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# Critical Issues in Justice and Politics

**Discussing the present – Influencing the future**

Department of Political Science & Criminal Justice

Southern Utah University

# Critical Issues in Justice and Politics

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*Critical Issues in Justice and Politics* is a refereed (peer-reviewed) journal which contributes to the theoretical and applied nature of justice and politics. We are a scholarly journal which requires all articles to undergo an extensive review process for both content and format. Our emphasis is on the exchange of qualified material in order to generate discussion and extend the often limited boundaries of scholarly exchange.

*Critical Issues in Justice and Politics* is sponsored by the Department of Political Science and Criminal Justice at Southern Utah University. The editorial board is comprised of faculty from the department as well as select faculty and practitioners from around the United States.

Published twice a year (March and September) *Critical Issues in Justice and Politics* focuses on emerging and continuing issues related to the nature of justice, politics, and policy. A special emphasis is given to topics such as policy, procedures and practices, implementation of theory, and those topics of interest to the scholar and practitioner alike.

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We prefer manuscripts which are not under review by other journals or publications. We endeavor to review all manuscripts in a timely fashion, so simultaneous submissions are not usually necessary. Refereed submissions are submitted within forty-eight hours of acceptance and we generally ask reviewers to complete their assignment within 10 working days. In most instances an editorial decision may be reached within a month of submission.

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All papers submitted for refereed publication will be sent to at least two reviewers. We use a blind-review process which submits papers in anonymous format. If there is a clear split between the reviewers then a third reviewer may be used when necessary for clarification or additional comment. We do rely very heavily on our reviewers for insight and recommendations. All of our reviewers hold the appropriate degree and experience to qualify them for the particular project.
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# From the Editor

As a new academic journal *Critical Issues in Justice and Politics* has been very lucky to receive so many outstanding submissions. Selecting the articles to publish is a balance between choice of quality, content, and ideology. For an editor of any journal a central question is one of voice. There is always a question of which article to publish, and the issues to be measured include voice, concept, and writing quality. An article that demonstrates outstanding writing style may lack depth of substance while an article that struggles with language choice may contain an interesting intellectual approach. To address these issues the editorial board of the journal has elected to use an approach that favors diversity of opinion. This edition is an example of this approach in several ways.

This edition also provides an opportunity to include our first submissions from international scholars. This has presented for us a significant issue for any editorial body. The question is whether we edit for style to improve readability or do we limit edits in order to retain originality of content. The editorial board quickly decided that an important part of a journal like this is to give voice to those that might not otherwise have an outlet. As such, in this and future editions we hope to provide voice that is accepted for its own value rather than the strict editorial guidelines of a small group of editors.

The extension of any editorial policy is the ability to generate discussion and research by other scholars. The quality of any academic journal is drawn from its ability to engage others. The purpose is not to simply publish for the purpose of printing but rather to engage readers. A controversial idea, questionable policy, or unpopular opinion is not always fodder for the editor but rather provisions for discussion. To that end readers are invited to submit their opinion, rebuttal, or comments about any article presented by the journal.

## EXPANDED PUBLISHING OPPORTUNITY

The journal is proud to announce that it will soon move to an expanded schedule. Initially we felt fortunate if we received enough articles to put the journal out twice a year. The response from academics and practitioners alike has been excellent, and this will allow us to expand the number of editions each year. Beginning in January 2009 *Critical Issues in Justice and Politics* will publish three times a year: Winter (January/February), Spring (April/May) and Fall (September/October).

# Racial Disparity in Pennsylvania Prisons: A Theoretical Explanation, Causes, Consequences, and Partial Solution

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**Indiana University of Pennsylvania**

## Abstract

The purpose of this paper is to present some empirical and theory-based evidence that attempts to explain the route cause of racial disparity in Pennsylvania prisons. This paper is organized as follows: empirical evidence is presented that establishes the magnitude of racial disparity in Pennsylvania prisons. Thus, 49.7 percent of prison population in the state of Pennsylvania is comprised of blacks; whereas blacks comprise of twelve percent of the total population in the state of Pennsylvania. The second part of this paper focuses on the theoretical framework of racial disparity. Two theories have been incorporated in the explaining of some of the factors that leads to more blacks being sent to prison. The Social Disorganization theory (a macro-level theory) attempts to explain the ecological factors that lead to racial segregation of neighborhoods as a result of population decline. At the meso-level, I used strain theory to explain some of the factors, such as unemployment and blocked opportunities, which lead to more people employing illegitimate means to survive in society. Following the theoretical explanation of some critical factors that explain racial disparity, I included a short empirical-based analysis of the consequences of racial disparity in Pennsylvania prisons. On the last section of this paper, I attempt to offer a partial solution to this racial disparity in Pennsylvania prisons. Consequentially, I suggest that in order to minimize the magnitude of this racial disparity in Pennsylvania prisons, the state should eliminating mandatory minimum sentencing laws, increasing the use of alternative sentencing, especially for nonviolent drug offenders, eliminate racial profiling, and ultimately decriminalize minor drug-related offenses such as those related to gateway drugs (i.e., marijuana, etc.).

## The Magnitude of Racial Disparity – Problem Statement

Unarguably there are more blacks in prison compared to whites; they are disproportionably represented in criminal justice system. In fact, 66 percent of the prison population in the State of Pennsylvania is comprised of minorities (49.7 percent of them are blacks). On the other hand, all minorities comprise 29 percent (with 12 percent blacks) of the total population of the State of Pennsylvania (Kramer & Ulmer, 2006; Prison Policy, 2004; U.S. Census, 2000). "The imprisonment rate of black American men is over eight times greater that that of European Americans" (Oliver, 2001, p. 28). Thus, the magnitude of the problem is much greater than we are comfortable to believe. An explanation

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(among other explanations) of this racial disparity could be found in the practice of racial profiling, but this is only a partial reason to why the magnitude of this problem is so great. Racial profiling is the police attitudes toward people of color. In other words, the police view minorities – blacks in particular – as potential criminals before they have committed any crimes (Skolnick, 2007; Alpert, 2007; Kane, 2007; Alpert et al., 2007). Thus, it is the source of discrimination and this form of discrimination (that is derived from the practice of racial profiling) contributes to the racial disparity in Pennsylvania prisons as well prisons in other states nationwide.

Some police departments consider racial profiling to be as a very effective method of fighting crime in the United States – this is a more conservative view, of course. However, regardless of effectiveness of this practice, people feel that they are being judged totally by race, and in reality, racial profiling is just one factor that leads to more arrests. Skolnick (2007) argues that individuals should be judged based on their own conduct and not based on race. Every time when the probable cause is based on race, it reflects a disproportionate arrest rates for black Americans. The statistics show that there are no legitimate reasons to exercise racial profiling because even if race could be helpful to identify profiled criminals, the use of race may cause many errors where the offender happened not to fit the race predicted by the model of law enforcement (Skolnick, 2007). Therefore, law enforcement fails to capture the actual suspect. Some people argue that there is a reason why the police can be more suspicious of black people. They base their argument on the facts that show that twenty-five percent of violent crimes committed in the United States are committee by blacks, and blacks only comprise twelve percent of the total population. Thus, it is the disproportionate criminal behavior of minorities that the police frequently encounter and arrest that make race a salient factor in police work (Harris, 2007). However, statistics are misleading. They are just numbers; in order to make sense of them, it requires a meaningful interpretation of them (Maxfield & Babbie, 2001). If the probable cause for an arrest, for example, is solely based on race, then obviously there would be more blacks in prison that whites. If the police hold negative attitudes toward blacks, then there would be more blacks stopped, searched, and arrested. This is not evidence that blacks are committing more crimes; it's the cause of arrest that is based on their appearance.

