

The Criminal Record

The Fresno Juvenile Behavioral Health Court: An Evaluation of Processes and Outcomes

In December 2008, the SCJC completed a process and outcome evaluation of the Fresno County Juvenile Behavioral Health Court (BHC) and submitted a report detailing its findings.

The report begins by acknowledging California's Mentally Ill Offender Crime Reduction (MIOCR) program (which has since been repealed) and Stanford Law School for their financial support, and recognizes the following current and former Stanford Law School students for their outstanding contributions: Salena Copeland, Sara Mayeux, Katie Young, Michelle Enchill, Aaron Konopasky, Justin McNabney, Serena Orloff, and Whitney Sado. The report also acknowledges Superior Court Judge Denise Whitehead and Probation Chief Linda Penner, without whom the BHC *(continued on pg. 3)*

The Fresno County Juvenile Behavioral Health Court

An Evaluation of Processes and Outcomes

December 2008



StanfordLawSchool
Stanford Criminal Justice Center

A NEWSLETTER OF THE STANFORD CRIMINAL JUSTICE CENTER: Stanford's vehicle for promoting and coordinating the study of criminal law and the criminal justice system, including legal and interdisciplinary research, curriculum development, and preparation of law students for careers in criminal law.

Director's Note: California's 2008 Criminal Justice Voter Initiatives



2008 was an interesting year for anyone interested in criminal justice policies and practices in California. While SCJC turned its attention to local and county criminal justice officials on the important topic of criminal justice information sharing (see *Stanford Executive Sessions on Sentencing and Corrections*, page 4), California voters were weighing several initiatives that appeared on the November ballot.

The November 2008 ballot contained three voter initiatives related to the administration of criminal justice in California. Proposition 5 (NORA – the Nonviolent Offender Rehabilitation Act) called for an expansion of California's much-lauded Prop 36, provision of additional funding for drug courts, radical alterations to the administration of parole, and initiation of a number of programs related to youth justice. Proposition 6 (the Safe Neighborhoods Act) called for increased spending on local law enforcement and lengthier prison terms. Proposition 9 (Marsy's Law) called for massive changes in the requirements for notifying and involving crime victims at all levels of the criminal justice system and severe curtailments of inmates' rights during the parole process.

Prop 5 lost, but for the wrong reasons (disclaimer – I was on the Prop 5 Advisory Committee, see *NORA Advisory Committee*, page 6). One legitimate objection to Prop 5 is that it would have created an entirely new infrastructure within the California Department of Corrections and Rehabilitation, which would likely have led to increased bureaucracy and conflict within an already problem-ridden Department. Most of the voters who opposed it, though, did not cast their votes in opposition to increased governmental bureaucracy. They voted against Prop 5 largely because they were persuaded by Senator Diane Feinstein (who referred to the initiative as a “drug dealers bill of rights”) or because they identified with Martin Sheen (who also opposed the initiative).

Prop 6 seemed to be off to a good start, but lost steam along the way. One reason for its demise could be the fact that its primary donor was indicted on charges involving fraud, cocaine, ecstasy, and prostitutes about half way into the election cycle. Another possible explanation, however, is that voters viewed it as a step in the wrong direction for California. Prop 6 would have reallocated money currently

spent on education, health and human services, housing, and environmental protection, to spending on the state's prison and parole services. It would have required that all youth age 14 years or older who are convicted of any gang-related felonies be prosecuted as adults and increased prison terms for most gang-related felonies. It would have deprived anyone convicted of any recent crime of public housing services. The state's Legislative Analyst's Office predicted that it would have cost the state at least a half billion dollars in capital outlay and at least a half billion dollars annually, and would have an unknown net fiscal impact for state trial courts, county jails, and local criminal justice agencies.

Prop 9 won, most likely because it was heralded as a Crime Victim's Bill of Rights. It is true that the bill sets forth a number of statements purporting to declare the rights of crime victims (most of these declarations are unenforceable) and contains some improvements in the area of victim notification and the right to be present and heard at hearings. Unfortunately, this law in fact does little to provide any actual assistance to crime victims. The law's biggest impact will come in the area of parole – in all indeterminate life sentence cases, there will now be a 15-year delay before the inmate may seek a new hearing for release on parole after being denied at a previous hearing. Inmates may shorten the period of delay (to a minimum of three years), but have to meet extremely high substantive and procedural burdens in order to do so. Of course, this has little to do with crime victims – the actual needs of most crime victims will continue to go unmet.

