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U.S. Policy Toward Illegal Immigration and Border Security: Summary and Evaluation

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ABSTRACT: *Immigration has been a recurring issue throughout American history. Recently, American's attention has been diverted from immigration from across the seas, to the immigration concerns at the Mexican American border. This paper examines several policies and studies about immigration. One will gain knowledge of the history of America's immigration and the policies used to regulate immigration. The effects of these policies will also be evaluated. In addition, the reader will learn about potential policies that officials considered implementing, but upon weighing the options, decided against. Finally, the reader will gain an understanding of why Mexican citizens are choosing to immigrate to America.*

The United States and Mexico have been close partners due to economic factors and geographic proximity. Focus on the relationship between these two countries often centers on the border region, an area that experiences a complex history, and where Mexican immigrants have historically crossed in search of economic opportunity. Many continue to cross the border illegally by the hundreds of thousands. While issues of securing our border and stemming the flow of illegal immigrants into this country fade in and out of our national consciousness, when they do come to the forefront of our political debate, a number of strong emotions, beliefs, and perceptions confront the problem. Arguments concerning national sovereignty and border security are complicated with racist sentiments, human rights concerns, and economic considerations.

This paper will provide an overview of the 2,000-mile border between the United States and Mexico and the policies that affect it. Immigration policy is not a recent federal concern. Change over the last 150 years has impacted the interactions and border crossings between American and Mexican citizens. After discussing previous policies directed at the southern border and the immigration issue, including the roots of the problem, this paper will analyze the dramatic intensification of policy toward immigrants and border security that occurred under the Bush administration after the tragic events of September 11, 2001. We will also examine the role of the U.S. Border Patrol and the deterrence theory.

The 9/11 attacks brought U.S. national security under intense scrutiny. This resulted in the reorganization of the border security and immigration agencies into the newly established Department of Homeland Security (DHS). The goal of this investigation is to assess to what

degree the DHS policies have failed in preventing the illegal passage of immigrants. These policies have ignored peaceful, balanced, and mutually beneficial solutions to the dilemma. The paper will conclude with recommendations for resolving the complex problem.

When one thinks of the southern border, visions of a rugged region, a wild frontier with dirty border towns, vast ranches, señoritas, banditos, cowboys, and violence generally come to mind. The history of the two nations and their people's interactions date back to the countries' foundings. After achieving independence from Spain in 1821, Mexico opened up trade to the North commencing a flood of American migration to the border region motivated by economic opportunity (Truett, 2006, p. 36). In 1848, Mexico lost a significant portion of its territory to the United States as a result of the Mexican-American War (p. 32). The Treaty of Guadalupe Hidalgo established the boundary line and surprisingly, economic activity continued to flock to the borders (Maril, 2004, p. 139).

Economic interaction between the two nations was encouraged by the Mexican government from the Benito Juárez period of reform through the rule of Juárez's successor, Porfirio Díaz, whose regime lasted from 1876 to 1910 (Truett, p. 59). Despite the encouraged economic growth, the border remained a violent region with tense relations between the Americans, Mexicans, and Apaches (p. 60). While smuggling may be viewed as a modern problem, it was just as prevalent in the mid 19th century due to the newly established international border. In the place of drugs and immigrants, tools, leather, furniture, tobacco, and guns were smuggled across the border (Maril, p. 140). The problem with exploited immigrant workers dates back decades with the mines in Arizona re-

sorting to the Mexican population for a supply of cheap labor (Truett, p. 38). At the beginning of the Mexican Revolution in 1910, the border was once again redefined. This marked a shift in how the United States addressed border security. During the conflict, officials north of the border, disturbed by the violence and fearful of incursions by Mexican forces, stepped up security and limited entry into the country (p. 167). The Mexican Revolution affected America's policies towards the border. By 1917, it was clear that America had begun to patrol its southern border in a new manner: Mexicans began to cross in increasing numbers, drawn by the opportunities available in the United States (p. 177).

T. Payan (2006) identifies the three major eras of U.S. policy towards immigration and the border. The first of these is the Frontier Era, which lasted from 1848 to 1910. During this time the southern border was largely unregulated as Mexicans freely passed to and from Mexico. At the time, anti-immigration sentiment was directed toward the Chinese through the Chinese Exclusion Act of 1882. Of four immigration laws passed during this period, the U.S.-Mexican border was not mentioned (p. 6). In the early 1900s, the border was further scrutinized as other nationalities began taking advantage of the area for illegal crossing. However, Mexicans were not the focus of these restrictions. According to President Theodore Roosevelt, the border was "closed to all but citizens and bona fide residents of Mexico" (p. 7). This attitude stood in stark contrast to the rhetoric and policies of today toward our Mexican neighbors.

The next period was the Customs Era, which was influenced by three important events. First, the Mexican Revolution required more U.S. security and forts be placed along the border (p. 9). Secondly, the anti-immigration sentiment expanded to include Mexicans, who were now seen as "foreigners." This helps to explain the continued closing of the border (p. 10). The Bisbee Deportation of 1917 exemplifies this attitude. Twelve hundred striking mine workers, the majority of whom were Mexicans, were rounded up and deported across the border (Truett, p. 174). As part of the increased restrictions on the border, the U.S. Congress established the Border Patrol in 1924 as part of the immigration service (Lovalo, 2008, p. 20). The end of World War II was the third force that influenced the Customs Era and continued the trend of increased separation and enforcement along the border (Payan, p. 11). According to Payan, "This drove a wedge between the two countries, driving home the economic disparities that have marked the border to this day" (p. 11).

The Law Enforcement Era was ushered in during the Nixon administration, which marked a surge of conservative ideals that placed an emphasis on law and order (p. 11). In line with the trend, this era continued to place restrictions on immigrants and increased the enforcement along the border. A number of legislative pieces were passed to meet this goal. These included the 1986 Immigration Reform and Control Act (IRCA), the 1990 Immigration Reform Act, and the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (Guerette, 2007, p. 247). The 1986 IRCA did take a somewhat balanced approach to the problem by granting amnesty to three million illegal workers already in the United States. Despite that provision, the focus remained on increased forces patrolling the border. The result was the Border Patrol tripling its personnel from 4,000 agents to 12,000 agents during the 1990s (Maril, p. 168). During the 1990s the Border Patrol implemented military-style operations along the border, which included Operation Hold the Line in Texas, Operation Safeguard in Arizona, and Operation Gatekeeper in California (Payan, p. 12). The purpose of these operations was to deter immigrants from entering the United States and to force attempted crossing to more remote terrain where Border Patrol agents would have a tactical advantage (Guerette, p. 246). The border patrol partially succeeded in their goal, but it resulted in an unexpected consequence. Because of the increased difficulty in crossing, immigrants were forced to take more dangerous routes in remote desert locations. This caused the migrant death toll to increase dramatically. In response, the Border Patrol, under the Immigration and Naturalization Service created the Border Safety Initiative (BSI) in June of 1998 (p. 246). While the program has had some success, the overall death toll reflected little change (p. 260).

In order to comprehend the problem of the border, one must recognize the factors that bring Mexicans to America illegally. Additionally one must understand the attitudes of Americans and Mexicans. Every day along the Mexican side of the border, buses carry loads of Hispanic workers to within walking distance of U.S. soil. The intention is obvious: To cross and find work in the United States (Maril, 2004, p. 133). Payan reaffirms this notion: "Mexican migration both to Northern Mexico and to the United States is almost entirely motivated by economics" (p. 61). In the first years of U.S. existence, the nation's survival depended on the waves of immigrants that came in search of economic opportunity. The situation was mutually beneficial (Jackson Lee, 2006, p. 268). Today the U.S. economy arguably depends on the labor provided

by foreign immigrants. A study by the *Economist* shows a shortage of labor in the United States, which allows for the easy incorporation of a large number of migrants. According to the study, approximately 161 million job opportunities in the United States exist, while there are only about 156 million workers (Payan, p. 62).

The United States has depended upon immigrant labor throughout its history; the Bracero Program was an important example. During the World War II labor shortage, the government established the Bracero Program, which lasted from 1943 to 1964. Under the program, many Mexican workers came to the United States and worked mainly in agricultural sectors (Maril, p. 145). When the program ended in 1964, illegal immigration began to rise (Payan, p. 55). The rapid industrialization of Mexico in the 1960s and 1970s did not help, as it caused a spike in unemployment throughout the country (Payan, 2006, p. 55). R. L. Maril described how the Rio Grande separated, “the most powerful country in the world from an exploding third-world population with little on its plate but hope” (p. 6). The juxtaposition of such wealth and opportunity alongside poverty readily explains the force that draws migrants to sneak across the border. The reality of Mexico’s economic instability creates a pushing force that combines with the pulling force of economic possibility in the United States, thus driving the northern migration (Fullerton & Sprinkle, 2004, p. 70).

A Pew Hispanic Center poll reveals that 43% of Mexicans would leave Mexico for the United States if they could (Payan, p. 61). The busiest time of the year for apprehensions by the Border Patrol is just after the Christmas season as undocumented workers return to their jobs in the states after celebrating Christmas in Mexico with their families (Maril, p. 7). Many Mexican immigrants make it across to the United States and find jobs through a network system. Friends and relatives already in the United States contact the future migrants in Mexico to let them know they have jobs waiting for them. This reveals strong ties to their families and country, which immigrants must sacrifice for the sake of survival (Fullerton & Sprinkle, p. 71). While criminals do cross the border illegally, the vast majority are peaceful people seeking a better life (Payan, p. 61). Once these undocumented workers take the risk of crossing the border, a relatively little chance that they will be caught inside the United States remains (Payan, 2006, p. 77).

In 1986, between four to five million illegal immigrants resided in the United States (p. 55). By 2006, the number increased to over ten million immigrants. Between 2000 and 2004, about 700,000 workers ille-

gally entered the United States each year (Jackson Lee, p. 271). The problem of illegal immigration raises concerns among the American public. About 75% of Americans are concerned about illegal immigration, while 50% think the government should do more to solve the problem (p. 271).

On September 11, 2001, Americans were shocked by the terrorist attacks against our nation. Those tragic events demonstrated the vulnerability of our nation, and, in its wake, attention was turned to securing our borders (p. 271). The fear that followed led to an anti-immigrant environment (Lovalo, p. 16). Everyone that crossed the border into the United States was considered a suspect and viewed as a potential terrorist (Payan, 2006, p. 14). This fearful environment led to policies directed at the U.S.-Mexico border, which in reality had little to do with the threat of terrorism (p. 13). The border issue was redefined. Historically treated as a matter of law enforcement, it became a matter of national security (p. 13).

Following the attacks of 9/11 and the refocusing that occurred as a result, all matters pertaining to immigration (previously under the Department of Justice) were reorganized under the newly created Department of Homeland Security (p. 13). The resulting legislative acts and policy proposals have demonstrated a one-approach pattern of increased security through militarized tactics. The USA PATRIOT Act, signed into law by President Bush in 2001, expanded the government’s capability to detain and deport suspected terrorists, increased the immigration enforcement budget, and added agents to the Border Patrol (Hines, 2006, p. 12). The National Intelligence Reform Act of 2005 requested an additional 10,000 Border Patrol agents to reach a total of 21,000. Although the act was vetoed by President Bush, it still demonstrates the military style approach toward the U.S. border (Payan, p. 18). Passed in 2005 the Secure Border Initiative (SBI) was another step forward in the new strategy. SBI called for more efficient enforcement of immigration laws, an increase of Border Patrol agents and technology along the border, better detention and removal capabilities of illegal immigrants, and an investment in infrastructure to help secure the southern border (p. 19). This infrastructure would include the highly debated security fence along the U.S.-Mexico border. As of August 29, 2008, 344 miles of fencing have been completed along the southern border (Basham, 2008). Another step towards increased enforcement of illegal immigration was the Real I.D. Act of 2005. Several of the terrorists involved in 9/11 had acquired U.S. driver’s licenses. The Real I.D. Act prohibits

states from issuing driver's licenses to a person without proof of legal residence (Hines, p. 22).

Despite the intensified efforts by the federal government to control the passage of immigrants, terrorists, and drugs along the southern border, the problem remains. The continued trafficking of humans and drugs along with kidnapping, murder, and destruction of private property in the border region have forced the states to act on their own. In 2005, governors Bill Richardson of New Mexico, Janet Napolitano of Arizona, and Rick Perry of Texas all declared states of emergency due to the continued violence and criminal activity along the border (Jackson Lee, p. 273). The necessity of these states to declare a state of emergency reflects the failure of the federal government to control the border (p. 274).

The consistent pattern by the national government has been one of increased security through agents, weapons, fences, and technology, especially since 9/11. Many attempts at finding a more balanced approach continue. President Bush, along with Senators John McCain and Ted Kennedy, proposed a temporary guest-worker program, which was a step toward a more balanced and realistic policy (Payan, p. 65). This program would allow undocumented immigrants to either enter or remain in the United States to work for a specific period of time. Workers would be able to renew their status, but once their time expired they would be forced to return to their home countries. The program also called for stricter penalties for companies that hired undocumented workers and required U.S. companies to attempt to find a U.S. citizen to fill the job before hiring a temporary worker (Jackson Lee, p. 275). Although the program was never passed, it does demonstrate the awareness that a multifaceted solution must be found. Part of the obstacle to such a program is the opposition of many Republicans who view this as rewarding lawbreakers by giving them a legal status (Hines, p. 26).