Away from the explanation of police attitudes toward minorities, is punitive drug policies. This means, the majority of blacks currently serving time in Pennsylvania prisons are on drug-related charges. Thus, the major cause of racial disparity is the "war on drugs." Dysfunctional neighborhoods (deteriorated areas – see sections below) have been the principle fronts of the war

on drugs. Massive street sweeps, buy and bust operations, and other police activities, have heavily targeted participants in street level (Sherman, Farrington, Welsh, & MacKenzie, 2006). Not surprisingly, those people who live in deteriorated neighborhoods are predominantly poor blacks. It is drug-related arrests that overpopulate Pennsylvania prisons, and as mentioned earlier, the majority of drug-related crime by race are blacks (see the last section of this paper for a partial solution to this problem).

**Theoretical Framework**

Often the criminal justice system responds to the condition (to crime) created by forces outside of individual control. However, the function of criminal justice system is to respond to crime; arrest the law breakers, adjudicate them, and correct them. Although "correcting criminals" is not the true goal of criminal justice anymore.

Criminal behavior is a product of a numerous factors, frequently a combination of multifactor. Thus, criminal behavior is also caused by social and environmental factors. Such factors include: poverty, unemployment, disorganization, discrimination, and inequality. Accordingly, there are many theories that claim to have an absolute explanation of deviant behavior but some of them are more convincing and more applicable to explaining racial disparity than others. However, one should not rely on only one theory that tries to assume responsibility for explaining antisocial deviant behaviors what we call criminal behaviors, but a combination of more than one is preferable. In an effort to explain racial disparity in Pennsylvania prisons, two well-known theories will be incorporated; social disorganization theory and strain theory.

**Macro Level – Social Disorganization Theory**

One of the most compelling and more modern theory that explains racial disparity and social causes of crime is social disorganization theory developed by Chicago School of Thought. Social disorganization theory was developed in the "1920s by members of Department of Sociology at the University of Chicago" (Bohm, 2001, p. 67). This theory assumes that those individuals who engage in harmful behaviors are basically normal human beings and that their deviant behavior is caused by environmental factors, usually to specific neighborhoods. Furthermore, this theory assumes that crime is the product of social disorganization. As a macro-level theory, social disorganization "focuses on the relationship between crime rates and social institutions. This perspective implies that ecological forces and/or group memberships determine individual behavior" (Holman & Quinn, 1992, p. 178). Though, according to this theory, individuals are not responsible for their engagement in antisocial deviant behaviors because

the environment where they live, create the circumstances to get involved in such behaviors (Bohm, 2001). The founders of this theory did not think, however, that we can solve or reduce the problem of crime by implementing individual treatments.

Furthermore, social disorganization theory, however, explains a lot with regard of finding a better understanding of the problem and implementing methods in reducing criminal activities which I am referring to as antisocial deviant behavior. Based on this theory, we can conclude that individuals engage in harmful behaviors because of environmental conditions that surrounds them, which are: poverty, discrimination, and urban deterioration (see Skolnick, 2007). Some people believe that young people, undereducated and without access to good jobs become frustrated with their lives and engage in harmful behaviors as an alternative to boredom, hopelessness and devastating poverty. When it comes to the explaining of racial disparity, this theory is applicable (see section: the application of social disorganization and strain theory to racial disparity).

**Meso Level – Strain Theory**

The second theory that I would like to apply to the explanation of racial disparity is Strain Theory, also known as Anomie. The strain theories were developed in an attempt to link the macro-level explanation of crime (issues identified by the disorganization perspective) to the micro-level explanation of crime, "at which the behavior [obviously] occurs" (Holman & Quinn, 1992, p. 216). These theories "links crime to the strain of being locked out of the culture and economic mainstream, which create the anger and frustration that leads to [criminal] acts" (Siegel, 2002, p. 87). According to strain theories, deviance occurs when individuals "failure to achieve positive valued goals" which leads to "negative stimuli" (Siegel, 2002, p. 87). A simple understanding of this theory is that this "negative stimuli," created by external factors outside of individual's control" leads to crime (Siegel, 2002, p. 87). In other words, "strain theories propose that there are certain socially generated pressures or forces that drive people to commit crimes. [And] those called strains are not evenly distributed in society" (Vold & Bernard, 1986, p. 185); they are more pronounced among minority groups.

For the most part, this theory appears very compelling. It is also closely related to the previous theory – social disorganization theory. Reiteratively, deviant behavior, according to Strain theory, occurs "when personal goals cannot be achieved by using available means" and "consequently, these [affected] individuals may…use deviant methods [illegitimate means] to achieve their goals," which is engaging in criminal behavior (Siegel, 2002, p. 86). Thus, when an individual is prevented from achieving his or her goals through available

means, he or she will experience some undesirable stimulus, as a result of which he or she would be engaging in deviant behavior as a means of coping with it (coping with this undesirable stimulus created by forces beyond that individual's control) (Robinson, 2004). Furthermore, strain theory does not assume that people are naturally bad or likely to commit criminal and antisocial behaviors; rather, our desires and appetites come from the dominant culture in our society, which stresses the goal of acquiring as much wealth as possible (Robinson, 2004).

**The Application of Social Disorganization and Strain Theories to Radial Disparity**

As I mentioned earlier, the population in Pennsylvania is declining (U.S. Census, 2000); the neighborhoods are becoming more and more racially segregated. Whites move to areas which are well maintained and social organization (schools, churches, business, and the police) function normally. Conversely, those neighborhoods where the minorities live, in many ways the institutions have failed (weakened social organization). This social disorganization produces the conditions conductive to crime. Thus, one can conclude that crime in those areas "is not primarily due to 'defective' people with biological or psychological abnormalities" or differences but rather as a result of normal people living in abnormal conditions (Miller, Schreck, & Tewksbury, 2006, p. 72).

Furthermore, parallel with this population declination, the employment opportunities are declining too. Unfortunately, minorities – especially African Americans – are stuck in those areas where the population is declining and where there are fewer economic opportunities. In some cases, the only way of survival is the use of illegitimate means. And that means; to engage in criminal activities. The result of the use if illegitimate means thus leads to imprisonment. Once an individual is convicted of a felony (blacks are more likely to be found guilty than whites), his or her economic opportunities will be further blocked. Blocked opportunities are "a disjunction between goals and means" (Renzetti, 1994, p. 150). This disjunction thus produced anomic conditions and those anomic conditions in turn produce strain. Often those who experience strain are engaged to crime (Agnew & Cullen, 1999). In this case, crime is the means for achieving individual goals, which inevitably lead to more people being sent to prison.

