Interviews were semistructured, open-ended conversations, lasting from 1 to 12 hours and were taped and transcribed. Sessions with students spanned their life-history (Vigil, 1988), covering such topics as places the consultant lived, reasons for moving, descriptions of fights, drug use, experiences in school, intimate and familial relationships, hobbies, and experiences with gangs. Transcripts were provided for consultants when possible, checked for accuracy, and used as the basis for further questions.

I coded and analyzed data according to the traditions of grounded theory (Glaser & Strauss, 1967; Charmaz, 2006) and analytic induction (Katz, 1983), as formulated by Emerson et al. (1995) and Becker (1998). Validity is assured first and foremost through an in-depth, long-term commitment to the field (Emerson, 1987), leading to a rapport which facilitates honesty, an understanding of the reputations of consultants, and opportunities to probe nonobvious ways of checking statements to avoid compromising
confidentiality. Some consultants revised prior statements once they came to know me better, and many were interviewed more than once over the four-year period. A second check of validity occurs during coding, as similar statements are juxtaposed, and statements that do not “ring true” are set aside.

THE NUANCES OF AMBIVALENCE

The Challenge of Accommodation

CAA was initially founded as a storefront, through a special grant from the Department of Housing and Urban Development, in cooperation with local governmental and nonprofit agencies. Ms. Reynolds, who helped write the original grant for the school, was principal from the outset. She had substantial success as a principal of a nearby continuation school in an impoverished area, where she had numerous contacts and knowledge of gang members, but she had no contacts in CAA’s neighborhood. As she states, “Coming to this area, I really didn’t know anyone. It was a whole different gang structure, gang stuff going on.” To make her way into the area, Ms. Reynolds worked closely with Community Gang Services (CGS), a community-based organization composed of ex-gang members who specialize in working with kids in gangs. As she states,

We had CGS in the area, and many of those guys are former gang members. They knew the area and were from the community. They knew the gang bangers, and they were not afraid. So we brought them in, and that kind of paved the way. They introduced us to them. From that connection, that’s how I got to know the area, that’s how I got to know the kids, and that’s how now we’re well-known in the area, and I would say even well-liked by the area.

Ms. Reynolds highlights the centrality of CGS in this statement. First, as “former gang members,” workers in CGS were “not afraid” of gang members. Second, as members of the community, CGS staffers were intermediaries between Central and CAA, to “pave the way” for the school by making introductions. CGS was clearly integral in the founding of CAA, despite strong warnings against hiring former gang members, found in such books as *Gangs in Schools* (Goldstein & Kodluboy, 1998, p. 108). From her statement, it would seem that the neighborhood is so thoroughly saturated with the ethos of Central, that by developing good relations with this gang, the school became “well-known” and even “well-liked.”
Below, the vice principal speaks of their continuing relations in terms of a “running pact.”

“We have a running pact with the neighborhood gang around here,” he tells me.

“Like an agreement?” I ask.

“Yeah. Verbal. You don’t mess with my students here in school and I’ll support you in whatever court endeavors you have. I used to send a lot of ‘em to a friend of mine, go stay a few days. We’ll make arrangements so they can have a place to eat and sleep.”

Here the vice principal mentions two ways he assists local gang members, provided they do not “mess with my students here in school.” First, supporting them in “court endeavors” means providing a ride to court, testifying before a judge, or sending a good account to a probation officer. Second, he may help them with food and shelter. Such shelter may provide a respite from a dangerous situation or may simply provide human essentials that are lacking in that young person’s life. As Mr. Griffin, a local community organizer told me, “You’d be amazed at how many of these young people are homeless.” Nonetheless, the mere notion of a “running pact” with gang members is anathema to advice offered by security-oriented “experts” such as Trump (1996) on how to deal with gangs.

The accommodating stance toward gang members derives from the prevailing ideology at CAA, espoused by Ms. Reynolds, that they are children with needs. She expresses the typical features of such a discourse, often reinforced in staff meetings:

A lot of people are afraid to even deal with them, but they’re humans, they’re children too. Then if you treat them like a child, like you do the others, that’s all they want. Many of them are from dysfunctional families. Some of the kids were living in houses that were really old houses, abandoned houses in the area. They had no other place to sleep. So when you show them love, and you know they don’t have any food, you give ‘em money. “Here, go get yourself something to eat.” Again, giving, helping, and they appreciate that. I think the fact of not being afraid of them and then willing to deal with them, and help them also to see that there are other things. They band together as gang members because of that need for family. So then when we extend ourselves as family too – you can come to us – that starts changing.

In this account, Ms. Reynolds tells of a number of the needs she recognizes in her students: familial, housing, and food. She then discusses some of the ways she extends herself to such students, to make the school accommodating. She juxtaposes love with providing money for food, and the importance of not being afraid of them. All these practices are based on the notion that young people go to gangs for a sense of family, so if the
school can move toward meeting that need, they may exert a positive influence. Ms. Reynolds has structured this ideology into the school schedule, by referring to the 15-minute period after nutrition as “Family,” rather than “Homeroom.” Teachers make announcements during this period, and as Ms. Reynolds states, “You’re with that same teacher for Family until you graduate. So it’s a sense of having that person you can turn to.”

The vice principal draws on his personal interactions with students to echo Ms. Reynolds’s sentiments concerning the school’s perspectives toward gang members. According to this account, certain key moments showed him how students were lacking basic familial and housing needs, and he describes some steps he took toward accommodating such students.

I remember one young man who was a student here at the school. Still comes by to see me from time to time. He was outside playing basketball. He had turned his ankle. We managed to get him over to the office. By this time, someone had come in and told the assistant principal at that time of the incident. So the assistant principal hollered through the window, “Mr. Merritt, call his parents, have them come and pick him up to handle that.” The little kid sat there and looked up at me and he said, “Mr. Merritt, so and so knows god damn well that nobody here got any parents.” Even though I always kind of knew this, it hit me with enough lightning to make me review and reanalyze every child that I come in contact with now. Many times, we take for granted that our kids are coming from homes where there is parenting taking place; there is some kind of a family structure there. That is most definitely untrue. I approach each child with the intent of finding out what type of stability has been in their life. We don’t know. Many times as educators, we go under assumptions, their parents should do that. Well, that child doesn’t have any parents. So their parents didn’t do that, or their parents were children, and they had no structure, so they had nothing to pass down. Many times, kids come in here and confide things in me that I’m never gonna share. That’s going on now.

I had a young man one day. He lived in the air conditioning vent on the roof of my bungalow at school. And I knew he stayed up there; he had no place to go. At morning he climbed down off that roof, and right about the time he thought I was coming to school, he’d be there sitting on the porch waiting for me. I’d take him to breakfast. I’d let him into the gym so he could shower and clean up.

Many gang monographs refer to large-scale social changes such as deindustrialization (Wilson, 1996) as a cause of gangs (Bourgois, 1996; Padilla, 1992; Hagedorn, 1988); accounts of CAA staff emphasized the psychological need for connection due to strained family ties. When gangs are the explicit topic of conversation, staff tend to invoke such explanations as overriding background features to explain gang involvement, as in the following statement of Mr. Dolan, a teacher at CAA.

Essentially what I mean is that young people are looking for identification. They’re trying to become a part of something. Many times the kids are desperate.
They’re hurting, they’re in pain. And there’s an association they made with some other people that gives them the false sense of strength, of self-esteem.

In this excerpt, Mr. Dolan, like Ms. Reynolds, implies a causal connection that desperate kids who are in pain will look for a group to be a part of, which can provide support and a positive self-regard.

Not all staff at CAA share such a charitable view of the school’s relationship toward students, however. Some teachers grow weary of what they see as students’ misbehavior, and administrators’ disinclination to address it. For instance, in describing how the school differs from job programs in which students can be fired, one teacher states,

Here the kids get away with so much stuff! You can’t just kick ’em out. You can’t. I have a problem with that. I think the disrespect of adults is an issue. In the real world, you can’t cuss your boss out and expect to be there the next day. Doing this is a disservice, to make them think, “OK, we’ll let you go this time.” The world is not like that. And that’s the way it’s always gonna be. Excuse me! That’s not how life is.

This teacher is especially upset that a student (Buck) who was caught with a teacher’s manual had not been expelled. As she tells me in an interview, “I was so appalled when I came back to school the next week and there he stood, looking at me and smiling as if to say, ‘See what I got away with?’” That kind of stuff pisses me off, OK?

In my interview with the principal, her response to such teachers is blunt. See, those kinds of teachers, they don’t need to be here. They don’t need to be teaching any student. Anyone who would say that, that’s not the kind of staff member I would want on this staff. … I don’t cherish having anybody on my staff with an attitude about students like that. Especially knowing this is why we exist…. They come to us with a lot of different problems, many. It’s a tough group to work with. I’m not saying they’re the easiest – it’s tough. But this is why we exist.

Teachers are not always appreciative of such practices. Ms. Grodem, a teacher at CAA, expresses her disdain in response to my question, “Is there any other kind of accommodation a teacher would need to make?” For a gang? One thing I notice here is in my first year or two, when we got new students, the Centrals would try to mess with them. They would either jump new students, so they won’t come back, or they would harass them a lot, so they’re not safe. Instead of getting rid of the ones that are harassing, they let them stay here, and we lose the good kid. I’ve seen that happen several times. That, I don’t understand.

Although Central “controls the school,” I spoke with at least three young men, Shawn, Doogan, and Tom, who attended CAA despite belonging to gangs that are staunch enemies of Central. First Shawn and then Tom speak of how they had to negotiate their passage into CAA.
Everybody know, that’s what they say, it’s a Central school, because it’s in the Central territory and whatever. And like I got into it once with one of them. I had to let him know how I am and who I am, and how I’m standing. I’m here by myself and I’m gonna be here by myself. But, if I have to come up here with problems, it will be handled.

In this case, Shawn’s implied threat apparently pacified Central’s overtures. Tom is a bit more explicit.

Man, when I first came to this school, I thought I was gonna have problems, like for real. I used to have my homeboys from 40’s come pick me up everyday. When I first came here, Infant, my first or second day here, he came and asked me where I was from. I told him I thought I was gonna have problems. I told him,”“I’m from 40’s. I’m just here to come to school. I’m trying to get this outta the way.” He had a different point of view. He was like, “Fuck this and fuck that,” which I didn’t too much like. If I’m serious about getting my schooling done, I’m just going to have to hear that. Words is going to be words.

Once Tom swallows his pride, he is able to tolerate the sometimes antagonistic presence of the gentlemen from Central. Yet, notably, all three young men, Shawn, Doogan and Tom, maintain a low profile at CAA, never playing basketball and rarely socializing.

The Necessity of Monitoring

The expansion of CAA from a storefront to a campus stalled when one of their students was shot in front of the school. Ms. Reynolds tells how she determined, “they got the wrong one.”

Ms. Reynolds: There was a young man, let’s call him Sammy, who enrolled from another area, and the word was out that he was from there. And I had to watch the kid. He was only with us like two weeks. But everyday I was so concerned about him, that it just seemed like he was a walking target. I knew he was nervous.

RG: How did you know that?

Ms. Reynolds: Because when he enrolled I questioned him, I asked him, you know when they come in I talk to them to find out what they’re involved in, what gang they’re in, who they know and who knows them, and that kind of stuff. This particular kid had been into so much, and I just asked him, I said [to myself], “If Sammy didn’t live in that area, and I know if he had been into that, he had crossed somebody in that area before, and before long someone was going to know he was here.” So everyday I would talk to him, come in, say, “How are doin’? How was your night? Is anyone saying anything to you? Is anyone looking at you? Do you know anyone where he said this or he said that, or they looked this way or they looked that way?” Then I have to remind all of the students that we’re here as a group. We’re not going to have any of this violence or fighting, you know just constantly monitor.
Ms. Reynolds tells how she inferred that Sammy was a “walking target,” based on his nervousness, where he had lived, and his past activities. As part of her monitoring, she asks him to tell her of any warning signs of possible violence such as “anyone saying anything to you,” or “looking at you.” Soon, she found another program for this student, since, “I know this kid cannot learn looking over his shoulder. It has to be very uncomfortable... We got him home, and low and behold, he was home by eleven o’clock and by one o’clock a young man who was enrolled in one of our educational programs... was killed right in front of the building.” Later, after speaking with other social service agents who knew Sammy, “We came to the conclusion that that happened because they were after the kid who’d gone home that day.”

This incident almost prevented CAA from becoming a regular, institutionalized setting. As Ms. Reynolds states, “It was a question as to whether we need to proceed with the school.” Her response to these hesitant officials was, “That’s why we’re here, that’s the purpose, high crime, high poverty.”

Although the school must accommodate gang members, due to its location and neighborhood dynamics, staff also emphasized the importance of “constantly monitoring” them, bridging the discursive divide found in much of the gang literature. Administrators justify such monitoring not as a “gang suppression tactic” (Brotherton, 1996, p. 100), but as a practical, managerial issue. First, staff are concerned that gang members tend to coalesce in case of a conflict, allowing them to, in effect, enforce their own agenda at school. As Ms. Grodem states, “You have to consider them being in a gang, because when conflicts happen between students, at least involving gang members, they will get their whole gang to come back and retaliate. That’s a factor you have to worry about when people get into conflicts and fights.” Second, since gang members tend to be friends (in fact, they are referred to simply as “friends” by the principal), they tend to enjoy each other’s company, which may be disruptive in a classroom, especially if lessons are not engaging.

Such monitoring continues with each student who enrolls at CAA. In light of the vice principal’s “running pact” with Central, he tells of how he asks those who enroll from outside the area if they are in a gang when they initially check into school. In other words, those students who live in areas in which Central is not active are especially subject to scrutiny.

Generally if a child checks into here from outside of this area, first I’m gonna ask him, “Are you bangin’?” “Oh no, I’m not bangin’.” “So, are you affiliated?” “No, no, no.”
“OK now, you told me you’re not in any gang and so forth. So my deal with the gang that’s around here is hands off. But if I find out, and I will find out before the day ends, if you lied to me, and have been involved in gang activity, then you’re out of here, simply because you have now created a hostile environment on my campus.” Any student who attends school here and is not gang affiliated has a right to get a high school and college education, and that’s what we’re trying to push them toward. If they have had it in the past, and can prove that they’re no longer associating, I will allow them in at that time.

Such a statement provides some insight into the nuances of administrators’ “running pact” with local gang members. In demonstrating how he presents these “general” questions to an incoming student, Mr. Merritt shows his knowledge of levels of involvement in a gang, asking first whether he is “banging,” and then whether he is “affiliated,” meaning he “hangs around” with gang members in some sense. Mr. Merritt then demonstrates his conditional acceptance of the hypothetical student’s claims, combined with a threat to expel the student, not for being in a gang, but for lying about it. He would know whether they had lied from the various students, many of them from Central, who regularly share information with him. Mr. Merritt’s statement that such a lie may create a hostile environment on campus is overblown, for the “hostile environment” is already present, as we will see.

Although many “security experts” who offer advice to administrators on how to manage gangs would have difficulty endorsing, or even fathoming such practices, they are understood by many as making sense in this local ecology. As one teacher, Ms. Rivers states, “The kids that come here that are in the Central gang pretty much can’t go to any other school. They can’t go to Fuller! Some of our kids, that’s their home school. But they live in this neighborhood, and they can’t go over there. They’d run ‘em up out of there. The kids will beat ‘em up or chase ‘em home or whatever.”

Students are often dumbfounded when administrators are not aware of such issues. Below, note Johnnie’s stated exasperation at school officials at Fuller High who were unaware of the dire transgressions of the local ecology they committed when they tried to transfer him to a school dominated by his rival gang.

Johnnie: They tried to send me to Eldridge [high school]. Wouldn’t attend a DAY in that school.

RG: Why not?

Johnnie: Bloods. And not only Bloods, but niggas I knew didn’t like me, and I didn’t like ‘em, didn’t get along with ‘em. So they like, “We sent your transcript to Eldridge.” “What the hell you mean, you send my transcript to Eldridge? I ain’t fittin’ to go to
damn Eldridge! What the hell wrong with you?” And luckily I end up here, CAA. ... I was like, I’m not goin’ to Eldridge. My life would be in danger. I’m talkin’ about serious danger. And trust me, I’m not about to die, just to go to no damn school. I’d be better off goin’ to Columbine, ya know?

Such a vast disjuncture in adults’ and children’s understanding of the local ecology of knowledge (Anspach, 1987; Weinberg, 2000) is common in research on the inner city (Anderson, 1999). In working to develop a reintegrative approach to gang members at CAA, staff were constantly working to bridge this gap.

When I ask how students could prove they are no longer associated with a gang, Mr. Merritt’s response tells how he monitors gang members by working with other agencies to document their gang record.

RG: How could they prove it?

Mr. Merritt: Birth certificate, shot record.

RG: To prove that they’re not in a gang?

Mr. Merritt: Yes.

RG: How would that prove they’re not in a gang?

Mr. Merritt: Well, in their birth certificate, see you get that information, look up the prints downtown, they’ll feed it into the computer (snaps fingers) tell me if this person’s on probation, is he being detained, is he on parole or anything. So I kind of utilize those people. … I guess its part of the job, just part of the job.

Hence, Mr. Merritt uses his relationship with outside agencies as a further check against a student’s account (Emerson, 1991).

Teachers may also determine quite readily whether a student has been involved in gang activity, not through an initial interview, but by watching how other students respond to the new student, as Mr. Thurman, a teacher and part-time administrator, discusses. He also describes what Mr. Merritt may have meant by a “hostile environment.”

When they first come into this school, you find out very quickly, because if he’s from somewhere else – we had a gentleman come here during the summer when I was here, and he came over, and he was from a place that’s only a mile away from here. When we let out during the daytime, you’ll notice there’s a large group outside this area out here. What happens here is they’re part of a local group [i.e., Central]. As soon as he got here, he wasn’t here two days, and he had nerve enough to tell somebody [he was from a rival gang]. Shoot, by the time he got ready to walk out of that gate the second day he was here, they were standing in front of that gate waitin’ for him to come out. Mr. Merritt and I were here, and we were standing in front of the gate at the time he walks out, and the first thing they say is, “You from 40’s?” He said, “What are you talking about?”
They said, “Yes you is.” He said, “Why?” They said, “Cause a lot of them ‘bout to break out you punk bitches, that’s why.” So he turned around and came back inside that gate rather than go outside that gate, “cause they were all up and down the street. They had already set up and were ready for him.” So I took him home that day. I actually physically put him in the car and drove him home. Next day, I talked to his mother, and we discussed the situation, and he himself said he was involved in that. He also said he was a little concerned because one of his friends had just been killed by someone who came out of this area. … Needless to say, he didn’t come back after that day, so we lost him after two days.

Here, Mr. Thurman discusses the problems of a young man who “had the nerve to tell somebody.” Thurman replays how members of Central “banged on” the student, asking the loaded question, “You from 40’s?” foreboding future violence as gang related. At this point, the addressee loses his nerve, responding with a question that denies any gang relevance, but the members of Central counter that denial with “Yes you is” and further humiliate him by emasculating him and his gang. Such interrogations are instantly recognizable by the student and the teachers present as a powerful interaction ritual to immediately produce humiliation, foreshadowing and justifying a potentially violent confrontation (Garot, 2007). Thanks to Mr. Thurman’s intervention, the young man is able to make his way home safely, only to drop out of yet another high school.

Accommodating and Monitoring Gangs in the Classroom

Mr. Don Moses, an old head of the Philadelphia black community advises, “Keep your eyes and ears open at all times” (Anderson, 1999, p. 23). Similarly, according to Mr. Merritt, “I tell the teachers to watch everything. Things can happen spur of the moment, with the snap of a finger [snaps fingers]. So you have to always watch what goes on; you have to always listen to what goes on.” One way administrators monitor students is by checking schedules to assure they will not place too many gang members in the same room, according to Mr. Thurman. Avoiding grouping gang members can be especially difficult during state testing, when students must be arranged in an ad-hoc fashion.

RG: Would being a gang member make any difference, you think, in terms of the classroom attitude or participation?

Mr. Thurman: Sometimes. If they’re showing off for their peers. But usually we don’t keep that many in one class. The way it works out, you’re not going to have them all sitting together. The only time we do is when we have those free periods, like for instance
the other day we had testing. So only a certain group of kids were being tested. And now the rest of the groups are allowed to choose which classroom they want. And because of their affiliations, they want to choose to be with each other. So they’ll flock toward one classroom where the discipline is least strict. And they’ll hang out in that classroom as long as they can, and they’ll cause problems. That’s how we got that graffiti there the other day. They wrote all over that building.

Ms. Reynolds, however, claims that since so many of their students are gang members, trying to separate them in different classes would be a logistical “nightmare.” Instead, after scheduling, if there is a problem, they will make adjustments, as they would in any class where too many friends are congregated together, causing a disruption. As she states, “We schedule everybody. But if there’s a problem, it’s gonna stick out like a sore thumb, and then we make the changes. But initially, no, we don’t, because we deal with so many of them. But if there’s a problem created because there’s so many friends in one, then we try to spread them out.”

Often, teachers invoke gangs as an accounting device to provide a way to understand a student’s behavior, as well as a justifiable reason for a class to appear poorly managed. In such cases, actions are interpreted in terms of what Garfinkel (1984, pp. 76–103) referred to as the “documentary method.” As Garfinkel (p. 77) stated, “[B]y waiting to see what will have happened [one] learns what it is that [one] previously saw” (also see Heimer & Staffen, 1995, p. 639).

At times, teachers make such assessments on the spot, as an interpretation of a setting’s features. The following occurs during a time in which students’ schedules are changed for standardized testing. Teachers report this as one of the times when they have difficulty preventing gang members from being grouped together.

Robert is tagging on his desk. “Don’t write on your desk,” Mr. A says, giving him a piece of paper. Robert writes in his scrawling gang script on it, saying, “I’m gonna send this to somebody.” Two other young men are in the room, one with a big tiger on his shirt, another with a green sweater with a picture on the back of a man flexing humongous biceps and wearing sunglasses. The sweater reads, “My homie… I’ll never forget you,” in medieval script. The one with the tiger shirt [who is walking around the room] pulls an antenna out of his pocket and extends it. “That’s off someone’s radio,” Mr. A notices [I also see how it could be used as a stinging weapon]. The student whips it around, but eventually ends up breaking it and throws it away. Another runs around, rattling dice in his hands and gathering dollar bills from the others. “Let’s go, let’s go,” he says excitedly. Finally, Mr. A says, “Hey, you can’t play dice in here.” Meanwhile, his aide sits at her desk in the back, showing utter disgust. “These aren’t my students,” Mr. A says. “These are Mr. B’s students.” Mr. B comes in, looking tense, telling Mr. A, “There’s too many Centrals in this room. We gotta break them up.” They discuss the matter, but soon realize there is nowhere else for them to go.
In this scene, only two features can justifiably be interpreted as gang related. First, a student tags on a desk, and then on a piece of paper provided by Mr. A. This, however, is not necessarily connected to Central, since many students tag as an alternative to gang involvement (Garot, forthcoming). Moreover, tagging is simply something to do when no other work is provided, akin to doodling. The second ostensibly gang-related feature is the student’s green R.I.P. sweater, which is in Central’s colors, and features a medieval gang-style script. This, however, is a passive feature in the setting, which is not invoked by the members. Many other features of the setting: the student walking around, whipping an antenna, and another walking around rattling dice in his hands, are not overtly gang related. Such behaviors could occur in any classroom, like this one, in which students have been provided with nothing to do, and the teacher exerts little control. By labeling them as “gang related,” teachers are able to shift responsibility for behaviors from themselves to the students. Although many scholars have pointed out how an emphasis on control contradicts pedagogical concerns (McNeil, 1988), some classrooms may be characterized by neither control nor pedagogy (Garot, forthcoming). In such situations, the invocation of “gangs” is useful as an attempt to rationalize the scene that ensues.

Many students with some variety of involvement with a gang feel it is counter-productive for teachers to confront them about being in a gang, as Marco states,

Talkin’ about where you from, what you did, you know. I don’t like those kind of questions, especially from a teacher. Tryin’ to get in all mine, and I told him yesterday, “You know what?” Cause I was mad yesterday, I was mad as hell. And he was, he was talking to me, you know. I just told him, “You know what?” Stay out of mines. “Cause as soon as you step into this class it’s mines too, you know. But it might be somebody else’s, it might be yours too and somebody else’s, but with me, it ain’t going like that. What’s mines is mines and that’s it.” That’s why I don’t talk back to nobody and I stay calm. You know. “What’s wrong with you?” “Stay out of mines man, just stay out of it, you know.”

Here Marco is resentful that a teacher is interested in a personal matter and also that such an interest could lead to trouble. Although he claims 18th Street to start fights, Marco has been affiliated with Vernon Locos, rivals of 18th Street. At the time of this field work, members of 18th Street were the dominant Latino gang at CAA. When he states, “it might be somebody else’s,” he implies that members of 18th Street may hear the teacher’s question, and perhaps come to discern Marco’s gang identity, which he is trying to maintain as a private affair. Asking a student “where you from?”
or “what you do” (Garot, 2007) may bring more troubles than a teacher might realize, contrary to Trump’s suggestions.

Rather than simply asking a student his gang affiliation, teachers have more discrete ways of gathering information. As an important aspect of monitoring students, they routinely share what they have learned about them. During my taped interview with Mr. Dolan, he and Mr. Pope discuss a rivalry between various girls at the school for the attention of Billy, a charismatic leader of the Central gang.

Mr. Dolan: I took Francesca to the office three times today. I keep bringin’ her back. They wanted to jump on her. I talked to her mom too.

Mr. Pope: Who wanted to jump on her?

Mr. Dolan: Billy’s girl. Francesca told her to come outside. “What you lookin’ at, bitch. You need to come on outside. We can handle this.”

Mr. Pope: Billy’s girl?

Mr. Dolan: Yeah. And Amy. You know why?

Mr. Pope [lowly, as if avoiding being overheard]: Cause she likes Billy too.

Mr. Dolan: Used to. But he dissed her already.

Mr. Pope: I know. But it doesn’t matter what he did.

Mr. Dolan: Nah –

Mr. Pope: No, She tryin’ to get the female outta the way so she can get back into the picture.

In this exchange, the teachers, like some of Anderson’s (1999) informants, demonstrate to each other how they watch and listen to students, by sharing intimate information about students as a means of foreseeing and perhaps preventing future conflicts. Mr. Dolan, the more experienced of the two, could even be seen to be schooling Mr. Pope, asking, “You know why?” Mr. Pope then affirms his competence, telling Dolan, “I know” and then provides a summary statement for the exchange. Later in the text, we will see how this conflict between Francesca, Amy, and the others risks blowing up into a situation that threatens Ms. Reynold’s authority, as well as the “running pact” they have developed with Central.
“Clowning”

Teachers often interact with students on the yard as a way of gaining rapport, toward reintegrating gang members, as Mr. Boden, a teacher who often plays basketball with the students, explains. “I think the fact that I carry myself the way I do helps me out a little bit. It helps me out a lot, really. I clown a little bit with them. … Get to know ‘em a bit intimately, they’ll do more for you.” Such clowning includes verbal play, such as the following.

Mr. B criticizes Andy’s dirty shirt. “Looks like you rolled in the street or some’in,” he says. “And look at them socks. You gotta bleach them.” “Nah,” Andy says. Mr. B continues, getting a few laughs from the other guys sitting around.

Such clowning tactics could become rather physical, as I notice while I wait to interview Mr. B.

It is difficult to pull Mr. B away from students for the interview. I see he has taken a girl’s purse and is holding it over the trash can. She wants it back, but when she pulls on one of the shoulder straps, he does not let it go. Eventually he does let go, and comes over to join me with a big smile on his face.

As can be imagined, some of the experienced teachers at CAA criticized Mr. B for “clowning a little bit,” yet he discounted this as “professional jealousy.”

Although gangs may appear heinously threatening in police or media accounts (Katz, 2000), at times students’ identities as gang members are used as a common resource for humorous interactions among staff and students. Below, students capitalize on the vice principal’s knowledge of local gangs to engage in light-hearted banter. As I stand near the gate at the end of a school day, three Latinos quiz Mr. Merritt on the meanings of various acronyms of tagging crews, jokingly referring to whether he has been studying his sheet that lists them.

“Have you been studying your sheet?” Daniel asks.

“Oh yes,” Merritt says.

“So what’s LAK?” he asks.

“LA’s coolest?” Merritt responds tentatively.