In order to achieve security and prevent immigrants, drugs, and terrorists from crossing U.S. borders each year, the U.S. Border Patrol is on the frontlines of both Canada and Mexico. The 2,000-mile border between the United States and Mexico is the focus of the illegal immigration problem. Officially established May 28, 1924, by an act of Congress, the U.S. Border Patrol is the law enforcement branch of U.S. Customs and Border Protection (CBP) within the Department of Homeland Security. According to the CBP website, the overall mission of the Border Patrol is to detect and prevent the entry of illegal aliens into the United States. Maril (2008) describes how, following the attacks of 9/11, "the U.S. Border Patrol was suddenly

yanked from virtual obscurity into a public spotlight as a thousand questions were asked about the security and safety of our nation's borders" (p. 223). As the frontline defense of our borders, the Border Patrol was called upon to expand its goals in accordance with the changing threats. The overall mission of the Border Patrol remains the prevention of illegal entry, but the scope of its goals has greatly expanded.

The Border Patrol has identified five main objectives. The first is to increase the likelihood of capturing terrorists and their weapons at points of entry. Next is the deterrence of illegal entries through improved enforcement. Third, the Border Patrol strives to detect, detain, and deter traffickers of human, drug, and other illegal cargoes. Additionally their goal is to increase overall effectiveness through the use of "Smart Border" technology. The use of this technology includes night-vision goggles, electronic sensors, infrared scope trucks, helicopters, and patrol boats. Lastly, they strive to reduce the crime in border communities (Office of Border Patrol, 2004, p. 2).

Since 1994, the main strategy of the Border Patrol has been that of deterrence. In the 1990s Silvestre Reyes, a high-ranking official within the Border Patrol, implemented a strategy along the El Paso border sector. He focused agency resources along highly visible points of the border. According to his theory, potential immigrants would abandon their border crossing attempts upon seeing the immense power of the Border Patrol, therefore being effectively deterred. This strategy removed agents and resources from traditional means of tracking and apprehending illegal immigrants. Traditionally, the success of the Border Patrol was measured by apprehension rates. According to the theory, the more illegal immigrants that were captured the better the agency was functioning. The strategy of deterrence turned that logic upside down. Under the new strategy, declining numbers of apprehensions demonstrated success. Deterrence was eventually applied to the entire southern border (Maril, p. 160–62). As a result of this strategy, for a number of years the agents were required to perform "X's." A certain number of agents per shift were required to station their vehicles along the border with their lights on in highly visible locations. During the eight to ten hour shifts, the agents were required to stay in their vehicles and were discouraged from exiting the vehicle unless they saw illegal immigrants with their own eyes.

The strategy of deterrence is based on rational theory, but the logic behind it and the measures of success are questionable. Deterrence, which has been used throughout law enforcement policy, suggests that the

potential criminals, or immigrants in this case, will examine the costs and benefits of their actions along with the consequences. If the swiftness, certainty, and severity of punishment are likely, the immigrant will realize that the costs are higher than the benefit (Payan, p. 76). The idea of deterrence sounds good in theory, but in practical application this has had questionable results in stemming the tide of illegal immigration.

Arguments in support of deterrence hold that by maintaining visibility and showing force instead of searching out and apprehending immigrants, the Border Patrol would discourage potential immigrants. However, if the Border Patrol measures success through the decrease in apprehension rates, it is only logical to assume that by being unmobilized and unwilling to pursue illegal immigrants that the numbers will drop dramatically. It is not surprising that after Reyes' plan was implemented, there was a drop in apprehensions (Maril, p. 165). Despite deterrence being heralded as a success and being continued today, it is obvious that workers and drug smugglers continue to cross in large numbers. The implementation of deterrence and the "X's" became a joke to agents who were forced to comply with the strategy. Following night shifts, trails of trash and clothing, evidence of illegal crossings, were plainly evident between the fixed positions that Border Patrol agents maintained. Furthermore, agents that continued in seeking out and capturing illegal immigrants were discouraged from doing so. An increase in apprehension statistics proved that the Border Patrol was not succeeding as measured by the strategy of deterrence (p. 166). Additionally, it seems that workers continue to take the risk of crossing because the benefit of obtaining a job and thus ensuring survival far outweighs any risk of getting caught (Payan, p. 76). By only applying deterrence to the border region, the government limits its success and does not take into account other factors.

Even with the intense scrutiny that U.S. border security has experienced in recent years along with the increase of manpower, technology, and budgets, illegal immigration is still a problem as immigrants and drugs continue to cross (p. 14). As Maril aptly states, "Real control of these lands along the Rio Grande was a pipe dream, a vacuous illusion, and a wicked pretension." (p. 117). Such harsh criticism may be hard to accept, but is nonetheless true. The U.S. government has failed in securing its southern border and preventing the flow of illegal immigrants. From 1986 to 2006 the Border Patrol grew from 2,000 agents to 12,200 (Payan, p. 56). The government has taken a blanket approach to the three problems facing our borders: immigration, drugs, and

terrorism. The American government has tried to stop all problems through the single approach of the expansion and militarization of the Border Patrol (Payan, p. xiv). Continuing to pour money into this failed system is like continuing the same tactics for the failed "War on Drugs" (Hines, p. 28). Furthermore, while the government has ultimately failed to stop or even slow down illegal immigration, it has inadvertently increased immigrant deaths through the policies it has pursued (p. 25).

Through proposals and legislative acts, the federal government has at least demonstrated some awareness that the problem of illegal immigration cannot be won only on the border but must be addressed on all fronts. By calling for better enforcement of immigration laws and punishment for employers who hire undocumented workers, the benefit will decrease for those who seek to enter the United States illegally. Other measures, including increased deportations and limitations on the acquisition of driver's licenses also combat the problem from the interior. Yet those messages alone will do little to solve the problem. As long as the United States is an economic power in need of unskilled labor, Mexico's poverty will drive workers to our border. Policy makers must recognize that the majority of illegal immigrants are driven entirely by economic motive and are not a threat to our national security. A policy reflecting this realization would be mutually beneficial to aliens seeking employment and to the American economy. While not a perfect plan, the guest worker program proposed by Bush, McCain, and Kennedy is at least headed in the right direction.

In 2006, Democrat U.S. Representative Sheila Jackson Lee proposed two pieces of legislation aimed at confronting the immigration issue on two levels. The first proposal, Save America Comprehensive Immigration Act (SACIA), would address the issue of the economic motivation and the residence status of undocumented workers. The bill would provide legal access for undocumented workers who have been in the United States for five years to maintain an occupation. It would also grant permanent legal status to immigrants who have been in the United States since 1986 (p. 279). Exploitation proves to be a problem with the temporary worker program. Workers may be forced to work at low wages or face the risk of being fired and losing their employee status if they do not comply. SACIA would implement protections for temporary workers and seek to prevent the separation of families through deportations (p. 280). The second proposal is the Rapid Response Border Protection Act (RPBPA). This bill would expand measures to secure the border by increasing the size of the

Border Patrol by 15,000 agents over the next five years. Additionally, this act would seek to attract highly qualified candidates for the positions of immigration enforcement (p.284). According to Jackson Lee, this two pronged response would, “deal with the millions of undocumented workers who currently reside within the country but also must work to prevent the present undocumented population from being replaced by a new one in the future” (p.273).

Payan asserts that “a real solution to the border would require a political will that no one, from Washington to Mexico City, is willing to invest on this god-forsaken part of the globe that clamors for attention” (p.xii). Regardless of the political realities that have thus far prevented genuine border security and immigration reform from being achieved, law and policy makers must realize the complex nature of the problem. Additionally, these officials must stop trying to use such a single, heavy-handed approach, which by itself, does little more than waste money and turn foreign opinion against us. Government officials must recognize that the vast majority of illegal immigrants are not criminals, but rather peaceful, hard-working people that contribute to our nation both economically and culturally. The United States is fully within its rights as a sovereign nation to secure its borders. However, focusing all of our attention and resources on the border can only go so far in resolving the problem. We must understand that the strong motivations that drive illegal immigration have not yet been stopped by increased

border security. Even so, if such an approach were possible, it would not help either side.

The United States needs to develop a comprehensive policy that recognizes the complexity of the issue. The legislation proposed by Representative Jackson Lee approaches the problem in an appropriate manner. We must take into account border security, economic needs that immigration can satisfy, the possibility of permanent residency for some and a temporary program for others, labor exploitation, and the enforcement of immigration and labor laws and the punishment of violators. Although such reform could not be guaranteed to work completely, it would likely be far more successful than the current policy and would be a much more balanced and rational approach. Through an approach that would limit the number of illegal crossings, the Border Patrol would be able to focus on the interdiction of drugs and the protection of our borders against terrorist threats. A more peaceful resolution of the immigration problem would benefit the United States by welcoming foreign workers who would contribute economically and culturally to this great nation. The border region with Mexico would achieve a level of stability and peace, and the United States could remain the center of diversity and economic opportunity.

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The Ninth Amendment in Relation to Abortion and the Consequential Political Action

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ABSTRACT: *Over the last two centuries the fundamental rights of Americans has been protected through the security of the Bill of Rights and a Democratic system of government that allows constituents to defend their rights when necessary. This paper looks at the fundamental rights of the Ninth Amendment. Both the explicit and implicit rights of the amendment are discussed, as well as, how those rights affect people, politics, and legislation today.*

The fundamental rights of Americans have been protected over the last two centuries through the security of the Bill of Rights and the democratic system of government that allows constituents to stand up and fight for their rights when necessary. Although most of the amendments in the Bill of Rights are specific on the federal government's responsibilities, there are a few that leave power in the hands of the people and the Supreme Court. The Ninth Amendment not only has been stretched to encompass privacy, liberty, and a woman's reproductive choices, but it has also become a centerpiece in our contemporary political world. Presidential nominations, rulings of Supreme Court justices and appellate court judges, and pending legislation that affects American society all depend heavily on how the Ninth Amendment is interpreted. This essay explores the intricacies behind the amendment, including legislative interpretations, effects on American society, current events surrounding the issue, and why it matters.

The Ninth Amendment was adopted in 1791 as part of the Bill of Rights proposed by James Madison (National Archives and Records Administration [NARA]). The intent of Bill of Rights was to prevent governmental abuse of powers and to protect citizens. The Ninth Amendment, specifically, states that, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people" (U.S. Government Printing Office). This definition is one of the most vague statements made in the U.S. Constitution. Through judicial activism and a loose interpretation of the Constitution, Americans have created new meaning from this vague sentence.

Originally, the concepts behind the Ninth Amendment were related to federalism. Those who framed the document understood the words to be a "guardian of the

retained right to local self-government" (Lash, 2008). Today, the majority of Americans see the Amendment as a justification of judicial activism and unspoken rights of individuals. The Ninth Amendment's historical ambiguity is not new. Supreme Court Justice Arthur Goldberg compared the Amendment to "reading a text obscured by an inkblot" (p. 467). This analogy demonstrates how differently the Ninth Amendment can be interpreted. The Ninth Amendment's most significant effect on U.S. society concerns the right to privacy. The implied right in the Ninth Amendment to privacy originates from a Constitutional penumbra (United States Conference of Catholic Bishops [USCCB]). Although the Ninth Amendment remained broad to account for the evolution of society, implicit rights in the amendment can now be protected through legislation, Supreme Court decisions, and the activism of the American People.

The Ninth Amendment's vague wording has granted individuals a legitimate right to privacy that other amendments in the Bill of Rights cannot provide. The Supreme Court, deciding specifically on abortion and birth control cases, stated that there was an expected "recognition of the right of liberty or privacy in matters related to family, marriage, and sex" (*Creighton Law Review*, 2008). The Supreme Court went further by striking down any statutes that may intrude on the right to privacy inferred by the Ninth Amendment. Simply put, the Ninth Amendment's ambiguity and broad language has allowed the Supreme Court and American activists to interpret its meaning to protect rights not specifically mentioned in the Bill of Rights.

The implied right to personal privacy that emanates from the Ninth Amendment has been upheld in many high profile Supreme Court cases including *Griswold v. Connecticut* (1965), *Roe v. Wade* (1973), *Planned Parent-*

hood v. Casey (1992), and most recently, *Stenberg v. Carhart* (2000) (USCCB). The most important inference of the right to privacy in reference to abortion was reaffirmed when the Supreme Court reviewed the 1992 case *Planned Parenthood v. Casey*. The Court connected the right to privacy to the Ninth Amendment concluding that, although privacy is never mentioned in the Constitution, the Court must recognize a “person’s most basic decisions about family and parenthood” (Robertson, 1992).