Unfortunately, fewer job opportunities for blacks especially, create the condition conductive to crime, which – as I mentioned earlier – lead to imprisonment. Most social scientists agree that crime doesn't pay. Therefore, those who are frequently engaged in criminal activities, those frequently arrested, have no money to pay for legal representation, which means longer sentencing;

premature sentencing (plea guilty deals during the plea bargaining process) that in turn leads to more frustration that result from further blocked employment opportunities (strain), and that is ultimately related to more crime and more arrests. The actors in this play are usually blacks and other minorities. In short, the contributing factors to racial disparity are: population is declining; declined economic opportunities for blacks and other minority groups are declining; neighborhoods are becoming more racially segregated; and police negative attitudes toward blacks and other minority groups mentioned at the beginning of this paper.

**Consequences of Racial Disparity**

One of the major problems that is a direct result of racial disparity is child poverty. Black male imprisonment contributes to high black child poverty several years later. The first is lower family earnings, especially in two-parent less-educated families, which is presumably due to the reduction in earnings of men with prison records (Martin, 2002; Oliver, Sandefur, Jakubowski, &Yocom, 2005; Murray & Farrington, 2005). In other words, "removing substantial number of African American men from the labor force would be associated with increases in African American child poverty" (Oliver, Sandefur, Jakubowski, &Yocom, 2005, p. 1).

The disproportionate incarceration of blacks reduces the pool of working-age men and the number of potential marriage partners for black women with children. According to Bureau of Justice Statistics' (2000) estimates, in 1999 seven percent of black children had an incarcerated parent. The majority of those incarcerated were employed at the time of arrest and seventy-one percent of them were parents. This suggests that those incarcerated were probably economic assets to those families already living below poverty line (Oliver, Sandefur, Jakubowski, &Yocom, 2005).

Parental imprisonment is a risk factor to children, which is another consequence of racial disparity in criminal justice system. Increased number of parental imprisonment results in many children being poorly supervised and thus exposed to the risk of engaging in delinquent behaviors. Such behaviors include theft, burglary, and gang affiliation, etc. Lack of parental supervision has been shown to be related to low self-control, and low self-control is one of the primary causes of crime to adolescents and later on as adults (see Gottfredson & Hirschi, 1990). The findings of Murray and Farrington (2005), for example, show that "seventy-one percent of boys who experienced parental imprisonment during childhood had antisocial personalities at the age of thirty-two, compared to only nineteen percent of boys who were not separated and whose parents never went to prison" (p. 1273). In the state of Pennsylvania, blacks are overrepresented in

criminal justice system – in prisons (U.S. Census, 2000). This means that blacks are at a much higher risk of producing a new generation of young people who are vulnerable to criminal propensities. From the criminal justice point of view, "it seems that imprisoning parents might cause antisocial behavior and crime in the next generation, and hence contribute to the intergenerational transmission of offending" (Murray & Farrington, 2005, p. 1277). And blacks and other minority groups are those who are more exposed to criminal justice system and thus more likely to contribute to this "intergenerational transmission of criminal behavior."

**Partial Solution to Racial Disparity in Pennsylvania Prisons**

It is obvious that the majority of blacks who are currently in prison are serving drug related sentences. Yet, most of them are for minor drug-related crimes but serving longer sentences for multiple offenses. If whites were incarcerated on drug charges at the same rate as blacks, I believe that punitive drug policies relying on harsh penal sanctions (as they are now) would have been changed long ago.

Since this problem mostly affects blacks and other minorities, there are a few suggestions that can be made to minimize the racial disparity in Pennsylvania prisons. Namely, eliminating mandatory minimum sentencing laws, increasing the use of alternative sentencing, especially for nonviolent drug offenders, and eliminating racial profiling (racial profiling can be eliminated by making it a requirement for the police to keep and make public statistics on the reasons for all stops and searchers by race) (Alpert et al., 2007; Kane, 2007; Klein, 1998; McCarthy, 1987).

Another way to solve this problem (racial disparity) is to decriminalize minor drug-related offenses (Golub et al., 2007). As mentioned above, the majority of blacks serving in prison are on drug-related charges. Yet, most of them serve time for gateway drugs such as marijuana. Furthermore, there are those who serve prison sentences on multiple drug offenses as well. By decriminalizing minor drug-related offenses, the number of blacks and other minorities will be reduced considerably. And for the hardcore drugs such as cocaine, the state should at least eliminate different sentencing structure. For example, offenders arrested for crack cocaine vs. powder cocaine should receive the same sentence.

In sum, there are many ways to deal with this racial disparity in Pennsylvania prisons but what is lacking is the will and the determination by policy makers to take actions. Personally, I strongly believe that the state should shift away from "war on drugs" to "war on poverty" instead. Drug-related offenses should be decriminalized and drug addiction should be treated as a

disease. That way, the state will take away the profit that is related to drug sales, and those addicted to drugs will be able to legally seek treatment.

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# EFFECT OF POLITICS ON LEGAL NORMS IN INTERNATIONAL BOUNDARY DISPUTES

**Saghir Munir Mehar**[1]

## Introduction

Politics or is it law, understanding or principle, compromise or rule, strange questions keep on arising when international issues keep on jolting the scenario. International boundary disputes have played a unique role in International law, in its development and in creating more questions as to human rights situation. The International Court of Justice (ICJ) and many international tribunals have faced international boundary questions many times and have successfully dealt with it. That does not mean that the numbers of international boundary disputes have decreased or the human population affected by such disputes have been remunerated. Most of the nations just do not want to have their case heard by ICJ out of many political reasons. The courts have relied on many ways to solve international boundary disputes in the past. Some of the claims that nations had before the international courts and international tribunals were based on treaty[2], uti possidetis[3], self-determination[4], geographical needs[5], economical need, effective control, elitism and ideology[6]. This paper is going to look into another aspect of international boundary disputes, that is politics. International law itself is a construction of compromises and agreements

[1] Saghir is presently working as Faculty and advisor for legal affairs with the Prince Sultan University, Riyadh Kingdom of Saudi Arabia.

[2] For the purpose of understanding the treaties with respect to international boundary disputes I found two books in their general sense to be very useful. One was Termination of treaties in international law by Athanassios Vamvoukos and the second is Introduction to the Law of treaties by Paul Reuter, translated by Jose Mico and Peter Haggenmacher. The principal of Rebus Sic Stantibus which always made me think twice before going into the disputes of boundaries, after reading R.Y. Jennings, The Acquisition of Territory IN International Law became quite clear, in the sense that states normally inherit treaties to boundaries and can not just escape the force of those treaties that easily.

[3] See B.A. Garner, Blacks Law Dictionary (West Publishing Company, 1999) p. 1554, Uti possidites has been defined as doctrine by which "old administrative boundaries will become international boundaries when a political subdivision achieves independence." BLACK'S LAW. See also Joshua Castellino, Title to Territory in International Law, A Temporal Analysis (Dartmouth Publishing Company, 2003) p.3.

[4] Even though the concept is believed to be in state of early life before the creation of the UN, after creation of which the concept was originally recognized by the Charter of the UN but customary international law shows strong traces of the concept in history, even before the creation of UN.