“LA Killers,” Jack says and laughs. The students continue, asking if LOL is on his sheet, or BBC.
This quiz is delightful for the students (although perhaps not as humorous for Mr. Merritt) on many levels. First, they are reversing traditional pedagogical roles, posing questions and judging the adequacy of Merritt’s responses. Second, they allude to knowing “inside” knowledge of Mr. Merritt’s sheet, and the irony that he has to study what to them is practically second nature. Third, the challenge is an unfair one, since the meanings of the acronyms of tagging crews are ever-changing, as crews dissolve, reform, split, and merge on a continuous basis, so his task is practically hopeless.

At other times, teasing moves in the opposite direction, as teachers tease students about alleged gang affiliations. Such is the case when I walk down the street with Mr. Dolan after school, and we notice the following.

Jerry curbs his brand new, shiny, royal blue SUV across the street from the school and gets out, his big gold necklace jangling around his neck. “Where can I get some wheels like that?” Mr. Dolan asks him. “Huh?” Jerry says, as he exits. “Where can I get some wheels like that?” “Huh?” Jerry repeats, tilting his head slightly, walking across the street. “You heard me, I wanna know how I can get me some wheels as nice as you got.” “Huh?” Jerry says again, busting into a grin. Mr. Dolan shakes his head, also grinning. “Whatever he’s doing, I’d like to know!” he tells me. “That’s some fine car!” Later, Jerry returns with Billy and Marcus, and they pile in and leave.

THE CHALLENGE OF REINTEGRATIVE CONTROL

Although members of the Central gang were integral in facilitating the establishment of the school, and they constitute the bulk of the students, their presence could be quite problematic when they took a proprietary perspective toward the school. Mr. Griffin, a local community organizer, was familiar with the exploits of Darin, a leader of the gang.

Darin and his Central pals used to beat up all the kids from outside the neighborhood. I asked him, “Are you fighting?” “With everything I can get my hands on,” he said. “With chains, baseball bats, anything we can get our hands on.” He tells me how Darin knew CAA was supposed to be a neighborhood school, so he “and his Central pals” were beating up anyone who wasn’t from the hood.

“Sounds like he needed some negotiating skills,” I say.

“Oh, he had those.” He tells me this was a kid who was on the board and went to meetings, and he wanted the school to benefit this neighborhood, so that’s how he did it.

Many local residents substitute the name of the local gang for the name of the school, akin to changing it from “Choices Alternative Academy” to
“Central Alternative Academy.” Ms. Reynolds also spoke of Darin’s efforts to assert control.

I mean the school was known as Central High School. They had taken ownership of it to that extent. Darin didn’t beat ‘em up personally, but he intimidated them with his friends. And all they had to do was stand on the corner, and these kids had to pass by them. Just think of the fear many of them had, with these Centrals across the street, on the corner, and they have to go to the bus stop. What are they gonna do to me? Are they gonna rob me? So they were intimidated.

Central’s territoriality at CAA is recognized by many as a response to their exclusion from other campuses “owned” by their rivals. Despite what administrators understood as the necessity of accommodating students involved in the Central gang, parents were not always in accord with such policies. In fact, they could respond to them quite lividly, as is apparent in the episode witnessed below.

Suddenly, a woman comes out of Ms. Reynold’s office screaming that nothing had been done about a large group of girls harassing her daughter. “What kind of place are you runnin’! I have been up here over and over, and nothing’s been done!” She comes out of Reynold’s office, shouting to whomever will listen, and Sally [a secretary] tries to whisper to her to calm her down, and eventually moves her outside the office. There, she speaks with three police officers who were on the campus already for a student who had hit his mother. Ms. Reynolds comes out and watches her complain to them from the rail, until the police tell her, “It’s OK Ms. Reynolds, we’ve got it,” and she goes inside.

The next day, Ms. Reynold’s clarifies the meaning of her confrontation with the parent as she enters the staff meeting, conducted in one of the classrooms.

Ms. Reynolds enters strongly proclaiming, “First time in 31 years!” She walks to the microwave by the sink in the left rear corner of the room to heat up her sweet potato pie. Reenacting her meeting with the girl’s mother, she often mimicks how the woman spoke and gestured. She says, “The mother asked if I could guarantee her daughter’s safety at this school.” Ms. Reynolds looks out at the teachers with an exasperated expression, and a few start saying what her impression implies, and what she then articulates: “I can’t even guarantee my own safety!” She says that when she told the mother she could not guarantee her daughter’s safety, the mother started “gettin’ loud.” Enacting the mother’s response, she states, “Well I don’t know what kind of school you think you’re runnin’ up here!”

Speaking for herself, Ms. Reynolds says, “So then I stood up, and she saw when I stood up, that I wasn’t going to listen to her anymore. That’s when she went out of my office and started making all sorts of noise. Sally tried to calm her down, and eventually had to take her outside. She was sayin’ she was going to call the police on us! It just so happened we did have three police
officers here, and I was happy to leave her with them.” Then Ms. Reynolds implies that the parent was on drugs, based on how she smelled.

A teacher asks what was going to happen with the young girl who was transferred. Ms. Reynolds says she advised the mother to place her in another school. “She went off when I told her this, but basically, the police said the same thing. We can’t move the six Central girls that she feels are harassing her daughter. If she does not feel her daughter is comfortable at this school, she needs to put her daughter in a school where she feels more comfortable.” Ms. Reynolds says she has no children of her own, but the students at the school are all her children.

Such an excerpt provides a glimpse into the dilemmas of being a principal at a school like CAA. As workers at an alternative school, staff at CAA are mandated to assist students who have dropped out or been expelled from traditional high schools. Furthermore, staff at CAA have had to develop a relationship with the local gang, first in the initial founding of the school, and second in developing a “running pact” with them. Third, their desire to help inner-city teens leads them to try to create a family-like school atmosphere for some of the most ostracized: gang members. On the contrary, as Ms. Reynolds states, “Central can wreak havoc in an area.” The contradictions of such ambivalence are reconciled by Ms. Reynolds’s maternal concern, in stating that the students at the school are all her children. Presumably she would rather lose one than six, staying on good terms with the local gang, instead of losing six students for the sake of one, and risk that Central might “wreck havoc.” Such havoc at least would affect CAA’s already problematic attendance.

**CONCLUSIONS**

This chapter has begun to explore the profound ambivalence of some inner-city service providers toward gang members, and the consequences of this ambivalence for the ways they construct and monitor gang members. Mr. Griffin recognizes Darin as a drug dealer and a gang banger, yet is willing to mortgage his house for Darin’s college education, out of a recognition of his gifts as a leader and a poet. Ms. Reynolds can tell of a student killed literally on the school’s doorstep, and yet argue, “that’s what we’re here for.” These are positions that are as much courageous as strained, as much heroic as tragic. Yet they are also pragmatic and realistic. Insofar as gang members are predators, boding the destruction of a community, they also comprise that community, and are both products and victims of it. The prosecution of gang members may be the prosecution of a
drug dealer and a murderer, but it may also be the prosecution of a vital and
treasured neighbor, student, and friend.

Out of staff ambivalence arise numerous dilemmas. A common refrain in
inner-city communities, heard in both the opening quote of this chapter and
a statement from Ms. Rivers, is that gang members are children too, and
they need an education. Yet, as both the tearful young man in the high-
profile hotel ballroom and Ms. Grodem state, they “scare away the good
ones.” Here we find “the gang problem” linked to “the dropout problem.”
Alternative schools are explicitly designed as places where students who are
a threat to others, and interfere with the learning environment, are provided
an education. Yet such students are often a threat to each other, and the
school is unable to resolve such conflicts by itself.

Aside from dramatic steps such as school transfers, many uneasy tensions
are a tangible part of daily life at CAA. Whether teachers might adequately
accomplish what passes as “teaching” at the same time as a student is
hoping to accomplish a demonstration of gang affiliation is an ongoing
question. It is also an ongoing question whether students who are not
affiliated with a gang can peacefully take classes together, and whether
students with differing ways of affiliating with different types of gangs can
peacefully coexist. Usually, they do, but not without concerted efforts.
As a school of last resort (Emerson, 1981), which is highly dependent on its
students’ attendance for funding (Heimer & Staffen, 1995), such efforts are
an everyday necessity.

The ambivalent dilemmas faced in conceptualizing gang members is a
practical working problem for individuals serving gang members and also
for researchers and writers of gang-related dynamics. Although it may be
rhetorically tempting to simply collapse an argument into one side of a
dichotomous schema, choosing to represent gang members as either vicious
thugs or as needy children, ambivalence may prove a more useful analytic
tool. To not at least recognize gang members’ humanity is to condone the
historic conditions that give rise to gangs and ratify their continuance.
At the same time, it is short-sighted indeed to overlook the innocent
bystanders, neighborhoods, and gang members who have been victims of
gangs. Even if gang members construct their identities as monstrous or
inhuman, those who provide services to gang members learn to see beyond
such constructions. On the contrary, recognizing that many gang members
are indeed needy children does not obviate the necessity to monitor them,
in light of the distinct possibility that one might end up murdered literally at
the school’s doorstep. In an increasingly exclusive era (Young, 1999, 2007), in
which maintaining a “running pact” with a gang might be considered colluding
with terrorists, we might take note of the challenges faced in providing even the most marginalized with opportunities and spaces for reintegration.

NOTES

1. See Donileen Loseke (1993), regarding victim-victimizer contests.
2. Compare Werthman (1983), who shows in vivid ethnographic detail how resisting educational goals is only relevant for gang members in classrooms where they interpret teachers’ grading practices as arbitrary.
3. The notion of ambivalence is central in many ways for understanding gangs. Diego Vigil (1988), drawing repeatedly from Erikson’s (1968) developmental model, stresses how the ambivalence and unpredictability that characterize the status crisis in the transition to adulthood, if not resolved, may lead to gang-related crises. Garot (2009), drawing on Klein’s (1988a, 1988b) theories of psychosocial development (Gadd & Jefferson, 2007), explores how young men in the inner-city must reconcile themselves to emotive dissonance and ambivalence when structural ties such as those to fellow gang members inhibit one from retaliating. More broadly, Gadd and Jefferson (2007) draw upon Klein’s theories to understand how criminal behavior may result from an inability to reconcile oneself to ambivalence. Shadd Maruna (2001) analyzes the reverse of such processes, showing how ex-convicts struggle to come to terms with past crimes and reintegrate into society by learning to accept perceived harms without resorting to retaliation. On “the dialectical ambivalence of adversarialism and mutualism,” see Barak (2003, pp. 281–282).
4. According to the local police department, the area around CAA ongoingly experiences the highest percent of “gang related crime” in the city, measured at 14.3% of all gang crime in the city in the year before the school was built. One of the CAA census tracts charted the largest increase in violent crime in the city between 1980 and 1988, at 92.2%. On the contrary, the invalidity and unreliability of gang statistics are notorious, as Katz (2000) and Klein (1995) point out. Meehan (2000) provides a revealing insider’s view of how such statistics are constructed. I provide them here to give a sense of the data available on the area. For a discussion on how the number of gang members at CAA is impossible to determine, see Garot (forthcoming).
5. Fieldwork was conducted in and around the school over 116 days of observation, primarily in two periods, from January to June 1997 (33 days of observation), and November 1999 to June of 2001 (83 days of observation), with the period between spent working as a full-time teacher and substitute in a nearby school, with frequent visits to the fieldsite. Detailed fieldnotes were maintained over 489 hours of participant observation.
6. Alternative schools such as CAA have been conceptualized as an increasingly common response to school safety concerns. In a national survey of school boards (National School Boards Association, 1993), 66% of responding boards claimed to have an alternative program or school in place as a setting for placing violent students who have been expelled from a traditional school setting. 85% of urban districts report having such a program in place, 66% of suburban districts, and 57% of rural districts. Policy makers often advocate such settings as an alternative to
expelling students, thereby balancing the rights of violent students to receive a free education with the rights of all students to a safe environment (Leo Klagholz, 1995). Many students at CAA have been transferred there for frequent episodes of fighting and violence, although others were transferred for dealing drugs, and others are simply drop-outs from traditional high schools who have sought out CAA as a means to achieve a high school diploma. Michelle Fine’s (1991) thorough examination of the ways inner-city schools produce drop-outs, Deidre Kelly’s (1993) detailed exploration of the history and contradictions of continuation schools, and Betsy Rymes’s (2001) analysis of the political and social dynamics of an alternative urban high school provide an apt backdrop of the issues in which alternative schools are enmeshed.

7. Nevertheless, since the overwhelming presence of Central at CAA is so obvious, it often prevents conflicts. First, students fear antagonizing the gang, and second, gang members try to minimize violence on campus to avoid attracting undue attention from the police. For further discussion, see Garot (forthcoming).

8. Although Merritt uses the masculine pronoun, such questions apply to young women as well as young men. On the varying levels of gang affiliations, see Garot (forthcoming).

9. Some students have claimed that they have been expelled from school not for being gang affiliated, but for appearing to be affiliated with the wrong gang (this student denied any gang affiliation).

Bill: Like when I was in San Francisco, I always wore – I liked the blue. I always wore blue. In schools I went to, they was like, ‘You can’t wear this here.’
RG: What’d they say you can’t wear?
Bill: They say I can’t wear blue.
RG: Who said that?
Bill: The students, teachers, whoever. They was like, it was like it’s gang affiliated.
RG: Where did they say that?
Bill: North State Middle School. Just like, it was gang related, ‘You can’t wear this color here.’ And the whole school is like wearin’ nothin’ but red and all that, and I’m like, this is gang affiliated? Everybody around here is gang affiliated. And they was like, ‘You either gotta check outta this school, or change the colors you wear.’
RG: The teachers said that to you?
Bill: Yeah. And I’m like ‘Damn.’ So I had my mom check me out the school and from there we moved out here.

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REFERENCES


The Gang’s School


PART V
SUBSTANCE ABUSE IN THE COURTS
LOSING HOPE: THE PRODUCTION OF FAILURE IN DRUG COURT

Mitchell B. Mackinem and Paul Higgins

ABSTRACT

Purpose – The purpose of this study is to examine how staff contributes to the operations of an adult drug court and, more critically, how staff produces client failure. Previous drug court researchers often attribute outcomes to the characteristics or the behaviors of the clients or to the program design, not to the actions of the staff.

Methodology – This study is based on extensive field research in three drug courts over a 4-year period. We observed both public and less public drug court events from the court event to staff meetings.

Findings – The key finding is that staff produces program failures. Within the policies and procedures of their programs, using their professional belief systems, and in interaction with a range of others to manage the demands of their position, staff produces the outcomes.

Limitations – As with other ethnographies, the generalizability of the exact processes may be limited. The core finding that the staff actively creates outcome decisions is a fundamental process that we believe occurs in any drug court or, more widely, problem-solving courts.
Implications – The practical implications of this research are in the illustrations of how staff matter, which we hope will spur others into examinations of staff actions.

Originality – Previous research ignores staff or treats them as mere extension program policies. The in-depth examination of staff behavior provides a unique and valuable examination of how much is lost by ignoring the staff judgments, perceptions, and actions.

Drug courts are one of the most touted responses to the current problem of mood altering substances. Drug courts are court-supervised drug treatment programs designed to divert drug abusing criminal offenders from future crime and possible incarceration. These programs are very popular with courts in all 50 states and several foreign countries. Research suggests that drug courts are effective in reducing both recidivism and costs compared to traditional criminal justice responses to drug crimes (Fagan & Chin, 1990; Gottfredson, Najaka, Kearley, & Rocha, 2006).

Despite the many high-quality studies on drug court, we know little about how the staff members in drug court operate. Drug court, as with many other drug treatment programs, is often referred to as a “black box.” The black box has inputs and outputs, which researchers study to determine if the program works. For example, young black male crack users are more likely to fail the program than others (Miller & Shutt, 2001). Because researchers lack reliable information about the actual day-to-day activities and process of the program, we cannot know why such a group fails at a higher rate. Notwithstanding a few interesting efforts, the staff members in drug courts tend to be hidden in the “black box” of treatment (Mackinem & Higgins, 2008; Burns & Peyrot, 2003; Goldkamp, White, & Robinson, 2001; Paik, 2006).

Staff actions create drug court at three critical decision-making junctures: admission to the program, judging the client’s progress, and removal (Mackinem & Higgins, 2008). To identify all staff decision-making, interpretative practices, theories of the office and actions at each critical junction would take far more space than we have here. We will narrow our examination to the one specific junction of leaving the program, which we call Losing Hope. This junction reveals the importance of staff in producing program outcomes and, by implication, reveals and underscores how important staff is for the entire drug court enterprise. The purpose of this chapter is to look inside the “black box” and see how staff activities create program failures through their decisions, conversations, and actions.
We begin with a constructionist stance that has proven so useful in the examination of other human service organizations and settings (Emerson, 1969; Gubrium & Holstein, 2001; Higgins, 1985, 1992; Holstein, 1993; Loseke, 1989, 1992; Lipsky, 1980; Weinberg, 1997; Frohmann, 1991; Berger & Luckmann, 1990). From a constructionist position, we can make two assumptions that separate this approach from previous research. First, client characteristics and behavior, in and of themselves, do not produce program failure. Second, neither staff nor organizations merely “respond” to participants’ behaviors or characteristics but attend to some behaviors or characteristics, ignoring others in an interpretative process through which staff members create an identity for the participant.

In what follows, we first provide an overview of drug court. Next, we present how we conducted our multiyear, multisite study. We then explain the drug court staff’s professional belief system of drug addiction, treatment, and testing within which they make decisions about whom to remove from the drug court program. We follow with a discussion of the process through which drug court staff decides to remove clients from the program.

**DRUG COURTS**

Drug courts are popular, with 1,900 existing courts, and fast-growing, with 500 courts in the planning stage (Columbel, 2007). They began in Miami in the late 1980s as a response to the dramatic increase in cocaine and crack arrests (T. Murray, personal conversation with M. Mackinem, 1999; Terry, 1999). Drug courts were the first in a wave of “problem courts,” which address public policy concerns including community crime, mental illness, drunk driving, gambling, and domestic violence (Huddleston, Wilson-Freeman, Marlowe, & Roussell, 2005; Higgins & Mackinem, 2009). It appears that problem-solving courts have become institutionalized as a small but permanent part of the criminal justice system.

Drug courts are court-supervised drug treatment programs. Drug court clients typically have a serious drug problem and a history of previous arrests. They are usually charged with felony crimes such as Possession With Intent to Distribute (PWID) crack cocaine or marijuana (Belenko, 2001).¹

Drug court offers treatment services, drug testing, and judicial supervision. Treatment services include drug counseling, self-help meetings (such as Narcotics Anonymous), and perhaps other services (including vocational and educational counseling). Staff performs drug tests on clients as often as several times per week. The results of this testing are reported to all staffers...
and are interpreted as an indication of progress or failure (Mackinem & Higgins, 2007). In drug court sessions, staff reviews client performance with the drug court judge and reports on client attendance at counseling and self-help meetings, drug test results, and attitude. Judges in drug court come to know the offenders over months or even years. They monitor client performance and encourage, praise, chastise, and warn, among other responses. With the advice of program managers and treatment staff, judges may punish noncompliant clients with sanctions that range from community service to jail time. As clients progress through the program, moving from the initial to concluding phases, they may be required to attend fewer counseling sessions and to be drug tested less frequently (Burns & Peyrot, 2003; Drug Court Program Office [DCPO], 1997; Goldkamp, 1999). The three courts we studied fit this approach.²

Drug courts are part of a movement within the judiciary toward dynamic involvement in specific community problems. Using judicial power, these courts can address specific community problems (Berman & Feinblatt, 2001; Berman & Feinblatt, 2005). By 2004, there were more than 2,558 problem-solving courts operating across every state, with an increasing number operating or being planned in foreign countries (Huddleston et al., 2005). Such courts include adult drug courts, driving while intoxicated (DWI) courts, mental health courts, and community courts.

Nationwide, 68% of drug court clients are “failures” – they do not graduate from drug court (Cooper, 2001). In the three courts we studied, 60% of the clients failed the drug court programs. To explain these failures, many researchers have examined participant characteristics to determine the type of person for whom drug court is most effective. This research has examined participants’ characteristics to predict program failure or rearrest (Peters, Hass, & Murrin, 1999; Gottfredson, Kearley, Najaka, & Rocha, 2005; Belenko, 2001). Such research assumes that participant characteristics affect program participation and ultimately client outcome.

Many participant characteristics are predictive of program failure within drug court. Crack-using clients have higher failure rates than those who use other drugs (Miller & Shutt, 2001). Lower status participants are more likely to fail than higher status clients (Goldkamp & Weiland, 1993). High-risk participants, in general criminal justice terms, more often fail the program and are ultimately rearrested (Spohn, Piper, Martin, & Frenzel, 2001). The strongest predictor of rearrest is the number of previous arrests (Finigan, Carey, & Cox, 2007). All these examples and many more focus on the prediction of outcome based on participant characteristics.
SETTING AND METHODS

This article comes from a larger project that explores how drug court professionals transform drug-using offenders into drug court clients through the social construction of the moral identity of offenders (Mackinem, 2003). We studied three adult drug courts in a metropolitan region of a state capital in a southeastern state: one in an urban county in which the state capital is located, another in a suburban county, and the third in a farming county, which is in the same judicial circuit as the urban county. Mackinem served as the administrator in the urban county drug court from its founding in 1996–2004, when the director folded it into the farming county drug court. He served as administrator in the farming community drug court from its founding in 1998 to August 2005. On six occasions between August 1997 and July 1999, he observed in the suburban county drug court.

We provide a portrait of the three counties in which the drug courts are located, discuss each drug court’s type of court, present information about drug court clients and staff, describe how we conducted our field research, and explore the advantages and challenges of Mackinem being a key professional in two of the three drug courts we studied.

Although the three counties are in the same metropolitan area, they do differ. Urban county, home to a large state university and many professional, business, and white-collar workers, has one of the state’s highest average incomes. Suburban county, known as conservative and tough on crime and whose residents commonly work in the capital city, is prosperous compared to urban county. With agriculture and light industry, farming county has an average income of several thousand dollars less than that of the other two counties.

Drug courts vary in how offenders enter the program after their arrest. The drug courts in the urban and farming counties were quasi-adjudicatory programs. The defendants formally signed a stipulation of guilt before entering the program. Should clients then fail the program, they were subject to further legal action. In suburban county’s drug court, the first to be established in our southeastern state, clients entered through preadjudicatory and postadjudicatory paths. Preadjudicatory entrance provided diversion from the criminal court without any stipulation of guilt. Postadjudicatory participation occurred when judges ordered defendants into the program as a condition of probation. The “typical” drug court client for the urban and farming counties, where most of the research was done, was an African-American male, less than 30 years of age, who used crack cocaine.
Seventeen drug court staff professionals across the three courts were significant participants in our larger investigation. The four drug court judges were white males, each with more than 15 years of judicial experience. Mackinem, the only program coordinator for the drug courts in the urban and farming counties during the period of our study, is a white male with more than 20 years of experience in drug counseling and now drug courts. Two program coordinators served suburban county’s drug court during our study – a white male lawyer who began the program, and more recently a white female with several years of drug treatment experience. Of the four public defenders involved in our study, all were female, two black and two white. The seven drug counselors who treated clients in the three programs were composed of four white females, two black men, and one white male. Their experience as counselors ranged from a few years to over 20. One white female and the white male were themselves recovering addicts.

During the larger project, Mackinem produced more than 400 pages of single-spaced fieldnotes. He was careful to record the language used by the drug court professionals, especially the terms used by staff to refer to failures and successes in drug court (Emerson, 1969; Spradley, 1979; Wieder, 1974).

In addition to numerous hours of observations, Mackinem interviewed eight drug court professionals in different positions within the court, developed key informant relationships with three professionals, taped seven drug court sessions in urban county (with the permission of the judge), and transcribed the sessions. In doing so, Mackinem had access to a wide variety of documents used in drug court, including arrest warrants, applications for drug court, and court notes from counselors, which were summary statements about how clients were participating in treatment.

Our field research was opportunistic, with Mackinem using a complete membership role (Adler & Adler, 1987; Riemer, 1977). Although the classical school of field research may criticize this approach because the investigator may be overly involved in the phenomenon and perhaps uncritically accept the perspectives of the fellow members, field researchers have recognized the value of this approach and have encouraged fellow researchers to participate more intimately in the social worlds they study (Adler & Adler, 1987; Adler, Adler, & Rochford, 1986; Ellis & Flaherty, 1992; Higgins & Johnson, 1988; Jorgensen, 1989; Lofland & Lofland, 1995).

Serving as program coordinator in two of the three drug courts studied provided opportunities and challenges for Mackinem. Most of the work of drug court occurs outside of the public drug court sessions. As a complete member, Mackinem participated in many less public activities of drug court.
Being a complete member also posed challenges (Adler & Adler, 1987; Mackinem, 2003). First, given his position as administrator, it was inappropriate to interview drug court applicants and clients for research purposes. Second, as an experienced drug counselor, Mackinem at times found it difficult to notice the mundane in drug court and reflect on his observations and experiences.

To address these challenges of being a complete member, Mackinem talked extensively with his coauthor, an experienced field researcher, but an outsider to drug court. Field researchers have advocated this kind of team field research, which was effective in enabling Mackinem, the insider, to reflect on his experiences and observations as a drug court administrator and to make them available for sociological inspection and analysis (Jorgensen, 1989; Douglas, 1970).

BELIEF SYSTEM OF DRUG ADDICTION, TREATMENT, AND TESTING

Within their beliefs about drug addiction, treatment, and testing, drug court staff works with clients, evaluates their performance, and decides whether they will successfully graduate or recommended for removal. First, drug court staff believes that addiction is a compulsive behavior that is best compared to a disease. Second, the professionals regard the compulsion to use drugs as a product of biological, psychological, and social drives (Lobdell, 2004; Jellinek, 1960). Third, the staff believes that due to the biological changes created by the substance, and the psychological accommodations associated with use, drug users cannot easily assess and evaluate their own condition. Drug users routinely lie both to themselves and to those around them, a process typically called denial. Fourth, treatment, which attempts to change the drug user on biological, psychological, and social levels, is a dynamic process, not a discrete event (NIDA, 2000; White, 1998). The movement toward abstinence, called recovery, is characterized by periods of renewed illicit drug use, known as relapses.

Based on these beliefs, staff expects specific client behaviors. First, addicts lie about drug use. Lying helps them avoid stigma and promotes continued use (Furst, Johnson, Dunlap, & Curtis, 1999). Second, clients make bad decisions. When clients skip meetings, seek medical care, or go out on Friday night, staff assumes they are seeking drugs. Being late for a group counseling session could be a simple mistake or a sign that the client is
returning to drug use. Third, despite the staff’s best effort, clients are likely to relapse while in the program. Termed by staff as a “simple slip” or a “full-blown relapse,” returning to illicit drug use is a normal part of the recovery process. Fourth, clients must change. Staff expected relapses and bad decisions when clients first enter drug treatment. After sufficient time, staff expects no additional relapses.

Finally, staff understands that drug testing is a critical part of any drug court. Drug testing is necessary to catch the client using drugs (Borg, 2000; Knudsen, Roman, & Johnson, 2004; Yacoubian, 2000; DeJong & Wish, 2000). The staff we observed fully trusted the drug testing results. Never did staff openly doubt the test and, when challenged by clients, the staff would emphasize the scientific nature of drug testing, pointing out, for example, that neither secondhand smoke nor holding cocaine will result in a positive test (Hawks & Chiang, 1986).

**PRODUCING DRUG COURT FAILURES**

Drug court professionals *produce* the failures of their programs within their own policies and procedures and within their collective professional beliefs system. Client behavior does not, by itself, determine whether they have failed or succeeded. First, the drug courts that we observed did not have a zero-tolerance policy. The professionals assumed that clients might violate program requirements during their early participation in the program. Second, the professionals took a stance of hope toward the clients. They accepted offenders into the program when they believed that the clients had a serious drug problem, were sufficiently motivated to change, were capable of benefiting from the program, and were not an unacceptable risk to the program’s continued support should they relapse. An unacceptable risk label was typically placed on drug offenders who had committed a violent offense. The prosecutor did not allow such offenders into the program.

The policies, practices, and decisions that figured into drug court acceptance are part of the production of success and failure. “Creaming” clients in which only those offenders who have the greatest likelihood of success or taking all offenders, no matter how uncertain their likelihood of success, would, no doubt, affect the production of failure in drug court. The courts we observed adopted neither of these extreme positions. We do not explore here drug court entry, but rather client exit.

As drug court professionals provide services to their clients, monitor their participation in the program, and judge their progress, these professionals
eventually come to decide how the clients will leave the program. Will they be removed from the program for failure to progress satisfactorily, and, therefore, deserve the harsh punishment that such an unworthy criminal may expect from criminal court? Alternatively, will the clients graduate from the program, having satisfactorily met the requirements, and, therefore, deserve recognition for having turned around their lives and merit such legal benefits as dismissal of charges or probation termination? Have the clients become worthy or unworthy of graduation? Drug court professionals judge both client performance and their personal worth.