Whether or not the government should interfere with abortion is the subject of debate. Some activists argue that it was a “mistake that it [abortion] became a political issue at all,” and further, that “even when [abortion] was illegal, it was widespread” (Quindlen, 2005). In the United States, statistics from 1955 show that the number of illegal abortions numbered between 200,000 and 1.2 million (para. 3). The number of dangerous or illegal abortions that occurred when abortion rights were not protected is daunting. This is one of the most striking pieces of data referencing illegal abortion rates. It supports the argument that abortions will happen whether or not there are laws against it. Without government protection of abortion privacy rights, women could be forced to terminate pregnancies using unqualified medical providers, or conditions where infection, excess bleeding, and death are possible. One physician described the tools of non-physician illegal abortions where women used:

Household products and utensils to terminate a woman’s pregnancy such as bicycle spokes, Lysol douches, garden hoses, potassium permanganate corrosive tablets, a slippery elm stick, turpentine by mouth, bleach douche, intrauterine installation of kerosene and vinegar, or a coat hanger. (Creighton Law Review, p.24)

Even though the Ninth Amendment may never have been intended to protect the a person’s overall privacy, it is understood to do so today. There is a strong connection between the fight over abortion and the right to privacy which will be further explored in the U.S. Supreme Court cases: *Griswold*, *Roe*, *Casey*, and *Stenberg*.

The landmark case of *Griswold v. Connecticut* (1965) stated that “the Connecticut statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights” (*Griswold v. Connecticut*, 1965). The seven-to-two majority decided that the Connecticut statute was unconstitutional; Justice William O. Douglas acknowledged that “a zone of privacy created by several fundamental constitutional guarantees” was found

in the Ninth Amendment, among others (Thoreson, 2007). The question argued during the *Griswold* case was whether or not a couple had the right to privacy when consulting a physician on the attainability of birth control. The case was appealed to the Supreme Court in 1965, after *Griswold*, an executive with the Planned Parenthood League of Connecticut, was convicted for violating Connecticut’s birth control law when she distributed information about preventing conception to married couples (*Creighton Law Review*, p.226). The couple argued that the statutes violated their Fourteenth Amendment rights because the patients and physicians were deprived of their liberty without due process (*Griswold v. Connecticut*, 1965).

This decision concerning a couple’s right to privacy set a precedent that established a level by which government can interfere in citizens’ private lives. Many conservative or liberal activists believe that a mistake was made when people’s private lives became subject to legal intervention (Quindlen, para. 3). Still, Justice Goldberg’s concurring opinion “concluded that ‘other rights’ in the Ninth Amendment included Libertarian rights, such as the right to privacy—and that these rights were enforceable against the states” (Lash, p.469). This decision was the first step toward defining a specific sphere of privacy and opened the door for abortion rights under the banner of privacy. It paved the way for cases like *Roe v. Wade*, and was one of the “most influential and controversial precedents in recent history” (Thoreson, p. 2). The *Griswold* case has not only affected how couples obtain birth control, but shaped the rules that placed abortion within the sphere of privacy implicit in the Ninth Amendment.

Roe v. Wade (1973) was the first abortion case that the U.S. Supreme Court decided; one that, set a precedent on the legality of abortion in the United States. Prior to the *Roe v. Wade* decision, justifiable abortions were allowed only in certain states. Georgia’s legislature concluded a legal abortion occurred when “a licensed physician is justified in terminating a pregnancy if there is a substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, or that the child would be born with a defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse” (*Creighton Law Review*, p.224). Prior to *Roe*, issues of abortion were primarily dealt with by state legislatures. The case of *Roe v. Wade* held that:

State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother’s behalf without regard to the stage of her preg-

nancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the State cannot override that right, it has legitimate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of a woman's approach to term. (*Roe v. Wade*, 1973)

The decision went further, specifying that the physician's counsel is enough to decide the issue of abortion in the first trimester, but after that, the state may create regulations (*Roe v. Wade*, 1973). The *Roe v. Wade* decisions extended throughout the fifty states and overturned all state statutes on abortion (National Right to Life News, p. 2). In order to reach this decision, the Supreme Court Justices relied on passages from the First, Ninth, and Fourteenth Amendments to create the implied right of personal liberty and personal privacy (USCCB, p.2). Since the *Roe v. Wade* decision in 1973, "American women have had the option to obtain safe and sanitary abortion procedures, not only for elective abortions, but also for terminations that are necessary for the health or life of the woman" (Creighton Law Review, p.225).

As mentioned previously, criminalizing abortion does not stop the practice. The legalization of abortion in 1973 prevented thousands of infections, injuries, and deaths that could have occurred from unsafe abortions. The precedent set in *Roe v. Wade* not only initiated the idea of a woman's right to an abortion within the sphere of privacy, but brought the abortion issue to the forefront of American politics.

The next Supreme Court case that ruled on the issue of abortion was *Planned Parenthood v. Casey* in 1992. Prior to *Planned Parenthood v. Casey*, women had made great steps in securing their right to an abortion. Prior to *Casey*, *Doe v. Bolton* (1990) went further than *Roe* by allowing an abortion to be performed during any of the three trimesters of pregnancy for reasons of maternal health (USCCB, p.2). However, after the *Roe* decision, judicial support for the precedent began to erode. *Casey*, "resuscitated a woman's right to choose abortion from the terminal illness it appeared to have suffered after *Webster v. Reproductive Health Services* (1989)." *Webster* set regulations on the use of state funds, facilities, and employees in performing abortions. The backlash from the *Roe v. Wade* decision was clearly seen in cases such as *Webster* and *Rust v. Sullivan* (1990), which prohibited government funding of abortions. *Casey* abandoned the previous framework of the trimester basis for determin-

ing whether an abortion was illegal in favor of the pre- and post-viability tests of the fetus (USCCB, p.1). Also, the Supreme Court justices reaffirmed the *Roe v. Wade* decision, but replaced "privacy" with "liberty" as the constitutional interest (USCCB, p.2). Specifically, *Planned Parenthood v. Casey* (1992) stated that:

Consideration of the fundamental constitutional question resolved by *Roe v. Wade*, principles of institutional integrity, and the rule of *stare decisis* require that *Roe's* essential holding be retained and reaffirmed as to each of these three parts: (1) a recognition of a woman's right to choose to have an abortion... (2) a confirmation of the State's power to restrict abortions after viability... and (3) the principle that the state has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.

Casey affirmed the basic principle behind *Roe v. Wade*: a woman has the right to terminate her pregnancy up until the fetus is viable and can still terminate at a later time if necessary to protect her life. *Casey* also held that the government may not put an "undue burden" on the woman with regulatory procedures that may create obstacles (Biskupic, 2006). Although there are many additional precedents that *Casey* added to the abortion argument, the Court reaffirmed all the precedents in *Roe v. Wade*. Even with public opinion changing and anti-*Roe* judges being appointed to the Court, the *Roe* decision was upheld. *Casey* revised the "legal grounding for the 'right' to abortion," but the primary protection remained the same (National Right To Life News, 2). The Ninth Amendment still retained the implied right to privacy, although after *Casey* it was sometimes referred to as the right to liberty.

The most recent case decided on the abortion issue was *Stenberg v. Carhart*. In 2000, the Supreme Court held that Nebraska's ban on partial-birth abortion was unconstitutional due to the absence of an exception for the mother's health, and because the description of the procedure was "vague" (USCCB, p.3). The case states that:

Because the statute seeks to ban one abortion method, the Court discusses several different abortion procedures, as described in the evidence below and the medical literature (b) the Nebraska statute lacks the requisite exception "for the preservation of the... health of the mother." *Casey, supra*, at 879 (plurality opinion). The State may promote but not endanger a woman's health when it regulates the methods of abortion. (*Stenberg v. Carhart*, 2000)

In the majority of the concurring opinion were Justices Stevens, Souter, Ginsburg, Breyer, and the recently retired Sandra Day O’Conner (Biskupic, p.14). O’Conner was the fifth key vote. The number of pro-*Roe* justices has now dwindled to four. The advances of these Supreme Court rulings could not have taken place without the original *Griswold* ruling in 1965. Now the Supreme Court actually maintains the power to make the right to have an abortion a political issue and the right to privacy a right that can be defended with specifics (Thoreson, p.2). The Supreme Court can now rule on an issue that was once only discussed behind closed and locked doors. Abortion has even become an important issue to feminists, thanks to wording that specifies abortion as the right of the woman instead of being a “Bill of Rights for physicians” (Robertson, p.24).

Griswold v. Connecticut, *Roe v. Wade*, *Planned Parenthood v. Casey*, and *Stenberg v. Carhart* have all had a great effect on American society and the rights of women. Not only have they affirmed the privacy rights of individuals, couples, and reproductive rights, but they have also had a dramatic effect on the political scene. The presidential election of 2008 was a prime example of the effects of abortion cases because either candidate would have the opportunity to appoint Supreme Court Justices who could affect the rights of millions of Americans. In the next few years the Supreme Court’s decisions will affect Americans by ruling on “privacy, reproductive, speech, and religious rights, to their occupational and environmental protections” (Lithwick, 2008).

The Supreme Court receives their power from the concept of judicial review originating in the 1803 case of *Marbury v. Madison* (Lithwick, p.2). Also, the Supreme Court is not truly reflective of the American population; most of the judges are “white and/or old;” most are both, including Justice Stevens, 88, Justice Ginsberg, 75, and Justice Souter, 68 (p.2). The newest justices, who changed the Court’s balance, replaced Chief Justice Rehnquist and retiring Justice O’Conner. In their places, Chief Justice John G. Roberts Jr. and Justice Samuel A. Alito Jr. joined the Court (Weddington & Kretzer, 2007). A Supreme Court nominee’s position on privacy rights is very important, especially with the “*Roe*-obsessed confirmation process” that all Supreme Court nominees must undergo (Economist, 2005). The Supreme Court’s implied power of judicial review, referred to negatively as judicial activism, has made the Court the final voice about what is or is not constitutional. Supreme Court justices and nominees must be careful about what they say regarding the *Roe* decision and privacy. One news-

paper columnist suggested that the Democratic fight for privacy rights may be better off if *Roe v. Wade* was overturned:

Roe is a pretty flimsy decision. The idea that the constitution protects “the right to privacy” was already something of a stretch when Justice William O. Douglas discovered it in the *Griswold v. Connecticut* case in 1965. Ruling that the state government could not stop married couples from purchasing contraception, Douglas wrote that the right to privacy exists because the “specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance.” It was these penumbras and emanations that were stretched still further in 1973 when the court ruled on *Roe*.

A prime example of the shaping, bending, and balancing of values that must occur during a Supreme Court nomination was seen during the 2005 nomination process of Chief Justice John Roberts. Roberts’ nomination, a “sometimes testy hearing marked by tart exchanges with Democratic Senators,” was characterized by a focus on Roberts’ opinion regarding the right to privacy. Roberts remained vague about his opinion on the right to privacy (Kiley & Biskupic, 2005). The process even turned sloppy when pro-choice organizations supported ads that linked Roberts to abortion clinic-bombers; the ads were later pulled (Gibbs, Bacon, & Novak, 2005). Roberts did acknowledge some concept of privacy existed, reportedly telling a Senator, “it was hard to read the Constitution without getting some impression that the Founders were talking about privacy” (Gibbs, Bacon, & Novak, 2005). Overall, the Supreme Court nomination process is a trap where senators, and the public alike, must decide how a nominee feels about relevant topics and whether they will push for rulings against court precedents. Roberts made it through the confirmation hearings and was confirmed as Chief Justice. Roberts plans to be open on the subject of the right to privacy, unlike the previous Chief Justice Rehnquist, who voted against abortion and privacy rights (Shapiro, p.4). Without the support of justices who use their power of judicial review to keep unspoken rights safe, the Ninth Amendment’s right to privacy may find a challenge in upcoming Supreme Court cases.

The interpretation of the Ninth Amendment is an issue hand that affects every American. Pro-life, pro-choice, or undecided, the interpretation of the Constitution has generally accepted the right to privacy, and therefore, the right to abortion. Three of the biggest concerns include

(1) the recent changes in the composition of the Court, with two new justices and the possibility of others; (2) increasing state efforts to limit the legality and availability of abortions; and (3) two cases which are pending in the Court this term involving congressionally-established limitations on the availability of abortions.

(Weddington & Kretzer, p. 15)

Human Rights Watch has become active in protecting women who are still unable to obtain abortions in emergency situations (HRW, 2006). The Freedom of Choice Act, passed in 2004, was one of the strongest pro-abortion pieces of legislation in recent years. It supports precedents such as *Roe v. Wade* (1973) and *Griswold v. Connecticut* (1965). However, there are still pieces of legislation that are in place to prohibit women's access to abortion. The Hyde Amendment, passed in 1976, prohibits government funding for abortions with exceptions for rape, incest, or danger to the woman's life (ACLU, 2004).

The right to privacy implicit in the Ninth Amendment is alive and well in today's world and has an effect

on every life in America. Because of the broad language of the Ninth Amendment, Americans have seen the protection of rights that they never thought existed. The right to privacy and the right to liberty have been included in the Ninth Amendment's vague language in order to protect those rights not explicitly included in the Bill of Rights. Although the Ninth Amendment rights have held strong in the past forty to fifty years, they may find considerable challenges in the future. The Supreme Court's control over issues like the right to privacy affects every life in the U.S. and is one about which every American should be educated. Control is in the hands of the people to decide which direction the country goes and it is not a topic that should be taken lightly.