SCJC is committed to working with the state of California and its 58 counties to find more creative ways to administer justice throughout the state, and looks forward to examining the proposals that come forth in 2009.



Kara Dansky

Executive Director, Stanford Criminal Justice Center

Fresno Juvenile Behavioral Health Court Evaluation

(continued from pg. 1)

would not be a reality. What follows here is excerpted from the report's Executive Summary.

Public officials across the United States are finding that their adult and juvenile justice systems are becoming increasingly flooded by mentally ill offenders – offenders whose illnesses render them less criminally culpable than their mentally well counterparts and who are particularly vulnerable to the psychological harms associated with incarceration. As incarceration rates across the United States continue to increase, incarceration rates of mentally ill offenders increase as well – and this presents a challenge for the public officials responsible for administering their cases. Some jurisdictions have responded to these challenges by creating mental health courts – problem solving courts designed to minimize the criminal law's anti-therapeutic consequences and maximize its therapeutic value for mentally ill offenders. Mental and behavioral health courts (there is no substantive difference between a "mental" and a "behavioral" health court) are relatively new and untested – Fresno's is one of approximately eleven juvenile behavioral health courts in the U.S.

In 2006, a small group of Fresno County's criminal justice officials began meeting to address the fact that increasing numbers of mentally ill youth were being incarcerated under unhealthy conditions. What resulted was the Fresno County Juvenile Justice Services Collaborative – an organization of public officials and private organizations who pulled together to create the BHC and then applied for state funding to support it. Very early on, the Collaborative identified a set of goals and objectives – nine in total. The first of these goals is to assist youth, their families, and the community through evidence-based interventions to address the needs of the juvenile offender with significant

emotional and/or mental challenges, consistent with public safety and the safety of the youth participant; the second is to reduce the number of days spent in custodial facilities when participants are better served by mental health services and intensive case management, expeditious referrals to community based services and engagement of family supports. The last is to reduce re-offending.

Between 2006 and September 2008, BHC's overall acceptance rate was just under half. Females were more likely than males to be accepted. Broken down by race, rejection rates were highest for Hispanic males. The next highest rejection rate was for white males. Hispanic males were also the largest demographic group represented and constituted nearly a third of the sample population. Age is not a predictor of acceptance into or rejection from the program. Less than one percent of the sample population was reported as speaking Spanish as his first language – a surprising statistic given Fresno's overall demographic patterns.

BHC currently has two calendar days per month. During the mornings the team meets to discuss cases on the calendar for that afternoon, including screenings and status hearings. The team endeavors to reach consensus on how to proceed with each case. Cases are heard in the afternoon. Team members are present along with youth participants and their parents and guardians, but the courtroom is closed to all others. BHC has had three planning retreats at which team members gathered to discuss issues such as whether to add calendar days, updates on the mentoring program, team trips, mechanisms for improving communications, and updates on outcome measurements. BHC team members work together collaboratively and appear to have effective mechanisms for resolving conflicts that arise in cases. Team meetings and calendars operate smoothly and efficiently.

Youth referred to BHC are assessed by residents of the University of California San Francisco (Fresno campus) Department of

(continued on pg. 4)

ANNOUNCEMENTS

SCJC Advisory Board

The SCJC is creating an Advisory Board to provide policy advice to the SCJC and to help ensure that SCJC's projects and activities are in concert with its overarching mission. An early brainstorming session to discuss the potential size, scope, and role of the Advisory Board was held in January 2009.

Appearance on KQED's Forum

SCJC Executive Director Kara Dansky was a guest on KQED's Forum with host Dave Iverson in January 2009. Ms. Dansky joined Wilda White, Executive Director of Berkeley School of Law's Thelton E. Henderson Center for Social Justice, and Robert Talbott, Professor of Law at the University of San Francisco, for an engaging discussion on the killing of Oakland California resident Oscar Grant by BART Police Officer Johannes Mehserle.