Drug court professionals produce the failures of their programs by removing clients whom they have determined are unworthy of further services from the court. The staff “kicks them out” when they lose hope that the clients are worthy addicts who will successfully complete the program. Staff removed clients when they to believe that their clients were either incapable or unwilling to make changes. Losing hope commonly occurred at the end of a long series of behaviors that staff judged to be failures. Less often, removal from the program is the product of a sudden or dramatic action. For example, when law enforcement arrests a client on new charges, the staff’s decision for client removal may come quickly. We first discuss the sudden departure of clients and then examine the process of losing hope. Although graduation is the goal of the program, staff removes the majority before graduation.

Critical Incidents

Drug court professionals occasionally recommended the removal of clients because of some critical violation by clients of program regulations or expectations. As a general policy, arrests for new charges carried the presumption of removal. However, under certain conditions, the staff waived this presumption. If the arrest centered on a charge that occurred before admission to drug court, but was just now coming forward, then continuation in drug court was possible. Staff could overlook a minor drug crime such as driving under the influence (DUI) or simple possession of marijuana if the client was prompt and candid in telling staff about it. For example, the local police arrested Teddy, a client, for shoplifting. He was drunk in a convenience store and, without paying for it, drinking a cold beer. Staff allowed Teddy to stay in the program. Conversely, staff universally acknowledged charges of violence, weapons, and drug dealing as reasons for removal. These would have been grounds for denying admission; they certainly were grounds for removal.
Consider Deshawn, a client who had only been in the program for 3 months. When robbing a bank, he wrote a note demanding money on his deposit slip. The cashier gave him the money and called the police after he left. The police arrested him within moments because his home address was on his slip. The client had also left his checkbook and driver’s license on the bank counter when he fled. Although Mitch understood this robbery to be a stupid crime, probably driven by the client’s desperation for drugs, it triggered his immediate removal from the program.

Threats of violence or sexual advances against staff or other clients could lead to immediate removal. For example, after about 5 months into the program, a client who was gay, HIV positive, and suffered from bipolar disorder, began making a series of sexual advances toward other male group members. The judge quickly agreed with staff on their recommendation for removal. Even had the client not been HIV positive, his sexual advances would very likely have been grounds removal.

**Losing Hope**

Drug court professionals typically became concerned about the progress of clients who tested “dirty,” missed counseling sessions, or in other ways violated the regulations of the program. They increasingly gave such clients unworthy identities. The professionals began to lose hope. As they lost hope, the staff members gave opportunities to the clients to show that they could progress satisfactorily toward graduation, that the staff should not lose hope and abandon the clients. Once staff had lost hope, they recommended the client’s removal to the drug court judge.

First, we explain the staff’s experience of losing hope. In doing so, we discuss two program considerations, program capacity and the good-of-the-group, which provided organizational context within which staff experienced loss of hope. After we discuss how staff experienced losing hope, we examine the process by which staff sought to remove clients from drug court. Four components constitute the removal process: advocacy, trials, record review, and presenting the case for removal.

**Experience of Losing Hope**

When staff became increasingly concerned about the unsatisfactory participation of drug court clients in the drug court program, about their failures to comply with the program regulations, or about their inadequate progress, the staff may begin to lose hope. Losing hope was founded on the
characterizations that staff made of clients over time as they participated in drug court. Staff came to characterize clients, not just their behaviors, and thus labeled the client with an organizational identity. Staff’s characterization of clients ranged from highly positive to strongly negative, from worthy addicts making great strides in going straight to unworthy, lying criminals who would likely require removal. Staff judged the motivation of clients to change their addictive behaviors, as well as whether they possessed the “tools” to change. Staff may characterize worthy clients as “Stepping Up,” “Working Hard,” a “Leader,” or in other positive ways. Staff characterized unworthy clients as “Big Fat Liar,” “Slick,” “Criminal,” or in other stigmatized ways. Earlier characterizations provided the interpretative lens through which staff viewed the future behavior of clients. As staff increasingly lost hope, they portrayed clients through previous negative characterizations and through recalled behaviors. The staff interpreted the recalled events and molded them into a coherent portrayal of the clients as unworthy criminals, no longer deserving of drug court.

Drug court professionals in the three courts we studied understood the decision to remove clients from drug court in the following way: Has the staff done everything possible within the program to help clients who are not performing satisfactorily? Was there any reason to continue what staff understood as fruitless effort to help the clients? Did client actions show that they were unworthy of the program’s continued assistance? As staff concluded that “yes” was the answer to the first and last questions, and “no” the response to the second, they increasingly lost hope. Eventually, they may have lost all hope.

In the following interview excerpt, Sherri, the program coordinator in suburban county’s drug court, and Mitch discussed removing clients from drug court:

Sherri: My thing is, and one of things we focus on: Have we run the gamut on this person? Have we exhausted every single option, from placing them out of their house into a halfway house or connect them to mental health or all those things? Have we done everything we possibly can for this person? And they’re not responding. We have given them a good bit of the tools in order to do all these things and they continue not to heed the message.

Mitch: I described this to someone as when we lose hope. When there’s no hope left that we can help them.

Sherri: I agree in that respect, I really do. You just throw your hands up, and there’s nothing more you can do.
As staff came to believe that clients had developed the tools to stay drug-free and had the support do so, but continued to fail anyway, they began to lose hope in their clients. As treatment and punishment did not work, hope was lost.

Consensus occurred at times with little discussion. More often, staff arrived at a collective loss of hope and consensus on removal through serious discussion. In the three drug courts we studied, staff typically used objective policy to support the removal of a client from the program, but policy did not dictate. Staff decided to remove clients as they individually and collectively voiced their growing loss of hope.

Consider Ralph, whom the staff, through the judge, removed after 4 months in the program. The house director kicked Ralph out of a halfway house, which led to Mitch and other staff discussing his removal from the program. However, when the house director kicked Ralph out of the halfway house, it was not a critical violation, but part of a pattern of inadequate performance. In the following staffing passage, Jane, a treatment counselor, and Mitch discussed Ralph’s removal:

Jane told Mitch that Ralph was being kicked out of the halfway house for not paying the bill. This concerned Mitch. Jane continued, telling Mitch that Ralph had misused the living assistance checks for his residence. Ralph had a lady-friend represent herself as his wife and cash the checks. The money then went to places unknown, and the housing bill went unpaid. Mitch found himself becoming angry over this. He commented to Jane that he was going to kick this person out and send him back to jail. Jane commented that he was doing nothing in treatment. Mitch told her that he could handle the addiction, but this blatant manipulation for crime just really bothered him and he didn’t have any patience for Ralph on that. Jane agreed.

Jane viewed Ralph as an unmotivated client who was not progressing satisfactorily in treatment. The halfway house manager called him “poison.” To Mitch, Ralph was a criminal; his misuse of the living assistance check was not an addiction-based crime. All characterizations were consistent with the organizational positions of the treatment counselor and the program coordinator. Both viewed Ralph as unworthy.

Later, Mitch talked with the treatment staff about Ralph in the morning meeting before court that evening. When Calvin, a counselor, summed up the concerns about Ralph, he did not mention the stolen living assistance checks but expressed concern about Ralph’s persistent inappropriate behavior:

First, he disappeared. He wasn’t coming enough for us to touch base with him. We could never schedule an individual session to discuss his options with him. It was pretty much the same old behavior. He would come in high and be apologetic for one week. After that, he would be gone again. It was at the point that we couldn’t get him to come in. We
tell people, “If you screw up, keep coming back. If you keep coming back, there is a possibility we can help you. But you got to be here. We can’t help you if you are not here.” It was like the lies. The lies, the exceptions, “I swear to God it wasn’t me.”

To the staff, Ralph’s stealing the living assistance check with the help of his lady-friend was just another behavior by which Ralph showed a lack of good faith and a growing pattern of inadequate performance.

Staff decided to remove clients from the program when they had lost hope that the clients would succeed. The staff had come typically to understand the clients as willfully noncompliant, although occasionally they lost hope when they came to understand clients as beyond help.

Program Considerations

Loss of hope for individual clients occurred at times within two programmatic considerations: program capacity and “good of the group.” When the drug court program was full and potential clients were placed on a waiting list, Mitch felt significant pressure, usually from a sense of duty, to push clients through the program, including pushing clients out who were not performing adequately. When discussing problematic clients with counselors, Mitch asked whether the clients were ever going to graduate. If the counselors felt that progress was being made, however slowly, Mitch did not push for removal. However, if Mitch received little indication that the problematic clients were moving toward graduation, he began to promote the possibility of removal. If the problematic clients were not going to make it, then Mitch had “10 who would.”

When all three programs had potential clients waiting to get into the program, Mitch and the other coordinators more critically judged the performance of marginally performing clients. In the following case, the counselors recommended Akeem for removal after testing positive six times. More importantly, this client denied using drugs every time and once blamed the staff “for putting something in my cup.” Note that one of the reasons in Mitch’s thinking for removing Akeem was program capacity.

In thinking about Akeem’s participation in drug court, Mitch was convinced that Akeem was more focused on avoiding responsibility than self-change. After the last positive test, he contacted the Veteran’s Affairs to see if that federal agency could give him “better” treatment. Akeem denied using drugs and denied that anyone had told him about his positive test, although the counselor reported she told him in person. Given Akeem’s lack of admission and the number of people waiting to get into the program, Mitch decided he should be removed.

When there was no waiting list and especially when slots were not filled, Mitch evaluated the marginally performing clients more generously and
with more patience. Coordinators and staff used and referred to the number of clients being served relative to the program’s capacity in deciding and explaining their decisions to remove or retain clients.

At times, program coordinators and staff considered the effect of individual clients on the functioning of the group of clients who attended counseling together. Coordinators and staff reasoned that removing some unworthy clients also served to help the other clients either by removing an impediment to successful group functioning or by sending a message to other clients of what was expected of them. In short, the judge on staff recommendations removed some specific clients for the “good of the group.” Not to remove an unworthy client might “send the wrong message” to other clients. Drug court professionals did not remove problematic clients solely for the sake of the group, but the professionals did consider how removal (or failure to remove) could affect the group, or how such action or inaction later improved the group. The concern for the group perhaps lowered the threshold for deciding when to remove problematically performing clients.

In the following interview passage, Carl, the program coordinator of the drug court in suburban county, and Mitch were discussing some recent clients removed from Carl’s program. Notice Carl’s claim that removing several clients helped the functioning of the group, but also notice how Carl characterized those he removed.

Carl told Mitch that a couple of weeks ago he kicked four people out of the program. Since then, the program has been “rocking.” Carl described these people as “full of shit.”

Staff occasionally argued that removing a bad client was necessary to send the appropriate message to the clients that they should take drug court seriously.

**REMOVAL PROCESS**

First, as staff began to lose hope, they increasingly considered removing the client. However, advocates for a client, particularly professional staff who had not lost hope, could forestall the move toward removal. Second, if staff moved toward removal, at least in the three courts we studied, they provided final opportunities for the clients to perform adequately, to show the staff that the staff should not lose hope, that the clients were worthy of further assistance in drug court. We call these opportunities “trials.” Finally, if the clients had not passed the trials, then the program coordinator thoroughly
reviewed the clients’ case records to identify the grounds that he would present to the judge for the clients’ removal. Infrequently, the record review led the professional staff not to recommend removal of clients, at least at that time.

Advocacy

When some staff members lost hope and began to urge that unworthy clients be removed from drug court, other staff members may not have lost hope. These hopeful staff members may have advocated for the client to be allowed to remain in the program. Strong advocacy from a staff member could keep a client in the program, at least for a while longer. If the staff members felt sufficiently strong, they in effect could veto the removal decision of the other staff because the other staff would respect the sentiments of the still hopeful colleague.

For example, after being in the program for 10 months, Mitch and the counselors considered Robbie a likely graduate in a few months. However, he began to miss drug tests and treatment sessions, and Mitch suspected that he was “using” and was skipping treatment sessions to avoid the drug test. Alice, the lead counselor, thought Robbie was using but held out hope for him because of his having confessed, many months earlier, to using drugs before being tested (a good sign), his subsequent months of being clean, and his active participation in treatment. Several times, she talked Mitch out of a removal recommendation by asking for another chance for Robbie.

Suspecting that a colleague may push to remove a client, a staff member may preempt that possibility. In the following staffing, Jane, a counselor, knowing that Aaron had tested positive again for using cocaine, feared that Mitch would seek to remove Aaron from the program. Jane began the discussion by casting the client’s most recent positive drug test as a “teachable moment.” She also made other claims for the client that presented the rule violation as less negative than it might otherwise have been interpreted.

“I think we might have a teachable moment with Aaron,” Jane opened. “He tested positive for cocaine and that caught him off guard.” She continued, “He just ran into an old dealer of his. The guy said he hadn’t seen Aaron around much and that he had some killer stuff. Aaron immediately bought and used some. He is truly upset that people don’t see him as he sees himself. Aaron sees himself as a caring guy and others see him as not giving a shit. He picked the three strongest people in group to give him feedback and they all told him the same thing (which Mitch understood as the three clients were brutally honest with Aaron) … For some reason it is real important to him that he complete drug court. He needs to complete something that is really hard.”
Jane had not lost hope in Aaron. She understood the client’s drug use as an opportunity for change. She implicitly characterized him as motivated to finish drug court and supported this view by noting that the client picked the three most direct members of group to provide feedback. Her advocacy made the discussion of removal inappropriate.

**Trials**

As professional staff in the three drug courts we studied lost hope, they typically did not immediately recommend to the judge that the unworthy clients be dismissed from the program. Instead, staff provided opportunities to the clients to show that they could and would comply with the requirements of the program, and, therefore, the staff should remain hopeful and allow them to continue in the program. Trials reflected the desire of staff to help drug using offenders go straight and to assure themselves that they had indeed given the offenders a fair chance to perform satisfactorily in the program. Trials reflected and supported the professional image that staff had for themselves and for what they did. Ranging from the least to the most definitive were three kinds of trials: warnings, last chance agreements, and judge’s threats.

In warnings, staff told clients that they were headed for removal if they did not begin to comply with program requirements. Judges, treatment staff, or program coordinators warned clients in court, by telephone, in an office, or during a counseling session. Warnings could be general or include specific requirements to be met: “no more missed appointments; even if you are dead, you’d better be there” or “you have reached the end of the line; no more dirty tests; you’d better get it together.” Judges warned clients heading for removal and at times told them to see their counselors to learn what they needed to do to stay in the program.

Consider Robert, who had been a client in the drug court program in urban county for several months. He had previously tested positive four times for marijuana and once for cocaine; yet, he denied use during his most recent positive test, claiming that his positive drug test was due to inhaling secondary marijuana smoke as he took a car trip to the coast. He attended counseling sessions irregularly. After court, Mitch told Robert that he needed to stay away from his friends and his uncles.

Compare the private, word-to-the-wise warning Mitch gave Robert with the public warning Mitch gave Greg in court. Greg had been in the program a little more than 5 months, with periods of great participation and others of
lousy performance. Greg had not violated program requirements in several months, but he did not speak in counseling sessions and staff viewed him as unmotivated.

Your honor I would like to call Greg. If Greg continues his current patterns, he will never graduate the program. He does great for about a month or a month and a half, (and) then he messes up. He fails a drug test, which is the most common way he messes up. If he never makes a change, he will never graduate drug court. He could be here for ten years, everyone in this room could go away, and he still would not graduate.

Staff warned clients whom they believed could comply with program requirements but were not participating properly in drug court. They did so to elicit greater external motivation from the clients, which staff hoped would become internal motivation.

In the early years of urban county’s drug court, Mitch and the other professional staff frequently used last chance agreements, sometimes called “thirty-day contracts.” The last chance agreement was a form filled in by treatment staff and enforced by Mitch that notified clients that they had one last chance to follow the requirements of the program. Clients signed the last chance agreement, acknowledging that any future rule violation would lead to removal.

In the following case summary, Danny, a client who had done poorly in the program, was given a last chance contract. Staff characterized him as “treatment wise.” The client could say the right treatment words, but his behavior remained unchanged.

Danny was admitted to services on 10/25 and has attended 5 of 6 groups, 3 of 3 UA’s (UA stands for urine analysis or drug testing.). Client stalled on all UA’s. On 11/20, he was in the bathroom stall for over 2 hours and staff recorded his failure to deliver a sample as a positive. Danny has a long history of manipulative behavior. Client in group and homework assignments reflects “treatment smarts” and not an application of basic recovery ideas. Danny’s progress is completely unsatisfactory. Client’s group participation is characterized by excuses, rationalizations, and justifications for his willful behavior. Recommendation is for two-week last chance agreement; if there is no significant improvement in two weeks, recommendation will be for removal.

The last chance agreement notified Danny that he must either change his behavior or the treatment staff would recommend removal. Failing a last chance agreement did not guarantee removal but was a gravely serious strike. Danny survived in the program for a few more weeks before staff removed him.

Finally, judges occasionally threatened clients that if they did not comply with a specific, named requirement, such as missing no more counseling
sessions or changing their friends, then the clients would definitely be removed from the program. Robbie, whom we discussed earlier, always tested positive as graduation approached. Mitch told the judge in the precourt meeting of their suspicions of his using drugs and their plan to test him (and several other clients) before court. The precourt meeting ended early and Mitch went to test Robbie. Robbie claimed that he could not urinate, that he had just done so before court, and that that he could not possibly do so again. “Ask anyone, I just peed,” he remarked. Mitch “knew” that Robbie was dodging the drug test as the body produces urine in about 20 min. In court, Mitch reported that Robbie could not “deliver a sample.” The judge chastised him and told him to report to Mitch at 8:30 a.m. the next morning. “If you can’t give a sample then, you are out,” the judge threatened. Off to the side, the judge confided to Mitch that if Robbie tested positive, he was out of the program.

The public nature of the judge’s threat to remove Robbie if he did not produce a urine sample the next morning bound the judge, at least to some degree, to carry out that threat. How would the judge look to the staff and the drug court clients if he did not back up his threats? Although the judge’s statement to Mitch to remove Robbie if he tested positive was not made as publicly as the threat to Robbie, it still bound the judge’s actions. The next day, Robbie tested dirty. His parents came to the following court session to plead for another chance for their son. No drug court professional supported the parents’ plea, and the judge did not grant it.

Trials provided opportunities for clients for whom staff members were losing hope to comply with program requirements and to forestall their removal from the program. Clients who passed the trials remained in the program, having further opportunities to perform successfully and redeem themselves in the judgment of the staff. Clients who failed the tests confirmed the staff’s judgment of their lack of worth. The judge removed them.

**Reviewing the Record**

As professional staff arrived at the decision to remove a client from drug court, the program coordinator in all three counties reviewed the client’s individual’s record, listing the client’s violations of the program’s requirements. The coordinator often did this after warnings had been issued and last chance contracts imposed. Through a review of the record, the coordinator built a case for the client’s removal that would be presented to the judge, much as staffers do in other service or court agencies when removing clients.
or closing cases (Higgins, 1985; Holstein, 1993). The record review provided a simple, potentially powerful, indictment of the client as someone who was unworthy of continuing in the program.

Mitch listed the following record review on a piece of paper to prepare for the removal of a client:

Right before a surprise test, he admitted to using drugs.
Third positive test.
Put on probation during last court.
Fails to complete assignments.

Mitch judged the three positive tests to be the least significant failures in the record review. The failure to complete assignments was a more important concern as it showed inadequate motivation. In treatment, the client was making insufficient effort in treatment to change. That the client had been put on probation was a reminder to the judge and others that a last chance agreement had been set and the client had failed to abide by it.

Mitch used the record review at times to guide his discussion with treatment providers to remove clients. He used it to make a case in court to remove clients. Professional staff and judges accepted the record review as an accurate depiction of the client. However, at times, through the record review, Mitch and other staff decided that clients who were moving toward removal were not as unworthy, not as hopeless, as their staff discussions had suggested. These clients were allowed to remain in the program.

Presenting the Case for Removal

The final, often dramatic, step in removing a client from the program was the presentation in court of the case for removal. By presenting the case, the coordinator sought to convince the judge to remove the client or provide additional support to the judge’s earlier agreement to the recommendation to remove the client. Finally, presenting the case served to instruct the other drug court clients sitting in court what could happen to them if they performed inadequately in the program. In the courtroom, recommendations for removal shifted from mere plans to rhetorical performance.

Presenting the case for the client’s removal likely appeared to the casual observer as an attack on the client by the staff (Garfinkel, 1956). When presenting a case in court for a client’s removal, Mitch did not try to present an impartial account of the client’s participation in drug court. Instead, lawyerlike, he attempted to build a compelling case for removal of the
unworthy client. He highlighted the client’s failures, argued that the client would not or could not change, and insisted that no further effort from the program was warranted.

In the following presentation, Mitch called Joe to stand before the judge, reciting the client’s failures in the program and publicly pushing the judge to remove him.

Mitch: Your honor, the client attended 5 for 5 sessions, one UA, positive for cocaine on November 4th. Client admitted to using on November 3rd, but continued to blame use on something else. Client was confronted on his repeated failure to humble himself and let go of self-will. Client continues to portray the pitiful person after his drug use but fails to learn from his repeated use. Much time is taken away from others to assist the client, who fails to help himself. Recommendation is discharge. How long have we stood by Joe and had him let us down? Not once has Joe accepted responsibility for his action. He always has an excuse or story.

Joe: I know I have done wrong, your honor. I thought I had this thing beat. I made a mistake. If you could give me one more chance, I know I could do it this time.

Judge: Many times, we have given you another chance.

Standing beside Joe was his mother who quietly wept. Joe was subdued and still. The judge looked at the mother and asked if she had anything to say.

Mother: Please, judge, let Joe have one more chance. He is a good boy and I know he can do well in this program. Thank you. (Tears rolled down her face as she said this in a small voice.)

Judge: Joe, I don’t know how many chances we have given you to straighten up. Now you want one more. Well, you have used them all up. I am going to order you that you be removed from the program.

In his presentation to remove the client from the program, Mitch emphasized that Joe gave excuses for his failures instead of accepting responsibility for his willful violations of program requirements and learning from them. Mitch portrayed Joe as the unworthy criminal who no longer deserved to be in drug court.

In response to this presentation of the client as a willful failure, Joe only requested another chance. He did not dispute the portrayal nor try to recast his dismal participation in the program with an alternative explanation. Joe responded weakly to Mitch’s characterization of him as an unworthy. Joe’s ally, his mother, could have been an advantage. However, the mother’s tears, while sad, did not effectively contest the professional’s portrayal of her son. Had she presented herself as a strong individual who intended
actively to help Joe, perhaps some hope awaited them. However, she seemed resigned to her son’s fate. The judge removed Joe.

**CONCLUSION**

The drug court staff, not drug court offenders, produces the successes and, for this chapter, the failures of drug court. No one staff member, like the judge, produces the failures; they are the product of the entire staff. The conduct of drug court clients does not by itself lead to success or failure. Client behavior acquires meaning only as the drug court staff interprets it, characterizes the clients, and manages what the staff sees as the unacceptable behavior of increasingly unworthy offenders. Drug court staff makes fateful decisions of who to keep in the program and who to remove contingent upon program policies and procedures, professional beliefs about drug addiction and recovery, and interaction between professionals, clients, and others, such as family members.

In part because they are the most public figure, judges are seen as central to drug court operation and are, by extension, central to program failures (Marlowe, Festinger, & Lee, 2004; Berman & Feinblatt, 2002). The judge is the ultimate decision-maker. If one were to see only the public drug court event, then it would appear that the judge alone decides to “kick” a client out. The judge, however, is dependent on the other staff members for information, perspectives, explanations, and recommendations that ultimately manifest themselves as a single public decision. The judge is part of the staff and is subject to the contextual processes and limitations as any other member (Goldkamp et al., 2001; Hawkins, 1992; Flemming, Nardulli, & Eisenstein, 1992). Thus, it is important to see the drug court event as the public culmination of much larger and hidden processes involving the entire staff and covering many settings that ultimately produce the display of a unified rational decision.

Since the “outputs” of drug court are created by staff members through judgment of clients within contextual and social bounds, it is important that researchers who evaluate or predict drug court outcomes should not be satisfied with solely examining the characteristics and conduct of drug court clients or policies to predict client and organizational outcomes.

As we have seen, staff matter in the removal process just as they do in admissions participation. Admission considerations include who is “really”
motivated or whether the client was violent in the past. Participation considerations range from the acceptance of a client’s excuse for missing a group counseling session to staff’s determination if the client has changed. The idea that staff are active creators in client admissions, progress, and outcome may be challenging to many staff in drug courts. As long as staff members understand themselves as merely noticing the obvious-to-all quality of client actions, staff need not examine their assumptions, interpretations, and practices more deeply than making consistent, responsible decisions. To the extent that staff members understand that they create success and failure by their construction of meaning about client behavior, then staff would have to take full ownership on how they both create and maintain client identities. For example, if crack users fail at higher rates than noncrack users, the staff may need to examine their own behavior. How does staff “understand” crack users as different from “regular” addicts? What expectations does staff impose on crack users that might be different from other users? Such examination might initially make it more difficult for staff to work with their clients, always looking behind their own decision-making.

That staff matters opens new possibilities for researchers, although these possibilities have, so far, failed to be explored. Traditional drug court research operated on two fundamental assumptions. First, client characteristics and behavior determine outcome. Second, that paper policies and program descriptions capture the program. As we have illustrated, neither is true. Since staff matters, they warrant attention. At a simple level, drug court researchers have not examined if staff characteristics affect program outcome. For example, do counseling staff’s years of experience have any affect on client outcome? Studies of staff characteristics begin to explore how staff matters. Staff characteristic studies would be a simple beginning; richer detailed studies of how staff interact with one another and with clients would reveal much more about how drug court operates. Learning how client characteristics meet staff characteristics and what interactional patterns emerge would dramatically improve our understanding of drug court and by extension many other problem-solving courts.

Adult drug courts are part of the problem-solving court movement. From mental health courts to community courts, teen courts, domestic violence courts, or homeless courts, the problem-solving court movement is a part of the 21st century court system (Higgins & Mackinem, 2009). Many of the problem-solving courts are based on adult drug courts with, we suspect, many of the similarities. The lessons learned, that staff matters crucially for the production of failure in drug courts, and, by extension for the production of success, too, might apply to all problem-solving courts.
Staff matters in adult drug courts and we believe in all the manifestations of problem-solving court.

NOTES

1. Some have commented that drug courts select only the highly motivated applicant, discarding the unmotivated or risky. Nationally, this is not always the case; many programs take those ordered by the court and have little say over the admission decision. In all three courts studied, violent offenders were excluded from the program, as were burglars in two of the programs. In the programs we examined, staff sought to take drug addicts who were motivated to change.

2. Critics of drug court have cautioned that drug courts give inadequate attention to the clients’ due process rights. For example, since drug court is to be non-adversarial, clients may not receive a vigorous defense from their attorneys. Or, in traditional courts, urine testing can only occur if ordered by the court, a chain of custody must be maintained, and the defense is free to challenge the results. None of this typically occurs in drug court; these due process rights are waived (Nolan, 2001).

3. Drug court clients varied among the three courts. In particular, drug court clients in suburban county, based on the first 4 years of operation, were 55% white and 44% African American. Forty-three percent of the clients in the suburban county drug court used powder cocaine as their primary drug of choice. However, we found no evidence that drug court staff’s handling of client responses to illicit drug use accusations varied by the social characteristics or drug use preferences of the clients.

4. We have no evidence that the social characteristics of the counselors made a difference on how they handled client accounts. A recovering counselor was similar to a nonrecovering, as a female was to a male.

5. Bipolar disorder is an illness in which the person experiences extreme swings in mood from profound depression to euphoric periods of manic energy. The manic stage is occasionally characterized by impulsive spending, grandiose plans, and frequent sexual activity including promiscuity.

6. Occasionally, staff gave a “Most Improved Award” to those clients that staff believed had made a “180 degree turnaround.” This award suggests that clients can move out of a hopeless characterization. The number of such cases is too few to make any reasonable assumptions, but still worth noting. In all three courts, the most improved award was dropped because staff came to believe it was a curse. All those who received the award were ultimately judged as failing.

7. A judge may threaten a specific client or mark a policy change through a general threat. For example, one judge announced that any client caught faking a urine sample would automatically be removed.