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Urbanicity, Income and Jury Verdict Amounts in Civil Litigation

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ABSTRACT: *This paper reports on investigation and research explaining possible factors that affect the final award amount given by juries in civil cases. The two key variables examined are urbanicity and median household income. Data on civil trials collected through the United States Department of Justice, Bureau of Justice Statistics' The Civil Justice Survey of State Courts provided the primary data set for the study. The data set includes 156 counties and is a nationally representative sample of bench and jury trials. Urbanicity ratings, as well as median household income, were reported for each county. Pearson's correlations indicated no statistically significant relationship between urbanicity ratings and final award amount or between median household income and final award amount for cases decided by a jury. Evaluations of the linear relationship between final award amount and urbanicity using Pearson's correlation indicated no significant correlation between final award amount and urbanicity ratings. This study concludes that juries were not as susceptible to external influences or factors such as their location and income when awarding the plaintiff of a civil case.*

Introduction

The right to a jury trial is one of the most fundamental guarantees in the American justice system. With the duty and authority to discern facts, award damages, or convict an individual, jurors have a direct, immediate impact on justice in the United States. The interest in jury verdicts is not limited to criminal cases, but also civil cases where award amounts and punitive damages are at stake. Although many studies have focused on juror thought processes and decision making, little research has evaluated the impact that urbanicity has upon jurors and the verdicts they hand out in civil cases. While there is an inclination to view justice as universal, fair, and oblivious to peripheral conditionals, factors such as where a juror lives, could affect the outcome of a civil case.

There have been few studies of jury outcomes in civil cases at the county-level in the United States. However, several studies following outcomes in select counties highlight a number of interesting factors. Studies following jury verdicts, similar to *Civil Trial Cases and Verdicts in Large Counties* carried out by the Bureau of Justice Statistics (BJS) in 1996, have often analyzed data from civil cases filed in large counties. The BJS study analyzed tort cases collected over a year-long period from the largest 75 counties in the United States. Relevant data on mean and median awards for types of tort cases were calculated; volume, type, disposition method, and plaintiff information was gathered. Findings indicated that plaintiffs won in a little over half of all of trial cases. Plaintiffs in bench cases won 62% of all cases, while plaintiffs in jury trials

won 49% of all cases. Though this study provides relevant data on verdict trends in large counties, it did not always distinguish between jury trials and bench trials when indicating award amounts.

Another study using data from the *Civil Justice Survey of State Courts* from 1992, 1996, and 2001, focused on punitive damages—possibly the most publicized and controversial aspect of award amounts (Eisenberg, Hannaford-Agor, Heise, LaFountain, Munsterman, Ostrom, & Wells, 1997). The study compared the amount of punitive damages awarded by juries and judges, and found that juries and judges awarded punitive damages in approximately the same ratio to compensatory damages. Using data sets from several decades allowed researchers to compare award amounts and examine their trend. They found that damages have not increased (Eisenberg, et al., 1997). One limitation of studies involving this dataset results from the inclusion of large counties only. Thus, the possible discrepancies in award amounts with smaller counties remains to be identified.

Several areas of research in criminal justice have included discussion about urban and non-urban discrepancies, but interestingly few have covered the role of geography in civil justice. Feld (1991) examines the impact of a court's social context and location as strong influences in the juvenile criminal justice. Feld uses census data from each county in Minnesota to determine demographics including factors such as population characteristics, racial diversity, income distribution, and population stability. Surprising results indicated that formality, presence of council, and location had a large

impact. Structural-geographic variation was found to influence juvenile justice administration (Feld, 1991). Detention rates, appointment of counsel and arrest rates all indicated that urban youths experience the most formality, longer detention rates, and higher arrest rates. The study indicates that questions regarding local structure, culture and judicial process remain relevant when analyzing criminal justice. Questions regarding urbanicity for civil justice, however, remain unanswered.

More attention has been paid to the impact of race and poverty among jurors and their possible correlation in tort verdict amounts. Helland, and Tabarrok (2003) used jury verdict data collected by the Jury Verdict Research, *Civil Justice Survey of State Courts* (U.S. Department of Justice, 1992) and data from the Inter-university Consortium for Political and Social Research. They found that as African American and Hispanic populations, and especially poverty rates, increase, tort awards increase. Awards rise by nearly 3–10% when black poverty rates increased just one percentage point. When examining product liability cases, the authors found that increases in black or Hispanic poverty rates increased awards by an additional \$124,000 and \$213,000 respectively, and in medical malpractice cases this number rises to \$36,000 and \$162,000 respectively. Helland and Tabarrok (2003) uncovered the possible effects that race and poverty play when determining the fate of the plaintiff and defendant. Much like other studies in this field, its limitations lie in the data pool: lack of data on the composition of the jury and lack of databases meant that jury characteristics were inferred from county characteristics only.

Hastie, Schkade, and Payne (1999) studied juror assignment of punitive damages by showing mock jurors a videotaped summary of an environmental damage lawsuit and asking them to judge liability, punitive damages, and to assign a monetary award. Of the three independent variables in the study, geographical location of the defendant corporation and plaintiff were included.

The study found that plaintiffs local to the area were awarded more (36% higher on average) while the defendant's company location did not have a statistically significant affect on the award amount. Hastie, Schkade and Payne found that the only predictive demographic variable of the juror was sex. Eisenberg and Wells (2002) did not find consistent demographic affects on jury award amounts. Federal and state courts for tort cases, product liability cases, and employment cases were analyzed. There was no significant correlation between award levels or win rates with population demographics; however,

higher poverty rates correlated slightly with an increased award level in employment and tort cases.

Wissler (1999) found that none of the socio-demographic characteristics accounted for in his study—gender state, rural/urban status, education, and income level—were significant predictors or had a significant effect on perceptions of overall injury severity rating. Participants in the survey included eligible jurors, judges, and lawyers. The population sample was stratified by rural and urban counties in Illinois and New York. Respondents were asked in a survey to assess case summaries where severity of injury and award damages were provided. Wissler also compared juror assessments in negligence cases to assessments made by judges and jurors. He found that though jurors assessed injuries as more severe there was a high similarity in response patterns, suggesting juror approaches to evaluating injuries are similar to judges and lawyers. This finding is significant in understanding the differences between evaluating the facts of case and determining awards.

Identity of the parties' race is an especially interesting aspect to consider when analyzing verdict amounts and conviction rates. In criminal justice, Miller and Hewitt's study on conviction of a defendant as a function of a juror victim racial similarity, found that mock jurors who were African American convicted the defendant when the plaintiff was also African American, while choosing to convict 48% of the time when the victim was white (Hewitt & Miller, 1978). Conversely, 65% of Caucasian mock jurors chose to convict when the victim was white and 32% convicted when the victim was black. King (1993) notes that "in-group bias" may cause jurors to favor or empathize with members of their own race. According to another study examining juror sensitivity to the "cross-race effect," Caucasian jurors found prosecution witnesses more credible and were more likely to convict than their African American counterparts (Abshire & Bornstein, 2003). Tabarrok and Helland (1999) found that local poverty rates do have an impact on verdict amounts: where the state poverty rate is one standard deviation larger than average, the award amount is roughly \$100,000 higher. When a state's percentage of population in poverty increases by one standard deviation, awards increased by \$85,000. These findings indicate the possibility of juror bias in the civil justice as well.

Metropolitan and non-metropolitan areas differ in more ways than just race and poverty. Donald and Nye (1987) examined litigation trends in Florida counties from 1980-1985 and found a substantial increase in tort liability in urban counties as opposed to non-urban

counties. Automobile negligence was the highest percentage of overall tort cases filed. Overall, there was a 5.6% increase in litigation between metropolitan and non-metropolitan areas, which exceeded the normal expected ratio.

Whether or not the plaintiff is a corporation or an individual is also a consideration when analyzing award amounts by jury. Many researchers propose the possible “deep pocket” effect in cases where the plaintiff is a corporation. Vidmar (1993) posed a hypothetical experiment to test the “deep pockets hypothesis.” He found that jurors with higher levels of education gave smaller awards, but overall the juror’s gender, age, and household income were not related to the size of the award in negligence cases. There were also no statistically significant results to show that jurors treated medical and automobile negligence cases differently.

Attempts to predict the impact of demographic characteristics of award amounts have shown little success. MacCoun (1996) found that juror’s age, gender, education, employment status, political ideology, and family income did not account for deterrence, assessment of fault, or endorsement of the compensation. Thus, demographics were not significant in projecting award amounts.

Though many factors have been previously researched as indicators, predictors, or correlates in jury verdict amounts, the impact of urbanicity has not received as much attention. Many litigators have seen the impact of location on trial outcomes. Organizations like the American Tort Reform Association have deemed places like Cook County, Illinois “judicial hellholes” for the volume of cases tried and the large verdict amounts awarded within the county. Much of the debate about tort reform, juries and fair trials touches on the issue of urbanicity and jury verdict awards, meriting a further investigation.

Methods

Using a nationally representative data set of general civil trials, this study aims to investigate the significance of urbanicity and median household income on final award amounts in general civil cases decided by juries. The primary data set utilized in this paper comes from the United States Department of Justice, Bureau of Justice Statistics. *The Civil Justice Survey of State Courts, 2005* supplied data on general civil litigation in state courts of general jurisdiction¹. This data was chosen because it included numerous cases from several counties across the United

States with varying degrees of urbanicity. Representation of rural and non-rural counties was important in obtaining accurate results. The data includes types of civil cases litigated at trial, types of plaintiffs and defendants, trial winners, amount of total damages awarded, amount of punitive damages awarded, case processing time, characteristics of litigants filing an appeal, and, most germane to this study, final award amounts. One hundred sixty-one counties (urban, suburban and rural) were included in the study.

The original survey employed a stratified two stage sample design. The first stage of the survey sampled general civil trials from the 75 most populous counties in the United States and general civil trials in counties outside the nation’s 75 most populous counties. The primary sampling units were stratified by census region, levels of urbanization, and population size. The second stage of the survey involved generating lists of general civil, bench, and jury trials to be coded. Cases to be coded were required to meet general civil and bench or jury trial definitions. For the purpose of this study, bench trials were excluded from the data set. Jury trials were defined as “a trial held before and decided by a jury of laypersons and presided over by a judge culminating in a verdict for the plaintiff(s) or defendant(s).” Cases settled prior to verdicts or judgments were excluded. The general civil cases included tort, contract, and real property cases. Definitional criteria for tort cases included “claims arising from personal injury or property damage caused by negligent or intentional acts of another person or business;” contract cases included “all allegations of breach of contract including commercial torts;” and real property cases involved “any claim concerning ownership or division of real property, excluding mortgage foreclosures which are included under contracts.” Final award amount (FINALAMT) represented the dependent variable while urbanicity represented the independent variable.

Urbanicity was calculated using the 2003 Rural-urban Continuum Codes from the United States Department of Agriculture. This classification method identifies metropolitan counties by size and non-metropolitan counties by degree of urbanization. Metro counties were distinguished by population size of the Metropolitan Statistical Area of which they are part, while non-metropolitan counties were classified according to the aggregate size of their urban population. Counties were assigned an urbanicity rating from 1 to 9. Counties classified as metropolitan ranged from 1 to 3 while non-metropolitan counties ranged from 4 to 9:

Metropolitan counties

1. Counties in metro areas of 1 million population or more
2. Counties in metro areas of 250,000 to 1 million population
3. Counties in metro areas of fewer than 250,000 population

Non-metropolitan counties

4. Urban population of 20,000 or more, adjacent to a metro area
5. Urban population of 20,000 or more, not adjacent to a metro area
6. Urban population of 2,500 to 19,999, adjacent to a metro area
7. Urban population of 2,500 to 19,999, not adjacent to a metro area
8. Completely rural or less than 2,500 urban population, adjacent to a metro area
9. Completely rural or less than 2,500 urban population, not adjacent to a metro area

Data from the table supplement “Gross Migration for the Population 5 Years and Over for the United States, Regions, States, Counties, New England Minor Civil Divisions, and Metropolitan Areas: 2000,” by the United States Census, was used to calculate population mobility. The total non-movers for each county were divided into population over 5 for each county.

Finally, the median household income for each county was obtained from the United States Census “Census 2000 Summary File 3 (SF 3) - Sample Data.”³ This data was used to further analyze the relationship between the characteristics of the county and the final award amounts given. To examine how urbanicity, median household income, and final award amounts are related, linear regression analysis was performed. Evaluations of the linear relationships between urbanicity and final award amounts were measured using Pearson’s correlation.

Results

This paper aims to investigate possible factors explaining the final award amounts bestowed by juries in civil cases. Descriptive statistics for the data show the range for final awards was quite large. The mean final award amount was \$411,092.44 with a standard deviation of \$3,675,813.22, while the mean for urbanicity was approximately 1.36 with a standard deviation of 1.09.

Table 1. Correlations.

	(1)	(2)	(3)	(4)
(1) INCOME	1			
(2) MOBILITY	-.030*	1		
(3) URBANICITY	-.130**	.137**	1	
(4) FINAL AWARD	.003	-.011	-.018	1

* Correlation is significant at the .05 level (2-tailed).
 ** Correlation is significant at the .01 level (2-tailed).

Table 2. Correlations.

	(1)	(2)	(3)	(4)	(5)
(1) INCOME	1				
(2) MOBILITY	-.030*	1			
(3) URBANICITY	-.130**	.137**	1		
(4) SOUTHERN STATE?	.003	-.011	-.028*	1	
(5) FINALAMT < 100,000,000 (Filter)	-.007	.001	.006	.010	1

* Correlation is significant at the .05 level (2-tailed).
 ** Correlation is significant at the .01 level (2-tailed).

Table 3. Correlations.