[5] See Norman J. G. Pounds, Political Geography, (New York, McGraw-Hill, 1972) p. 258. The book also gives other claims like prescription, strategic claims, economic claims, ethnic claims, claims based on proximity, spheres of influence and acquisition of territories from pg 252 to 262. Most of these claims have not been given any value in most of the international cases but still exist in international law.

[6] Elitist claims to territory are an old principle legalizing the claims of conquerors. It contends that a particular minority has the right or duty to control certain territories. These claims have become quite less in number due to the reason that the principle runs counter to the principles of democracy.

amongst nations, meaning there by it can be changed whenever needed for political reasons. Political reasons do not necessarily mean adversely affecting the morals and standards of justice. Politics itself is a consensus in most of the cases either by political agents or by the individuals who form or appoint those political agents. It is not necessary that a political decision would always be a standard moral code or if the affect would be just. The boundary disputes falling under dispute as to being a question of law or politics depends solely on the case which comes in front. This paper raises questions and tries to answer them on the subject. Finally, this paper would also briefly look into why standard legal rules are adopted in most of the border dispute cases in order to reduce terrorism and create confidence amongst the nations and entities for rules of international law.

**Affect of Politics & Law on International Boundary Dispute Situation:**

Political understanding of the problem is most of the time different and flexible from that of legal norms. Human life and integrity is greatly affected by the decisions which are either against the norm or norms which are against justice and common sense. Political decisions in international boundary disputes, or lack of proper legislation, have turned huge numbers of people into refugees[7] and sometimes when the border moves, they become stateless[8] or displaced person in their own territory[9]. In all of the above mentioned cases the human rights of these effected individuals gets affect. The standard of life also changes with the loss of identity by visible change in the life style of displaced persons. One appropriate example would be the Northern areas of Pakistan. These areas are in a very strange legal situation. There is a claim that these areas are part of the Kashmir State. This claim is upheld by both India and Kashmir Parties. The second claimant is Pakistan which believes its status to be independent from Kashmir State. The territory of Northern areas is, however, not given any place in any constitutional instrument, leaving it open for many definitions. The people of these territories amidst this entire boundary dispute face a position of displacement. Most of the tribes who occupy this area are indigenous and have occupied this area for centuries yet face questions. Defining the status of these areas has been hard both in local laws of Pakistan and in international law. The status of the nationality of persons who live in these areas is to some extent unclear. The inhabitants can not approach the Supreme Court of Pakistan because the Constitution of Pakistan does not extend its jurisdiction to these areas, hence putting the people of Northern areas in a legal discrimination. The Kashmir state can not practice its jurisdiction on these areas because they are

[7] See 1951 Convention on the status of Refugees Article 1 A (2).
[8] See Convention relating to the status of Stateless persons entered into force on 6th of June 1960.
[9] Internally displaced persons.

believed to be territories of Pakistan and are duly occupied by Pakistan. The Pakistan courts have however played a positive role in finding a solution to the problem in some of its case writ petitions[10]. The courts have tried their best to solve the problems of the said area under the constitutional structure of Pakistan. Though there are no proper norms on the status of northern areas yet the political entities play their role in solving the problems. The political entities have resolved the matter by issuing the individuals Pakistan passports The Northern areas are just a test case where politics and law have joined hands to solve the dilemma.

**Political Understanding In The Form Of Treaty Laws**

Treaties themselves are political compromises which then take up the status of laws. The development of laws can be argued through politics and political process. Taking into account some other international boundary disputes this paper also looks into the gaps of international law which need to be covered in order to improve the situation. The law of treaties and behavior of states also play an important role in creating and diminishing international boundary disputes. By the law of treaties I do not take into account only the Vienna Convention on law of treaties,[11] but also the customary international law for treaties. The reason for this is because most of the international boundary disputes are far older then the Vienna convention. It is only the customary international law, which can effectively explain the point in dealing with the question of international boundary disputes and people who get affected by it. The international tribunals and international courts are very much interested in the existence of treaties in any such dispute. The interpretation of treaties is another question, which is very much debatable before the international courts[12]. One country or nation may argue that the state did not mean the treaty to be as such as the other state takes it to be or the situation in which it was made. This leaves a space for political experts to exercise their understanding of the problem. The treaties and the law of treaties are undoubtedly forceful before the international courts and tribunals. The international court can not hear a case on its own and has to follow a set of principles[13], providing an opportunity for political forces to exercise the substance of political science. It is also pertinent

[10] See Al-Jehad Trust vs. Federation of Pakistan (Supreme Court Monthly Review, PLD Publishers, Lahore 1999) p1379. See also Pervez Iqbal vs. Federation of Pakistan (Supreme Court Monthly Review PLD Publishers, Lahore 2004) p1334.

[11] Vienna Convention on Law of Treaties was adopted on 27th of May 1969 and entered into force on 27th January 1980.

[12] See Paul Reuter, Introduction to the Law of treaties, (London) pg 73.

[13] See Article 40 of the Statute of International Court of Justice at http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0 last visited on 17th of June 2008.

to note here that the ICJ has a prescribed method for getting into disputes. Article 38 of the statutes of ICJ[14] makes it clear what is to be the procedure of the ICJ in respect of its proceedings. The consent of the states to have a matter heard at the ICJ is still in most cases a matter of political dialogue.

The first and foremost application of the court is treaty and conventions[15]. If the court is successful in finding existence of treaty and the text is very much clear on a point the court prefers it and subsequently even decides the case on the basis of that treaty. Courts firmness in upholding treaty obligations can also be seen in the case of Gabcíkovo-Nagymaros Project (Hungary/Slovakia)[16]. On the question of boundaries the court has also relied on treaties as obligations to be followed by the parties. The only thing on the question of treaties is to effectively interpret them. If in cases of boundary disputes the treaty also contains any map then it becomes easy for the court to come to a just result.

One of the best examples is Temple of Preah Vihear (Cambodia v. Thailand)[17]. The court by nine votes to three came to the result that the temple of Preah Vihear is situated on the territory under the sovereignty of Cambodia and Thailand was under obligation to remove any sort of military or police force from there. The subject of the dispute in the case was sovereignty over the region of the Temple of Preah Vihear. This region of the temple of Preah Vihear is an ancient sanctuary, which is situated at the Dangrek range of mountains and which happens to be the boundary between Cambodia and Thailand. The instrument used by the court was the treaty of 13th February 1904. The treaty established the general character of the boundaries of these countries. This treaty was between France and Siam that is now Thailand. This treaty actually established the borders that later became the borders of Cambodia and Thailand.

The arguments of both the parties were based on treaties, religion, geography, culture, etc. The court was inclined to reject the arguments pressed by Thailand and the court relied on treaties that took place during the border

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[14] See Article 38 of the Statute of International Court of Justice at http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0 last visited on 17th of June 2008. The article gives the basic methodology for looking into the cases which are before the ICJ. Where these four elements are not clear and the court has been given jurisdiction to try the case then ultimately the cases fall on the rule of equity and other requirements but in all cases these four are the preliminary requirements.