Publication in Columbia Law Review

SCJC Research Fellow David Ball has had an article accepted for publication in the Columbia Law Review on the subject of parole – specifically, the application of the principles articulated in the U.S. Supreme Court's *Apprendi* decision to parole release determinations. The article citation is W. David Ball, *Heinous, Atrocious, and Cruel: Apprendi, Indeterminate Sentencing, and the Meaning of Punishment*, 109 Col. L. Rev. (forthcoming June 2009).

Publication in University of San Francisco Law Review

SCJC Executive Director Kara Dansky has had an article accepted for publication in the University of San Francisco Law Review. The article traces California's history with punishment and sentencing and makes suggestions for the state's future approaches to dealing with its massive prison population. The citation is Kara Dansky, *Understanding California Sentencing*, 43 U.S.F. L. Rev. (forthcoming Summer 2008).

The Stanford Executive Sessions on Sentencing and Corrections

In December 2008, SCJC completed the 2007-2008 *Stanford Executive Sessions on Sentencing and Corrections*, a policy working group designed to bring together key public, academic, and organizational leaders in the field of criminal justice policy in a spirit of cooperative movement toward reform of the sentencing and corrections systems, as well as the criminal justice system as a whole, in California. SCJC Research Fellow David Ball coordinated the 2008 segment of the Executive Sessions.

The 2007-2008 series comprised eight quarterly meetings, which focused on the following topics:

March 2007

The California Sentencing Commission:
Laying the Groundwork

June 2007

California Corrections Reform: State/Local Partnerships

September 2007

The Role of the Judiciary in Shaping Sentencing Law & Policy

December 2007

Criminal Justice Information Sharing:
Enhancing Early Intervention, Measuring Results

March 2008

Coordination at the Front End of Sentencing: The Judiciary, Probation and the Pre-Sentence Report

June 2008

County to County, Agency to Agency: Information Sharing and Operational Collaboration in the Bay Area and Southern California.

September 2008

The First 72 Hours of Re-Entry: Seizing the Moment of Release

December 2008

Catch and Release: Using Risk-Needs Assessment to Manage Local Custodial Populations

SCJC will be compiling a summary of the 2007-2008 Executive Sessions, which will endeavor to describe the process by which we chose our meeting topics, the importance of the discussions in the context of California's corrections crisis, and the influence that we hope our reports will have on the administration of justice in California. Reports from each meeting are available at: www.law.stanford.edu/program/centers/scjc/.

The Stanford Criminal Law and Justice Speaker Series

In November 2008 SCJC launched the Stanford Criminal Law and Justice Speaker Series, a joint endeavor of the Stanford Criminal Justice Center and the Stanford Criminal Law Society to bring notable scholars, practitioners and advocates to the law school to discuss the most salient criminal law and criminal justice policy topics of our time. Our kick-off speaker was Lisa Kung, Executive Director of the Southern Center for Human Rights. Ms. Kung had planned to give a talk on the execution of Troy Davis and an overview of capital punishment in the American South. Coming as this event did, however, on the heels of the 2008 Presidential election, she was inspired to give a talk on a different subject – the importance of the present moment in bringing forth progressive criminal justice reform. Ms. Kung urged Stanford Law students to seize this moment of opportunity – the election of Barack Obama to the Presidency – to make affirmative demands on the criminal justice system to protect the ideals of fairness and equality.

Fresno Juvenile Behavioral Health Court Evaluation

(continued from pg. 3)

Child Psychiatry. Assessments are spread out over two to three visits. Early assessments were somewhat basic, and have become longer and more detailed over time. Assessments now include recommendations regarding medications, placement, and other interventions, and are made available to the court, the minor's family, the minor's school (where appropriate) and treatment providers.

Early court interventions include counseling with a mental health clinician where appropriate and contact with probation officers. The mental health clinician provides treatment for participants incarcerated at the Juvenile Justice Campus, refers participants to outside treatment agencies, monitors participants' progress in outside treatment agencies, and occasionally provides therapeutic services to participants outside the Juvenile Justice Campus. BHC probation officers have significantly lower caseloads than traditional probation officers and, as compared to traditional probation officers, tend to view their role as less focused on law enforcement and more focused on meeting the needs of individual youth participants. Minors report having very positive interactions with BHC probation officers.