	(1)	(2)	(3)	(4)	(5)
(1) INCOME	1				
(2) MOBILITY	-.030*	1			
(3) URBANICITY	-.130**	.137**	1		
(4) SOUTHERN STATE?	-.153**	-.406**	.028*	1	
(5) FINAL AWARD	.003	-.011	-.018	.004	1

* Correlation is significant at the .05 level (2-tailed).
 ** Correlation is significant at the .01 level (2-tailed).

Table 4. Regression.

	Beta	p
Median Household Income	.001	.947
Mobility	-.009	.484
Urbanicity	-.0017	.183

R² = .020
 Adj. R = .000
 p = .452

Pearson’s correlation between mobility and urbanicity was significant at the 0.01 level; income and mobility were significantly correlated at the 0.05 level; and income and urbanicity were significantly correlated at the 0.01 level. Evaluations of the linear relationship between final award amount (FINALAMT) and urbanicity (URBANICITY) using Pearson’s correlation, however, indicated no significant correlation between final award amount and urbanicity ratings. Additionally, there was no linear relationship between income and final award amount.

Due to the large range between maximum and minimum final award amounts, the data set was filtered to exclude outliers that could possibly skew the correlation results. However, dropping outliers similarly yielded no significant correlations. When excluding cases with final award amounts over 100,000,000, no significant correlations were found.

The states involved in the survey were further classified as Southern or Non-Southern to test for correlation between final award amount and major geographic location defined as “Southern” or “Non-Southern.” For the purpose of this study “Southern” was defined as the eleven states that comprised the Confederacy: South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Texas, Virginia, Arkansas, Tennessee and North Carolina. Evaluation of the linear relationships yielded no significant correlation with final award amount, but did reveal correlations with income, mobility and urbanicity.

Conclusion

The results indicate that none of the independent variables—urbanicity, income, or major geographic location—were significantly correlated with final award amounts. The correlations between median household income and urbanicity seem to mirror similar research results (Hart, Saks, & Wissler 1999), although they were not statistically significant. The degree of urbanicity, as evaluated through the 1 to 9 rating system, was significantly correlated with income. The empirical results conclude that juries were not as susceptible to external influences or factors, such as their location and income, when awarding the plaintiff of a civil case.

The model used for this research was underspecified and this study could be improved by the addition of other counties in the sample. Additionally, inclusion of racial and ethnic group membership as well as education level would benefit the identification of factors related to final award amount.

The results of this study, however, should provide relief to parties in civil litigation trials that are apprehensive about the location of the trial. Much attention has been given to “judicial hell-holes” and counties with juries that regularly give large final awards. This gives the impression that a plaintiff’s chance at success differs significantly from jurisdiction to jurisdiction or county to county. However, this study concludes that, for the most part, such impressions may be mistaken. The universality of justice does not seem to be tainted by the location or characteristics of the county where the trial occurs.

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Impact of Community-Panel Juvenile Drug Court Judges in Woodbury County, Iowa

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ABSTRACT: Like most drug courts, the Woodbury County, Iowa program is based on therapeutic jurisprudence (TJ) and social bonds theory. It also relies on and trains community volunteers who serve as judges and work directly with clients. The article outlines the requirements for juveniles and community-based judges who are accepted into and remain in the drug court program. Woodbury County's overall success rate is higher than the national average. The difference between this drug court and others is the use of community members. Furthermore, the article combines leadership theories in volunteer organizations to explain how the judges work together, each panel's success rate over a two-year period, and their practical application of TJ and social bonds theory to clients' lives.

Introduction

Federal, state, and local governments have grappled with problems caused by alcohol and drug abuse throughout American history. Communities have attempted to balance dealing with the social and legal problems caused by drug and alcohol addiction with the need to protect every citizens' rights while honoring their values and beliefs about substance abuse. They have faced increasing social and financial costs caused by substance abusing individuals. (Banks & Gottfredson, 2004). In an attempt to address these needs and curb expenses, local American governments and their bureaucratic agencies implemented drug court programs that combine law enforcement measures with support programs for convicted juvenile and adult substance abusers.

For juveniles, drug courts are designed to be the "last stop" before adult court or long-term commitments to state juvenile facilities. Several scholarly journals, federal agencies, and state governments have published various documents on the financial or communal efficacy of drug court programs program (Belenko 1998a, 1998b; Breckinridge, et al. 2000; Gottfredson, et al. 2005; ONDCP Drug Policy Information Clearinghouse 1998; Shanahan, et al., 2004; Spohn 2001; Stanford and Arrigo 2005; U.S. Department of Justice 1997, 2002; U.S. Government Accounting Office 2005; Wilhelm & Turner 2002). While this situation allows local governments to create a drug court that reflects their values, these drug courts are overwhelmingly limited to individual, judge-based, juvenile programs and are not generalizable to other courts (U.S. Department of Justice, 2002).

Woodbury County, Iowa is a community that created one of the first community-panel drug courts, requiring that juvenile offenders answered to community volunteers rather than a judge. The community-panel drug court has reported one of the lowest recidivism rates in the United States. This is the first published article on the impact these community-panel judges had upon their juvenile clients and the organization.

This paper begins with a theoretical discussion of drug court programs and followed by an analysis of its mission statement, goals, and structure of the juvenile justice system leading to a drug court assignment. A discussion on the selection and training of community-panel judges follows with an analysis of its goals and phases. The final section discusses volunteer groups' leadership style and how these community judges tie theoretical jurisprudence and social bonds theory with the organization's mission and goals. This section includes a brief discussion on the impact these theories and practices have on the client's success and recidivism. Preceding research on the judges' leadership styles and impact on clients is a section which compares the organization's impact on the court's success rate.

Theoretical Foundations Of American Drug Courts

Like most drug court programs in America, the Woodbury County program operates on the principles of therapeutic jurisprudence (TJ) and social bonds theory. Created by Prochaska and DiClemente in 1982, therapeutic jurisprudence is a multi-component theory rooted

in law, psychology, psychiatry, criminology, criminal justice, public health, and philosophy (Prochaska & DiClemente 1982; Wexler 1996). TJ is designed to support a more pro-social and mainstream lifestyle through a multidisciplinary approach as defined by the program's legal and organizational boundaries. Legal representatives—prosecutors, defense lawyers, judges, probation officers, treatment, and education providers—act as legal and behavioral change agents under this theory. If these legal actions are entrenched within the correctional system, TJ incorporates change within the client's psyche by combining cognitive dissonance and self-efficacy with decisional balance. The client has the chance to alter existing beliefs, accomplish self-established goals, as well as evaluate advantages and disadvantages of a situation (Prochaska & DiClemente 1984; DiClemente, Prochaska, & Gibertini, 1985). A client's participation in a structured environment, like a drug court setting, encourages verbal processing and personal actions which ingrains itself into the client's psyche. This cognitive change within the client is the foundation of therapeutic jurisprudence and creates an ethic of care.

Social bonds theory lies within the ethic of care that therapeutic jurisprudence provides. This theory focuses upon four psychological and sociological actions that promote socialization and conformity, particularly among juveniles: attachments, commitment, involvement, and belief. The stronger the bonds between these feelings, the less likely a person will be delinquent. The more attached these juveniles are to the parents or guardians, school, and community, the less likely they are to commit crimes and jeopardize those relationships. The stronger their commitment to and involvement in pro-social activities and commonly held ethics, the less likely a juvenile will commit crime. Likewise, an inverse situation may cause juveniles to act inappropriately and commit crime resulting in imprisonment. Regardless of the connection youth feel to a community, a society's value system must be accepting of both the offender and vice versa (Adler, Laufer, & Mueller, 2004). The components of both theories hinge upon the drug court-sentenced juvenile's ability to identify with the panel and the assigned probation officer.

Whether a community implements a judge-based and community-panel drug court, the program allows its juvenile clients to form attachments with their panel members and probation officers. The judge and community panel encourage these teenagers to establish permanent employment, participate in school activities, or obtain higher educational goals. Through the application

of social bonds theory, the panel members assist the juvenile practice pro-social behaviors while accepting the community's belief system. As a factor of TJ, the client internalizes thought patterns about themselves and the world around them.

However, the approaches between both drug court programs differ at this point. Judge-based programs utilize one person who sits in judgment of a client's actions. He or she tends to speak with a judge for a few moments and works much more closely with their probation officer. Under a community-panel model, the clients meet and work closely with their probation officers as well as the three or four volunteer judges. They spend a minimum of 15 minutes per month per client, far more than single judges. The juvenile has the opportunity to bond with more than one panel member. This bond may encourage pro-social activities more quickly because the client answers to volunteers with different experiences. These experiences can assist the client in developing personal opportunities and insights into recovery from substance abuse to educational assistance. The exchange reinforces TJ and social bonds theory by building attachments while decreasing anti-social behavior among clients, particularly juveniles.

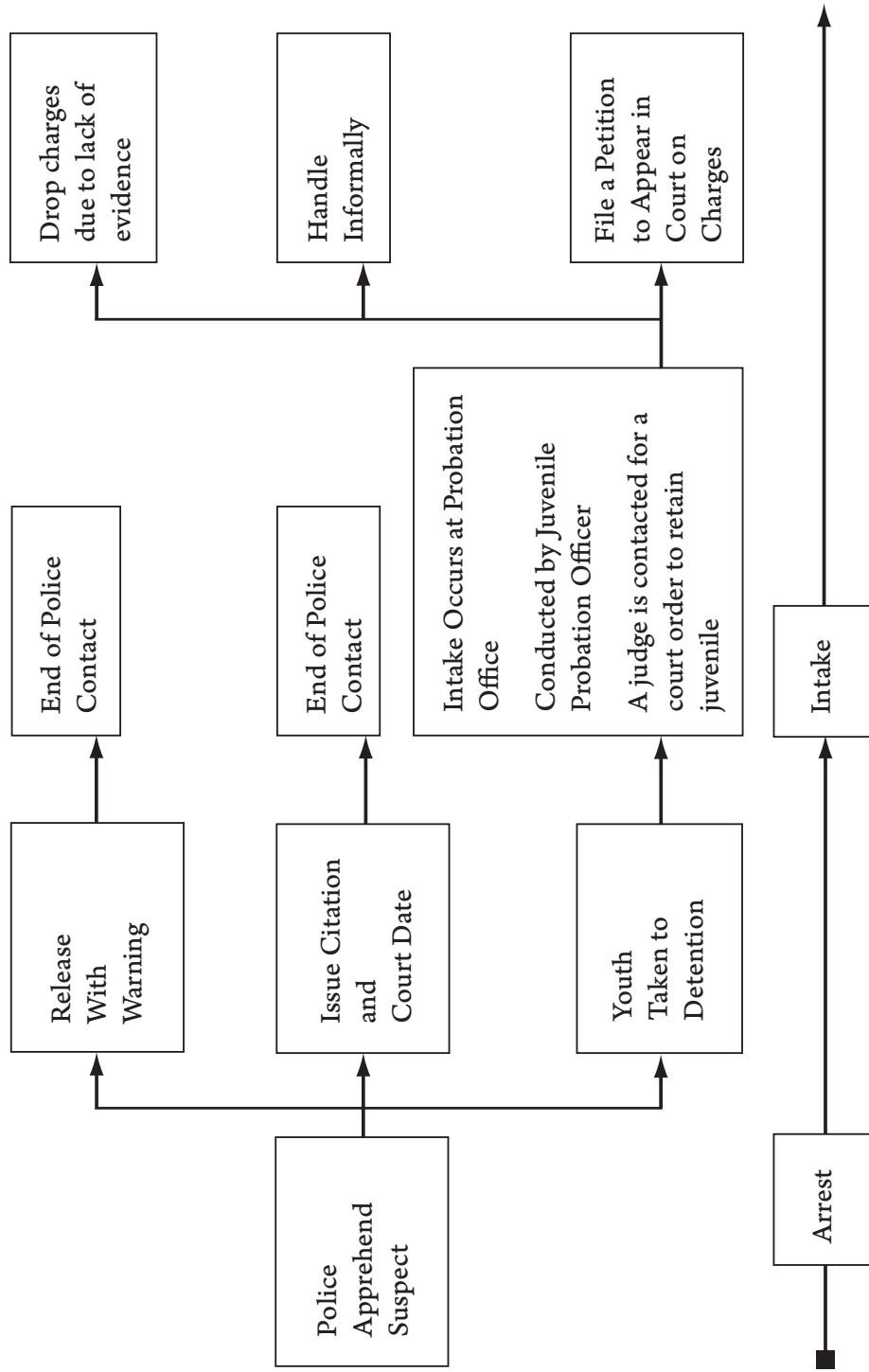
Mission Statement and Organizational Goals

Most drug court programs share a similar mission statement. Woodbury County's community-panel program makes the following commitment to its clients:

To demonstrate an innovative, comprehensive, and integrated approach to substance abuse treatment among offending juveniles and adults by coupling the coercive power of the court with substance abuse services" (Gendreau & Andrews, 2001; Niles, G., personal communication, 5 May, 2008)

The program's goals derive from its theoretical base and its mission statement. These goals include increasing the effectiveness of substance abuse treatment among offenders and timely case processing. Effective treatment for juvenile offenders is obtained by coordinating all related aspects of the justice system with social services such as substance abuse treatment providers, community service organizations, institutions of higher learning, and potential employers. This coordination is designed to reduce substance abuse and related crimes among the population. The cases are expedited by reducing the duration of incarceration to alleviate juvenile detention and court docket overcrowding (Gendreau & Andrews, 2001).