[15] See A.O.Bowett, The International Court of Justice Process, Practice and Procedure, (London, British Institute of International and Comparative Law, 1997) Chapter one. The book is collection of works by different Judges of the court and gives an insight in to the procedures of the court which it applies and the process which it uses in coming to a result.

[16] See for the details of the case. http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=hs&case=92&k =8d visited on 18th of June 2008.

[17] See case concerning Temple of Preah Vihear (Cambodia v. Thailand.), 1962 I.C.J. 6, 9 June 15. See also of ICJ http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=ct&case=45&k=46 visited on 18th of June 2008.

delimitation period. Coupled with these treaties were the maps that both the countries relied upon. The court assessed the maps and found out that the entire Preah Vihear region was located in the geographic area, which later became the Cambodia. The court accepted the argument of Cambodia that the 1904 treaty between French and the Siam was good enough in deciding the fate of the region. The court understood that the authority to draw the border rested in the Mixed Boundary Commission (MBC). The MBC also had the authority to map the entire region. The commission completed its duties and placed the temple in the now Cambodian territory, what was then French Indo China.[18] This factor of accepting the treaty has made a precedent in that it explains the system of ICJ in holding the obligations of treaty first.

Another aspect of the force of treaties can be seen in the African cases. Here, the vast numbers of claims over boundaries were not the result of prescriptive rights[19] but were the result of European treaties. There is one question that may arise at this point for the new states where the principle of new slate is upheld. What would be the status of boundary treaties for those states? The treaties also devolve on the successor states despite the change of sovereignty[20]. For the sake of maintaining stability and continuity of boundaries, most of the international community accepts the principle[21].

Still to see is the case of clean slate states and the cases where the treaty cannot be enforced and/or the principle of rebus sic stantibus[22]. The Shatt-AL-Arab boundary dispute is an interesting case in this regard. According to the 1937 treaty Iraq had sovereignty over the river Shatt-AL-Arab that runs along its frontiers with Iran. This river was to mark a boundary between these two states. In April 1969 Iran declared that it no longer accepted the treaty as effective on different grounds. Iran demanded a new and revised treaty dividing the Shatt-AL-Arab at Thalweg line, in accordance with the international rules of law and

[18] See http://www.icj-cij.org/docket/index.php?p1=3&p2=3&code=ct&case=45&k=46 visited on 18th of June 2008.

[19] Prescriptive rights are gained by occupying a certain land for a long period of time. When after this long period certain entities can claim that land to be theirs.

[20] See Peter Malanczuk "Treaties" AKEHURSTS Modern Introduction to International Law, 7th Edition, (London, Taylor & Francis Books Ltd, 1997) p. 162. In case of dis-positive treaties (that is, treaties which deal with rights over territory), succession to rights and obligations always occurs. Such treaties run with the land and are unaffected by changes of sovereignty over the territory. The definition points at the Vienna Convention 1978. If a treaty delimits a boundary between two states, and if the territory is acquired by a third state, the third state is bound by boundary treaty. See also an interesting book Treaties and Alliance of the World 6th Edition, the book looks in to most of the treaties conducted by many states over variety of topics.

[21] See Malcolm Shaw, Title to territory in Africa, (Oxford, Oxford University Press1986) p. 234. The chapter looks at the effect of boundary treaties if the states get occupied by another state or generally in the case of state succession.

[22] This rule states that a party to a treaty may unilaterally invoke as a ground for terminating or suspending the operation of a treaty the fact that there is a fundamental change in the circumstances from those, which existed at the time of the conclusion of the treaty.

justice. It also argued that the 1937 treaty was not in compliance with general customary law. Iraq rejected all the arguments of Iran by saying that there is no international principle for the delimitation of riparian boundaries, except for what the parties agreed to and that was either the Thalwej or the median line may be adopted or alternately the whole river may be agreed to belong to one country. The argument of Iraq was legal, valid and acceptable in international law. Although Iraq made another agreement in 1975, its arguments on the point were right in international law[23]. One might think that the political dialogues are stronger then treaties, provided one succeeds in it. The treaties can also be changed by the players of political pedagogy.

Practice reveals that the countries have now accepted the rule that the states inherit the treaties of their predecessors. The principle of succession to boundary settlement that has been bounded in treaties is to some extent a practice of the states. United States, while they did not accept that, was bounded by the treaties of UK, after independence did accept the previously established boundaries[24]. So is the case with the procedures of ICJ that the inheritance of treaties as far as the boundary disputes goes is accepted as principle. If the court does not find any treaty on the point or if it does finds one but the treaty is not interpretable then the court looks for other ways to decide the case regarding boundary dispute. The other thing, which seems to be very important to the international court of Justice, is uti possidetis.[25] The is an emphatic need for the study of treaties in international boundary dispute for the purpose of solving the problem of terrorism, displaced persons and refugees. The law of treaties and then the practice of states ensure the creation of norms that become recognized in international law. The situation of displaced persons is very vague in international law so the research focuses on the state practice towards theses subjects. A considerable number of treaties have come into existence. In these boundary disputes the most vulnerable are the occupants of that territory which has changed its shape or boundary. The question is, have international norms become an affective tool for solving international boundary disputes?

## Effect of Politics on Legal Norms

Practice has revealed another element; even if there are treaties, maps and legal norms, the political agents succeed in forging a different kind of agreement. Even the courts have resolved to compromises while deciding these matters. The

[23] See N.Kontou, The termination and revision of treaties in the light of new customary international law, (Oxford, Clarendon Press, 1994) p. 103.

[24] See Malcolm Shaw, Title to territory in Africa, (Oxford, Oxford University Press1986) p. 236. Also see the case US vs. Texas, where it was held that the Texan boundary with the US was that which was established in the treaty of 1828 between United State and Texas.

[25] See note 2.

case of Iraq war shows that the entire UN's charter was violated by the US to move into war with Iraq. The UN's Charter clearly indicates that force shall not be used and, to the best of states' abilities, dialogues will be preferred. If force is to be used, then a method prescribed by the UN is to be used. Political agents however found this to be meaningless for the USA and they moved into Iraq. This incident clearly shows that international law is a set of international compromises and so far has not seen its status to be portrayed as an effectively implemental instrument like a local law. This leaves place for international players to chalk things out in new way for new problems. On the same hand this element reduces the level of confidence for the subjects. Subjects these days are more then just states; the scope reaches out to belligerents, independence movements, aggrieved groups and many more.

The effect of this is the increase of terrorism and movements which do not have confidence in drafted laws or norms. For them use of force is the only method of getting recognition of their self determination. While factions look at the UN as an ineffective player in international disputes, terrorism is viewed as a sound instrument of voicing their policies. The psychology of non-belief of equilibrium at an international level leaves entities to rethink their policies of survival. A belief that there would be no territorial sovereignty, protection and impeccable thought that one can get attacked at any time discredits the status of UN's Charter.