8. Judges’ “threats” were at least, in part, based on the reasoning that clients had control over their behavior, believed the judges, were aware of the consequences, and were capable of making rational choices. We are unsure as to whether all four conditions were always present when threats to remove clients were made and kept. The judge in farming county’s drug court announced in court that any client forging documents showing they attended self-help groups would be removed from the
program. Within a week, the counselor caught Billy, a client, forging attendance documentation. Billy had been doing well in the program, and Mitch believed that eventually he would graduate. At the next court session, Billy admitted that he forged the attendance slip and explained that, because he had been working a lot recently, he did not have time to attend the self-help meeting. The judge removed him. For months afterward, the judge and Mitch discussed the client’s removal.

9. A brief record review, as in the above example, does not mean a weak case for removal. Drug court professionals attended to offenders in terms of drug court–relevant behaviors and attitudes.

REFERENCES


STANDARDIZING SOCIAL PROBLEMS SOLUTIONS: THE CASE OF COURT-SUPERVISED DRUG TREATMENT

Stacy Lee Burns and Mark Peyrot

ABSTRACT

Purpose – This study tracks the legal control of the problem of substance abuse.

Methodology/Approach – The chapter explores the “natural history” of the evolution of the social construction of drug use and our collective response to it. Over the past 100 years, our understanding of drug use/abuse and the system for handling drug problems have gone through a series of changes. In the past 20 years or so, provision of treatment for drug offenders within the criminal justice system has rapidly expanded. California’s recently enacted Proposition 36 (Prop 36) initiates for the first time on a mass basis the court-supervised drug treatment that began a decade earlier on a much smaller scale with the original drug courts. This chapter compares the Prop 36 program for diverting nonviolent drug offenders into court-supervised treatment with the original drug courts.

Findings – The research shows how court-supervised drug treatment has evolved from a personalized care program in the original drug courts to a
mass processing operation under Prop 36. The research finds that the social problem solution of offering treatment to more drug defendants created its own unanticipated consequences and problems, including significant standardization in the operations of the court and a dilution of many useful features that defined the early drug courts.

Practical implications – “Farming out” drug defendants to probation and treatment makes case-processing and treatment potentially less effective therapeutically. The chapter raises questions about how social control can extend its domain without “breaking the bank” and what the consequences are for how social problems are handled.

Over the past 100 years, this country’s construction of the use (and abuse) of psychoactive substances and its formal system for handling drug problems have gone through a series of changes. At the beginning of this period, drug use was a personal matter and not always considered a social problem. Not only were most drugs legal, they were not regulated in any way (Musto, 1973). Since drugs have become the domain of formal legal control, the strategies for control have been subject to a policy-making and implementation process which has produced a series of shifts across the continuum of intensity, as well as qualitative changes in the way drug cases are handled and how sanctions are administered to defendants by the courts. The goal of this chapter is to extend conceptualizations of social problems and their remedies by focusing on the case of court-supervised drug treatment in response to the problem of substance abuse. We will use a “natural history” perspective (Emerson & Messinger, 1977; Emerson, Ferris & Brooks-Gardner, 1998; Ferraro & Johnson, 1983; Jackson, 1954; Peyrot, 1984) to examine how earlier social control solutions to drug use created their own unanticipated problems and consequences and formed historical contingencies for the subsequent development of remedial approaches to handle the problem.

In the last decade of the 19th century and the first two decades of the 20th century, a new social ethos led to the passage of a number of laws reflecting a “prohibitionist” strategy (Musto, 1971, 1973). These laws and their interpretation by early 20th century courts established a predominantly punitive response to substance abuse and located “ownership” of the problem squarely within the criminal justice system (Gusfield, 1981). As a result, drug abuse was seen as a social problem calling for a punitive criminal justice response, rather than a private matter that was not always
problematic. Alcohol use was subsequently removed from the criminal justice domain (with some important exceptions), but other substances were brought under its dominion.

During the first half of the 20th century, the construction of substance abuse as a social problem evolved in two ways: (1) the escalation and modification of a punitive criminal justice approach to drug crimes and (2) increasing criticism of the punitive approach (Peyrot, 1984). The punitive approach faced major challenges in the 1960s and 1970s from treatment advocates, who argued “from a premise of individual responsibility... that treatment was more effective and humane than punishment and asked that some... federal drug money go to treatment and preventive education programs” (Ryan, 1998, p. 232). The result of these reform efforts was an increase in treatment (and prevention) resources for substance abuse, and an attempt to integrate treatment into the criminal justice system, for example, through “diversion” programs, including treatment as a condition of parole and probation (and intensive supervision probation), and Treatment Alternatives to Street Crimes (or “TASC”) case management approaches (Shelden & Brown, 2003, p. 388).

The “drug war” policies of the 1980s and beyond translated into enhanced law enforcement efforts and mandatory incarceration of many more drug offenders, including those convicted of nonviolent drug possession and use crimes (Duke & Gross, 1994a, 1994b; Shelden, 2001). These developments combined to necessitate costly prison construction and other expenditures of substantial criminal justice resources and to produce much court congestion and caseload pressure on the system by greatly increasing the number of drug cases, especially in large urban areas (Currie, 1993; Shelden, 2001). Despite these developments, implementation of the “get tough” strategy has been widely regarded as accomplishing little deterrence or rehabilitation (Currie, 1993; Duke & Gross, 1994a, 1994b; Ryan, 1998). Meanwhile, support for diversion of drug cases continues to expand. As Inciardi (2004) suggests, the arguments favoring diversion increased: “It was felt it would reduce court backlog, provide early intervention before the development of full-fledged criminal careers, ensure some consistency in selective law enforcement, reduce the costs of criminal processing, and enhance an offender’s chances for community reintegration” (Inciardi, 2004, p. 593).

The original California drug courts, and the voter-approved initiative, the Substance Abuse and Crime Prevention Act (SACPA) of 2000, known as “Proposition 36” (Prop 36), continue this trend of diverting drug cases away from punishment and toward more “therapeutic” approaches to handle the problem of substance abuse (Hora, Schma, & Rosenthal, 1999).
such programs is not only to process drug offenders and cases but also to improve the personal well-being and “life skills” of defendants by involving them in self-transforming processes, so that offenders will lead drug-free and law-abiding lives in the future. (Burns & Peyrot, 2003, 2008; compare Fox, 2001, 2005; Gubrium & Holstein, 2001; Pollner & Stein, 2001; Weinberg, 1996). Yet Prop 36, with its rehabilitative and nonpunitive aims and broad implementation, brought about its own unanticipated problems and consequences and occasioned the inevitable assessment and comparison of this system with the original drug court program.

**THE ORIGINAL CALIFORNIA DRUG COURTS**

Drug court is one among a growing range of rehabilitative, “problem-solving” court innovations, including but not limited to juvenile drug court, family dependency treatment court, homeless court, community court, mental health court, and domestic violence court (Huddleston, Freeman-Wilson, Marlowe, & Roussell, 2004, p. 6; Nolan, 2001). The provision of drug treatment under the institutional auspices of the criminal justice system has rapidly expanded nationwide in the past 20 years. In 1989, the first “drug court” in the United States opened in Miami, Florida, and by 1991 the first California drug court opened in Oakland. Drug courts bring treatment directly into the court, and judges there closely monitor the ongoing progress and compliance of defendants, making consequential judicial decisions about case dispositions throughout. Drug courts represent a move away from the “get tough” punitive approach to narcotics offenders and toward a more rehabilitation and treatment-oriented approach to substance abuse problems (Burns & Peyrot, 2003). The distinctly “tough love” message of drug courts is that the criminal justice system does care about helping addicts to recover, but it also requires them to be responsible and accountable for their choices and conduct (Burns & Peyrot, 2003). Drug courts combine treatment with the promise of rewards and threat of sanctions. Although the social problem of drug abuse remains within the criminal courts, there is a general easing of criminal penalties. However, drug court judges still retain the power to impose sanctions (e.g., incarceration) in the event the defendant relapses and/or fails to complete treatment.

In drug court, there is also de-emphasis on formal rules and the adversarial system of traditional criminal courts, with its concern for due process and other technical legal rights and protections. Greater emphasis is on dispensing a highly personalized form of “substantive justice” largely
through the judicial exercise of “charismatic authority” (Weber, 1947/1967). This transformation in the judge’s role in drug court resembles transformations seen in other court settings, where institutional agents assess moral character more than legal transgressions (e.g., juvenile court [Emerson, 1969]). The hearings in drug court are also characteristically “therapeutic,” with the participation of defendants increased and the participation of lawyers minimized, and replaced by a largely cooperative “team,” consisting of the prosecutor, defense counsel, treatment and probation personnel, along with the drug court “client” (i.e., the defendant). Among the drug court team, there is much sharing of information and open disclosure thought to facilitate defendants’ “best interests” and recovery.

The original drug courts in California were lauded for their success in rehabilitating defendants, saving significant court and incarceration costs, and reducing recidivism (Flaherty, 2002, p. 21). For example, the arrest rate for drug court graduates was found to be 85% less in the two years after admission to the program than the arrest rate for entering participants during the two years before their admission (Flaherty, 2002, p. 21). In addition, felony arrest rates for violent crime after program completion decreased by 96% and felony arrests for property crimes decreased by 94% (Flaherty, 2002, p. 21). Moreover, the conviction rate for drug court graduates was 77% lower and the incarceration rate was 83% lower during the two years after program entry (Flaherty, 2002, p. 21).

With the success of drug court, support grew for more widespread diversion of drug cases and a more “therapeutic” approach to handle substance abuse problems. In large part, this was because drug courts were costly to operate and were not the answer to the problem of heavy court congestion occasioned by the harsh drug laws. They handled only very small caseloads (approximately 5% of drug offenders), carefully selecting and admitting only those defendants they deemed to be “suitable,” and closely supervising and monitoring them throughout the program. Although some of the earlier criminal justice approaches to handling drug cases (such as treatment as a condition of probation or parole) exhibited features of “mass processing,” until recently, court-authorized treatment in response to illegal drug use has been quite limited in scope, generally for first-time users and/or users of “soft drugs” (e.g., marijuana), and was not offered on any kind of widespread basis. Moreover, the treatment system in such programs was only “loosely coupled” to the criminal courts (Peyrot, 1991). There was little effort or provision under these programs for judges to monitor, let alone closely supervise, the progress of participants and many defendants only returned to court for case dismissal when treatment was completed (Peyrot, 1985).
California’s “Prop 36” initiates for the first time on a massive scale the court-supervised drug treatment that began a decade earlier with California’s first drug court (California’s “Substance Abuse and Crime Prevention Act,” California Penal Code, sections 1210 and 1210.1). The purposes of Prop 36 are succinctly stated in the uncodified portions of the proposition and are: “(a) To divert from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers and paroles charged with simple drug possession or drug use offenses; (b) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration and reincarceration of nonviolent drug users who would be better served by community-based treatment; and (c) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies” (California Official Voter Ballot Pamphlet, General Election. (Nov. 7, 2000) text of Prop. 36, §3, p. 66).

The new law (effective July 2001) initiates a sea-change in criminal law sentencing. It mandates for the first time that most defendants convicted of nonviolent drug possession and use offenses (i.e., excluding drug crimes related to manufacture or sale) be sentenced to probation and drug treatment, not incarceration (California Penal Code, section 1210.1(a)). Although before Prop 36, the sentence for a convicted drug offender could be as high as three years in prison for a possession conviction, and punishment could rise to “25 years to life” if prior offenses were proven, after Prop 36 such defendants are sentenced to drug treatment and probation.

Prop 36 is by no means simply drug court, writ large. Although both programs divert drug offenders into court-supervised treatment, only judges in the original drug courts have discretion to exclude an otherwise “eligible” defendant by finding him/her to be “unsuitable” (Burns & Peyrot, 2003). A defendant who is eligible for Prop 36 must be sentenced to probation and treatment, irrespective of his or her perceived potential for recovery. Because the majority of drug possession and use offenses in California are now being processed under Prop 36, there has been a massive increase of cases in many counties as judges are required to deal with a large and continuing flow of cases. Caseloads have increased since the July 2001 effective date of Prop 36 and are expected to continue to grow as more offenders qualify for the program. By way of comparison, the Los Angeles (LA) County Prop 36 program was recently enrolling about ten times more
clients than drug court, or “almost 36,000 people annually, while drug courts average between 3,000–4,000 annually” (Longshore et al., 2004, p. 25). Statewide, the total number of Prop 36 participants from the July 1, 2001, effective date through June 30, 2005, was approximately 12,000–16,000 in California drug courts and 140,000 in Prop 36 (Drug Policy Alliance, 2006, p. 24).

This increased number of cases has required the legal system to expand court capacity. For example, the Superior Court of LA County initially assigned a total of 28 judicial officers to preside over Prop 36, double the number of court officers assigned to LA County drug courts. The LA drug courts continue to remain in operation and many of the LA County drug court judges still serve in that capacity and also sit as Prop 36 judges. In addition, more judges have been added to preside exclusively over Prop 36 program cases.

Another strategy for increasing Prop 36 capacity has been to increase the caseload of judges in most courts. Some judges currently handle over 100 Prop 36 cases on their calendars (Interview with Orange County Judge; La Jeunesse, 2003). In one of the LA County branches observed for this study, Prop 36 proceedings are held daily, which is more frequently than drug court hearings are held (three times per week).

Along with the heavy caseloads, there is reduced monetary allotment per client for treatment, as well as more limited duration of treatment under Prop 36, with a mandate of up to one year of primary treatment services, compared to a minimum of 18 months of treatment in drug court. As Emerson (1983a, p. 437) notes, “changes in the resources available to process and treat cases, as well as changes in the number of cases to be handled...transform the categorization and handling of cases.” This scenario demands more rapid, economical, and low intensity processing, that is, mass processing.

This chapter follows in the tradition of the “micro-politics of trouble” perspective of Emerson and Messinger (1977), which explores how social problems and their remedies are reflexively related. In this view, the specification of the problem at issue delineates the remedy (or range of remedies) considered appropriate in response. And, the social problem solution that is adopted may in turn create its own unanticipated problems calling for further remedial measures. This research describes the social construction of two social problems institutions for providing court-supervised treatment to convicted drug offenders.

In particular, we will track changes in court-supervised drug treatment from a system characterized by personalized care and individualized
interventions to an operation characterized by *mass processing* and the dispensing of “actuarial justice,” oriented to efficient, cost-saving correc-
tional practices and aimed at specific categories of offenders (Feeley & Simon, 1994; Garland, 2001). We discuss the development of several organizational changes in the system: admission, assessment and referral, treatment provision, and legalism (legal rules, rights, and protections). We also note how these changes in the court’s organizational features emphasize new, highly rationalized case management strategies that suggest the dilution of many aspects of the original drug courts, standardization, and perhaps even the “McDonaldization” (Ritzer, 1993) of therapeutic justice.

**METHODS AND SETTING**

This project was designed to examine two court-supervised programs for diverting drug offenders in California Prop 36 and the original drug courts. The study sought to describe and analyze the organizational features of the court and case management and processing practices employed in implementing these two distinct diversion programs in LA County, the largest county in the state.

The research design was adapted from the multisite model of Douglas (1976). The first phase of the study was based on ethnographic observation in three different LA County drug court and Prop 36 programs (Burns & Peyrot, 2003).6 Semi-structured interviews were also conducted in 2001–2002 with current and past presiding judges of the LA drug court and Prop 36 programs. Additional follow-up observations and interviews (not tape recorded) were conducted in one of the three LA County courts during 2003.

The next stage of the study incorporated case-comparison and case-contrast approaches (Sudnow, 1967; Peyrot, 1982a) and focused on an explicit search for negative cases (Katz, 1983, p. 130). Drug court and Prop 36 judges in the adjoining counties of Orange County (south of LA) and Santa Barbara County (north of LA) were contacted for interviews that were conducted in 2005. Orange County was selected as the comparison case for LA County because it is extremely populous and is the second largest county in California and the fifth largest county in the nation (Hilger, Jenkins, & Nafday, 2005, p. 3). Santa Barbara County was selected as the contrast case for LA County because it is much smaller. Santa Barbara County does not have the same caseload or resource constraint problems of large counties such as LA and Orange County.7
The data for this study also includes televised interviews with the supervising judge of the countywide LA Drug Court Program, a presiding drug court judge, two of the authors of California Prop 36 legislation, and a district attorney (DA), a public defender (PD), and a probation officer involved in the California drug court program. The televised interviews were collected from broadcast coverage on two local cable station news programs entitled “Week in Review” (2001) and “Perspectives on Prop 36,” and a public television program called “Life and Times” that aired between May 2001 and late August 2001. Data also include media accounts of the drug war, drug courts, the Prop 36 program and related legislation from a public newspaper (the Los Angeles Times) and a legal newspaper (the Los Angeles Daily Journal). Finally, data are taken from several government-sponsored reports and evaluations.8

**Background**

While participating in Prop 36, defendants are expected to complete the requirements of their assigned treatment level. Three levels of treatment are available in the program, which increase in duration and intensity based on the assessed severity of the defendant’s drug problems. Treatment is “aimed at the overall goal of helping the individual maintain a productive, drug-free and crime-free life” (Alcohol and Drug Program Administration, 2001). Defendants who successfully complete the Prop 36 program are discharged from treatment and taken off probation, have their criminal case closed, and are also able to petition the sentencing judge to dismiss the charges and expunge their criminal record (California Penal Code, section 1210.1(d); compare the similar provisions of Penal Code, section 1000, dealing with successful completion of diversion).

Typically, Prop 36 cases are processed only with other Prop 36 cases on the same court calendar. The Prop 36 system has several components:

1. The Probation Department conducts risk and criminal record assessments to determine which defendants are eligible for Prop 36. Probation also supervises the sentenced offenders, submits progress reports to the court, conducts drug testing, and reports probation violations to the court.
2. The Community Assessment Service Centers (CASCs) assess treatment needs for potential Prop 36 participants and refer them to an appropriate drug treatment program based on the defendants’ assessed level of needs.
Treatment providers offer a range of residential and outpatient treatment to defendants. Alcohol and Drug Program Administration (ADPA) monitors the treatment providers and programs to ensure that they comply with the requirements and service standards of Prop 36. Court officers handle the legal processing of Prop 36 cases and include the PD, the DA and the Judge (J).

Following arrest and conviction, offenders may face a “split sentence” (e.g., short jail time followed by probation), or the court may place the defendant on straight probation and order him or her to treatment. Before a treatment provider is assigned and a treatment program instituted, the court directs each defendant to go to one of the regional CASCs and receive a clinical assessment and a risk assessment (by Probation). As participants enter treatment (or move across treatment levels and/or the continuum of services), they are placed in (or shifted to) a level of care commensurate with their treatment needs (Alcohol and Drug Program Administration, 2003). CASC and Probation make recommendations to the judge about an individual’s placement at an appropriate treatment level. Participation in treatment is limited in duration and may be up to one year, plus six months of aftercare.

Each of the institutional components of the Prop 36 treatment system represents a substantial departure from its counterpart in drug court. In the following sections, we describe the operation of the Prop 36 system, contrasting it with the operation of the original drug courts.

LIMITED DISCRETION IN ADMISSION

In Prop 36, judges screen participants for “eligibility” only, whereas participants in the original drug court are screened for both “eligibility” and “suitability,” and the judge decides who is allowed to participate. The more stringent dual admission criteria operative in drug courts serve to pre-select clients who are more likely to complete the program. Because Prop 36 clients are not denied admission as unlikely to benefit from treatment or otherwise “unsuitable,” there is an increased likelihood that many unmotivated defendants will take Prop 36 and fail. As one judge notes:

It really is a problem because the world of people who’re eligible for Prop 36 is so big that we’re…treating people who are really untreatable.
Another judge likewise explains:

You’re taking in a lot of unmotivated people… [who] are simply not ready for treatment.

Moreover, due to the “wash-out” provision of Prop 36, even defendants who have prior convictions for serious or violent crimes are eligible, if they have remained prison-free and have not been convicted of serious or violent crimes in the past five years. Despite that the purpose of the law was to get immediate help for nonviolent drug offenders, as implemented it also operates as a “get out of jail free card” to career criminals who happen to use drugs (*People v. Wandick* 115 Cal. App. 4th 131, 2004; *People v. Superior Court* 97 Cal. App. 4th, at p. 539, 2003). This permits many violent or “career” offenders who also use drugs to avoid incarceration, creating unforeseen problems for treatment personnel, as one judge notes:

J: You know, right in the legislation, it says “non-violent.” But then it goes on to say…if you haven’t been in state prison for the last 5 years, you’re okay. Which means we have child molesters [and] all kinds of horrendous people in the program – people who have done assault with a deadly weapon [and] homicide. And it’s been rough for our health care people who historically have been used to people who wanted to be there.

Indeed, a statewide cost analysis noted that while Prop 36 substantially reduced incarceration costs, cost savings from Prop 36 were found to be far greater for some eligible offenders than others and that offenders with five or more convictions in the 30-month period before their SACPA eligible conviction produced costs that were ten times higher than those of the “typical” offender on the program (*Longshore, Hawken, Urada, & Anglin, 2006*, p. 22).

Although defendants who participate in any court-supervised drug program must “consent” to treatment, many participants in Prop 36 do not admit that they have a substance abuse problem or are not committed to recovery. By contrast, defendants in drug court must, as a condition of admission, acknowledge that they have an addiction problem and must demonstrate a continuing commitment to recovery, as one judge from drug court notes:

J [to Defendant]: If you really wanna change your life…drug court’s a much harder program [than Prop 36]…They won’t take you if you don’t think you have a problem. Because that’s the first step – [saying] “I’m not fine. I’m an addict.”

Because most possession and use offenders have the right to Prop 36 treatment, they are not denied admission based on being regarded as unlikely to benefit from treatment or otherwise “unsuitable.”
More personalized knowledge of defendants and their circumstances is acquired by judges in the original drug courts and greater commitment thus develops on their part to see clients get through the program:

**J:** [In drug court] you know the person a lot better. You know that in their heart, they want to be there and that they’re struggling as hard as they can to be successful. You know that they’ve agreed to take on a lot more responsibility and work and do a lot of other things they wouldn’t have to do in [Prop.] 36. So there’s a much higher level of commitment and simply because they’re struggling...that means that we try to respond by getting them something more.

But in Prop 36, as one judge suggests, “you don’t know if the person has ANY desire to stay clean and many of them don’t” (emphasis in original).

**STANDARDIZING ASSESSMENT AND TREATMENT REFERRAL**

There is standardization of defendant assessment and treatment referral in Prop 36 that differs significantly from the intensive probing and questioning by drug court judges in deciding whether to offer treatment to a given defendant. After arrest and conviction on a drug-related offense (usually after a guilty plea, but sometimes following trial), potential program participants in Prop 36 are referred by the court to the CASC in their area for clinical assessment and risk assessment by Probation and to determine their recommended treatment. Treatment services are assigned based on each defendant’s assessed treatment needs. Because of the large number of clients and the fact that assessment is no longer handled by the judge, CASC has adopted a *standardized measure* of addiction severity – the Addiction Severity Index (ASI) *(McLellan, Luborsky, O’Brien, & Woody, 1980)* – as the basis for client assessment. This index generates quantitative measures of “problem severity” on a number of dimensions (e.g., drug and alcohol use, mental health, family, work/school, and legal). This assessment strategy, while efficient in conserving judicial resources, is a far cry from the practice in drug courts where judges personally question and get to know the defendant as part of the process of deciding whether to offer him or her the opportunity to participate in drug court *(Burns & Peyrot, 2003)*. One judge explains the different screening practices in the two programs:

**J:** [In Prop 36] I have to do a lot less intensive questioning and my goal is not really to find out if you’re motivated like it is for drug court. My job is to find out whether you’re
eligible because you have a RIGHT to Prop 36 treatment; it isn’t that you only get it if you’re the right kind of person. So I don’t have any reason to ask all those motivational kinds of questions. (emphasis in original)

The standardized assessment strategy in Prop 36 permits CASC to develop rule-based criteria and procedures for assigning individuals to treatment. CASC and the Probation Office make recommendations to the court for placement of each eligible defendant in one of three levels of treatment, which increase in intensity, duration, and number of required sessions depending on the assessed level of addiction, public safety concerns, and court-ordered treatment level. Services for the three treatment levels are formularized as follows: Level 1 treatment requires at least 3 hours of counseling sessions per week for at least 120 days or 18 weeks; Level 2 treatment requires at least 6 hours of counseling sessions per week for at least 224 days or 32 weeks; and Level 3 requires at least 9 hours of out-patient counseling sessions per week for at least 280 days or 40 weeks, or residential treatment for no less than 30 and no more than 180 days or 6 months (Alcohol and Drug Program Administration, 2002b; Alcohol and Drug Program Administration, County of Los Angeles, 2006, Attachment V, pp. 1–4).

With the establishment of formal packages of services, it is possible to standardize the kind of services provided to individuals:

J: County Alcohol and Drug…they have a matrix that tells the treatment provider [what is required] in order to complete [say] Level 1 out-patient treatment; and then Level 2, etc. These are the basic [requirements].

Providers then deliver the services determined by the standardized assessments.

COMMODIFICATION OF TREATMENT

In LA County, the ADPA of the California Department of Health Services is designated as the County’s lead agency for implementing Prop 36 services (Alcohol and Drug Program Administration, 2001). As of May 2005, ADPA contracts with over two hundred community-based, substance abuse treatment and recovery agencies to provide outpatient rehabilitative services (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, Attachment VI, pp. 1–7). Statewide, the number of certified outpatient treatment programs following the passage of Prop 36 in 2001 increased by 132% through 2005 (Ehlers & Ziedenberg, 2006, p. 15). All the treatment facilities are certified or
licensed by the state in an effort to ensure the quality and effectiveness of drug treatment services and ADPA “monitors these programs for compliance with Prop 36 service standards and the requirements for staffing, program and facility quality” (Alcohol and Drug Program Administration, 2002a, p. 4).

However, some judges believe that quality control problems have emerged in the Prop 36 drug program because of dealing with many different providers, each employing different treatment modalities, programs and reporting practices, with varying overall quality of services:

J: [It’s]...an uneven quality of treatment...When you combine the fact that you have uneven treatment [and] these different levels of treatment, clearly not necessarily to meet the needs of treatment, but to meet the needs of the economics...the resource issue...They’re...motivated by a dollar...business sense...Some of them are going to be interested in making money and as a result there’s some motive to short-cut the treatment or not provide as much because when you get down to it if you provide greater treatment, it’s gotta come out of somewhere. And if you’re only being allocated so much money per client, what are you going to do?

Likewise, another judge describes the variable quality of treatment agencies:

J: [We're]...dealing with...literally hundreds of treatment providers...they don't all do the same thing....Some do a good job and some do a bad job. That's another thing that distinguishes drug court...My drug court treatment providers and the ones that are chosen for drug court [generally] are really the premier treatment, but Prop 36...open[s] it to everybody that's got a shingle...If you're licensed and if Drug and Alcohol [ADPA] puts you on the list, then you're...a treatment provider.

These numerous treatment providers contrast markedly with drug court’s “singular system” that utilizes just one or two main treatment providers. One judge describes the difference as follows:

J: With drug court, the Cadillac of treatment, each individual drug court has its own...main provider...[But] Prop 36 is almost like a diversion system. [It's] “here’s you're level [of addiction], here's a list of people in your area who have so far been approved to treat at that level, [choose]...one.”

In addition, judges express concern about “logistical problems” for defendants trying to find their way through the many complex procedures and requirements. One drug court judge suggests that some defendants will fail because there is no drug court-like system of “one-stop shopping”:

J: Drug court...is a singular system, [but Prop 36]...is....all over the place... You have all of the people going to one place, having one treatment provider, one person to answer to and that all gets reinforced. It’s easier going one-stop shopping, as opposed to
everywhere... There’s... a lot of logistical problems [in Prop 36]... [Many defendants] don’t complete things. Their whole life they’ve never been known to follow up and do what they’re supposed to do. So they’re going to court 1 and then they’re being told to go to court 2, in the meantime, they’re going to a treatment assessment place. Then they come to court 2, and I tell them to go to a treatment provider... [and] these people are also gonna have to report to a probation officer... All of that’s... gonna create a much greater possibility that they’re gonna fail.

In fact, client attrition at the early steps of the Prop 36 program in some counties (e.g., Orange County) has been attributed to requiring clients to go to numerous and often distant “reporting points” (Hilger et al., 2005, p. 18). Because of the great number of treatment providers in Prop 36, each provider typically handles only a relatively small caseload. With such a small “market share,” it is not economically feasible for most providers to send a treatment representative to be present daily in Prop 36 court and be the treatment part of the “team” characteristic of the original drug courts. As such, Prop 36 judges often have difficulty obtaining accurate, easily accessible information on individual defendants proceeding through the program. One judge describes how he is able to rely on one (or just a few) treatment provider/s to be available and accountable to the court to provide individualized information on defendants in drug court:

J: [T]he court can call and say, “I need to know what’s going on with this person” [and]... I have an individual counselor, a direct person from [one of the treatment provider organizations], who comes to my [drug] court every day... And so he can expand on what the report says.