Services for BHC youth are generally provided either by Genesis Family Center, Inc. or by private therapists. There are also a few community resources that are not formally part of the BHC but are potential sources of support for BHC youth participants, including TAY (a county program that provides services to Transitional Age Youth through the Department of Behavioral Health), and Adolescents in Motion (a 12-step program for teens).

BHC has worked diligently to develop a clear and straightforward set of criteria to determine youth participants' progress in the BHC. BHC has also developed a system of incentives and sanctions for use in (continued on pg. 6)

Stanford Law Review and Stanford Law and Policy Review Symposia

SCJC is co-sponsoring two symposia during the Winter of 2009: the Stanford Law Review's *Media, Justice and the Law* and the Stanford Law and Policy Review's 2009 symposium on drug law reform. By sponsoring student-run events, SCJC stays connected with the interests of the student body and provides much appreciated advice and support to the students advancing discussions about criminal law and criminal justice at the law school.

THE 2009 STANFORD LAW REVIEW SYMPOSIUM

Media, Justice, and the Law

JANUARY 30-31, ROOM 290, STANFORD LAW SCHOOL

The intersection of media and the law is an emerging field of scholarship and debate. The media interpret, report, and dramatize the law, moreover, the ongoing dialogue among legal actors, policymakers, the media, and the American public informs the opinions and behavior of all participants. Prominent scholars, practitioners, and journalists will discuss prosecutions in the news, media constructions of criminal justice, and the future of reporting on justice and the law.

AGENDA

Friday, January 30, 2009	Saturday, January 31, 2009
12:00 pm Registration Begins	9:00 am Breakfast and Registration
12:30 pm Panel: Prosecutions in the News Intended and Unintended Consequences	10:00 am Panel: The Future of Criminal Justice Reporting
2:00 pm Break	12:00 pm Adjourn and Lunch
2:45 pm Panel: Constructions of the Criminal	
5:00 pm Keynote Address: Jennifer Gormeran, <i>Author: Life on the Outside: The Prison Odyssey of Elaine Bartlett</i> (2004 National Book Award Finalist)	
6:00 pm Adjourn	

<http://scjc.stanford.edu/lawreview2009>

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STANFORD LAW & POLICY REVIEW 2009 SPEAKER SERIES

Drug Laws: Policy and Reform

2/12, 2/19, and 2/26, 12:30pm – 2:00pm
at Stanford Law School, Room 190

Week-by-week themes:

- 1 Drug courts: magic bullets or band-aids?** Join us for a critical examination of drug courts' successes and failures, including proposals for alternative approaches to court-based drug treatment programs.
- 2 Outside the box:** A discussion of the alternatives to current methods in criminal law to control drugs, including civil and social regulatory mechanisms targeting poor and underserved communities.
- 3 The war on drugs:** How, where, and upon whom its consequences fall.

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The Criminal Law Careers Forum

In conjunction with the Levin Center for Public Interest Law, in September 2008 SCJC launched the first ever Criminal Law Careers Forum at the law school. Over twenty Bay Area criminal law employers – including state and federal prosecutors, state and federal public defenders, and several criminal justice advocacy organizations – attended the 3-hour career networking session. First, second, and third year students were all invited to meet with employers (although only second and third year students were permitted to present resumes and request interviews). We are still assessing the results of the forum, but are confident that it has been and will continue to be a success.

Criminal Law Externships & Seminar

Stanford's Criminal Standard Externship Program (SEP) allows second- and third-year students to work for credit in district attorneys' offices and public defenders' offices in the Bay Area for one semester. Placements can be either full-time (40 hours per week) or part-time. Students participating in a criminal law externship are required to enroll concurrently in the Criminal Externship Seminar, in which students review topics relevant to the practice of criminal law and evaluate legal theories and ideals in the context of their practical experience. SCJC Executive Director Kara Danksy began to supervise the criminal law externships and to teach the externship seminar in the fall of 2008.