The second thing that is severely affected in the international boundary dispute is the property which is owned by the people who occupy these areas. The person who has suffered an identity stroke also gets tortured with respect to his property. There are treaties with respect to the properties which are left back or are still occupied by the displaced persons. The rule to return makes some room in these treaties for the rendition of pain caused to the affected but is still insufficient[26]. There were huge numbers of people who got displaced in the Kashmir case and then resettled in Pakistan and also in Kashmir. A procedure was devised for rehabilitation of these displaced persons. Their abandoned properties were converted in units and in replacement of these units they were given property inside the state of Pakistan. The state practice plays an important role in international law to make positive norms. At least this practice assures the security and service to some states and can ultimately become part of international system. There are hundreds and thousands of people who in the plight of armed conflict leave their properties, resulting in the properties being inhibited by the occupiers of that land. The general assembly of the UN has in its

[26] The reason is the insufficient norms of international law, which are also inaccurate if a case is put for test on it.

numerous resolutions recognized the right of return. The General Assembly has reaffirmed or recognized the right to return to one's home in resolutions concerning Algeria[27], Cyprus[28], Palestine/Israel[29] and Rwanda[30]. These resolutions have not forced many nations to rethink their policies. Cosovo is also a good example where several resolutions have been passed on the complaints of people who could not return to enjoy their property.

## Conclusion

The involvement of politics in international boundary disputes is both positive and negative in its nature. When the international norms are settled over an issue the involvement of political elements reduce the level of confidence in the system, like in the case of Iraq. The individuals develop disbelief in a working mechanism of the international bodies. Resultantly they resort to refigure their status and establish other methods of solving their problems. Practice has shown that political involvements in established norms have mostly discredited the international nomenclature of the law. This then increases terrorism, movements and agitations. The only thing that leaves an individual under the umbrella of law is the confidence that the law would hold him equal with others. The present scenario of the world is due to the deviation of some nations from the norms of international law.

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[27] See General Assembly resolution 1672 (XVI).
[28] See General Assembly resolution 3212 (XXIX).
[29] See General Assembly resolutions 51/126 and 194 (III).
[30] See General Assembly resolution 51/114.

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# Natrona County Drug Court Evaluation: Applying The Recently Published National Process Evaluation And Performance Measurement Standards To A Local Program

**Cary Heck, Ph.D.**

Drug courts have emerged as one of the fastest growing and controversial, criminal justice interventions for substance abusing and addicted offenders. While the growth has been phenomenal, the literature on the effectiveness of drug courts has lagged. Part of the problem related to researching drug courts has been the paucity of uniform data collected by operational programs. In 2006 the Bureau of Justice Assistance (BJA), published a document entitled, "Local Drug Court Research: Navigating Performance Measures and Process Evaluations," in conjunction with the National Drug Court Institute (NDCI) and the Office of National Drug Control Policy (ONDCP). The document provided a blueprint for local drug court evaluation and a uniform method for collecting drug court information. This report presents one of the first local program evaluations using the BJA model. This model allows for useful findings at the local level as well as data that can be aggregated at the state and national level. The findings from the Natrona County (Wyoming) drug court evaluation suggest that program graduates are employed, paying taxes, and largely remaining out of the criminal justice system.

## Introduction

A systematic review of the drug court literature produces a string of evidence that drug court programs are effective at achieving their stated goals (cf. Wilson, Mitchell, and Mackenzie 2006). These programs reduce substance abuse and recidivism among participants. The outcomes are better than any other type of criminal justice intervention designed to impact substance abusing offenders (Marlowe, DeMatteo, and Festinger 2003). Drug courts are programs managed by local authorities designed to provide treatment services and stringent supervision to substance-abusing or addicted offenders in the community. Drug courts rely on a regimen of frequent drug testing, intensive supervision, judicial oversight, drug counseling and treatment, social and educational opportunities, and the use of a behavioral model to encourage pro-social behavior.

The drug court model is premised upon a collaborative approach that provides complete assessment and matches locally available resources with offender needs. Ideally, offenders are screened using criteria that focus both on risk and needs. Risk factors include such things as previous criminal history and personal stability. Offenders with previous violent criminality are often excluded

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from participation. The need factors include such things as severity of addiction problems, co-occurring disorders, and prior treatment failures.

The goals of most drug court programs generally include reduction in substance abuse and criminality among participants. A long list of research suggests that applications of the drug court model are effective in reaching these goals (see Huddleston et al. 2004). However, it is becoming increasingly clear that the extent to which these programs are successful depends upon several key factors, which include the appropriate allocation of resources, continuity of application, and team participation. While it is unclear which of these factors is the most important, there is evidence that the model in its entirety produces positive results (Berman and Feinblatt 2005). Drug courts are often also measured by their ability to maintain and function within the "Key Components" (National Association of Drug Court Professionals 1997) of the drug court model. Significant research in the field of therapeutic court interventions suggests that the integrity of the drug court model is one of the primary predictors of programmatic success (Belenko 1998 and 2001).

Recent literature on drug courts also suggests that the power of the program may rest in its ability to reframe social networks for participants (May, 2006; Heck, Roussell, and Culhane 2007). Laub and Sampson (2003) argue that while criminal trajectories tend to remain fairly constant over the life course, there are factors such as stable employment and healthy marriages, which can help to diminish the drive to continue criminal behavior. Drug court programs often require participants to be employed and carefully manage their social networks of participants.

The purposes of this evaluation are twofold. The first purpose is to determine the extent to which the Natrona County Adult Drug Court Program is achieving its mission and benefiting the community at large and the program participants specifically. While this evaluation product is specifically designed to meet the requirements of a federal granting agency, the real value of the product is in providing a "check-up" for the program and offering recommendations for improvement when appropriate. The second purpose of this evaluation is to test an evaluation model designed to both serve local court programs and promote the collection of data at the state and national levels to determine the level of effectiveness of drug court programs in achieving their missions.

## Program Description

There is a significant problem with substance abusing offenders in Natrona County, Wyoming. Drug and alcohol offenses account for the single largest number of offenses for which arrests are made. Among this population

there are a growing number of people with methamphetamine addictions. Focus group participants agreed that methamphetamine is readily available and commonly used by a large proportion of the Natrona County population. This type of addiction requires intensive therapy and treatment to reach a successful outcome. The Natrona County Adult Drug Court (NCADC) appears to have been molded to deal with the difficult population of offenders that they serve.

The Natrona County Adult Drug Court began operations with a small start-up grant ($75,000) from the Wyoming Department of Health, Substance Abuse Division in January of 2002. Since that time the program has grown in a manner consistent with the needs and available services of the Casper community. Currently the program provides services for approximately 50 to 60 participants. These services include intensive treatment, consistent randomized drug testing, regular judicial contact, community supervision, counseling, and social support. Additionally, the NCADC is clearly designed around the "10 Key Components" of drug courts and is in compliance with state judicial and Department of Health rules and regulations for drug court operations.

The drug court process follows strict guidelines for referral and screening. As is the case with many drug courts around the nation, the NCADC gets drug court referrals from a variety of sources. As the program shows continued success with substance-abusing offenders, the range of individuals asking for assistance continues to grow. However, the primary means for acquiring referrals is through the jail. Offenders with appropriate backgrounds and addiction problems severe enough to warrant intensive treatment are run through a series of screening regimens that focus upon criminal background, substance abuse history, social history, psychological and/or medical issues. The screening instrument seems well devised and provides enough information for the members of the court to make a reasonable decision regarding the appropriateness of the candidate.