Another Prop 36 judge attempted to remedy the unanticipated absence of treatment personnel in the Prop 36 court by innovating a new practice of requiring each treatment provider to appear in court once per month, on the same day as the progress report hearings are scheduled for defendants who receive treatment from that facility. The judge explains the new procedure as follows:

J: We’re gonna start something new. We’re gonna try to have everyone with the same provider [here] on the same day, so if there are any questions on reports, they can be here to explain. [This is the] first time they’ll be here actually, physically in court.

This practice brings a treatment representative to court at least periodically to elaborate on reports and explain any findings that a given client may dispute (e.g., a report indicating that the client failed to submit to drug testing, where the client claims he or she did make himself or herself available for testing). The hearing also sometimes becomes a lesson for clients, such as when the treatment representative explains the procedures
the client must follow for drug testing (e.g., arriving on time and on the
date scheduled for the test and signing the sign-up sheet). This practice
shows that some of the differences between Prop 36 and the original drug
court are a matter of organizational culture and philosophy rather than
legal mandate.

LIMITS ON JAIL AS A SENTENCE OR SANCTION

Although defendants may refuse consent for treatment and be criminally
sentenced without participating in (or without completing) any drug treat-
ment program, the highly undesirable alternatives to Prop 36 participation
induce most eligible defendants to “volunteer” for Prop 36 treatment as the
best available option (Burns & Peyrot, 2003; Peyrot, 1985). As one judge
notes: “They will consent because they get out of jail.” Indeed, most
defendants who are also suitable for drug court nonetheless choose the Prop
36 program over drug court’s more expensive and intensive treatment and
judicial services:

J: [N]ot so many…take drug court because…if you take drug court, you’re subject to
sanctions. You have to agree that I can put you in jail…on a notice that you
relapsed…Prop 36 is easier [and] they’re gonna choose Prop 36. At a minimum, Prop 36
is less time of actually doing the treatment.

For hardcore addicts, the prospect of staying out of jail and doing less
time in and less intensive treatment has significant appeal:

J: A good addict is gonna find the least restrictive program they can find…So
you’re gonna have people who need the most help probably in the least restrictive
program.

For most defendants, Prop 36 is preferable to personalized drug court
because it expressly prohibits two strategies that drug court judges employ
when defendants test positive or “dirty” during treatment: sentencing them
to in-custody treatment, or imposing immediate jail sanctions following
relapse (“shock” or “flash” incarceration). Yet, personalized drug court
judges regard “shock incarceration” as a very helpful rehabilitative tool
that gets the immediate attention of relapsing defendants, making them
re-commit to clean and sober living (Burns & Peyrot, 2003): “You need
to intervene at the earliest possible time to let them know there are
consequences [of falling off the program]” (Warren, 2000, p. 1, quoting a
drug court judge).
Another judge explains:

J: It’s important for sanctions to be available to judges to use them appropriately…The motivating factor for most is fear of going to jail…[Sanctions are important to] convince people that their best course of conduct is to avoid drugs, avoid using drugs, stay out of court and stay out of trouble and get their lives back on track. (Perspectives on Prop 36, 2001)

Similarly, judges express the view that incarcerating noncompliant defendants is a valuable “adjustment” in the ongoing treatment regimen, often amounting to a “turning point” in the recovery process: “For a lot of them that’s rock bottom. That’s the crisis that allows us to reach them” (Banks, 2000, p. E4, quoting a drug court judge; see Denzin, 1993 and Weinberg, 1996 on “bottoming out”). Thus, limits on the Prop 36 judges’ ability to “shock incarcerate” are regarded as the loss of an effective rehabilitative tool, without which many judges feel they can only make shallow threats:

J: I really don’t think it’s as effective [as shock incarceration], trying to scare them as my only consequence under Prop 36…and then violating them and…maybe changing their treatment level…The problem is that…they’re thinking ‘you can’t hurt me. I’m not gonna go to jail if I use…I’m not gonna follow your stinkin’ rules.’ And their attitude makes it very, very difficult to get them really engaged with the kind of behavior changes they need to make to be successful.

A judge sums up the limited rehabilitative effectiveness of having to rely on mere threats (or elevating treatment levels) as the only available recourse in response to defendants who commit violations in Prop 36:

J: You have to sound tough and act tough [under Prop 36], realizing that there’s no teeth in your bite. You can’t let people know that. It’s kind of a silly phenomenon.

Not surprisingly, many judges now support changing Prop 36 procedures to allow them to jail relapsing defendants for short periods and believe that this will increase the program’s success (California Senate Bill 803 and see Burns & Peyrot, 2008). Of course, opponents of jail sanctions argue that this would contribute to the “mass incarceration” that Prop 36 sought to avoid and could cost counties millions of dollars, diverting public funds from other essential local services (Ehlers & Ziedenberg, 2006, p. 19).
RETURN OF ADVERSARIAL RELATIONS

Prop 36 defendants are not protected from further criminal prosecution for any admissions they make about drug use or other criminal conduct during treatment or in court interactions with the judge. But in the original LA drug court (and in drug court in some other counties), the problem of avoiding actionable self-incrimination by defendants has been dealt with by reaching an agreement (known as a “memorandum of understanding” or MOU) that is signed by the prosecution and defense, stating that any positive drug test reports, admissions or disclosures by defendants (in treatment or in court) about relapse or other criminal conduct cannot be used as the basis for future criminal prosecution. The absence of MOUs in Prop 36 is viewed by some Prop 36 judges as a significant unanticipated problem with the program because it impairs open disclosure by defendants in the recovery process. Prop 36 judges also note that their own active mentoring role in the rehabilitation process is stifled and diminished by their inability to ask defendants probing questions that might result in the filing of new charges against defendants. Hence, one judge explains why he is reluctant to ask as many questions of defendants about relapse as he does in drug court:

J: I’m afraid to ask these questions which may get to the heart of the problem because if the answers come back that they’re confessing to a new crime, how do I know the DA isn’t gonna run out of the room and file a new case?…So I don’t do as much questioning with the Prop 36 people…So [in drug court] I have certain liberties. I can ask you about your drug use as of today and nobody can file a case. [But] in Prop 36, there are no protections. So I’m not going to be able to get to know the client as well as I can in drug court anyway because the person can make an admission on the record and that can result in another case and so I cannot do the same things.

The absence of MOU protection in Prop 36, unlike in drug court, precludes the potential rehabilitative benefit to clients of making an open confession that may facilitate acceptance of treatment (Burns & Peyrot, 2003):

J: There’s a certain amount of progress that happens when a person is able to acknowledge their addiction, acknowledge their recent use, acknowledge their trigger problem in open court. Sometimes it happens best in a closed setting like a group, but sometimes in open court when they’re answering to the only figure that’s gonna put them AWAY if they don’t do right, sometimes there’s a lotta good [that] can come from that. (emphasis in original)

In this respect, the Prop 36 program is closer to traditional criminal courts where admissions of narcotics violations are almost always treated as damming to the confessing defendant.
MASS PROCESSING AND THE ROUTINIZATION
OF JUDICIAL INVOLVEMENT

Despite ideals of personalized justice and emphasis on personalized responses to defendants, case processing and services in Prop 36 are highly routinized and subject to many legal rules. As Weber emphasized, the everyday processing of criminal defendants is increasingly conducted under conditions of mass administration (Weber, 1947/1967). Similar to personalized drug courts, judges in Prop 36 supervise the overall treatment program and monitor the progress of each participant as they proceed through the program. However, the nature and degree of supervision is very different in the two programs. Drug court is characterized by intensive client supervision and by regular and frequent court hearings with much interaction between clients and the judge. By contrast, court supervision of Prop 36 clients is varied and often quite minimal. The Prop 36 judge may be active in client supervision, or (as is more common in larger counties) may essentially defer supervision to treatment personnel and probation.

The increased time spent on routine operations limits the actual amount of time that the judge may spend with clients. In discussing the amount of time available to interact with each client in Prop 36, one judge states:

J: There IS interaction that goes on [in Prop 36]...but it’s sort of hit and miss and sometimes it’s directly related to the amount of time that we have that day...And our big days are like 140 cases. That’s a lot of cases to get through in a day and be able to treat everyone as though you know them. (emphasis in original)

Judges in the original drug courts have the luxury of spending more personalized time with defendants according to need: “I spend four times as long...if a drug court client is in trouble.” And, the significant time, monetary expenditures, and personal commitment that develops with clients makes judges in personalized drug court reluctant to “give up” on relapsing defendants as being irremediably unsalvageable (Burns & Peyrot, 2003):

J: [In drug court] I usually am the last to give up because by the time we’ve gotten to the point of giving up, we’ve pumped so much time and money into the person, it’s like, if there’s anything else we can do before we give up. Now, I DO give up a lot easier on Prop 36 [clients] because there’s people who’ve come through once, twice, three times and really never get to the treatment door and really just do it to get out of jail and have no intention of getting clean. As opposed to the people who’ve gone through the rigorous kind of trial period and maybe incarceration, waiting to get out for drug court. Those people, I give a little more leeway to and give up on less...We try every possible angle we can and we rethink it. (emphasis in original)
This suggests that there may be more chances for missteps by clients in personalized drug court and a deeper kind of judicial commitment to facilitate defendants’ recovery.

**Deceremonalization of Client Success**

Ceremony plays an important role in the therapeutic process of drug court by celebrating minor as well as major achievements and successes are celebrated, including at advancement hearings and graduation ceremonies (Burns & Peyrot, 2003). These drug court ceremonies are thought to encourage clients to maintain their progress and to involve other defendants in their fellow clients’ successes, giving them something to look forward to. Judges feel that the praise and encouragement they offer during such ceremonies can have an important impact on their clients.

In drug court, successful defendants receive public recognition of their progress through advancement hearings promoting them to the next stage of treatment and graduation ceremonies for those who complete the program (Burns & Peyrot, 2003). In Orange County, drug court participants voted to have even more particularized attention to successfully completing the program in the form of individual graduations, as one judge explains:

J: We started doing individual graduations. And they [clients] bring their families and we make it a big deal. And the reason we did it is because they thought that with group graduations, it wasn’t so much about them...and they voted to do individual graduations, one at a time. We always cry. We can’t help it.

Unfortunately, these celebrations of ongoing achievement and ultimate graduation are largely absent in handling Prop 36 caseloads. When Prop 36 defendants are progressing well and “in compliance,” interchanges with the judge are encouraging, but brief and perfunctory, as the following examples suggest, each ending with the court giving the defendant a return date for further progress monitoring:

1 J: Mr. Defendant is apparently in residential [treatment]. He’s doing well. Let’s bring him back on July 2nd [in about a month].

2 J: There’s a progress report from probation and the treatment provider. [You’re] doing good. Back July 23rd at 9:00.

Most judges in large Prop 36 programs do not hold formal ceremonies to “advance” progressing clients onto the next stage and to “graduate” those who successfully complete the program (Burns & Peyrot, 2003). In Prop 36,
often the best attempt at formally marking a defendant’s progress involves routinizing the personalized drug court rituals of advancement hearings and graduations, for example, by distributing “certificates of accomplishment” to defendants who are progressing and “in compliance.” For example, in the Santa Barbara County Prop 36 program, the judge gives such certificates to “substance abusers who advance to higher levels of sobriety” (La Jeunesse, 2003, p. 1) and also attempts to hold “trimmed down” graduations for successful Prop 36 clients (Interview with Santa Barbara County Judge).

In large programs, like LA and Orange County, successful completion of the program may be notably unceremonious in Prop 36. An example of one such case dismissal occurs in the following case:

J: Report from PO [probation officer]. [reading] Program is completed. She had a diversion fee. [to D] Did you pay the balance?

D: Yes I did.


D: Thank you.

J: [joking] No time for thank you’s. [Gotta] Keep up our pace.

It is also difficult for participants in Prop 36 to take advantage of the benefits of peer support and bonding that are often lost in mass processing due to the great variability of court dates and various circumstances and requirements for each participant in the program. As one judge notes:

J: With Prop 36, you have a mass of people, all of them going to different treatment places, [and] you…have different dates to come back [to court]. There’s…no sort of glue to hold them together.

The original drug courts make use of peer support resources and the group dynamic to the rehabilitative benefit of defendants, as one judge explains:

J: Drug courts are small enough [that]…the drug court is able to use peer pressure and the group dynamic can also able to help these people seeking recovery drugs to seek counseling from the other clients or the people that they’re in the drug court with…

In many personalized drug courts, judges require defendants (including those who are not in custody) to “stay in the courtroom until the entire calendar is called” to watch and learn from the judge’s interactions with the other participants. After graduation, former participants in drug court often
become “mentors” to friends still going through the program, as one judge explains:

J: So the people that are in the [final] phase mentor the people in phase one [and] we’ve had so many people give other people rides to their AA meetings, or help them get jobs. And they do become a community. But it’s a healthy community and a group of people that are there for you, to support you, and help you as you go through it.

Graduates also come and speak to current participants about “how they’re doing since they graduated” and meet after graduation as alumni “support groups,” in one case forming an “alumni club that they completely run themselves and…put[ting] on various events for the current participants” (Interview with Orange County Judge).

CASELOAD MANAGEMENT UNDER MASS PROCESSING AND BUDGETARY CONSTRAINTS

Per client expenditures in Prop 36 vary widely throughout California. However, typically about half as much money is spent on Prop 36 clients compared to participants in drug courts (Interview with LA County Judge), with $2,254 currently spent on the typical Prop 36 offender (Longshore et al., 2006, p. 20). Reduced per client expenditures and larger caseloads in Prop 36 compared to drug courts translate into a shorter duration of treatment and fewer clients receiving long-term, intensive, and inpatient kinds of treatment than in drug court (Farabee, Hser, Anglin, & Huang, 2004). These caseload and economic constraints mean that the treatment received in Prop 36 cases is not the same as in drug courts:

J: [T]he treatment they’re gonna get is NOT THE SAME TREATMENT…It’s a dollar based treatment and there’s not enough dollars…We’re not giving them drug court treatment. We’re giving them some portion of….drug court treatment. (emphasis in original)

The availability of residential treatment under Prop 36 is “very small,” and that is a serious shortcoming because the treatment provided often does not fit the severity of many clients’ treatment needs:

J:….[I]n reality…almost all the people picking up Prop 36 cases need very intense treatment and the only way you get intense under Prop 36 is to go to residential.

Because of the large caseloads of Prop 36 and the relative lack of treatment resources, decisions must be frequently made about how to allocate
the system’s resources (Peyrot, 1982b; Emerson, 1983b). Peyrot (1982b, p. 165) finds that treatment allocation decisions under these conditions can be understood “as a set of practices for managing the caseload”; decision-makers reserve treatment resources for those who most need them. In Prop 36, the large caseloads and limited available resources combine to produce a system of triaging services to manage the caseload. One key way Prop 36 judges conserve scarce treatment resources is by allocating the limited available treatment services so that the vast majority of clients (about 86%) are receiving less costly outpatient treatment, whereas only 14% are currently receiving residential care (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, Chart, p. 16; Alcohol and Drug Program Administration, 2002c).14

In some large Prop 36 programs (e.g., Orange County), the Probation Department is now further economizing and routinizing the monitoring of Prop 36 cases, by “banking” cases of clients who appear to be doing well, so that they receive only minimal supervision from both the court and the Probation Department:

J: If you’re doing well...in good standing with their [treatment] program and they hadn’t had a problem with their testing...now not only do you not show up in court again until you have completed the program...but the probation department is also now ‘banking’ the cases...all they [treatment] do is send a letter once a month to probation telling them that they’re doing great...And they’re relying on the [treatment] program to tell them if the person was having a problem, at which time probation would un-bank them.

Thus, there is pressure in mass processing operations to preserve scarce treatment, probation, and court resources to get people out of the system and maintain the ability to take on new clients. This results in reduced treatment and limited court and probation supervision, even when the judge believes it is in the best interest of the client to have more.

Judicial understandings of drug addiction and abuse are also more moralized in personalized drug courts, where judges regard narcotics replacement therapy (methadone maintenance) as itself perpetuating drug use and dependence (Kimble, 2000), although pharmacological treatment such as methadone maintenance has been shown to be very successful in treating opiate addiction (e.g., Institute of Medicine, 1990). Constructions of drug use and addiction are viewed in more practical terms in the mass processing Prop 36 program. For example, although narcotics replacement therapy is specifically precluded as a treatment modality in
personalized drug courts, it is accepted as a legitimate form of treatment in Prop 36:

J: Prop 36 specifically allows for “narcotics replacement therapy” – methadone…And most of us in drug court don’t believe in that…In…drug court, we bar people on methadone. We tell them in essence that they can come into our courtroom if they’re on methadone, but they have 90 days to de-tox off methadone. And they cannot graduate from the program if they’re on methadone.

The availability and legitimation of narcotics replacement therapy as a treatment option for some seriously addicted defendants, like the allocation of most clients to out-patient treatment, potentially serves to preserve scarce resources by routinizing the monitoring process for treatment providers, as well as the court, in that treatment services for narcotics replacement therapy often essentially amount to checking the defendant’s prescription and, if necessary, adjusting it. The court’s work of monitoring “compliance” is thereby expedited and simplified.

CONCLUSIONS

Emerson and Messinger (1977) long ago noted that social problems and their remedies are reflexively related; the specification of the problem at issue delineates the remedy (or range of remedies) considered appropriate in response. And, the social problems solution that is adopted produces its own unanticipated problems and consequences, which must in turn be addressed. The past two decades have brought about important changes in our formal social control measures to handle the societal problem of substance abuse. Drug courts evolved as a response to the perceived failure of the traditional adversary system and retributive criminal justice approach to drug-related crimes. The original drug courts in large part decreased defendants’ technical legal rights (e.g., confidentiality of medical records [42 United States Code, section 290ee–3 1988, and Supp. V 1993] and other privacy rights) because it was believed that protecting the rights of persons addicted to drugs was tantamount to ignoring the addiction, resulting in a never-ending cycle of offense, incarceration, and release. Drug court represented a strategy for breaking the cycle, by treating addicted individuals and rehabilitating them before release. In effect, judges became case managers with control over the administration of criminal justice sanctions (and rewards) as a way of coercing (and nurturing) defendants to obtain the treatment thought necessary to break the grip of addiction.
The voters of the State of California and other key constituencies were convinced that the drug court treatment strategy was superior to the traditional criminal court approach, leading to an effort to mandate it into law and expand its operation. However, this expansion has not been without consequences, as our study has shown. By diverting thousands of drug offenders from incarceration and into treatment, Prop 36 has saved an estimated $350 million in reduced prison admissions and additional savings due to reduced jail admissions (Ehlers and Ziedenberg, 2006, pp. 23–25). It has also lessened the burden on prisons, avoiding prison construction costs (Ehlers and Ziedenberg, 2006, p. 25) and overall has saved California $2.50 for every dollar spent, according to the most recent evaluation study (University of California Los Angeles (UCLA), 2007). The Prop 36 program offers an increasing number of convicted drug offenders the chance to receive treatment. However, it loses many of the advantages of the original personalized drug courts, especially the customized quality of supervision, care, and treatment that participants receive. Prop 36 makes some treatment available, but not the same customized quality of treatment that participants receive in personalized drug court.

As more people opt out of the tougher and more intense personalized drug court system, questions are raised as to whether persons who need long-term and intensive drug treatment the most are getting it and what the consequences are for outcomes (Farabee et al., 2004). Farabee et al. (2004) found a 48% higher recidivism rate among Prop 36 clients compared to drug court clients. The report in part attributes the differences to the fact that more drug court clients receive intensive and inpatient residential treatment, compared to the less intensive, outpatient care received by most Prop 36 clients (findings reported in Simmons, 2004, p. 1). A recent UCLA evaluation study of Prop 36 found that in terms of program completion and recidivism rates, only about one quarter of defendants sentenced to Prop 36 treatment actually complete the program, with about 50% picked up by police within thirty months (UCLA, 2007). Notably, assessment and treatment “show” rates were higher in counties using one or more “drug court” kinds of procedures (Longshore et al., 2006).

The UCLA evaluation study recommends that more attention be given at the front-end of the program to offender eligibility criteria and suitability screening for offenders referred to drug treatment in Prop 36, including “changing the eligibility criteria to screen out clients presumed or shown to be little interested in recovery and adding graduated sanctions which would remove clients with little interest in recovery from the program more quickly” (Longshore et al., 2006, p. 33, ftn. 39). The study also suggests
improved matching of the severity of drug dependence to the intensity of treatment services and cites inadequate access to residential treatment and difficulties enrolling offenders in “appropriate” treatment as key problems with Prop 36 (Longshore et al., 2006). The UCLA report further recommends that offenders with high drug severity (e.g., histories of serious or lengthy use) receive greater criminal justice supervision (e.g., “drug court management”), as well as more intense drug treatment services (e.g., residential or day treatment). Many of these recommended changes would make Prop 36 more like the earlier drug courts.

Whether the limited success of Prop 36 is due to eliminating the screening out of difficult-to-treat cases, providing less effective treatment and/or court and probation supervision, or precluding shock incarceration in response to relapse is a matter of some debate (Longshore et al., 2006). Many judges view the elimination of their ability to shock incarcerate noncompliant defendants as the loss of a valuable tool in the carrot-and-stick dynamic of drug court. In response to this particular limitation, some judges now recommend that the provisions of Prop 36 be amended to permit judges to jail non-compliant defendants. Again, this proposed organizational change would remedy a perceived defect in Prop 36 procedures by making it more like the original drug courts (Rapattoni, 2006; Longshore et al., 2006; for a discussion of the debate over this amendment to Prop 36, see Hay, 2006).

Prop 36 drug diversion represents a movement toward mass processing, with more standardization, routinization, and economization than in personalized drug courts, which handle cases informally and without much resort to law, with a prevailing aim of rehabilitation. Several of the Prop 36 rules serve to temper punishment and increase the liberty of defendants, like the provisions barring shock incarceration and allowing defendants three relapses or “strikes” before they can be removed from the program. Yet at the same time that the new features of Prop 36 increase some of defendants’ legal rights, the system decreases the institutional ability to offer “tough love.” With more open disclosure in the original drug courts, defendants are protected by “MOUs” from possible prosecution relating to admissions made in treatment or in court. But Prop 36 defendants without the MOU protection lose the rehabilitative benefit of open disclosure and acknowledgment of addiction to facilitate treatment since admissions of drug and criminal involvement can be used as the basis for further prosecution.

Over time, the transformation of our legal solutions to the problem of substance abuse has been carried out within several distinctive institutional settings. The changes necessary to handle a massive increase in cases, without a corresponding increase in the amount of court, treatment, and
other resources have changed the very nature of court-supervised drug treatment. Drug court, a *personalized care model* characterized by individual attention, has been largely supplanted by the *mass processing model* of Prop 36 in which economization, standardization, and routinization are key features.

In this chapter, we focused on two remedial approaches to handle drug cases and offenders and the relationship between earlier and later approaches. Expanding the social control apparatus to provide treatment to more drug defendants created certain unanticipated problems and consequences. Prop 36 in large measure diluted court supervision and control of drug cases by “farming” them out to treatment and probation, making case-processing and treatment potentially less effective therapeutically, but also in some respects less scrutinizing and coercive.

This chapter raises questions about how social control can extend its domain (Foucault, 1979) without “breaking the bank,” and what the consequences are for how societal problems are handled. The amount of treatment received by Prop 36 defendants has decreased, as has the use of judicial involvement and peer support as means of motivating clients. Specifying other settings where standardization, routinization, and economization are progressively becoming defining features of societal responses to social problems would demonstrate the diversity of contexts through which these trends are moving (see e.g., Timmermans, 2003 on standardization in medicine and Ritzer, 1993 on “McDonaldization”) and help generate broad theoretical conclusions about the complexity of practices for managing social problems cases and the consequences of constructing social problems and institutional remedies in response.

**NOTES**

1. Under California law, the diversion statute authorizes the court to “divert” from normal criminal processing persons who are formally charged with first time possession of drugs, have not yet gone to trial, and are found to be both eligible and suitable for treatment and rehabilitation (California Penal Code, section 1000).

2. As of December 2003, there were 1,667 such courts operating nationwide (Huddleston et al., 2004, p. 10, Fig. 2).

3. Both drug courts and Prop 36 exclude as “ineligible” defendants who have been convicted of drug crimes involving manufacture or sale of controlled substances. However, the eligibility rules of drug courts relating to past felonies or violent crimes are much more restrictive (but see Burns & Peyrot, 2003, on discretionary admissions of defendants with remote prior misdemeanor violence). In Prop 36, there is an express “wash-out” period for past felony or misdemeanor violence and persons
remain eligible if they are prison-free for five years without committing a felony or violent misdemeanor.


5. Participants who successfully complete Prop 36 in LA County are actually getting an average of 381 days of treatment (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, p. 31), followed by 6 months of continuing care services or “aftercare” (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, p. 8).

6. The three LA County research sites can be described as follows: The first site is located in a predominantly African American and increasingly Hispanic, low income community. The second site, by contrast, is located in a largely affluent and Caucasian community. The third site is located in a large downtown and primarily business district. The composition of the defendant population in LA County is as follows (Alcohol and Drug Program Administration, 2002a): 80% are male; half are aged 36 or over; racial/ethnic groupings are Latinos (37%), African Americans (30%), Whites (30%), Asian/Pacific Islanders, American Indians and Others (3%).

7. For example, Santa Barbara handled an estimated 2,400 Prop 36 cases countywide for the first four years of Proposition 36 from its July 2001 inception through August 2005, fewer cases than the LA drug court handles annually (Flores, 2005). In Santa Barbara County, the Santa Maria Prop 36 court handles 60% of the drug cases in the county (Flores, 2005), or a total of approximately 1,435 cases in four years. By contrast, during its first three years, Orange County handled a total of approximately 11,500 Prop 36 cases (Hilger et al., 2005, p. 5) and LA County handled 16,427 participants for the single year 2004–2005 (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, p. 17).

8. This chapter has several limitations. Only the vernacular accounts and characterizations of judges are presented, and judges (especially those who now work or previously worked in drug court) certainly have an interest in drug court over Prop 36 court. Indeed, many drug court judges and advocates opposed the initial passage of Prop 36 because it would not be drug court (Sangree, 2000, p. 1). As a result of not having access to the defendants’ vernacular accounts of the activities and experiences in Prop 36 (nor to those of defense counsel or prosecutors), this chapter necessarily analyzes events from the perspectives of judges, including how judges interpret and respond to the activities of defendants. However, this study does not suggest that we agree (or disagree) with the judges’ characterizations of defendants or of their own actions. Instead, we adopt a policy of “indifference” toward the correctness (or incorrectness) of these characterizations and toward judges’ accounts of the effectiveness of their practices (Garfinkel & Sacks, 1970; Schneider, 1985). Nonetheless, judges’ perceptions strongly influence their activities such as trying to make Prop 36 procedures more like drug court (Burns & Peyrot, 2008).
9. Treatment services include de-toxification (e.g., to prepare a defendant to enter treatment), outpatient treatment, intensive day treatment, residential treatment, and narcotic replacement therapy (NRT) (Alcohol and Drug Program Administration, 2001). Defendants are required to regularly attend 12-step and other peer recovery support group meetings and to submit to regular drug testing “as a therapeutic and accountability tool” (Alcohol and Drug Program Administration, 2002a, p. 4).

10. Of course, the exercise of discretion by criminal justice actors remains a possibility under Prop 36. For example, in the case of a person arrested for multiple offenses (who may be eligible for Prop 36 on one charge, but not on another), the DA may not charge on the ineligible offense, or the judge may dismiss it, to permit the person to take Prop 36 (People v. Orabuena 116 Cal. App. 4th 84, 95–96, 2004). Contrariwise, in some cases eligibility criteria may be selectively employed by criminal justice personnel as a back-door way to screen for suitability, so that someone who might have been found eligible may end up being ineligible.

11. The Prop 36 evaluation report also indicated that the typical Prop 36 offender (at the median level of cost distribution) had no convictions in the 30 months following their SACPA conviction (Longshore et al., 2006, p. 22). The report concluded that SACPA criteria should be modified so that offenders with high rates of prior nondrug convictions (five or more prior convictions in the 3 years prior) would be placed in more controlled settings (e.g., residential or jail or prison treatment programs) to improve accountability for high-cost offenders.

12. A defendant’s refusal to acknowledge his or her addiction is not only grounds for finding them “unsuitable” for drug court, it is often considered “denial” by judges and treatment staff and understood as part of their addiction.

13. However, the downtown branch of the LA Prop 36 program held its first graduation ceremony in Spring 2003. This development illustrates that some observed features of Prop 36 courts are a matter of organizational culture and philosophy rather than legal mandates.