Figure 1. Juvenile Drug Court Process – Step 1



The mission statement and operational goals reflect the spirit of legal and theoretical underpinnings of any drug court program, and at the same time allows each of them to implement a program that reflects the community's values and beliefs. Albeit broad, they guide the requirements and expectations the court places upon both its clients and its judicial volunteers.

Criteria for Juvenile Acceptance into Drug Court

Figure 1 demonstrates how an arrestee can be assigned to drug court and work with community volunteers after being arrested for committing a non-violent misdemeanor or felony while under the influence of a mood-altering substance. In smaller communities like Woodbury County, Iowa, the arresting or detention officers usually know if the offender has a nonviolent, criminal history at the time of arrest. If the arrestee is under age 18, a judge is contacted to determine if the child should be detained in juvenile hall or released to a parent or guardian.

Occurring within 72 hours of the arrest, the juvenile meets with a judge, their legal representative, a lawyer from the district attorney's office, a probation officer, and their parent or guardian to determine drug court eligibility. This group determines whether to send someone to drug court by examining the client's criminal history and substance abuse experiences. The probation officer administers and scores the Substance Abuse Subtle Screening Inventory (SASSI) prior to the group meeting. SASSI is a psychological screening tool used to measure a person's dependence upon alcohol or drugs and is the tool used to diagnose the potential participant's dependence level on mood-altering substances. The client cannot alter their response based upon their gender, ethnicity, occupational, or marital status, age, disability, or level of education (Lazowski, Miller, Boye, & Miller, 1998; SASSI 1997). Other supplemental psychological tests have been used to corroborate SASSI's findings, such as Level of Services Inventory, Jesness, or Offender Profile Index. Based upon a potential client's history, test scores, and the review team's decision, a non-violent offender who has a moderate-to-high risk of continued substance abuse is more likely to be offered the option to participate in a drug court program than persons with a lower SASSI score or a violent past.

If an underlying substance abuse issue is determined, the client is referred to the drug court program. An interview with a drug court probation officer and local treatment provider are shortly scheduled to determine the required level of support for the juvenile. The probation

officer meets with the Woodbury County Attorney's Office, the client's legal representative, parents or guardians, and all other persons who are relevant to the situation. If all parties agree, the juvenile client enters drug court. The potential client signs a contract committing him- or herself to the program and they are randomly assigned to a "home panel," a group of three or four trained community volunteers who work with clients throughout their involvement in the program. Once these three criteria are met, six overarching goals must be accomplished prior to a juvenile's drug court graduation.

Goals and Phases within the Drug Court Process

These six overarching goals must be accomplished by the juvenile prior to graduation: 1) obtaining and maintaining employment, or remain in school or university; 2) completing all court-ordered community-service obligations; 3) paying all fines and court costs; 4) providing proof of attendance to one's treatment provide and 12-step programs; 5) maintaining continuous contact with one's probation officer or their representative; and 6) providing evidence of continuous sobriety at the point of graduation through random urinalyses. Clients are expected to achieve these goals in four separate phrases.

Once a client achieves the primary objectives of each phase, the adolescent is expected to apply for and receive the court's permission to be promoted to the next phase. During Phase I, the panel's primary goal is client stabilization. The panel members and clients spend between three and five months meeting with the juvenile client during this phase. It allows the volunteer panel members to establish trust between the client, the probation officer, and all service providers with whom the juvenile works. The client is expected to provide proof of attending 12-step meetings, treatment sessions, and attending school. Other expectations include: 1) attending all assigned drug court hearings; 2) submitting urine samples for random alcohol and drug testing; 3) testing free of mood-altering substances; 4) being respectful in all relationships; and 5) obeying all laws and probationary terms. The panel members also provide short-term tutoring and academic advising to juvenile client during their monthly reports. During this phase, the panel members and clients learn about and discuss similar interests and passions. The panelists attempt to link these shared interests to the client's recovery by encouraging him or her to continue them unintoxicated.

As depicted in Figure 3, the panel members establish the four tenets of social bond theory by developing a rapport with the client during the first two to three months

Figure 2. Juvenile Drug Court Process – Step 2

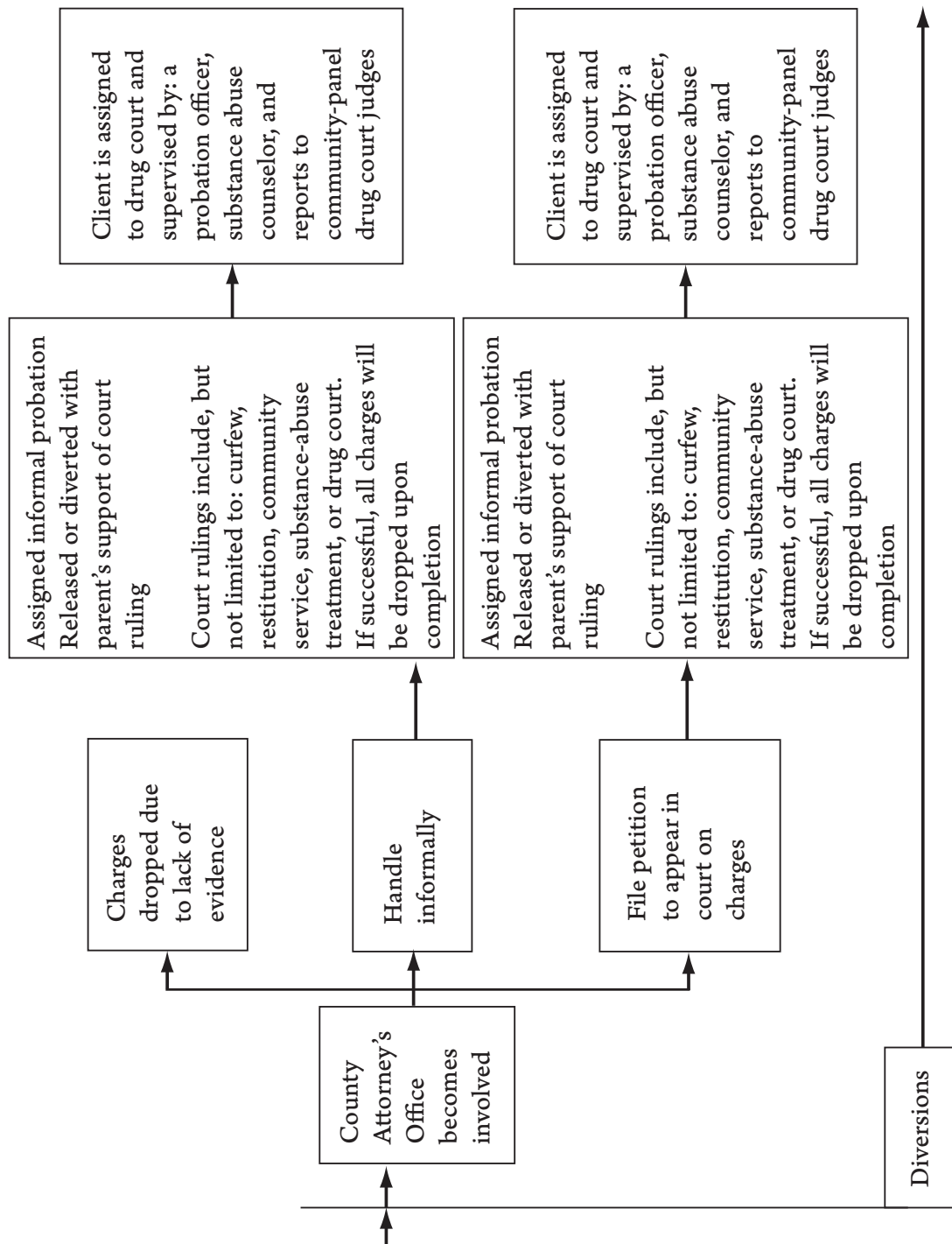
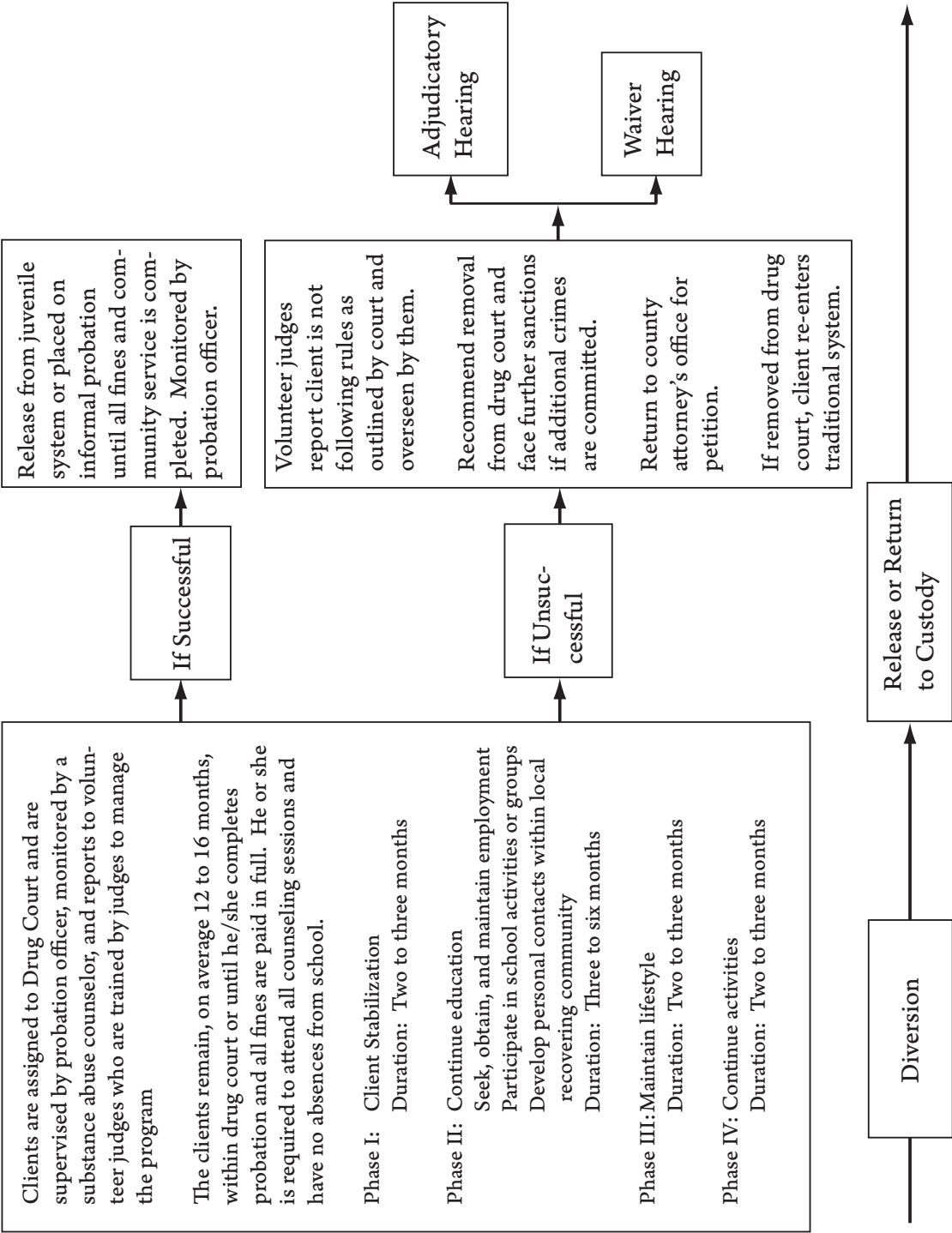


Figure 3. Juvenile Drug Court Process – Step 3



of their involvement. Juveniles are expected to “complete a comprehensive substance abuse evaluation and comply with drug court recommendations” and “terminate all relationships with drug-using associates and provide the drug court with a ‘bad friends’ list” (Third Judicial District 1999, p. 1). If a client recidivates, he or she is more likely to return to old behaviors during this bridge period between Phase I and Phase II.

Upon receiving the court’s approval, the client advances to Phase II. This phase is commonly referred to as the acceptance phase of the community-panel drug court program. The clients are expected to be earnest in seeking stable employment or to continue educational requirements as well as seek relationships that are more meaningful with family members, friends and co-workers, teammates, teachers, or employers. They are required to follow their treatment plan which usually includes attending 12-step meetings, having a sponsor from Alcoholics Anonymous or Narcotics Anonymous, and reporting their progress to the panel. While enrolled in this phase, the teenagers are held more accountable for their actions and often seek the panel members’ advice before dealing with a difficult situation. This is the longest and most work-intensive phase for clients, averaging between six to nine months. Clients are not promoted to Phase III until these goals are met.

Phase III is a maintenance phase for both the client and the judges. If successful, the client meets monthly with the panel members for an often jovial meeting between the client and all providers. The judges are working well together and they are more likely to share about relevant experiences they have in common with their clients. This is an approach that usually allows everyone to feel more comfortable and provides the client the opportunity to see that the lives of other mainstreamed persons is similar to their now “clean and sober” one. The client’s see the new lifestyle is easier than the drug-using subculture, one to which the client belonged one year earlier.