Participants who meet the screening criteria and choose to enter the program are placed in an Intensive Outpatient Treatment Program (IOTP), under Intensive Supervision Probation (ISP). ISP includes regularly scheduled and unannounced home and work site visits. These visits are conducted by a team of highly active law enforcement professionals including assigned agents from the State Department of Corrections and officers from the Casper Police Department. These professionals work to determine the appropriateness of living arrangements as well as to ensure compliance with a variety of rules and regulations by the participants. Participants work with law enforcement professionals to develop a schedule; this schedule is routinely checked by enforcement personnel.

The IOTP is centered on the development of a comprehensive individualized treatment plan developed for each offender. This plan is developed based upon a substance abuse assessment conducted by a Licensed Clinical Therapist and includes the use of the Addiction Severity Index (ASI) as well as other psychological and psychosocial tools. The assessment process is thorough and provides a sound measure of client needs. Additionally, this assessment appears broad enough to capture co-occurring disorders that are common among the population being served. Client strengths and needs are identified through this process and complete treatment plans are developed using short and long-term goals and objectives. Participants actively engage in their own treatment planning and often appear to become vested in their treatment and sobriety through this process. IOTP requires participants to attend nine hours of therapeutic treatment a week for approximately sixteen weeks.

After the completion of IOTP, participants continue to receive comprehensive treatment including Moral Reconation Therapy (MRT). Two licensed drug court therapists provide IOTP which includes the extensive relapse prevention program near the end of the drug court program. Therapists meet with each client for individual and/or treatment planning sessions throughout their drug court program whether they are in specific treatment groups or not. Both of these therapists bring extensive social service experience as well as appropriate training and certifications to the drug court program. Participants receive referrals from the drug court staff to a variety of services available in the Casper area. While there is always room for improvement in the availability of social services, it appears that the drug court team makes full use of the resources available in their community. Importantly, participants are required to join local Alcoholics Anonymous and Narcotics Anonymous groups and to find a sponsor. This connection has been documented through research to provide a continuing source of assistance for individuals with addiction problems as they move forward and graduate from more intensive treatment. The timeframe between the initial IOTP and the final relapse groups are used for clients to complete community referral programs and services.

The drug court program is progressive and based upon a behavioral approach to creating pro-social and conforming behavior (Marlowe, in press-a). In keeping with the drug court model, participants are awarded incentives and given sanctions based upon their behavior during the program. For example, if a participant is found to have missed a curfew the program staff will discuss the appropriate sanction for this behavior based upon the program policies as well as the participant's personal background and program participation level. Decisions about these sanctions and incentives are made during weekly judicial review conferences. These conferences are the heart of the drug court process. The

NCADC judicial review conferences are lively and reflect the appropriate tension between the treatment and supervision components of the team. They are attended by all of the important players in the drug court program and each individual seems to be heard as they discuss client behavior and progress.

The actual court hearings for the NCADC reflect the collaborative nature of the program. While the judge and the client under review are on center stage, all of the drug court team members enter into discussions about client behavior and court recommendations. This type of court hearing appears rather unconventional, but the importance of the team approach is readily visible in NCADC court activities. While the judge makes the final decisions about client issues, it is clearly the team that provides guidance.

Drug court participants can earn the right to proceed through the four phases of the program based upon continued sobriety and meeting other related program and clinical objectives. These objectives include the completion of community service hours, payment of restitution, fines and fees, and completion of educational and employment related goals. The program generally lasts twelve to eighteen months. Upon graduation participants are offered the opportunity to participate in a voluntary Alumni Association. Despite the difficulty of the program, and the extended period of intensive treatment/ supervision, over 200 participants have voluntarily entered the NCADC and 101 of those have successfully graduated as of July 1, 2007.

**Process Evaluation - Research Methodology**

Drug court research and evaluation generally takes one of two tacks. The first is empirically designed research that attempts to determine causality. This type of research is generally well-funded and requires years to complete. While this type of research does provide the foundation for practice, it is generally not a viable option for local drug court programs. The cost of such studies is prohibitive in most cases. A second more accessible type of research focuses on evaluating local program processes and collecting a set of performance measures. This type of research serves well as a barometer of program activity and effectiveness. Generally, this type of research is conducted by skilled researchers who have knowledge of evaluation methods, as well as content knowledge regarding the particular intervention. The current study fits into this category.

As with any business or social service program it is important to objectively review the operations to determine the extent to which the enterprise is reaching its goals. Few businesses operate well without regular evaluation of processes, procedures, and product. It is important to review and document strengths and weaknesses, determine the extent to which the business is meeting

the needs of its customers, and routinely scrutinize the activities by which the business attempts to meet its goals. Many federal and state agencies are also beginning to rely more heavily on a business model of management. It makes good sense from a managerial perspective to set measures for performance and then evaluate programs based upon those measures. These measures are valuable for documenting program outcomes and for providing a baseline by which the NCADC can determine if programmatic changes create the desired effects.

For drug courts, the evaluative tools upon which they are measured relate to the impact that the program has on participants. Drug courts admit only participants with relatively serious substance abuse or addiction problems. The promise of the program is that these participants will receive comprehensive treatment and other social services while being closely supervised and monitored by the court. The underlying presumption is that through the use of behavioral conditioning (i.e. sanctions and incentives), participants will become increasingly engaged in treatment, recovery, and pro-social behaviors. Thus, it is important to measure the impact of drug court activities using the extent to which participants make changes in their behaviors related to their criminality and sobriety.

This evaluation product is designed to provide a comprehensive review of the NCADC that includes both process and outcome measures. The process portion of this evaluation is focused on the operations and activities of the drug court program. Based upon the program goals and the "Key Components" it is meant largely to assist in the management of the program and to provide some objective insight into components of the program. The second portion of this evaluation is designed to provide some basic statistics concerning program performance. These statistics are related to the important performance measures associated with drug court programs (Heck 2006). Context is a critically important element when looking at social service programs and will be addressed in this evaluation. Research has clearly shown that there are economic, social, and personal variables that impact the likelihood of success with drug court participants. These variables create the fabric that forms the unique nature of drug court operations and will be considered to the extent possible in this evaluation. Finally, some recommendations are made that could help to enhance program performance and improve both effectiveness and efficiency.

Three basic purposes guide social science research: exploration, description, and explanation (Babbie 2002). On a limited scale, this evaluation will serve all three purposes. This research seeks to explore and describe the processes that contribute to the NCADC product and, in an inexact way, explain some of the impacts of the program. This combined model helps to provide a

marker of where the program has been, discuss the changes in the program, and document the effects of the program on participant behavior.