14. Approximately 37% of Prop 36 clients received Level I treatment, 39% received Level II, and 24% received Level III (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, p. 29). In drug court, outpatient clients also receive more intensive care than outpatients in Prop 36, as one drug court judge explains:

J: About 20–25% of drug court monitored clients are in sober living [facilities]. [And] 15% are in more intensified day treatment as opposed to residential [including] exercise, nutrition, parenting, anger management [programs].

15. Only .7% of clients received NRT (Alcohol and Drug Program Administration, County of Los Angeles, Department of Health Services, Public Health, 2006, Chart, p. 16), but p. 16 ftn. 3 of the same document states that “LA County remains committed to offering nrt services...as elements of the continuum of services available to Prop 36 program participants.”
REFERENCES

California Penal Code, sections 1000, 1210 and 1210.1.


PART VI
CORRECTIONAL TREATMENT
RECOVERY AND PUNISHMENT: RECONCILING THE CONFLICTING OBJECTIVES OF COERCIVE TREATMENT IN CORRECTIONAL SETTINGS

Holly Ventura Miller, J. Mitchell Miller, Rob Tillyer and Kristina M. Lopez

ABSTRACT

Purpose – Treatment for alcohol and drug addiction in correctional settings has become commonplace throughout much of the United States. The delivery of treatment services in prisons is a promising approach and has certain advantages relative to outpatient and voluntary treatment, including (i) certainty of program enrollment and participation by individuals who would not likely seek treatment on their own (i.e., coerced participation/guaranteed delivery of treatment); (ii) program modalities specific to residential settings as treatment options – in effect, more intensive treatment; and (iii) the parole process ensures participation in post-release aftercare services. During this era wherein reentry is a pronounced theme throughout American corrections, substance abuse treatment is fundamental in terms of rehabilitating offenders, increasing
public safety, and lowering recidivism rates and, ultimately, the overall prison population.

Methodology – Using data from a process evaluation of an in-prison alcohol treatment program in Texas, this study examines the environmental barriers to effective recovery present in correctional settings and considers the strengths and weaknesses of coercive treatment, generally.

Findings – Findings indicate that offenders can indeed become motivated to change through coerced treatment. However, study findings also suggested that a certain number of offenders will not become engaged in treatment and fail to develop any internal motivation, which can be problematic for a number of reasons.

Practical implications – The highly coercive and restrictive nature of correctional facilities may negate the overall rehabilitative intent of treatment programs.

INTRODUCTION

Problems with substance use and abuse are prevalent within criminal justice contexts, as both a driving factor and a collateral factor. Those in contact with the criminal justice system (i.e., arrestees, inmates, probationers, and parolees) are far more likely to suffer from addiction or other substance abuse disorders than the general population. Recent data suggest that among the general population, the proportion of Americans classified as either alcohol abusers or alcohol dependent was 16.8% of adults aged 18–25 and 6.2% of adults aged 26 and older; less than 8% in the 18–25 age cohort and 1.7% in the 26 and older age group are considered to be dependent on any illicit drug (Substance Abuse and Mental Health Services Administration [SAMHSA], 2008). Conversely, these numbers are much higher for criminal justice populations, with approximately half of State and Federal prison, as well as local jail inmates, meeting the standard diagnostic criteria (DSM-IV) for alcohol/drug dependence or abuse. In fact, one of the most salient findings in the extant drug-related crime literature is that most inmates are seriously involved with drugs and alcohol, many at the time of their arrest (Bureau of Justice Statistics, 2008). As a result, treatment for alcohol and drug addiction in correctional settings has become commonplace throughout much of the United States.
There is considerable logic to providing treatment in correctional settings before release. The delivery of treatment services in prisons is a promising approach and has certain advantages relative to outpatient and voluntary treatment, including (i) certainty of program enrollment and participation by individuals who would not likely seek treatment on their own (i.e., coerced participation/guaranteed delivery of treatment); (ii) program modalities specific to residential settings as treatment options – in effect, more intensive treatment; and (iii) the parole process ensures participation in post-release aftercare services. The prison-based treatment of inmates who are high probability recidivists is ostensibly a logical method for impacting both the general crime rate and the likelihood of future alcohol- and drug-related offenses. Recidivism among substance abusing offenders remains high, with nearly 70% of drug abusing offenders returning to prison within 3 years of their release (Langan & Levin, 2002). During this era wherein reentry is a pronounced theme throughout American corrections, alcohol treatment is fundamental in terms of rehabilitating offenders, increasing public safety, and lowering recidivism rates and, ultimately, the overall prison population.

There is, however, a debate surrounding the utility of coercive treatment. This debate involves a number of interrelated issues, including the effectiveness of coercive treatment and the various ethical concerns associated with the practice. More fundamentally, there exists concern that the highly coercive and restrictive nature of correctional facilities may negate the overall rehabilitative intent of treatment programs (see, e.g., Prendergast, Farabee, Cartier, & Henkin, 2002). This study focuses broadly on the ethical and practical concerns associated with treatment in correctional settings with particular attention to conflicting objectives of punishment and rehabilitation.

Using data from a process evaluation of an in-prison alcohol treatment program in Texas, this research examines the environmental barriers to effective recovery present in correctional settings and considers the strengths and weaknesses of coercive treatment, generally. This study is designed to address two broad research areas: (i) how the use of coercion impacts offenders’ treatment experiences and (ii) identification of the specific barriers that strain the rehabilitative environment. After providing an overview of the ethical debate surrounding coercive treatment and reviewing the extant literature related to the effectiveness of coercion on treatment outcomes, findings that inform the debate on coercive versus voluntary treatment are presented.
Coercive versus Voluntary Treatment: The Debate

Coerced substance abuse treatment has both its supporters and detractors. In fact, the use of coercion is supported by a number of different rationales, including recidivism reduction, economic viability, and public health concerns, among others (Anglin & Hser, 1990, 1991; Wild, 1999). Most relevant to the criminal justice system is the impact compulsory treatment may have on reoffending (i.e., recidivism). In this vein, substance use either constitutes criminal behavior (e.g., drunk driving) or contributes to criminal behavior (e.g., property crime committed by drug addicts to finance their habit) (Wild, 1999). As treatment aims to address the underlying causes of criminal behavior, participation (mandatory or not) should reduce rates of recidivism for drug-using offenders. Additionally, from an economic standpoint, the high cost of adjudicating and incarcerating drug offenders has already created extreme strain on the criminal justice system. Diversion to treatment has also shown to be a more cost-effective choice for the system (Gerstein & Harwood, 1990). Results from a recent meta-analysis of cost-benefit studies of correctional treatment revealed cost savings ratios that ranged from a low of 1.13:1 to a high of 270:1 (Welsh, 2004). Both of these arguments provide the criminal justice system with considerable incentive toward coerced treatment.

Substance use and abuse are also often considered within a public health paradigm (Barton, 1999; Fischer, 2003). This approach considers the public health problems associated with substance abuse as significant enough to justify coerced treatment for those who need it. Indeed, the costs associated with substance misuse and abuse in the United States alone are quite substantial, with estimates ranging between $118 billion (illicit drug abuse) and $500 billion when including the costs related to alcohol and tobacco use (National Institute on Drug Abuse, 2008). These costs include healthcare, criminal justice, and lost productivity. Few other health-related problems are comparable. Coercive treatment can be justified then by the potential to alleviate both the financial and the health consequences of chronic substance abuse.

Another argument in support of coerced treatment is the “tough love” justification that contends that few chronic addicts would enter treatment without some type of external motivation or pressure. Thus, legal coercion is as justified as any other motivation for entering treatment. Moreover, some empirical evidence suggests compulsory treatment can promote internal
interest and motivation for behavioral change (Blankenship, Dansereau, & Simpson, 1999; Hiller, Knight, Leukefeld, & Simpson, 2002; Longshore, Prendergast, & Farabee, 1999; Marlowe, 2001; Prendergast et al., 2002). Other evidence suggests that coercion by the criminal justice system brings addicts into their first treatment episode earlier in their addiction career than might otherwise have been the case (Anglin, Brecht, & Maddahian, 1989). In a similar vein, coerced treatment has been justified as a means for the addicted to realize autonomy (Caplan, 2006). Although coercion represents the opposite of autonomy for the addict, addiction itself is the primary assailant of an individual’s autonomy. Thus, coercion infringes upon medical or personal autonomy to create autonomy from addiction.

From a more empirical standpoint, coercive treatment may be justifiable because it is more effective than voluntary options (Collins & Allison, 1983; Salmon & Salmon, 1983; Marlowe, 2001). The ultimate goal of treatment, of course, is to prevent relapse, and many believe that within the context of coerced treatment, the ends justify the means. However, the empirical evidence is somewhat muddled by the fact that considerable variation in measures, samples, and methods exist between these studies. This issue is discussed in greater detail in the following section.

Although many arguments have been advanced in support of coercive substance abuse treatment, an equal number assail the practice. From a bioethical standpoint, coercion of patients to receive treatment, regardless of type, is problematic due to the emphasis on the values of personal autonomy and respect for patient self-determination (Beauchamp & Childress, 2001). This value orientation is why medical professionals cannot force a blood transfusion on someone who opposes it for religious reasons or keep a patient from exploring nontraditional medicine (Caplan, 2006). Indeed, in the United States today, an individual has a fundamental right to refuse beneficial and helpful care even if such a refusal shortens his or her own life and has detrimental consequences for others (Dworkin, 1998; Seddon, 2007). Relatedly, arguments against coercive treatment are also based on more specific ethical issues relating to patient confidentiality and informed consent. Based on these concerns, one interpretation is that the coercion of offenders (a vulnerable population to begin with) into treatment is not compatible with the spirit of American medicine.

Others have questioned the compatibility or viability of compulsory treatment and harm reduction philosophies, particularly within incarcerative contexts (i.e., prison) (Norland, Sowell, & DiChiara, 2003; Wild, 1999). Wild (1999) argues that although interest in and implementation of compulsory treatment policies increased considerably during the 1990s,
harm reduction efforts were compromised by poor follow-up of initiatives with administrative and fiscal support and inadequate attention to evaluation of such services. Moreover, significant ideological barriers also complicate the relationship between coerced treatment and harm reduction (Prendergast et al., 2002). These ideological differences emanate from both the policy-makers who formulate and legislate mandatory treatment and those who work within the correctional contexts in which the treatment initiatives typically operate.

Most obviously, some ideological differences exist in terms of the viability of a criminal justice sanction that is designed to both punish and rehabilitate (Wild, 2006; Wild, Taylor, & Alleto, 1998). Policymakers may fall on either side of the debate regarding the role of the criminal justice system in relation to drug offenders (i.e., punish or rehabilitate) and consequently are not satisfied with the compromise of coerced treatment in incarcerated settings. The public may feel that civil liberties are threatened when the state has the authority to compel individual citizens into treatment programs for what they may regard as more of a behavioral problem than a crime problem (Wild, 1999). Differences may also exist among stakeholders (e.g., prison administration, prison staff, and treatment staff) in the addiction treatment and criminal justice systems (Rotgers, 1992; Whiteacre, 2007). From the perspective of treatment services, drug abusing offenders are primarily substance-using clients who are to be treated the same as any other client; they are expected to relapse and a therapeutic approach is the appropriate manner in which to deal with them. Conversely, from a criminal justice perspective, the substance abuse itself is what makes the offender a criminal and thus must be monitored (and punished) as such. These differences in ideology, then, can impact the potential of treatment effectiveness.

Relatedly, within the population of actual treatment providers or deliverers (e.g., licensed substance abuse counselors, psychologists, and social workers), variability in individual ideology and attitude may also exist (Whiteacre, 2007). Some adopt a strict abstinence policy with their clients whereas others employ a harm reduction tolerance of controlled usage. This is of particular concern with coercive treatment within incarcerated settings where high turnover in treatment providers can lead to inconsistencies in programmatic strategy and message.

Another concern related to coercive treatment involves the equity of access to treatment services. The central concern is whether or not offenders are “jumping the treatment queue ahead of non-offenders” (Seddon, 2007,
p. 277). In effect, coerced treatment distorts how priorities for treatment access are determined. More specifically, by concentrating treatment resources within criminal justice contexts, some groups will be over-represented (e.g., young males) whereas others will be under-represented (e.g., women). Disparity in access to treatment serves as the core of this argument.

The problems of coercive treatment can be furthermore compounded within correctional settings. As mentioned earlier, a primary obstacle to treatment success for imprisoned addicts is the inconsistency of messages from treatment deliverers. While a particular program may espouse a specific orientation toward substance use while in treatment, usually abstinence or zero tolerance, the actual level of staff commitment to that principle may vary considerably. This variability can make it difficult for the offenders enrolled in such programs and undermine recovery. Perhaps, most fundamentally, there is considerable doubt as to whether the prison environment is appropriate or even feasible for rehabilitation (Prendergast et al., 2002). Recovery is, of course, an extremely difficult period for any individual, and from a best practice orientation, a therapeutic environment is favorable. The basic deprivation of liberty along with the specific discomforts and humiliations characteristic of prison life are not conducive to recovery. Furthermore, offenders who have been coerced into treatment are often hostile, resentful, and make it particularly difficult to deliver treatment in the group settings typical of prison-based programs.

This last point brings us back to the basic problem with coercion. A fundamental precept of the addictions treatment world is that an addict cannot get better until he or she possesses the internal motivation to do so. As coercing offenders into treatment violates this basic belief, it creates an environment where a large number of individuals are highly resistant to treatment. Thus, even if some or many of the offenders eventually embrace recovery (evidence has suggested that this can indeed occur, see Prendergast et al., 2002), the treatment environment remains poisoned by those unwilling participants. This is especially relevant for treatment in correctional settings where therapeutic communities and dormitory living are characteristic of the treatment environment.

Aside from the debate discussed earlier, the actual empirical worth of coercive versus mandatory treatment remains a central question. Or, in other words, is coercive treatment effective, particularly when compared to voluntary treatment? The following section provides an overview of the empirical evidence to date.
Although much has been written about coercive versus voluntary treatment, a relatively small proportion of these studies have actually used empirical data. A number of studies have explored the impact of specific programs on treatment outcomes, whereas others have utilized meta-analysis (e.g., Farabee, Prendergast, & Anglin, 1998; Gregoire & Burke, 2004; Inciardi, 1988; Langworthy & Latessa, 1993, 1996; Maxwell, 2000; McSweeney, Stevens, Hunt, & Turnbull, 2006; Pearson & Lipton, 1999; Turley, Thornton, Johnson, & Azzolino, 2004). Several published studies have reported a positive association between criminal justice coercion and treatment outcomes (e.g., Collins & Allison, 1983; Prendergast et al., 2002), fewer reported no significant differences (e.g., Anglin et al., 1989; Simpson & Friend, 1988), and a small number found a negative effect for coercive treatment (e.g., Harford, Ungerer, & Kinsella, 1976; Howard & McCaughrin, 1996; Parhar, Wormith, Derkzen, & Beauregard, 2008). Within this group of studies, however, there exists great variability in methodologies, measures, and samples. As a result, the extant empirical evidence is not clear regarding the value of coercive versus voluntary treatment.

As noted earlier, several studies have produced findings that suggest coercive treatment is capable of producing successful outcomes for criminal justice populations. Two of the earliest empirical studies both utilized samples from the Treatment Alternatives to Street Crime (TASC) programs and found that coercive treatment indeed impacted outcomes favorably (Collins & Allison, 1983; Salmon & Salmon, 1983). Although both studies used similar samples, Collins and Allison (1983) examined the impact of legal pressure on drug abusers’ length of stay in treatment whereas Salmon and Salmon (1983) assessed actual drug use, recidivism (i.e., rearrest), and employment.

Similar to the Collins and Allison (1983) study, Schnoll et al. (1980) examined the length of stay in treatment among four distinct groups: (i) directly from prison, (ii) open cases, (iii) parole/probation, and (iv) no legal involvement (voluntary). Findings indicated that residents admitted directly from prison were more likely to complete treatment compared to other groups. The authors attributed this finding to the fact that these subjects faced the possibility of reincarceration if they failed to do so. More recently, Hiller et al. (1999) and Belenko (1998) both found that those coerced into treatment remained for longer periods of time.

Two other studies that provide support for the effectiveness of coercive treatment offer only tentative support. Rosenberg and Liftik (1976), in one
of the earliest studies on the topic, found that weekly attendance of driving under the influence (DUI) offenders who were mandated to outpatient treatment was better than those of voluntary admissions. Weekly attendance at treatment is not, however, necessarily a robust measure of treatment success (nor, for that matter, is length of stay in treatment). Similarly, Siddall and Conway (1988), using a sample of 100 substance abuse clients (42 of whom were involuntary admissions), reported higher rates of treatment completion for the legally coerced group.

Several studies have found that legal coercion exerts no discernable impact on treatment outcomes (Anglin et al., 1989; Brecht & Anglin, 1993; McLellan & Druley, 1977; Simpson & Friend, 1988). Only two of these studies (Anglin et al., 1989; Brecht & Anglin, 1993) measured outcome success in terms of traditional criminal justice variables such as involvement in crime and drugs, whereas a third focused on the number of contacts with staff (McLellan & Druley, 1977). Despite these differences, all studies concluded that subjects who are coerced into treatment do as well as those who enter voluntarily.

Finally, a few studies have produced negative support for the use of coercive treatment. In an early study, Harford et al. (1976) found that legal pressure was either negatively or unrelated to outcome success in five different treatment modalities. In an alternative type of study, Howard and McCaughrin (1996) surveyed 330 outpatient substance abuse treatment organizations and found that organizations with 75% or greater of court-mandated clients had a higher rate of failure (measured as noncompliance with treatment plans) compared to organizations with 25% or less mandated clients. In a recent meta-analysis, Parhar et al. (2008) examined 129 correctional treatment studies and concluded that, in general, mandated treatment was found to be ineffective, particularly when the treatment was situated in custodial settings. Conversely, the authors found that voluntary treatment produced significant treatment effect sizes regardless of setting.

Based on the totality of these findings, some argue that coercion is a justifiable and even preferable policy for drug abusing offenders (Longshore et al., 1999; Marlowe, 2001). For substance abusers, the criminal justice system can be an effective source of treatment referral and a means for enhancing program retention and compliance (Farabee et al., 1998). Others suggest that coercive pressures may actually increase an offender’s intrinsic motivation for change (Marlowe, 2001). These issues are considered to a greater extent in the current study.
THE CURRENT STUDY

Despite all that has been written about coercive versus voluntary treatment, one area that has not been extensively studied in this debate is the offenders themselves. Few studies have presented qualitative findings related to mandatory drug treatment in correctional settings, and virtually, none have utilized the experiences and impressions of the inmates themselves to assess the value of coerced treatment. This study begins to address this gap by presenting findings from a process evaluation of an in-prison alcohol treatment program. After providing a brief overview of the program, the remainder of this chapter details the research methodology utilized and presents findings related to the viability of coerced treatment within a prison setting. Interviews with 115 program participants, all of whom were sent to the treatment facility without their consent (i.e., coerced into treatment), inform a discussion about the impact of coercion on attitudes toward treatment and other program experiences as well as the environmental barriers to successful recovery presented by the prison setting.

The In-Prison Driving While Intoxicated Recovery Program: An Overview

The in-prison driving while intoxicated (DWI) program is a 6-month treatment program based on the principles of a cognitive-behavioral therapeutic approach. With a capacity of 500 offenders, the program houses the participants in nine dormitories. All participants are initially screened upon entrance to the facility to develop a personalized treatment plan focused on maximizing the potential for reducing future drinking and driving behavior. The intake assessment involves administration of the Addiction Severity Index (ASI) designed to assess an individual’s capacity in seven areas including medical, employment, alcohol and drugs, legal, family, social, and psychiatric (McGahan, Griffith, Parente, & McLellan, 1986). More broadly, the initial screening is used to tailor program services to specific offender needs.

During their 6-month residence, the participants move through six stages of treatment and cover topics that include, but are not limited to, the use and abuse of alcohol, decision-making skills, and relapse prevention. Treatment sessions are conducted 5 days a week in a group setting. Conducted within the dormitories, the groups are directed by licensed substance abuse counselors who deliver all curricula. Treatment sessions are 4 hours and partitioned into 2 hours focused on the Residential Drug Abuse Treatment (RDAT) curriculum, 1 hour on workbook exercises related to...
the six stages, and 1 hour of lifestyle skill development moderated by the counselors. The remainder of the time is spent working within the facility, attending educational or job training classes, participating in one-on-one counseling sessions with a psychiatrist/psychologist, or engaged in recreational activities. Counselors conduct progress assessments on each participant once a month. All six stages must be successfully completed to graduate from the program. Graduation is aimed to coincide with a parole hearing to improve the likelihood of release.

METHODOLOGY

Assessment of the treatment program was conducted during two site visits to the facility in January and March 2009. The central goal of these visits was to collect information on the implementation of the treatment program from the perspective of the program participants and facility administrators and staff. Interviewing was the primary data collection mechanism, and all interviews were conducted in one-on-one sessions with the facility administration or in small groups with the facility staff (i.e., counselors) and program participants. Interviews are a well-documented strategic research method to collect in-depth, rich information regarding the topic of interest (Shober, 1979; Maxfield & Babbie, 2008; Krueger, 1988; Morgan, 1988, 1996). Interviews in this research followed a semi-structured format in which predetermined questions were posed and accompanied by follow-up questions to explore additional topics. This methodology does not presume complete knowledge of all relevant topics but rather engages the participants in an open, honest dialog to better understand issues related to the subject matter.

A total of 115 program participants took part in the focus groups conducted during the two site visits. Each focus group consisted of between five and eight program participants and was moderated by two research team members to ensure reliability and accuracy in recording all information. Each focus group lasted between 30 and 60 minutes and began with an explanation of the voluntary nature of their participation and the guarantee of anonymity. No facility administrators or staff were present during any of the focus groups, thus ensuring that no specific comments provided by the participants could cause any undue repercussions from the facility administrators or staff. All information provided by the participants was recorded with pen and paper and maintained by the research team in a secure, locked environment with access restricted to authorized research personnel.
The focus group discussions covered a wide range of topics regarding program implementation and its potential effectiveness. Topics included a discussion of the participants’ initial arrival at the facility, their opinions regarding the content of the program, and their perceptions of program effectiveness. The research team also inquired about the participants’ perceptions regarding barriers to effective program implementation and the source of those impediments.

At the completion of the interview sessions, all comments were collated for independent review by members of the research team. Each research team member reviewed the content of the focus groups and identified the major and minor themes stemming from this process. Once these themes were independently identified, they were shared with other members to ensure reliability in theme identification. This process allowed for confidence in the identified themes because they represented the most consistent and pressing issues from the perspective of the program participants. For the purposes of the current study, findings related to the specific research questions are summarized below and represent the broad, collective opinions of the DWI program participants regarding the use of coercion in correctional settings.

**FINDINGS**

Although interviews covered a wide range of topics, we focus here on the specific elements related to our current research questions. First, we asked each focus group to explain how they had come to participate in the treatment program, whether or not they were afforded a choice, and how that impacted their attitude toward and experiences in treatment. Within the focus groups, each individual was given an opportunity to present his story. Participants were also asked to identify the specific barriers to recovery with which they were faced. These types of questions were posed to the program participants in an effort to understand how coercion affects attitudes toward and experiences in treatment and as a means of gathering data regarding the day-to-day qualitative realities present in a treatment program located in a correctional facility. Or, in other words, how do recovery and punishment coexist in treatment?

*Impact of Coercion on Treatment*

Program residents reported being unaware of their transfer status and receiving little or no information regarding the nature of their transfer, how
long the transfer would take to complete, or where they were being relocated. A common description of the process included being woken up in the middle of the night, told to collect all their belongings, and loaded onto a transfer bus without any indication of destination. The majority of residents who commented on their arrival at the facility suggested they were previously housed at a different correctional facility (i.e., these residents were not sentenced directly from court to begin serving their sentence at the treatment facility), but no information was provided regarding the nature of their transfer. In fact, several residents related that they were told nothing more than “get your shit, you’re on the chain” – correctional department jargon for a transfer. Some believed that it was a simple random selection process that resulted in their current status at the treatment facility. Others commented on their previous position at a different facility and described their preference to maintain that position due to its freedoms, as opposed to spending 6 months in a stricter incarcerated environment receiving treatment (i.e., the treatment facility).

The lack of information given residents regarding their movement to the facility and associated reduction in freedom was identified as having a possible negative effect on treatment delivery. One resolution offered by the residents was to give them the opportunity to decide if they want to attend the treatment facility or complete their sentence in their previous location. This finding was of particular significance because it showed that some of the offenders were indeed engaged in the treatment and wanted to successfully complete the program, despite being legally coerced. Given the importance of motivation and positive attitudes in successful treatment (Hiller, Knight, Leukefeld, & Simpson, 2002), this is a welcome finding. It also lends credibility to the assertions of those who argue that offenders can become engaged in treatment and experience successful outcomes regardless of whether or not they agreed to treatment. Finally, some residents suggested it was not clear why some participants were only beginning their sentence, whereas others had served closer to 80% of their sentence. One 4-month resident suggested that he still did not have a clear understanding of how or why individuals are selected.

In addition to having little information regarding their transfer, the residents described a lack of information regarding the treatment program upon their arrival. Several residents commented on the lack of clarity as to the specific goals of the program, the length of the program, and their role in the treatment. This too was seen as a barrier to successful recovery. Much of this information was acquired from other residents and passed throughout the facility through a word of mouth process. In regard to the facility, other
residents described that they received an introductory orientation to the facility, including its rules and regulations, schedule of activities (i.e., access to the recreation room and commissary), and food services that offered them some comfort in familiarizing themselves with their new placement.

Fewer residents commented on the perceived appropriateness of the current resident population in the treatment program. Those who did comment indicated that they believed that some of their peers were inappropriately assigned to the treatment program due to issues with drugs rather than DWI-related offenses. As one resident suggested, “Criminal history should be looked at closer because there are some that shouldn’t be here – they are drug addicts, not alcoholics.”

Environmental Barriers

Comments by the residents regarding the facility environment were collected within the auspices of inquiries regarding limitations to effective treatment implementation. That is, all discussion regarding the facility environment was induced to gauge the effectiveness of treatment implementation and barriers to treatment delivery. Substantively, these topics comprised a considerable amount of the information provided by the residents regarding the treatment program.

One common sentiment was the participants’ support of separating DWI offenders from the general population. In general, the residents view themselves as different from other offenders due to the nature of their crime, and by separating DWI offenders from violent offenders, it creates an atmosphere more conducive to effective treatment. Moreover, the intensive nature of the treatment schedule reinforces the principles and tools of the program and increases the likelihood of the residents retaining and applying the skills. Other residents thought the dorm style living conditions and group work was an effective environment for treatment because it fostered camaraderie among the residents.

Other residents were not as positive about the facility environment and suggested that the climate within the facility was more “punitive than rehabilitative.” They suggested it was a negative environment for treatment due to several inconsistencies within the facility. For example, the apparent difference in attitude between the counselors and the guards toward the residents, differences in rule enforcement depending on the guard, and inconsistencies in following the posted schedule were some concerns mentioned by residents. Others mentioned that the dorm style living
conditions create an environment in which residents have no space to collect their thoughts, and at least one resident complained that the prison schedule (i.e., early wake-up calls) was developed “to keep us exhausted” and inhibits their ability to concentrate on their treatment.

Finally, some residents suggested that the facility should be a pure DWI facility to improve the environment for treatment. Others suggested that the private company that was contracted to deliver the treatment “is in it for the money,” and “there is a moral dilemma with prisons for profit.” These types of comments reflect a deeper cynicism regarding the effectiveness of the program independent of the facility environment. Many of the offenders were skeptical about the viability of recovery in prison and suggested that labeling the institution a “treatment facility” was a misnomer – in the words of one inmate, “This isn’t a treatment facility, we’re in prison” (emphasis in original).

DISCUSSION

As the number of incarcerated continues to rise, the identification of viable rehabilitative treatment is paramount for managing increasing prison populations. Drug and alcohol treatment remain at the forefront of this policy challenge. Indeed, one of the most salient findings in the extant drugs-crmie literature is that most inmates are seriously involved with drugs and alcohol, many at the time of their arrest. A natural solution for the criminal justice system is to mandate treatment for those inmates who suffer from addiction disorders. Implementation of such practices, however, raises a number of theoretical, ethical, empirical, and practical questions.

This study explored two interrelated research questions: (i) how coercion affects offenders’ attitudes toward and experiences in treatment and (ii) what are the specific barriers that strain the rehabilitative environment. Findings suggested that although all offenders were placed in the program without their consent, this did not necessarily translate into resistance to treatment. In fact, many of the offenders interviewed reported satisfaction with the program and even gratitude for the opportunity to participate. This is consistent with the findings of Prendergast and his colleagues (2002) who reported similar results.