Criminal Justice and the Criminal Courts

During the spring of 2009, SCJC Executive Director Kara Danksy will be teaching a Stanford Introductory Seminar entitled *Criminal Justice and the Criminal Courts*. Stanford's Introductory Seminars are small-group undergraduate courses offered in a wide range of disciplines, in more than sixty departments and programs and all seven schools of the university. These courses are an excellent way for students to explore their interests and develop long-term mentoring relationships with faculty. They can also develop critical thinking skills in a specific discipline early in their undergraduate career. *Criminal Justice and the Criminal Courts* will focus on the structures and theories at play in the criminal court system, emphasizing court procedures, structures, constitutional guarantees, and the trial process.

AALS Conference on the Model Penal Code

SCJC Director Robert Weisberg gave a presentation on “Measuring Sentencing Success” at the 2009 American Association of Law Schools convention in San Diego on Jan. 9, as part of the panel titled “The Model Penal Code: Sentencing Proposals.” That panel reviewed the latest draft of the innovative new MPC reform of American sentencing law. Other participants included two experts who have frequently appeared at SCJC programs, Prof. Kevin Reitz of Minnesota (Reporter to the ALI on the sentencing proposal), and Prof. Douglas Berman of Ohio State (producer of the famed sentencing law blog).

The Plata Advisory Committee

SCJC Director Robert Weisberg has been appointed to a special Advisory Committee to assist U.S. District Judge Thelton Henderson (N.D. CA) on the case of *Plata v. Schwarzenegger*. Plata is the prisoners’ class action suit in which Judge Henderson has already declared the overall medical care system in California’s prisons unconstitutional under the Eighth Amendment, and the Judge’s injunctive control of the medical system is now being implemented by a special court Receiver. Judge Henderson created the Advisory Committee, which also includes public health, medical, and nursing experts, to help him assess the receiver’s progress in establishing a constitutionally compliant and cost-effective new plan.

The NORA Advisory Committee

One of the voter initiatives on California’s November 2008 ballot was Proposition 5 – NORA (the Nonviolent Offender Rehabilitation Act). In order to ensure Prop 5’s effective implementation, the bill’s sponsors convened an Advisory Committee – a loose conglomeration of criminal justice and substance abuse experts. SCJC Executive Director Kara Dansky was a member of that committee. Because Stanford University’s lobbying restrictions prohibit Stanford staff from lobbying on behalf of or against any particular piece of legislation or candidate, SCJC did not take a position on the advisability of the bill. Nonetheless, Ms. Dansky’s participation was helpful in bringing an important criminal justice perspective to the discussion. Prop 5 did not pass in the 2008 election.

Fresno Juvenile Behavioral Health Court Evaluation

(continued from pg. 4)

conjunction with the stages and graduation criteria. Early data indicate that the incentive system is having a positive effect on success rates, although the numbers are too small to draw any real conclusions.

Early data suggests that BHC’s success rates are not as high as one might expect. Often low success rates are tied to insufficient access to intensive community mental health services. BHC may need to begin monitoring its success rate and to examine past discharges (both successful and unsuccessful) to determine whether any of its policies and practices contribute to this low success rate.

In response to questionnaires and focus groups, BHC’s youth participants

generally expressed positive perceptions of the BHC. Youth had positive perceptions of the court’s rehabilitative focus and individualized approach, and spoke highly of the individuals involved in the court’s operation. Parents and guardians also expressed generally positive views of the BHC – in particular, they expressed appreciation for the BHC probation officers’ seeming to genuinely care for their children. They also described having positive impressions of the judge and public defender.

It is difficult to draw conclusions about youth performance outcomes because of some limitations in the BHC’s data management system. Early data indicate some preliminary findings. Not only are females more likely than males to be

About The Criminal Record

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accepted into the program, but also, once they enter they are more likely to complete the program successfully. Hispanics were the racial group least likely to be accepted into the program overall, and also the least likely to complete the program successfully.

The BHC is still so new, and has collected so little data about its participants and processes, that it is not possible at this time to draw meaningful conclusions about its success. Yet there are reasons to be optimistic about BHC’s ability to demonstrate positive outcomes. The report concludes by urging the BHC to focus its attention on two striking results of the evaluation – the low success rate and the lack of solid outcome measurement data.