At the fourth, and final, phase, the client is prepared for graduation as the need for a more structured environment is not deemed necessary. The client meets with the judges on average, about two to three months prior to a semi-formal graduation ceremony where family, friends, judges, and the probation officer have a small celebration (Niles, G., personal communication, February 28, 2005, 5 May, 2008). Upon completion, the client’s records reflect their actions and charges are dropped. Their records can be sealed at the client’s request. If all requirements are met, the client graduates from the drug court when Phase 4 is completed (See Figure 4). If the client is un-

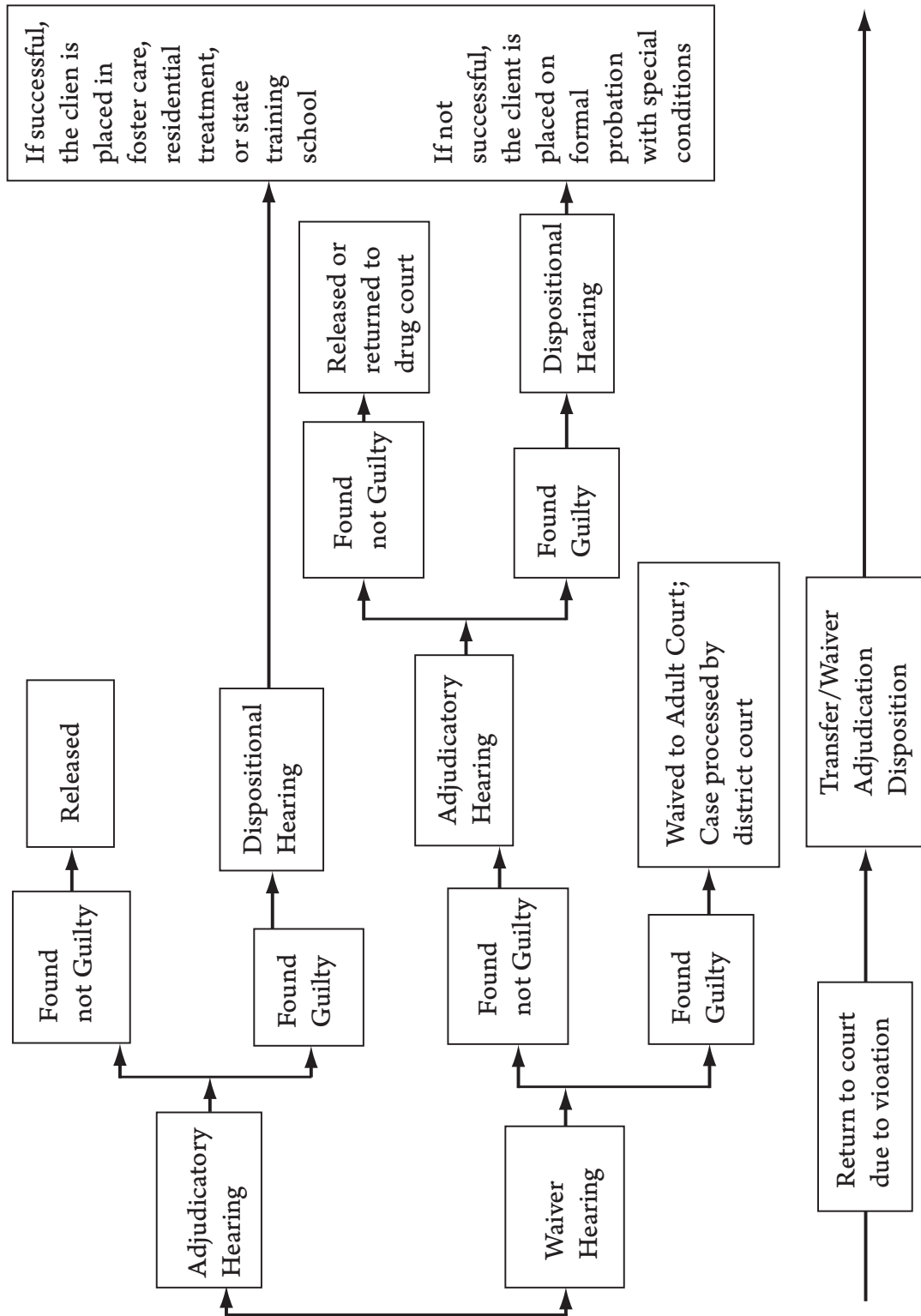
successful in drug court, he or she will face more challenging situations.

Regardless of the phase in which he or she is enrolled, overachieving clients receive rewards or incentives from the judges in the form of verbal praise, fine or community service hour reduction, coupons to local cinema or non-alcohol serving restaurants, and early promotion to the next phase. Intrinsic and extrinsic rewards are given more frequently during Phase II when the client is in the midst of the acceptance of their addiction to a drug or drugs of choice.

There are situations where the client is dismissed from the program. Early dismissal occurs when the client has overriding mental issues that cannot be controlled through medication or counseling and usually result in the client’s inability to follow simple requirements. Also, the juvenile may be dismissed if he or she cannot make healthy life choices or their family inhibits the juvenile’s ability to change their reaction to a stressful situation.

Unsuccessful adolescents are referred back to the sentencing judge to face additional sanctions. The client is referred to the supervising judge if he or she is re-arrested for crimes against another person, continued intoxication, or other serious misdemeanor or felony crimes. If the client’s behavior does not improve, the judges can impose sanctions or incentives that are proportional to the client’s actions. These sanctions include, but not limited to: 1) verbal admonishment; 2) increased number of community services; 3) placement in detention for up to 72 hours or until the client can be seen by a judge; or 4) removal from the program and a return to original sentence. If the client is not allowed to re-enter drug court, he or she will be transferred to a regular probation officer and face more serious legal challenges. These challenges can include, but are not limited to: admission into a long-term residential substance abuse treatment facility, transfer to the Iowa State Training School, or transfer to adult probation. However, a juvenile who is placed in foster care or a local treatment facility is usually not removed from the program; instead their participation is suspended until the client can be stabilized and returned to the program. If the client is transferred to the state training school, he or she may be allowed to return to the program upon completion. In most cases, the client does not return to the program because he or she will be enrolled in the program until age 18. At this point, the juvenile is transferred to adult probation for any supervisory requirements.

Figure 4. Juvenile Drug Court Process – Step 4



Organizational Impact on Success Rates

Woodbury County's drug court program is oldest of eight community panel-based programs in the United States. The other seven are less than three years old and are scattered throughout rural communities located in western Iowa. There are no known studies comparing the success rates between this form and other judge-based, juvenile drug court models. However, a comparison of individual reports shows this program may be more successful than judge based ones. The community-panel approach is the only variable that differentiates it from other American drug court programs.

A five-year follow-up study was conducted in 2005 and 2006 on the overall success rates of community-panel programs among 130 juveniles post-graduation (Vick & Lamb-Keating, 2007). The Internal Review Board at West Texas A&M University approved the research and a Certificate of Confidentiality was obtained from the U.S. Department of Health and Human Services. After both organizations approved the project, each client who participated in drug court as a juvenile, but was now an adult, was contacted by letter notifying them of the research project. Removing their names from all records, the former clients were informed that all unsealed juvenile records would be reviewed. Their names would be made available to the researchers on a separate sheet of paper so the researchers could check for any adult criminal activity within the State of Iowa and surrounding states. If they were not listed on any Internet database provided by these governments, the clients would be considered as rehabilitated. If the clients did not want to be part of the research, they were given contact information via their individualized letters and local radio and television announcements. Twenty-five percent of former drug court clients contacted their former juvenile probation officers or the researchers inquiring about the project. While they refused to be interviewed in person by one of the researchers, they were not opposed to anyone searching the Iowa Courts Online website to verify if they had been convicted of any crime post-drug court release.

Most clients were Caucasian males between 15 and 17 years of age when sentenced to drug court. Approximately 65% of the juveniles lived with one parent. In most cases, the client's parents were divorced, deceased, or never married and lived with their mothers and had at least one other sibling in the household. The juveniles lived in high-crime areas. Most were high school sophomores or juniors; yet, they were part-time students who held part-time jobs. Their primary drugs of choice were marijuana and alcohol. The average age of first drug use

was thirteen and showed no symptoms of underlying mental or physical disorders other than an addiction.

Follow-up data showed 53.5% of all graduates received no citation or conviction past their graduation date. Only 26.7% of former drug court clients were arrested on alcohol or drug related charges. They were more likely to commit these crimes either immediately upon release or at 30, 60, 90 days, six months or one year post-release. The crimes seemed to have been committed at approximately the same time the former client received a chip or key tag from a 12-step program. The remaining 19.8% of clients were arrested and convicted on non-substance abuse, non-violent crimes. The national recidivism rate among judge-based, juvenile drug courts is estimated at 30.8%, a 22.5% increase over the national average (Roman, Townsend, & Bhati, 2003).

The only known variable that distinguishes this program from similar ones is the community-panel approach. Since there are only two other community-panel based programs in the United States, comparative studies are not possible at this time. Preliminary results show this approach may be more successful than judge-based programs. There may be other communities who are interested in implementing this model within a new or existing drug court but have questions about: 1) the impact these volunteers have on court structure, 2) how to select and train volunteers; and 3) how to monitor panel member interaction. The following section answers these questions by combining therapeutic jurisprudence and social bonds theory with leadership styles.

Impact of Volunteers on the Drug Court Clients and its Structure

Volunteer groups have varying organizational forms and are staffed by persons who share common goals, values, and beliefs (Fairholm, 2002). Most volunteer groups recruit volunteers who are sympathetic to their cause and provide a smooth transition between the entrance and end of an event. Because an application process and criminal background checks are required for final approval, the community-panel drug court program requires greater commitment from the volunteer. While this does not diminish the ease of participation, the volunteers' individual and collective commitment is essential for implementation and execution of these theoretical methods to be successful for the at-risk youth (Hughes & Wilson, 2003).

To maintain consistency among the judges' approach to assist substance-abusing youth avoid their former sub-

cultural activities, the volunteers are expected to meet certain requirements. First, these volunteers must be willing to donate three to four hours monthly to work with the clients. Secondly, they must commit to work with two to three other community members on a panel and work as a team with each of these adolescents. This section begins with a discussion on the history of and requirements for a community member to serve as a judge.

Criteria for Judges' Acceptance to Drug Court

The court system needed to recruit approximately 30 citizens who could serve on one of nine panels. The community advisors and judicial officials agreed to advertise for them in the local newspaper, the *Sioux City Journal*, in order to solicit interested persons. Since they are not required to have legal backgrounds, they must be willing to work closely with a judge and the client. Application forms were available from Juvenile Probation Services located in downtown Sioux City. Within one day of the announcement, the office received 87 completed applications (G. Niles, personal communication, February 28, 2005, [5 May, 2008]).

This unexpected, but welcomed level of support, forced the community leaders who spearheaded the movement and judicial employees to review and select judges from these applications; however, they also feared that anyone not selected would drop their support for the program. The applicants were ranked based upon professional backgrounds and their knowledge of substance abuse. They often lacked legal knowledge but had the intellectual fortitude and academic ability to work with offenders. In many cases, these professionals were recovering alcoholics and addicts who not only understood their client's plight but also their schemes and excuses. Those persons who were not selected were placed on a waiting list. As persons left the program or new panels were added, the courts had a list of community volunteers who were approved to serve.

Training Volunteers for Community-Panel Drug Courts

Once chosen, these community judges began a brief but intensive training with formal judges and probation officers on the following subjects: addiction; the organizational structure of the community-panel drug court program; the role and responsibilities of community judges; and the interaction between judicial, educational, and treatment providers in the area. Once completed, the panel members were assigned and began to meet with clients throughout their time in drug court. Furthermore,

they were required to attend continuing training classes each quarter. Because these clients need consistency, volunteers who cannot participate for one quarter will be contacted by an official of the court and asked to support the program or resign.

Each month, the panel members meet with probation officers over dinner. The officers report the adolescent's monthly progress in treatment, school, extracurricular activities, work, attendance at 12-step meetings, and the like. The client's progression or digression is reported to a formal judge who oversees the entire project and executes the recommendations of the community panel. Based upon the client's progress, they make recommendations to encourage pro-social behaviors that are carried out by these systems.

Therapeutic jurisprudence and social bonds theory are applied when intrinsic or extrinsic rewards are provided to the juvenile by the volunteers. In most cases, the panel members learn during Phase I about the juvenile's interests and passions. They encourage the client to link their interests to recovery from their addiction. Examples include bringing examples of their art, literature, or music to court. The panel members assist them in finding tutoring or academic advising.

However, these rewards are usually given when the juvenile has performed exceptionally well or very poorly. If the client is performing well, the panel may recommend a reduction in community service hours, a short extension on their curfew hours, or traveling with student groups or family members to an out-of-town event. Often, the adolescent is asked to meet with a judge who will see their progress as well as that of the program. If the juvenile is not performing well, he or she will not be allowed to advance to another phase. Other options may include: increasing community service hours, reporting more frequently to one's probation officer, going for review before a judge, or being removed from drug court. While each panel follows drug court's policies and procedures, their approach to providing rewards, punishment, and the overall management style differs greatly.