Of greater concern was the presence of offenders who (absolutely) did not want to participate and thus polluted the treatment environment. In fact, many of the offenders suggested making participation voluntary so that the program would be composed of only those who truly wanted to
“get better.” The problem for these inmates, then, was not that they had been assigned to treatment without their prior knowledge or consent but that the involuntary nature of participation naturally led to inclusion of those who did not desire treatment. Based on these findings, it may be that when treatment “slots” are available in correctional systems (as they are in this particular case), a better way to place offenders may be to first consider those that express a desire for treatment.

Naturally, many of the offenders expressed great displeasure with the nature of their confinement. Indeed, it is not uncommon for incarcerated populations to identify a “laundry list” of complaints related to staff, guards, privileges, and so on. Although we recognize that anybody exposed to confinement will undoubtedly have an ax (or two) to grind, there are nonetheless rich data to glean from these reports. In particular, the concerns related to the minutia of incarceration are indivisible from the treatment reality itself, and, thus, of concern in a program evaluation and, more broadly, for criminal justice policy. Many of these offender complaints speak to the fundamental paradox of treatment within an incarcerative setting and raise serious doubts about the viability of effective treatment delivery within traditional correctional contexts (i.e., prisons and jails). The findings presented here suggest that the goals of punishment and rehabilitation are not easily compatible.

This study contributes to the literature and informs criminal justice policy in a number of important ways. First, this is one of a few studies that has utilized the interviewing of inmates as a means of collecting information regarding the impact of coercion on treatment outcomes. We feel that the inmate interviews provide valuable data regarding the practical viability of coercion in substance abuse treatment and recovery. Furthermore, we argue that the inclusion of program participants in a process evaluation is necessary to establish program fidelity and understand the day-to-day qualitative realities.

The findings from this study also indicate that offenders can indeed become motivated to change through coerced treatment. This appears to be positive evidence for a policy of coerced treatment in criminal justice. However, study findings also suggested that a certain number of offenders simply will not become engaged in treatment and fail to develop any internal motivation. This is problematic for a number of reasons. First, those unwilling participants can poison the treatment environment for more motivated clients. Second, these inmates consume a disproportionate amount of time and resources relative to more compliant offenders. Third, because there are presumably more addicts than treatment slots, these
unwilling participants are filling a spot that may otherwise be occupied by an inmate more amenable to treatment. A better policy, then, may be to offer treatment spaces to offenders who wish to participate.

Our study also reveals the fundamental difficulties in attempting to both punish (through incarceration) and rehabilitate (through treatment) drug and alcohol abusing offenders. The contrast is even more striking, and perhaps more disconcerting, given the sample of offenders studied here—nonviolent DWI offenders. Although there was no doubt most, if not all, of the participants were in need of substance abuse treatment, it was less clear as to the appropriateness of incarcerating these types of offenders at all. This is not to say that drunk driving is not a serious crime that should not carry with it serious penalties, but the overall utility of incarcerating men who were otherwise law-abiding is questionable. Perhaps, a better way to manage chronic addicts whose behavior is a threat to public safety may be to instead mandate in-patient treatment that is not located in a prison. Although this would certainly be a dramatic policy change and require the vast reorganization of substance abuse services within the criminal justice system, the findings presented from this study indicate that consideration of such an approach may be merited.

A final area of discussion warranting attention is the involvement of private, for-profit companies in the delivery of substance abuse treatment within correctional settings. Although privatization has long been a feature of American corrections, many have voiced concern over various issues with these arrangements including propriety, quality, security, liability, accountability, and corruption (for an overview on correctional privatization, see Mays, 2000). Although this study was not designed to comment on or assess the value of privatized corrections, we were nonetheless confronted with a number of these issues. Several inmates offered statements regarding the perceived “immorality” associated with prisons-for-profit whereas others made allegations regarding the overall lack of quality of the facility compared to the public prisons where they had been held previously. These concerns suggest that the privatization of corrections poses perhaps as much of a dilemma for the criminal justice system as does the issue of coercive treatment.

NOTES
1. The RDAT curriculum, sanctioned by the Federal Bureau of Prisons, focuses on identifying and eliminating criminal thinking, improving rational thinking, and
improving interpersonal skills all couched within the context of maintaining recovery and sobriety.

2. Interviews conducted with facility staff echoed many of the same themes as those reported by the program participants; thus, specific reference to the content of the program staff interviews is not discussed further.

3. We use the term “treatment facility,” but this should not disguise the fact that this was a prison that operated rehabilitative programming.

REFERENCES


EX-INMATES WITH PSYCHIATRIC DISABILITIES RETURNING TO THE COMMUNITY FROM CORRECTIONAL CUSTODY: THE FORENSIC TRANSITION TEAM APPROACH AFTER A DECADE

Stephanie Hartwell

ABSTRACT

Purpose – This chapter describes the problem of and approaches to ex-inmates with psychiatric disabilities exiting correctional custody. Although all ex-inmates must find housing and employment, persons with psychiatric disabilities require linkages to various health-related services and supports. These linkages are necessary, but it is unknown whether they are sufficient because discharge planning services and transition programs for ex-inmates with psychiatric disabilities historically lack an evidence base.

Approach – After a decade, the first-generation re-entry programs for ex-inmates with psychiatric disabilities have yielded little in the way of empirical data, but they have provided models for program expansion and imperatives for second-generation program assessment. Related research
findings for first- and second-generation programs are highlighted with an emphasis on a unique statewide program in Massachusetts.

Findings – A review of the first- and second-generation programs suggests that progress has been slow in identifying empirically supported best practices for this population. There is a growing evidence base that community reintegration outcomes for ex-inmates with psychiatric disabilities are the result of demographic and criminal history variations, yet implications of these variations needs further exploration in the realms of service access and receptivity as well as variations in postrelease adaptation.

Implications – More knowledge and innovative research is needed on the experience of ex-inmates with psychiatric disabilities and social integration. Resources for cost effectiveness studies as well as long-term follow-up qualitative studies are necessary.

INTRODUCTION

Ex-inmates with psychiatric disabilities exiting correctional custody have been a concern of officials from both the mental health and the criminal justice systems for more than a decade. Although all former inmates must find housing and employment, persons with psychiatric disabilities require linkages to various mental health and outpatient services and the establishment of insurance to reimburse treatment and medication. These linkages are necessary, but it is unknown whether they are sufficient because discharge planning services and transition programs for ex-inmates with psychiatric disabilities lack an evidence base (Bailörgeon, Binswanger, Penn, Williams, & Murray, 2009; Draine & Herman, 2007).

This chapter examines early or “first-generation” approaches to ex-inmates with psychiatric disabilities leaving corrections and describes how they have informed the “second-generation” programming and research in this field. For instance, most first-generation programs were managed by criminal justice agencies with a correctional orientation and lacked attention to features of postrelease social integration, including the therapeutic/rehabilitative aims of public mental health (Wilson & Draine, 2006; Draine & Herman, 2007). Current “second-generation” approaches include intensive discharge planning programs following ex-inmates into the community or existing mental health programs tailored to forensic populations (Hartwell & Orr, 1999; Wilson & Draine, 2006; Morrissey, Meyer, & Cuddeback, 2007). This chapter also highlights Massachusetts’ Forensic Transition Team (FTT)
that has been in existence since 1998. The FTT is an interesting case because it spans both first- and second-generation approaches. It is also a voluntary, statewide public mental health program that has the potential to impact re-entry policy and programming in a substantive way.

**BACKGROUND**

The nation’s jails and state and federal prisons hold more than 2,100,000 inmates (James & Glaze, 2006). Research suggests that 10–16% of these inmates have severe psychiatric disorders (Ditton, 1999; Pinta, 2001). This means that the number of inmates with severe psychiatric disabilities ranges from 210,000 to 336,000. A recent Bureau of Justice Administration study reported that half of all offenders have some form of psychiatric disability (James & Glaze, 2006), and among inmates, the rate of psychiatric disability is four to five times the rate of the general population (Rice & Harris, 1997). However, these figures cannot be generalized to all sub-groups of inmates. Female inmates are reported to have higher rates of psychiatric disability. Ditton (1999) reported that 24% of female inmates have some sort of psychiatric disability, and 18% of female inmates are estimated to have an Axis I major mental disorder of thought or mood (Pinta, 2001).

Studies report a disproportionate number of individuals with severe psychiatric disabilities involved with the criminal justice system, including 40% with one or more arrests in their lives (Steinwachs, Kasper, & Skinner, 1992). New evidence suggests that inmates with psychiatric disabilities are more likely to have had previous incarcerations (Baillargeon et al., 2009). The risk factors for involvement and reinvolve with the criminal justice system (unemployment, substance abuse, mental illness, poverty) are also the risk factors for poor social integration, and the vast majority of inmates with psychiatric disabilities are released from the criminal justice system and return to the community with complicated service needs (Hartwell, 2002). Individuals with psychiatric disabilities are typically under-insured and have limited coping repertoires that can have “spill-over” effects in the community when they are released from correctional custody (Massoglia & Schnittker, 2009). These effects include broad difficulties in reintegration leading to more specific problems, including securing housing, employment, and appropriate healthcare, substance abuse, and subsequent criminality postrelease (Baillargeon et al., 2009). Although it is apparent that related support services are necessary for social integration, we have yet to understand whether they are also sufficient for this population.
A recent Urban Institute study on correctional re-entry identified variables impacting social integration for the general population of ex-inmates (Travis, 2005). These variables included criminal history, education level, employment history and entitlements, health stability and substance abuse history, and family relationships (Travis, 2005; Visher, Baer, & Naser, 2006). In the broadest sense, these domains indicate that personal history, social capital, health, and social networks are features effecting social integration postincarceration. Although no such comprehensive study exists for ex-inmates with psychiatric disabilities, the features of social integration identified are often elusive for ex-inmates with psychiatric disabilities.

More than a decade ago, Feder (1991) found that individuals with psychiatric disabilities released from correctional custody had difficulty remaining in the community, with two-thirds arrested and half hospitalized within 18 months of release. Recently, Hartwell (2003) reported that even with support programming in place, nearly a quarter of ex-inmates with psychiatric disabilities are hospitalized and one-fifth is reincarcerated at three months postrelease. Taken together, this evidence suggests that there has been little progress in reducing criminal justice involvement among persons with psychiatric disabilities. In fact, we know very little regarding the manner in which ex-inmates with psychiatric disabilities are engaged or disengaged from the community and formal and informal social institutions postrelease, even though service programs addressing this problem are proliferating.

**FIRST GENERATION OF RE-ENTRY APPROACHES**

The first generation of specialized programming addressing offenders with psychiatric disabilities involved with the criminal justice system included approaches at both the front end (arrest) and the back end (release) of the criminal justice system. These programs emerged from legislative mandates as well as a growing awareness of individuals with psychiatric disabilities involved with the criminal justice system. For instance, in Ohio, a class action suit resulted in a consent decree to address individuals with psychiatric disabilities involved with the criminal justice system and being released from correctional custody across the state. The result of the consent decree included discharge planning programs and community justice partnerships addressing the needs of individuals with mental health and substance abuse problems, including both the Serious Violent Offender Re-Entry Initiative and the Urban Institute’s Returning Home Study (Travis, 2005; Visher et al., 2006). Other distinct service system responses
included specialized police training (Borum, Dean, Steadman, & Morrissey, 1998), jail diversion programs (Steadman, Barbera-Steadman, & Dennis, 1994), and re-entry initiatives postcorrectional release (Hartwell & Orr, 1999). The early research on these initiatives is largely formative and descriptive because the studies lacked control groups, programs were small in scale and in start-up phases, and outcome measures were limited (see e.g., Hartwell, 2003). For instance, the Memphis police training crisis intervention team (CIT) program was effective in Memphis, but the results could not be generalized to other locations because of the history of program development and the environmental context in which it operated (Borum et al., 1998). The program has been difficult to replicate with other police departments in other locations with other resource issues (Steadman, Davidson, & Brown, 2001).

Additionally, many program models were adapted from existing programs that documented beneficial outcomes for individuals leaving hospitals. In California, funds were legislated to develop multidisciplinary case management and Assertive Community Treatment (ACT) teams. The theory behind implementing ACT teams included the finding that ACT teams are effective in helping clients released from hospitals maintain housing and reduce the number of days in the hospital (Mueser, Bond, Drake, & Resnick, 1998). Yet, at the time, there was no critical evaluation or evidence base negating or supporting ACT programs for ex-inmates with psychiatric disabilities. Perhaps due to this lack of evidence base, most of the first generation of programs were geographically limited. Programs with evaluation components such as the Thresholds Jail Program in Chicago, Illinois, seemed promising. Although the majority of individuals participating in the program had a history of substance abuse and homelessness, they received benefits and mental health treatment two years after release which reportedly reduced hospitalizations and jail days, providing cost savings for the county and state (McCoy, Roberts, Hanrahan, Clay, & Luchins, 2004). Yet, the evaluation of this program was limited to an extremely small data set \((n = 24)\) without a comparison group.

In sum, very few programs had comprehensive evaluation components; most were/are small in scale rather than statewide, many had client exclusion criteria, and most required alternative funding sources from the state. During this time, Wilson and Draine (2006) identified more than 50 re-entry programs for criminal justice inmates with psychiatric disabilities. They found that the vast majority of the programs were funded by the criminal justice system. They concluded that this correctional orientation was problematic, leading to a tendency to align individuals with psychiatric
disabilities with the criminal justice system, rather than integrating them to the community based mental health service system (Wilson & Draine, 2006).

THE SECOND GENERATION OF RE-ENTRY APPROACHES

The second generation of re-entry programming that expands existing programs and that implements new models is well underway. Promising approaches from the first generation, most notably jail diversion, have been replicated through targeted expansion. For instance, the Substance Abuse Mental Health Services Administration (SAMHSA) has partnered with the Gains Center to systematically assess 34 jail diversion programs grounded in best practices and interagency collaborations (CMHS National GAINS Center, 2007). These programs received technical assistance for implementation and more recent iterations specialize in trauma and/or special populations (e.g., veterans) and will provide an evidence base through a cross-site national evaluation (Steadman et al., 1999; CMHS National GAINS Center, 2008). They are also unique in their adoption of the sequential intercept model (Munetz & Griffin, 2006), which provides a framework for diversion from the criminal justice system in a holistic way. The sequential intercept model offers a range of diversion points from police prebooking and emergency room to re-entry and community corrections diversion (Munetz & Griffin, 2006). These distinctions in intercept diversion points across diversion sites will offer insight into outcome variations and best practices (CMHS National GAINS Center, 2008).

Typically, however, jail diversion programs operate using models of prebooking in police stations and/or postbooking, often now in mental health courts. Mental health courts operate similarly to drug courts (Watson, Hanarahan, Luchins, & Lurgio, 2001). The Bureau of Justice Assistance and the Consensus Project have numerous initiatives underway to survey existing mental health courts (Bureau of Justice Assistance, 2009; Consensus Project, 2009). Although these initiatives have developed rapidly, they are also more comprehensive in scope than first-generation approaches, creating the opportunity for comparative analysis and outcome evaluation. However, jail diversion programs are usually front-end programs. Re-entry programs, conversely, are back-end programs post correctional custody. As such, they are an essential component of the continuum of care from correctional custody to the community. Postrelease, community living can
seem chaotic and overwhelming for individuals with limited resources and coping mechanisms. Re-entry programs for individuals released from longer-term incarceration are important in that they address the jarring transition from total institutions to the open community. Gaps in support in this domain can result in returns to the criminal justice system, at significant cost to public services and public safety.

Thus, specialized case management approaches that have an evidence base as being effective with other populations have been tailored for ex-inmates with psychiatric disabilities, including Forensic Assertive Community Treatment (FACT) teams. FACT teams function like ACT teams for individuals involved with the criminal justice system with a psychiatrist, psychiatric nurse, case managers, and a parole officer. FACT teams are a promising approach, yet the available evidence suggests that their costs are not completely offset due to their relatively mixed efficacy in comparison with less intensive case management models (Morrissey & Meyer, 2005). Nevertheless, FACT teams are less expensive to operate per day than a night in prison or jail (Morrissey et al., 2007), and efficacy measures and cost analyses are important features of current efforts to assess re-entry programming.

Smaller, geographically limited programs from the first generation of approaches that showed promise are also expanding. For instance, the threshold program provided the framework for Illinois’ Prison Aftercare Program (PAP) (Lurigio, Rollins, & Fallon, 2004). PAP is operated out of two correctional facilities and offers ACT services to releasees who meet program criteria including being nonviolent. PAP clients receive an array of support services, including the completion of benefit applications, scheduling of community appointments, vocational training, and medication maintenance management. A unique feature includes clients continuing to be engaged as PAP clients even after they are rearrested, hospitalized or reincarcerated (Lurigio et al., 2004). Although operating with a limited population (nonviolent individuals), PAP has the added dimension of considering features such as vocational programming and continuity of care that may be essential for social integration. Similarly, Critical time intervention (CTI) has a social integration perspective (Draine & Herman, 2007). It includes features of cognitive behavioral therapy, supportive housing, dual diagnosis treatment, social skills development, and community supports over three transition stages during a nine-month period (Draine & Herman, 2007). CTI has been proven effective with homeless dually diagnosed men using case–control studies and is currently being evaluated for ex-inmates in the same manner (Draine & Herman, 2007). Like FACT teams and PAP, CTI is promising, but is also extremely labor-intensive and,
in turn, limited in the number of clients that can be served due to both human and financial resource constraints (Morrissey & Meyer, 2005; Morrissey et al., 2007). To date, there is no evidence that an intensive use of resources is necessary or even the best use of limited resources for the increasingly diverse population of ex-inmates with psychiatric disabilities.

MASSACHUSETTS’ FORENSIC TRANSITION TEAM

In Massachusetts, approximately 20,000 inmates are released to the community from incarceration each year and a range of 7–16% (1,400–3,200) have psychiatric disabilities. Since 1998, the Department of Mental Health (DMH) FTT program has worked to identify individuals with psychiatric disabilities being released from incarceration and provide re-entry and transition services. The FTT also works with pretrial individuals and individuals who are released under public safety supervision (probation/parole). FTT activities include establishing entitlement benefits and community service linkages for both juveniles and adults involved with the criminal justice system. From the start, the FTT provided transition planning services to voluntary ex-inmates with psychiatric disabilities being released from both county (misdemeanor) and state (felony) correctional facilities.

The primary goal of the FTT is to enhance community re-entry and reduce recidivism for ex-inmates with psychiatric disabilities released from correctional custody through three core re-entry functions: (1) inmate “meet and greet”; (2) postrelease tracking and documentation; and (3) advocacy. FTT coordinators meet and greet all pending releasees who correctional facilities determine are in need of DMH services to begin the DMH eligibility determination process. Eligibility for DMH services is based on an Axis I clinical diagnosis and need, including chronic disability leading to impaired functioning for a year or longer inhibiting the ability to make a living/earn money. After eligibility determination, FTT coordinators begin tracking and documentation, gathering information on inmates who are within three months of release. This information enables FTT coordinators to create release plans with community providers and to assess social service benefits and needs. As needed, the FTT coordinators advocate for ex-inmates at release via attending meetings, sharing information, and tracking community service linkages and progress for three months postrelease. Distinctive features of the FTT program include: (1) it is a statewide program, (2) it has mental health (DMH) funding, and (3) participation is voluntary.
Hartwell and colleagues have conducted evaluative and descriptive research on the FTT and FTT clients since program start-up in 1998 (Hartwell, 2001a, 2001b; Hartwell, 2002, 2003; Hartwell, Fisher, & Deng, 2009). The primary source of evaluation data includes the FTT postrelease research database and qualitative interviews with clients and staff. The database incorporates 51 variables including client demographics, health and criminal history variables, service use, and short-term/three-month postrelease contact statuses. The data originate from forms created by the research team and completed by trained FTT staff. Once the data are entered into DMH’s Forensic Division database, de-identified forms are sent to the research team where the data are coded and entered into the research database. Data have been collected on all ex-inmates referred to DMH services before release from correctional custody since the program began in 1998. Additional service and outcome data are captured on individuals found eligible for DMH services at three months postrelease. Broad findings include that ex-inmates with psychiatric disabilities have unique re-entry and reintegration trajectories based largely on demographics, including gender, race/ethnicity, and age, with the caveats that criminal and substance abuse history and the region (social context) to which clients return postcorrectional release significantly impact social integration. For instance, females have elevated rates of substance abuse and difficulty with re-entry due to their distinct social-cultural roles, including motherhood and limited work histories. Many females are also incarcerated in the single women’s state correctional facility which isolates them from their communities and social networks (Hartwell, 2001a, 2001b).

The four mental health/criminal justice contact statuses when FTT services end at three-months postrelease include “Engaged” in community services, “Lost” to follow-up though not hospitalized or reinvolved with the criminal justice system in Massachusetts, “Hospitalized” within three months of release, and return to the “CJ System” through rearrest or reincarceration. To date, results of the FTT program evaluation suggests that over the last decade the majority of FTT clients are “engaged” in services (47%) in the community at three months postrelease. Engagement in community services is the optimal postrelease status. Less optimal statuses include rearrest or reinvolvement in the criminal justice system (18%) and lost to follow-up (14%). Individuals who are lost to follow-up have not been hospitalized or rearrested in Massachusetts. Although these individuals could have moved to another state, being lost to follow-up may
also positively indicate that individuals are functioning well in the community without services. Conversely, the status may also indicate patterned weaknesses in social service outreach and engagement. Finally, one-fifth (21%) are hospitalized within three months postrelease. Hospitalization is not an optimal status, particularly if costs are considered, but spending time being hospitalized could arguably be viewed as a part of the continuum of care for individuals with severe psychiatric disabilities. Hospitalization rates also reflect referral networks and processes (Table 1).

Table 1 includes postrelease contact status statistics on all first-time state and county postrelease FTT cases since 1998 who were not reincarcerated and re-released through the program (n = 966). More than 200 additional cases have cycled through FTT services two or more times; these individuals are excluded from this analysis as they are a distinct group requiring a separate analysis.

The three-month postrelease evaluation period is too brief to assess social integration. However, it encompasses the most critical transition period postrelease where service engagement is both tantamount and variable by subpopulation. Table 1 indicates that 17% of females (32/185) as opposed to 14% of males (106/781) are lost to follow-up. Nonwhites comprise 35%
Ex-inmates with Psychiatric Disabilities

(341) of the total sample and are also disproportionately lost to follow-up postrelease. Additionally, ex-inmates released from misdemeanor public order (24% or 22/93) or drug-related offenses (15% or 62/405) are at higher risk of being lost to community follow-up as opposed to 10% of felons (44/436). Here again, losses to follow-up largely reflect system issues including the inability to engage certain populations in services or track individuals postrelease. Females are smaller in number and return, at least, in the short term to family networks and roles that may prohibit service engagement (Hartwell, 2008; Hartwell & Orr, 2009). Nonwhites include subpopulations such as Latinos and Haitians who have culturally distinct coping styles and beliefs that do not often include seeking out state social services or healthcare. Finally, misdemeanants serve shorter sentences and may still have social networks in place at release to support them postrelease rather than relying on more formal social networks and support through the public mental health system.

Additionally, nonwhite ex-inmates (16% or 54/341) are also less likely than white ex-inmates (24% or 148/625) to be hospitalized within the three-month postrelease period. Again, this could reflect cultural variation in help-seeking and symptom presentation or bias in social service engagement efforts and evaluation of acuity of service need. Individuals released from felonies comprise 45% of the total sample and are disproportionately hospitalized after release from prison. More than a quarter of felons (26% or 114/436) as opposed to 17% of misdemeanants (67/405) and 12% of drug offenders (11/93) are hospitalized three months postrelease. When felons are released to the community, they often have a more detailed case history by virtue of their longer correctional sentences; they are also higher profile usually due to the more serious nature of their criminality. Subsequently, they are scrutinized in the community with both formal mechanisms including probation and parole and informal mechanisms in the public mental health system. Problematic symptoms and decompensation are less likely to go unnoticed among recently released felons who may be a threat to public safety.

Finally, nearly a fifth of substance abusers (19% or 118/635) as opposed to 17% of nonsubstance abusers (56/331) become reinvolved in the criminal justice system. This disparity grows when examining gender where a fifth of females (21% or 39/185) recidivate as opposed to 17% of males (135/781) (Table 1). Aside from dual diagnosis (substance abuse), clinical diagnoses are not related to contact statuses postrelease. By virtue of their substance abuse, ex-inmates who are dually diagnosed are more likely to come into contact with criminogenic environments or the police. They are also more likely to violate conditions of probation and parolee resulting in more frequent returns.
to the criminal justice system (Hartwell, 2004). Females, as mentioned earlier, are difficult to engage in services and often have fewer resources to maintain themselves in the community postrelease. They more often return to troubled families who cast them off or they may be sole providers for their children. These constraints coupled with a lack of resources realign them with criminal activity as a means of community survival (Hartwell, 2008).

In summary, gender, race, substance abuse, and offense history are important variables impacting postrelease service linkages and outcomes in the community. These findings are significant when considering re-entry or transition program content. Resource-based decisions should be made regarding adopting either more intensive programming serving fewer ex-inmates or more comprehensive programming that may not have the capacity to address the needs of diverse segments of the population (females, minorities, substance abusers). The FTT’s rates of utilization and engagement suggest the program is efficacious in the short term; however, particular subpopulations require specialized services and outreach for longer-term engagement and social integration.

System Level Evaluation Findings

Regarding social integration, recent research indicates that regional variation in resources and services has an impact on contact statuses postrelease (Hartwell et al., 2009). At program initiation in 1998, seven FTT staff worked as a team overseen by the DMH Central Office. By 2002, the FTT staff doubled with two staff deployed to each of the six service regions of the state. The goal was to improve coordination of FTT services in local regions. Specific objectives included increasing mental health services in each region, reduction in duplicated efforts espoused by a centralized model and improved communication among local service providers. Thus, in the regionalized system, FTT staff work with other area personnel both responsible for and familiar with their local community’s clients and services, including case management, housing supports, and employment options.

To analyze the effect of regionalization on re-entry services, Hartwell and colleagues (2009) compared system-level outcomes observed in the period before and after regionalization (Hartwell et al., 2009). Here again, the FTT postrelease research database was used for this analysis including 957 client episodes ($N = 957$). At the time of the analysis 178 individuals were released and reincarcerated and released again with FTT services. These individuals are represented in our postrelease data each time, so that the data presented
pertain to episodes of FTT service, not “individuals.” In more than half of these episodes (525 or 55%), individuals were released from county facilities for misdemeanors. The remaining 432 episodes (45%) involved ex-inmates released from state prisons, who served an average of seven years for felony charges. From July 1998 through November 2002 (the “preregionalization” period) the re-entry program managed 525 episodes; postregionalization (December 2002 through December 2006), the program managed 432 episodes. We conducted a pairwise *t*-test of percentages in each postrelease contact status pre- and post-regionalization and the *t*-values and *p*-values for each before and after regionalization across contact statuses by correctional setting (i.e., county house of correction or prison). After regionalization (post-regionalization), FTT episodes involving persons exiting county houses of correction showed a significant increase in engagement, from 50% (142) to 59.2% (142). Regionalization also had a strong positive effect on episodes involving individuals released from prison whose three-month engagement rates increased by almost 15%, whereas the lost to follow-up rate declined by roughly one-third. Another significant finding was that regionalization reduced the percentages of the individuals returning to the criminal justice system from county houses of correction (24% to 10%) and prison (23% to 4%). In general, the data supported the notion that service delivery is made more effective and efficient when localized (Hartwell et al., 2009).

However, postregionalization there continued to be increased episodes of being lost to follow-up for ex-inmates released from misdemeanant/public order and drug offenses from the county houses of correction, suggesting that many ex-inmates serving shorter correctional sentences remain difficult to engage and track postrelease even in local communities familiar to service providers. In contrast to the felon/prison population, individuals being released from misdemeanors serve much shorter sentences (on average approximately nine months). Thus, prerelease planning and engagement is shortened. Additionally, individuals being released from misdemeanor or public order offenses are generally less of a public safety concern than felons being released from state prisons, who may be described as “high profile” or “dangerous” and warrant more attention postrelease (Hartwell et al., 2009). This suggests that re-entry services should be differentiated based on length of incarceration due to variations in prerelease planning time, on the one hand, and inmate institutionalization truncating social networks necessary for social integration, on the other. That is, an inmate serving a nine-month sentence has a different re-entry trajectory and experience than individuals being released after nine years who are returning to diminished social networks and an unfamiliar or altered community.
Nevertheless, public safety concerns at the local level seem to enhance the FTT’s capability and expertise in transitioning ex-felons with psychiatric disabilities being released from state prisons. Felons serve much longer sentences with lengthier prerelease planning. Time-served, coupled with public safety concerns and regional accountability, provide the impetus to access somewhat scarce hospital beds for individuals who may have extreme difficulty reintegrating in the community immediately postrelease. This enhanced capability is important in that felons may have re-entry and reintegration challenges greater than those experienced by persons completing misdemeanor sentences (Hartwell et al., 2009). In sum, regionalizing the statewide FTT transition service provided the staff an increased level of local familiarity, access to resources, and clear lines of accountability. Additionally, staff are more imbedded in their local communities where they know other providers and benefit from social support and professional networks that provide resources for ex-inmates with psychiatric disabilities (Hartwell et al., 2009).

Summary of FTT Evaluation Program

Clearly the FTT is a unique re-entry/transition program and has provided Massachusetts the opportunity to learn about ex-inmates with psychiatric disabilities. However, similar to the first generation of re-entry approaches, findings related to the program remain limited to within-group analysis rather than a more rigorous case-control comparative analysis. At this juncture, postrelease statuses are broadly defined with little attention to potential measures of social integration. Findings also come from a relatively short period postrelease and do not include a more nuanced picture of social integration or outcomes for chronic recidivists. As mentioned, to date, more than 200 individuals have cycled through the FTT more than once (up to seven times). An analysis of this distinct group is essential to examine and consider markers of chronic offending among this population. Nevertheless, the FTT remains a comprehensive public mental health model as it attempts to include voluntary male and female, violent, and nonviolent ex-inmates with psychiatric disabilities with greater of lesser degrees of success. In the future, comparative empirical and cost effectiveness data on the FTT could provide further evidence of its efficacy and substantially broaden the range of available re-entry program models that minimize costs and maximize public mental health outcomes for ex-inmates with psychiatric disabilities (Wolff, 2005).
DISCUSSION

Given their scope and evaluation mandates, the second generation of re-entry programs will inform advances in re-entry and transition programming for ex-inmates with psychiatric disabilities with evidence based best practice prescriptions regarding programming. However, longer-term social integration for ex-inmates should be the overarching goal. On the basis of the premise that successful community re-entry and social integration is an interdependent process between the community and the individual, understanding individual (personal history) and community (social context) characteristics, such as treatment availability and the flow of resources between individuals and their communities, is essential (Draine, Wolff, Jacoby, Hartwell, & Duclos, 2005). Public and private resources in employment, housing, and health services/treatment (substance abuse, mental health, and specialty services), individual features (including social networks, family, and friends), and personal histories (including mental health, criminal justice, and substance abuse) are features hypothesized to impact social integration.

However, capturing the interaction of individuals and service system contexts, including community settings and barriers to social integration such as the variant quality of social supports and community resources, requires both fieldwork and case–control studies of re-entry models (Draine et al., 2005). For instance, interviewing ex-inmates with psychiatric disabilities and documenting their abilities and difficulties navigating community living, including housing, employment, social networks, social roles, and managing medications in the community, is essential. Additionally, understanding the neighborhoods where ex-inmates reside postrelease offers an important dimension to understand the complexities of social integration (Hartwell & Benson, 2007). Social contexts and the social networks of ex-inmates with psychiatric disabilities should be articulated and understood, providing a better description of the communities and social institutions (including social roles) with which they are predominately associated postrelease.

As already noted, the Urban Institute recently conducted a series of studies discussing the experiences of ex-inmates released from state correctional facilities with ex-inmates (Travis, 2005; Visher et al., 2006). The Institute identified a range of variables potentially associated with re-entry outcomes through interviews with inmates pre- and post-release. Ex-inmates described a shortage of supervised release programs and a dearth of financial and/or housing support from families that contributed to their negative attitudes and beliefs about re-entry. They reported
environmental variation in resources such as programming, mentoring, and housing (Travis, 2005; Visher et al., 2006; Visher & Courtney, 2006). These studies are significant because the articulated variables come from interviews with individuals experiencing the transition from correctional custody to the community. However, of the four states focused on for the Urban Institute study, only one state specifically focused on the experience of ex-inmates with health and mental health problems (Visher et al., 2006). Nevertheless, the Urban Institute method of understanding re-entry from the ex-inmate’s perspective, including features of social integration, may have merit for addressing ex-inmates with psychiatric disabilities. Multisite, multimethod approaches have the ability to provide more comprehensive knowledge, data, and subsequent improved program planning. As it stands, qualitative research studies on the experience of ex-inmates with psychiatric disabilities in the community are scarce, and, thus far, programming remains oriented to front-end or costly and at times exclusionary back-end programming.

Careful assessment and evaluation of a range of programs, including descriptions of their contexts and scope, is necessary. Equally important to post-release context is a description of the population being served. Is the population’s participation mandatory or voluntary? Does the program have eligibility or selection criterion based on acuity of psychiatric disability, dual diagnosis, and/or criminal history (violent/non-violent)? Is the program culturally competent to serve a diverse population? The FTT experience suggests that females, minorities, and felons require distinct approaches, as do younger and older ex-inmates (Hartwell, Fisher, & Davis, in press). Additionally, evaluations should include resources for longer-term tracking and follow-up of ex-inmates to capture longer-term postrelease outcomes, as well as features increasing or inhibiting social integration. These features include social context and social networks. Finally, program capacity and range are important features impacting outcome evaluations and expectations. Is the program operating at a local or statewide level in an urban or rural region? What are the laws, policies, and resources governing the program as applied and operationalized? For instance, if the program serves sex offenders (as the FTT does), what are the laws that govern their correctional release and are there resources in the community to manage and support re-entry for the particular subpopulation?

When resources for evaluations are limited, re-entry programs should, at the least, collect program data and maintain program databases that have the potential to be shared or compared with multiple agencies. Agency collaboration and data sharing, although complicated, offer the potential to conduct more rigorous outcome and cost evaluations for the population
that cross-cuts many service agencies. Combining existing program or secondary data from a matched cohort of individuals not receiving re-entry program services offers an approach that is rigorous, but does not require randomization. For instance, the Maryland Re-entry Partnership Initiative (REP) was found to reduce crime and associated costs among ex-inmates using a quasi-experimental design including a comparative contemporaneous cohort of prisoners released between 2001 and 2005 (Roman, Brooks, Lagerson, Chaflin, & Tereschchenko, 2007). Without using randomization, evaluators were able to assess program outcomes for individuals in the REP program and similar individuals not receiving REP services. In addition to matched cohorts, within-group comparisons are also helpful to understand for whom programs are most efficacious and helpful.

Finally, a clear articulation of program goals and program scope (range of individuals served in geographical area) is necessary to understand and contextualize program measures and outcomes. For instance, the FTT is a public mental health, and somewhat utilitarian, approach to ex-inmates with psychiatric disabilities in Massachusetts. A goal is to identify all transitioning offenders with severe psychiatric disabilities and provide linkages to community treatment and social services. The program does not provide treatment or intensive follow-up. Thus, although transition programs such as the FTT are clearly necessary, we do not yet know whether the program is sufficient for longer-term social integration. To be sure, more resources for evaluation are needed. Cost evaluations and comparative economic arguments may provide useful data in this regard. The potential cost savings per night per individual maintained in the community as opposed to correctional custody should be underscored.

**IMPLICATIONS AND CONCLUSIONS**

With the first generation of re-entry programming giving way to larger-scale second-generation multisite interventions and evaluations or smaller intensive program initiatives incorporating comparative analysis, it is too soon to say what works and what does not for ex-inmates with psychiatric disabilities. More research is needed to derive those conclusions. However, it is important to state that support programming and service engagement are necessary for this population and the sub-populations within this population. We may never know what definitively works for each ex-inmate with a psychiatric disability, but we will be able to assert a range of best practices-based individual characteristics, and clinical and criminal histories in the
context of program goals, objectives, resources, and operating context. Features of community engagement and social integration will be substantiated through empirical data and best practices identified.

The first generation of re-entry programming for individuals with psychiatric disabilities was based on the premise that specialized services were needed for ex-inmates with psychiatric disabilities (Hartwell & Orr, 1999; Healy, 1999). These programs, however, resulted in a paucity of rigorous data to inform best practices. However, there is a growing evidence base that community reintegration outcomes for ex-inmates with psychiatric disabilities are the result of demographic, contextual, and resource variations. The implications of these variations need further exploration in the realms of service access and receptivity as well as cultural variations in adaptation. Additionally, personal histories, including substance abuse and criminal histories, also influence community re-entry and transition strategies. Severity and length of substance abuse and criminal histories influence patterns of linkages to services and community tenure. Public safety concerns, discrimination, and stigma influence these patterns and linkages as well. These factors and features of social integration are often portions of the more rigorous and extensive research programs of the second generation of programming, yet more still needs to be done. For instance, too little attention is paid to factors associated outcomes among the group of recidivists that receive post correctional release services repeatedly to understand this high service utilizing group that may need a distinctive, refined set of program supports and resources.

Offenders with psychiatric disabilities have been a priority area for states and the federal government for more than a decade. During this time, there has been a proliferation of programming addressing this population, but too few resources to support research and evaluation of these programs, perhaps because the population they serve cross-cuts multiple agencies. As it stands, the largest gaps in the research on the social integration of ex-inmates with psychiatric disabilities include longer-term follow-up studies addressing measures of social support, social capital, and resources, and the social networks that link them to supports, the result being, in large part, spotty and marginally informed postrelease planning. Qualitative research and description that documents the local barriers and resources influencing the community reintegration is needed to inform postrelease planning and transition services for ex-inmates with psychiatric disabilities. Additionally, clear program articulation and data collection for within- and across-group analysis and agency comparisons are other avenues to validate program
effectiveness. Finally, cost analyses are needed not only to generate evaluation resources but also to illustrate that re-entry programs for ex-inmates are both necessary and cost-effective. We may never be able to prove that a particular type of programming is sufficient for this population due to its broad contextual and demographic variation, but from a public health perspective, we may be able to identify numerous versatile approaches that are both necessary and efficacious.

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PART VII
CONCLUSION
SOCIAL PROBLEMS AND PUBLIC POLICY: A THEORETICAL OVERVIEW OF POLICY ISSUES AND IMPLICATIONS

Mark Peyrot and Stacy Lee Burns

It has been 25 years since the publication of a theoretical model describing the evolution of social problems, or more precisely, the evolution of public policy institutions for the remedy of social problems (Peyrot, 1984). Yet, this model still provides a framework that encompasses the range of new social problem developments described in this collection. In this chapter, we use that model to organize the diverse developments described in the other chapters into a coherent overview. We describe the key elements of the theoretical model, and we apply the model to the substantive developments described herein. We also identify some integrative themes that connect these developments to one another and provide insight into the implications that the collection has for the larger study of public policy regarding social problems.

A MODEL OF SOCIAL PROBLEM DEVELOPMENT

The theoretical model draws on the pioneering work of Spector and Kitsuse (1973, 1977) describing the stages that a social problem goes through. These stages are conceptualized as cyclical in nature, with stages repeated...
(in modified form) across multiple cycles. Although the model provides for multiple cycles, only the first two cycles were explicitly formulated in the original paper. However, consideration of the developments described in this collection requires that we consider additional cycles, and doing so allows us to expand the model beyond its original formulation.

The first cycle of social problem development consists of four stages: (i) agitation for mobilization of collective action, (ii) policy formation, (iii) policy implementation, and (iv) policy modification. Many “social constructionist” analyses focus on the first stage, specifically on efforts to define a social condition as a problem, or more precisely, as a particular type of problem with particular causes and consequences, which suggest the appropriate types of public policy solutions. Policy formation, implementation, and modification are often ignored or regarded as natural outgrowths of the definition that is regarded as the endpoint of stage 1. Yet, clearly for those with an interest in public policy regarding social problems, it is these latter stages that are crucial in the institutionalization of a problem within society. The chapters in this collection focus more on these stages of the process.

One of the important features of a cyclical model is that it provides a way of thinking about the subsequent stages of a social problem beyond the initial institutional approach. Often, problems are not seen to have been “resolved” by the initial remedial approach. Problems are seen to persist, and perhaps even worsen, in spite of (or perhaps because of) society’s remedial efforts. When this occurs, it is likely that the problem enters a fifth stage of reform agitation in which alternative definitions of the problem and its appropriate remedy are proposed. Note that this fifth stage corresponds to the initial stage of agitation during the first cycle and initiates a second cycle of the social problem development process. If the reform agitation is successful, there will be another stage of policy formation based on the newly proposed problem definition, followed by stages of new policy implementation and modification of those policies. If the history of the problem is followed for sufficient time, and it is not seen to have been resolved, there likely will be another cycle of reform agitation and policy formation, implementation, and modification.

LARGER TRENDS

In following the development of a social problem across cycles, and its relationship to the development of other social problems, several larger patterns, or mega-trends, emerge. First, multiple cycles involve systematic
changes over time. For example, cycles may represent oscillation between more and less severe forms of remedy; the initial response may be more punitive in nature, whereas the next response may be more therapeutic in nature. Later cycles may continue this trend by returning to a more coercive approach, which in turn is relaxed. But, this is not a simple oscillation between states – each cycle represents a shift in social conditions because the new policy approach is implemented within a context defined by earlier cycles. In effect, there is an accretion of institutional forms so that a later remedy is implemented as a supplement to preexisting remedial forms. For example, if the initial remedial institutions are criminal justice, a later therapeutic approach will be located within (or at least with reference to) the criminal justice institution.

The second mega-trend is that subsequent cycles of social problem development typically involve domain expansion – expansion of the institutional domain of the problem. There is a process of “net-widening” that expands the scope of the problem (what counts as a problem) and the populations to which the problem definition and remedy apply (Conrad & Potter, 2000; Macallair & Males, 2004). When this occurs, there is often a parallel dilution of social control. That is, as less severe forms of behavior come to be defined as problems and larger number of persons become subject to remedial efforts, the intensity and coerciveness of the remedies diminishes. This may simply reflect the change in definition (i.e., the problem definition is expanded to include less serious problems), or it may be a result of limitations on the resources available to deal with the problem (if the number of people to be processed increases, either the overall resources must increase or the resources devoted to each person must be reduced). Research has yet to identify the likely endpoint in this process of expansion/dilution, nor the factors that might predispose toward different endpoints.

The third mega-trend is that there may be a diffusion of institutional forms from one social problem domain to another. For example, the criminal justice approach diffused from acts that victimize others to so-called victimless crimes such as substance abuse. The community-based counseling approach diffused from voluntary treatment to coercive treatment (Peyrot, 1985). The substantive justice approach focusing on rehabilitation diffused from juvenile court to drug court.

Finally, we note that there may be meta-trends – patterns in mega-trends. For example, the rate of institutional accretion, expansion, and diffusion may be changing over time. Acceleration would result in faster turnover in remedial approaches, more rapid expansion and dilution of social control, and quicker adoption of new remedial approaches across multiple problem
domains. Conversely, deceleration would slow these processes, perhaps due to barriers such as lack of funding. Another meta-trend may be a convergence of mega-trends, for example, expansion/dilution may favor certain institutional forms over others. These meta-trends are the least well-researched aspect of the theoretical model because their examination requires an ample body of research on mega-trends, which is yet to be published.

APPLICATION AND IMPLICATIONS

With this framework in mind, let us consider the “new” social problem approaches identified in the chapters of this collection. First, we note that while all of these remedial approaches may be “new” in some sense, most are not new in the sense of being an initial approach to a new problem. Perhaps, the most deserving of such a designation is Berard’s study of “hate crimes.” While the criminal acts to which the “hate crime” designation is applied (e.g., assault and murder) have long been regarded as social problems, the new category of “hate crime” has only recently been created and institutionalized. Thus, we are seeing the initial stages in the development of this problem. The legislation and implementation of policy are underway. It is not clear how far this policy domain will expand and what implementation strategies will develop. Will new categories of “hate victims” be established, for example, the homeless? If the history of other social problems is any indication, the answer is yes. Will the severity of hate crimes penalties be increased? Again, history suggests that it may happen, especially if, as Berard suggests, existing penalties are not seen to deter hate crimes.

The chapter by Muschert and Peguero on school violence represents a problem at stage 4 – policy modification. There is a long history of school violence, and there have been efforts to deal with such violence for almost as long. While these social problem remedies have been primarily local in nature – often organization-specific – that is no reason to regard these efforts as falling outside the scope of social problems studies. Local school boards or individual school administrations may follow the same patterns identified by the cyclical development model, and their initiatives may diffuse within the educational sector of society. As Muschert and Peguero suggest, school violence has persisted, increased, or even – in some spectacular cases (e.g., Columbine) – exploded, in spite of efforts to control it. This has led to an intensification of efforts to prevent and control school violence. Increasing attention, personnel, technology, and funding have been devoted to the problem. At this stage, the boundaries of the problem
domain often expand to include lesser forms of problematic behavior, and the policies become increasingly harsh; Muschert and Peguero document these trends and allow us to see the logic behind the implementation of these strategies.

The cycle model of social problem development states that the stage of policy escalation is often followed by a reaction against the previous remedial strategy, with reform agitators suggesting that that approach is not only a failure but may actually contribute to a worsening of the problem. This agitation usually incorporates the seeds of a new approach to the problem, one which represents a significant departure from the prior approach. While there may be many such alternatives to the approach described by Muschert and Peguero, the chapter by Garot gives us a concrete example of implementing one such approach – the gang’s school. Although this approach is not necessarily a direct descendant of the Columbine response (i.e., it may not be the successor to a “failed” Columbine response at a particular school), it does represent the development of a new approach within the larger educational institution of US society. Moreover, this strategy reflects a diffusion of institutional forms, specifically the use of an “academy” school model (California Department of Education, 2009) as a way of avoiding the violence arising from the traditional large school model that brings conflicting groups together on a single campus and then attempts to suppress the conflict and violence with intensified control strategies.

Garot does not extensively discuss the academy school movement, but this is clearly a radical reform within the educational domain, and it has arisen in part as a response of the perceived failure of the traditional school approach. This institutional form may come to be seen as the solution to a number of education system problems and may become a dominant approach of the next cycle of educational problems development. However, it appears that this new approach will be subject to the dynamic of institutional accretion described earlier. That is, academy schools operate within the bureaucratic framework of large-scale public school systems; they are not completely free to develop an optimal approach because they are tied to the institutional system that previously failed to deal with the problem.

Konradi’s chapter on court-related reforms surrounding rape prosecutions illustrates the complexity of the transition from one cycle of a social problem to the next cycle. This transition often reflects the overlap of two stages – incremental policy modification (stage 4) and radical reform agitation (stage 5). These processes occur simultaneously and are in competition with each other. Policy modification is reflected in the efforts to increase the participation of victims/survivors in traditional court proceedings.
Konradi provides an evidence-based assessment of a number of these strategies and finds several of them worthwhile. However, many of the modifications discussed by Konradi do not challenge the traditional criminal justice approach in any significant way. Convincing survivors to bring charges and helping them to testify more effectively are consistent with traditional prosecutorial goals of getting convictions. Other strategies (i.e., those designed to increase survivor satisfaction with the judicial outcomes) begin to move toward a radical departure from the traditional approach. Unfortunately, as Konradi’s analysis suggests, where those strategies leave prosecutors in control of court operations, there are limits to what the “reforms” can accomplish. It is only when the survivor is made central to the process that a new approach can truly be said to have been formulated and implemented.

Konradi does discuss one set of radical reform proposals – restorative justice conferencing. This serves as one means for allowing rape survivors to play a more central role in the remedial process. At this stage in the development of rape as a social problem, we can only say that this approach has been piloted in a few settings. For this approach to become dominant, jurisdictions would need to formulate policies mandating such treatment (at least when desired by the survivor in a case) and develop systems for routinely implementing such policies. If the ameliorative proposals Konradi discusses are not seen as successful in dealing with survivor issues, restorative justice initiatives are likely to become more popular among policymakers.

The Petrunik and Ilea chapter on adult males who are sex offense victims/perpetrators nicely parallels the Konradi chapter but adds an additional level of complexity. Like Konradi, this chapter deals with sex offenses where there are two types of participant roles – victims and perpetrators. Unlike Konradi’s topic, however, the two roles are merged into a single participant. Thus, Konradi focuses on the victim role only in relation to its place in dealing with perpetrators and does not examine therapeutic programs and practices for dealing with the mental health needs of victims beyond the impact of participating in court proceedings (although this focus should not be interpreted as indicating that Konradi does not think these issues are important). In contrast, Petrunik and Ilea examine the conflict between programs reflecting the criminal justice focus on controlling perpetrators and programs reflecting the therapeutic focus on addressing the mental health needs of victims. Ironically, both types of programs and their practitioners seem to reject the concept of the victim/perpetrator role, privileging the perpetrator role as dominant. Programs for addressing victims’ mental health needs tend to exclude adult male sex offenders, although those employing
one perspective (the Good Lives Model) seem willing to incorporate victim mental health needs as a subordinate focus when deemed relevant to offender rehabilitation.

Existing programs that address both victim and perpetrator issues reflect an incremental modification of conventional perpetrator-oriented approaches. Like the incremental modification approaches reviewed by Konradi, these approaches are based more on therapeutic insights rather than relying on increasing the severity of punitive approaches (e.g., control through pharmacology rather than longer incarceration). It is interesting that the programs that reflect a radical departure from the conventional approach utilize a restorative justice approach. Again, this parallels Konradi’s findings and reflects the diffusion of this form of social control across institutional problem sectors. However, it is too early to know whether this radical departure from conventional practice will take hold in this domain, any more than in the domain of rape.

The question of what constitutes a policy modification (a late first cycle, stage 4 activity) versus a policy reform (an early second cycle activity) also applies to the mental health programs for correctional inmates examined by Hartwell and by Miller and colleagues. As is characteristic of the stage 5 activity that can initiate a second cycle of social problem development, critics of the correctional system have long argued that incarceration may worsen the problems it is intended to address by increasing recidivism (Meyer, 1968). Both chapters document the recognition that the psychiatrically disordered (including substance abusers) are especially resistant to rehabilitation and vulnerable to the negative effects of incarceration. However, both types of programs examined here represent complementary efforts in service of correctional goals; they do not fundamentally reorganize the correctional approach and are not provided to all inmates.

The potential for prerelease and postrelease mental health programs to become standard components of the correctional system is dependent on several conditions, including the operational conflicts between correctional and mental health programs, the integration of the mental health programs into the correctional system, and the degree to which the programs align with the existing structure of the correctional system. As an evaluator of a prerelease correctional treatment program, Peyrot had a chance to observe the operational conflicts facing such programs (Yen, Peyrot, & Prino, 1989; Peyrot, Yen, & Baldassano, 1994). Staff in the correctional facility prioritized security over the goal of getting patients and treatment personnel together at the time and place for treatment activities. And correctional staff regarded treatment as a “scam” whereby inmates could opt out of the
disciplinary regimen of the facility. When faced with budget issues, these programs were easily terminated because they were not integrated into the structure of the correctional program.

One advantage that prerelease programs have over postrelease programs is that they operate within the dominant component of the correctional system – the custodial facilities – whereas postrelease programs operate within the subordinate component – the parole system. But the goals and the functioning of postrelease programs are more closely aligned with the component of the correctional system within which they are located. They share the same rehabilitative goal of reducing recidivism and maintaining the former inmate in the community. Unfortunately, correctional systems have been dedicating the majority of their funds, including funding supplements, to increasing custodial capacity (Donziger, 1996; Shelden, 2001). Thus, the fate of postrelease programs is likely to be closely tied to a shift in correctional budgeting priorities. This may bode well for such programs if more states and localities are forced to reduce their reliance on incarceration due to the rapidly rising costs of this approach (Petersilia, 2008).

Among all the social problems remedies discussed in this collection, drug courts represent the approach that most clearly fulfills the criteria for having moved beyond the first cycle of development. In the initial cycle of social problem development, substance abuse was fundamentally in the criminal justice domain. In the second cycle, diversion of substance abuse offenders into court-mandated treatment during the 1960s and 1970s represented a shift away from the criminal justice approach. However, the clinical approach was not tightly integrated into the criminal justice system. Treatment was not supervised or even monitored closely by the court, with the result that substance abusers were able to negotiate agreements with treatment providers to obtain perfunctory or superficial treatment (Peyrot, 1985). The development of drug courts represents the modification (stage 4) of the hybrid criminal justice/clinical model with the integration of therapeutic activity into the criminal justice system through judicial monitoring and supervision of treatment. As Mackinem and Higgins demonstrate in their chapter, drug court staff give offenders many chances to rehabilitate themselves and only reluctantly determine that the criminal justice approach should take precedence in a given case. Note, however, that the drug court strategy is an increase in the level of social control over that in the previous diversion-to-treatment era (Burns & Peyrot, 2003).

The chapter by Burns and Peyrot on California’s Proposition 36 examines the most recent development in the management of substance abuse, the expansion of the hybrid criminal justice/clinical, and drug court approach to
encompass most (nonviolent) substance abuse offenders. This expansion represents the full integration of the treatment model into the criminal justice system for substance abuse. Burns and Peyrot also demonstrate that this expansion is accompanied by a dilution of social control, with reduction in the average resources devoted to each client and more perfunctory monitoring and supervision of treatment by the court. It is an open question whether the institutional form of mandatory treatment rather than incarceration will diffuse from California to other states and localities. Such diffusion would seem to complete the second cycle of social problem development in this social problem domain, such that subsequent developments should represent the beginning of another cycle.

The original formulation of the cyclical model of social problem development proposed that there could be multiple cycles of social problem development but did not characterize what later cycles might look like. Recent developments in California regarding the management of substance abuse provide some insight into this issue. One development is the passage of medical marijuana legislation (Proposition 215) that allows people to obtain medical prescriptions for purchasing and possessing marijuana and vendors to provide marijuana to prescription holders (Egelko, 2009). This represents a shift from criminal justice regulation, which was instituted in the 1930s when legislation made marijuana possession and sale a crime, to medical regulation (a newer form of social control). Another recent development is the California legislature’s failure to budget funds to cover treatment mandated by Proposition 36 (Drug Policy Alliance, 2009). While this funding may have become available by the time this collection is published, this legislative action illustrates one possible policy outcome, as treatment may become optional (Richman, 2009) and be paid for by clients (as it is currently in some problem-solving courts). This would represent a return to the situation that existed in the 1970s, that is, benign neglect rather than benevolent paternalism. In developmental terms, this would be a devolution rather than further evolution.

LOOKING FORWARD

Thus far, we have discussed two mega-trends in social problem development – the expansion/dilution of control and the medicalization (therapization) of social problem solutions. In terms of the diffusion of specific organizational forms, the most significant development is the spread of “problem-solving” courts from the domain of illicit substance abuse to
various other domains – alcoholism, dual diagnosis, homelessness, domestic violence, and so on (Aldrich & Hyman, 2009; Heward, 2007; Nolan, 2009). Problem-solving courts reflect a shift in legal philosophy (Weber, 1947/1967) from “formal rationality,” emphasizing a focus on strict adherence to procedural regulations (e.g., due process), toward “substantive rationality,” emphasizing a focus on achieving desired outcomes (e.g., rehabilitation). In problem-solving courts, judges become caretakers more than law enforcement agents. Laws and punishments function as criteria and tools for engaging in a process of helping persons who are troubled or troubling.

Problem-solving courts are likely to increase in popularity if budgetary constraints worsen. These courts are well suited to managing defendants in the community, thereby reducing the need for incarceration. Community management is much cheaper than institutional confinement (Pew Center on the States, 2009), providing a motive and rationale for its adoption without the requirement to demonstrate superior efficacy in problem reduction.

Problem-solving courts are part of a larger trend that includes the restorative justice proposals described by Konradi and Petrunik/Ilea. Both involve a shift away from prosecuting and punishing defendants and toward “harm reduction” (Roe, 2005), helping victims and perpetrators. At the most general level, problem-solving courts and restorative justice initiatives share this commonality with the trend toward the medicalization of social problem solutions (Conrad, 1992). The shift away from overtly punitive forms of social control represents an approach to social control that is consistent with the ethos of the welfare state. In this form of social control, society provides individuals with what are perceived as benefits (even if the individuals receiving those “benefits” do not perceive them as such; see Burns & Peyrot, 2008; Thompson, 2002). The perception of these social control actions as the provision of benefits reduces public barriers to expansion of social control, thereby facilitating the larger trend toward expansion/dilution. It remains to be seen whether financial burdens will limit the expansion of the welfare state, resulting in a further dilution of control or providing an impetus for a new direction in social problem public policy.

REFERENCES