Interaction between Judges and Leadership Impact

This section combines drug court's organizational impact with its values and vision, the cornerstones of leadership theory. These leadership theories and managerial patterns allow the community-panel judges and their juvenile clients to accomplish higher success rates, especially when they are compared to national results. The courts are particularly interested in the: 1) emerging patterns of interaction between the volunteer judges and

clients; 2) development of a language between the judges and clients; and 3) existence of behavioral patterns between the individuals and other members of the group (Fairholm, 2002).

These three processes are important in linking therapeutic jurisprudence, social bonds theory, the community-panel drug court program, and the volunteer judges who work within it. Observing the judges' interactions links the mission statement and organizational goals to the practical application of the program's theoretical foundation. The leadership styles among these panels and volunteer judges demonstrates how these persons combine legitimized, hierarchical, judicial structure with personal power and influence between panel members and clients.

Methodology

The most appropriate technique for data collection was the participant-observer technique. This data collection method allowed for the leadership styles to develop and emerge within the group without formal interviews or direct interaction. The research team did not take an active role within the hearing without invitation or approval from a panel member. This is the primary control variable that is most difficult to maintain (Mason, 1996, p. 64; Lofland & Lofland, 1995, p. 18–22).

In an effort to balance the researcher's observation of the judges and participation in the program, the researcher provided factual information that would assist the panel or the client in making more informed decisions about the issue at hand. The researcher periodically served as an onsite court reporter for each of the panels from October, 2004, to October, 2006. One met with them during their briefings over dinner, prior to court hearings, as well as the volunteer judges' interactions with the clients. During the meetings, notes were taken on group interactions, and quantitative data were collected on the outcomes of the panel's clients post-graduation.

Results

Over time, the panel members developed personal as well as professional friendships with their cohort. Two primary concerns dominated each of the panel's discussions at their monthly meetings. First, they were concerned about the legal or administrative issues surrounding clients who were in Phase I and II of their drug court stay. The volunteer judges were concerned there was a lack of coordinated effort between some of the agencies. Agency coordination is essential for therapeutic jurisprudence to work within a client's life. Other

times, they were concerned the client still operated in a "black or white" mindset, meaning they still thought in extremes and were unable to moderate behaviors. Left unchanged, the client may think or act in ways that could prevent him or her from accepting prosocial norms; as a result, the panel members feared without strong application of these theories and organizational goals, the client could return to the substance-abusing subculture.

Fairholm's research (2002, p. 4–5) of the interaction between ecclesiastical groups can be applied toward the communication styles of other volunteer organizations. Five broad coding categories were used to define their verbal interactions: 1) concepts like group values, purpose, and direction with each client; 2) positive or negative tone, use of command and persuasive arguments; 3) presence of congenial conversation; 4) use of nonverbal communication techniques; and 5) the presence of an informal group leader and how this power was exerted within the group (p. 5). In majority of hearings, the panel members agreed with other volunteers over major client concerns. However, their use of nonverbal communication and presence of a congenial conversation or persuasive argument were the most commonly used forms that communicated an informal leadership style that linked their work to drug court's mission, goals, and theoretical philosophy of therapeutic jurisprudence and social bonds.

All 30 members used different forms of nonverbal cues to convey their thoughts about a client's behavior during the probation officer's briefing or in court. The most common of these were: nodding of the head, shuffling in the seat, leaning over the table towards the client, pushing one's chair closer to or further away from another panel member to influence decision making. These nonverbal cues were used to influence other judges or the clients. Furthermore, the volunteer judges would pass written notes to each other, whisper, or talk under one's breath at times. This happened when one of the judges was concerned about the client's health or if they suspected the client was intoxicated at a hearing. However, the leadership within each of the panels changed as the client's needs shifted.

The longer-serving judges or those who were recovering from their own addictions had a form of institutional memory that caused some judges and clients to refer to them for information. Some of these judges were part of the community group who initiated the drug court program. They appeared to have a sense of ownership with the program and their position within it; therefore, they held higher expectations for compliance among the juveniles who were involved in the program. Yet these ex-

Table 1. Success Rates by Panel

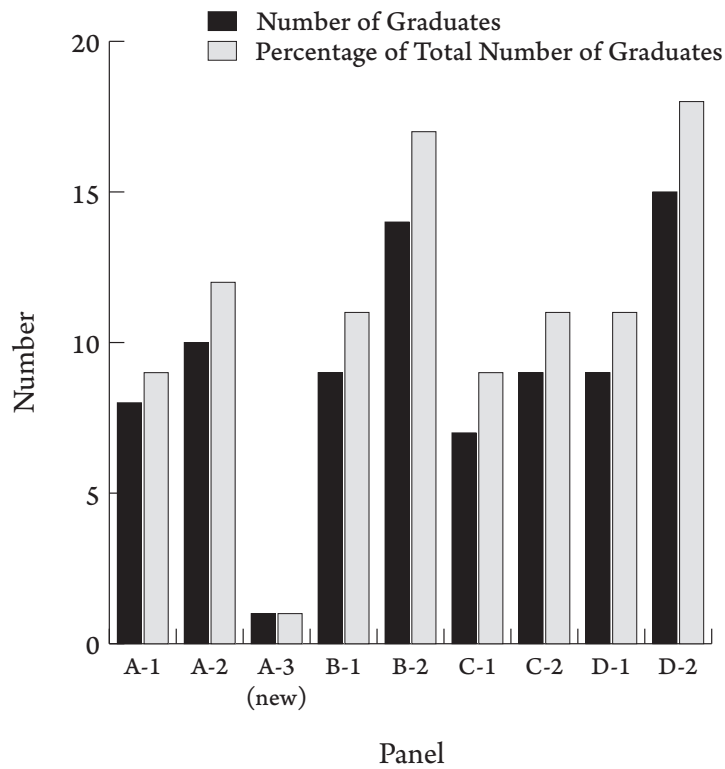
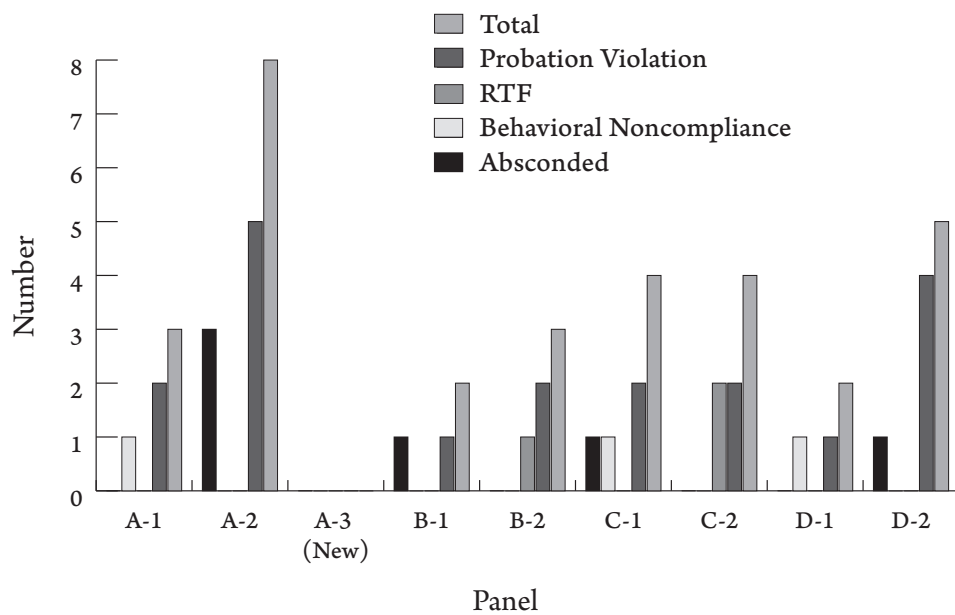


Table 2. Client Failure by Panel



periences and community-wide connections assisted the client to more readily connect with mainstream society. Based on the client’s body language, word usage, or sentence phrasing, these judges would determine if the juvenile client was sincere about remaining “clean and sober,” or if they viewed the program as one that will keep them out of detention. In the end, these judges combined their institutional memory with their personal drug-using and recovering experiences to assist these juvenile clients obtain and maintain sobriety.

Panel Outcomes on Clients

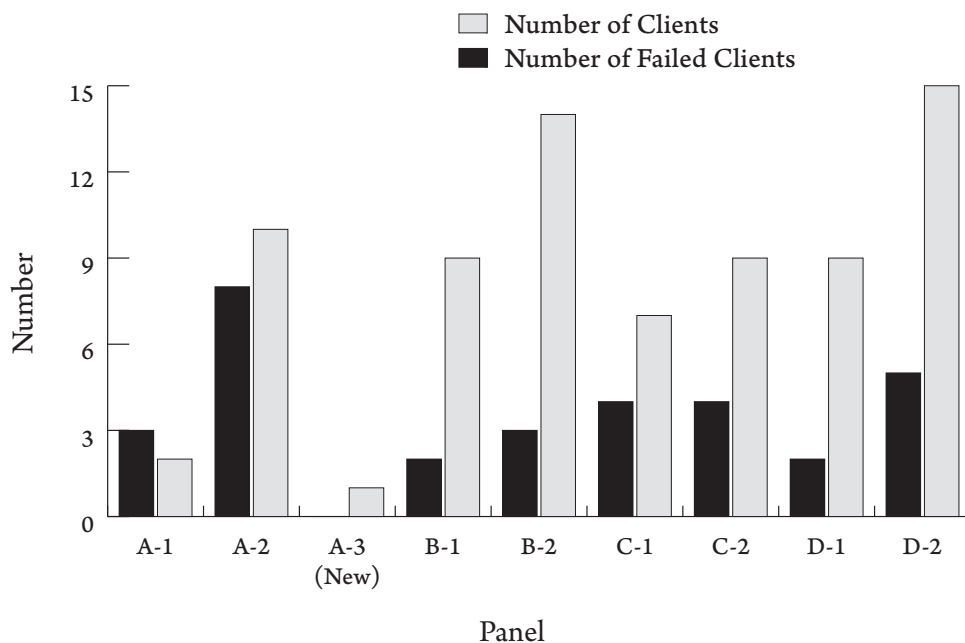
The juveniles tended to bond with all of the judges between the three to five months of their drug court involvement; otherwise, they usually consumed alcohol and/or drugs and were removed from drug court. However, this attachment occurred with different people for different reasons.

The client’s racial, gender, or sexual orientation appeared to have no major impact on one’s overall drug court success. Some panels had slightly higher success rates with females or racial minorities (See Chart 1). Panels

C-2, B-1, and D-2 appeared to have a slightly higher success rate when compared to other groups. Panel C-2 is the only panel that reported having a higher number of female than male graduates. Numerically, Panels B-2, B-1, D-2, and A-2 were more successful with persons who were a race other than Caucasian; however, there was no statistical significance.

In some cases, the juveniles related to those who were closer to their own age. While in others, they were more comfortable with someone who was much older. For example, if the adolescent was interested in attending college, he or she tended to bond with those who worked in their field of interest. Juveniles who required more medical attention attached themselves to those persons who worked in a medical field. If the client did bond with someone on their panel, they were more likely to listen to and work more closely with a volunteer panel member who was a member of a 12-step program like Alcoholics Anonymous, Narcotics Anonymous, or Alanon. As a result, the bond that formed between the judges and the adolescent shifted from one panel member to another, depending on the client’s needs.

Table 3. Failed Drug Court Clients



There were some situations where these therapeutic or leadership theories did not work with the clients. It appears these situations occurred within each panel regardless of their application of TJ, social bonds theory, and their leadership styles. While there were some panels who graduated a higher number of clients, the client failure rate was not significantly different for eight groups. Otherwise, training and reporting techniques, and attendance requirements for each panel were consistently followed throughout the life of the project. Furthermore, their success rates were below or equal to the national average of judge-based, drug court programs.

As discussed these clients were more likely to leave the program within the first three to five months after admission. Most of them committed one of the following four crimes or actions that led to their removal: absconded from area, behavioral noncompliance, sent to the Residential Treatment Facility (RTF) located within Woodbury County's correctional system, or committed a probation violation. Panels A-2 had the highest failure rates. There are several variables that may explain this phenomenon.

First, their clients were randomly assigned and may have been less likely to comply regardless of their assignment. Secondly, the clients ran away or violated probation prior to advancement to Phase II; therefore, they may not have bonded with these judges prior to these occurrences. They were more likely to run away or violate their probation prior to bonding with the judges. The panel composition was similar to all of its counterparts.

Conclusion

Americans have struggled with substance abuse throughout our existence. Based upon their beliefs and values, communities have responded to these problems with criminalization of a substance to absolute legalization. Drug courts are the most recent, and one of the most successful, responses to this social concern.

Woodbury County, Iowa, created the first community-panel drug court in the United States. The program's founders created, implemented, trained, and monitored an entire process that would allow juvenile drug and alcohol offenders a "last stop" to rehabilitation. To relieve judges' caseloads and reduce incarceration costs, the judicial system gained support by seeking and using citizens to serve as panel judges. As a result, the program has obtained one of the lowest recidivism rates in the United States. This was achieved by combining therapeutic jurisprudence and social bonds with leadership theories. These were reflected in the mission statement, goals, and drug court process for adolescents who were given the option to participate in it. Two other Iowa drug court programs were created using the Woodbury County model as their guide. Other drug court programs throughout the country may consider such options. By doing so, research into the drug court phenomenon would expand and allow for greater generalization and application.

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