The methodology selected for this evaluation is based upon the questions driving the research. An initial interview was conducted with the program coordinator to explore her needs for managerial information and to determine what questions loom largest for the program. Since the time of that interview, secondary data has been collected concerning drug court operations and participant activities. Additionally, secondary information concerning the number and types of arrests in Natrona County was gathered and reviewed. This information is useful in determining the extent to which the NCADC is reaching its target population and having the intended impact. The initial round of evaluation interviews were conducted with all of the members of the drug court team, some of the management committee and a few of the participants. These interviews were structured with the questions being drawn from the issues discussed in the initial interview with the court coordinator as well as from drug court research. In the second round of data collection, anonymous surveys were collected from all staff and a focus group was conducted with 17 randomly selected participants. No personal information was taken from these participants. Finally, the judicial review and court proceedings were observed and notes were taken.

Statistical analysis was performed on the secondary data using the Statistical Package for Social Sciences (SPSS). Content analysis was performed on the interview and focus group responses as well as the staff surveys and all of the information was then brought together to complete the foundation for this evaluation. The NCADC uses a localized database for collecting information and this information was provided for review.

**Fidelity of the Drug Court Model**

The adult drug court model was codified in 1997 by the National Association of Drug Court Professionals in a document that described the "10 Key Components" that define the drug court model. These components can be refined into five specific dimensions.

| | |
|---|---|
| Dimension 1 | Integrated non-adversarial justice system responses. |
| Dimension 2 | Quick and appropriate responses to participant substance abuse. |
| Dimension 3 | Behavior management overseen by a judge/magistrate. |
| Dimension 4 | Intensive and consistent supervision of participants. |
| Dimension 5 | Collaboration with local and state agencies. |

NCADC functions at a level consistent with the intent of these dimensions. The drug court itself is non-adversarial and integrates all of the key players in decision-making processes. Drug and alcohol testing is frequent enough to ensure quick detection and the program staff and the judge work diligently to respond to dirty drug screens in the week in which they are given. The behavior management model is based upon a team approach but it is clearly the judge who oversees the dispensing of sanctions and incentives to participants. While there remains room for improvement in this component of the program (see recommendations below), the team is clearly committed to improving pro-social functioning among participants. Community supervision of participants is a strength of the NCADC. The team has two dedicated police officers and sufficient probation staff to supervise participants and make regular visits and night checks on their activities. Finally, the program collaborates well with the District Attorney's Office as well as the Public Defender's Office and other community based resources.

**Program Goals**

NCADC operates with four primary program goals:

Goal 1. Intervene into the cycle of recidivism among adult substance abusing offenders by offering drug court as an alternative sentencing option.

Goal 2. Reduce offender participation in criminal activity by providing supervision with immediate consequences for behavior.

Goal 3. Increase offender self-responsibility and productivity by addressing ongoing recovery needs.

Goal 4. Involve the community and partner with key community stakeholders.

The first three of these goals can be summarized and measured using the four primary performance measures developed by the National Research Advisory Committee of the National Drug Court Institute (Heck 2006). The performance measures will be outlined below. The fourth goal is more subjective and thus requires a different approach for measurement.

Community involvement in the NCADC is evidenced by the broad support from local law enforcement and other community leaders. Natrona County and the City of Casper have pledged continued support both fiscally and programmatically. In fact, the matching funds for state funding come from these entities. Further, the program frequently uses a broad base of community services including some transitional housing provided by other local governmental agencies and not-for profit organizations.

**Program Processes and Structure**

There are many aspects to drug court systems that must work in sync for programs to be successful. By all accounts the NCADC has an excellent set of processes that promote stable and consistent treatment of offenders. The three primary court processes in which drug courts engage are screening and admission of clients, judicial review meetings, and court proceedings.

The screening and admission processes for the NCADC seem to work exceptionally well. As clients are referred, the drug court team is quick to respond and the tools used for screening seem adequate. Research in the field of drug courts is very clear on the importance of analyzing potential clients quickly and getting them to their first treatment encounter in close temporal proximity to the time of arrest. Judging from the available information, the NCADC understands this concern and is doing the best that it can to accomplish the goal of quick client processing.

Judicial review meetings are the point in the process in which all of the team members provide input into the court recommendations for each client. The NCADC review meetings may seem a bit chaotic and disorganized, but there is a definite method to the madness. It is often difficult to remain focused on the task at hand while encouraging input from a variety of sources. Two recommendations emerged from the observation of the NCADC review meeting. These recommendations are that the entire team, including those members from the District Attorney's and Public Defender's Offices, be provided with greater information prior to the meeting. During the review it seemed as though much of the time was spent detailing information that would be useful in team decision-making. If this information was available in a consistent manner prior to the meeting, all members would have greater time to prepare their thoughts regarding client plans.

All of the planning and weekly activity of a drug court program comes together in the actual drug court hearing. Client issues are addressed directly with the judge and the team in a semi-formal setting. The team decisions, sanctions or incentives, are relayed to clients. The NCADC court hearing was impressive. Clients were addressed by Judge Huber in a caring, consistent manner. The judge listened to client responses and elicited comments and input from other team members as needed. It was obvious to the evaluator and the clients that the actions of the court were reflections of the desires of all of the team members.

**Program Eligibility**

The true target population for any drug court is often driven by the available resources and the criminal population. The NCADC has defined its

target population as adults with a second or subsequent misdemeanor alcohol charge or a second or subsequent misdemeanor drug use or possession charge. Additionally, the program accepts some clients who are already on probation and are facing revocation for dirty drug screens. Excluded from this population are those with previous charges involving violent crimes or sexual offenses. There are generally two means by which the extent to which a program is meeting its target population is measured. The first is to look at the characteristics of the current program population to determine the level to which the program participants reflect the target. Using this means of analysis it is clear that the NCADC is achieving its stated goal. All program participants fit the desired characteristics. The second means by which the target population goal is assessed is to look at the overall number of individuals in the community that fit the program requirements and compare that number to the actual number of clients served. Using this form of analysis, it is obvious that the NCADC could serve many more people in the Casper community. However, as is always the case, the program is limited by the available resources. When this constraint is factored in, it is fair to state that the NCADC could serve a few more clients, but in general is close to serving the target population to the best of its ability.

**Treatment Services**

The treatment services provided by the NCADC appear to be excellent. The two primary counselors are skilled and compassionate and seem to embrace the drug model of supervision and behavior management. Clients report a strong willingness to provide support and promote healthy living. The management of the treatment program is guided by the program coordinator. The treatment planning and case management aspects of the program are well devised and provide a strong continuum of care for clients. Assessment is an important component of treatment provision and the NCADC has an excellent set of assessment tools at its disposal. Client needs are assessed and reviewed on a regular basis and serve as the cornerstone of counseling.

**Program Strengths**

The strengths of the NCADC seem to flow from the people who work in the program. The judge is perceived as caring and compassionate. The treatment professionals are well versed in the philosophy of treatment. The supervision personnel are active and supportive of one another as well as the clients. Overall, the program is well-conceived and effectively managed; clients have reported that the program is effective and helpful. The results of these strengths are evidenced in the performance measures discussed below.

The NCADC meets or exceeds all expectations for drug court activities according to the key components. While appropriate tension exists between the treatment and supervision elements of the program, there is a genuine team approach that guides all of the actions of the NCADC. This team approach is clearly cemented by the commitment of all team members to their clients. Moderated by Judge Huber, the team operates in a democratic fashion and promotes input from all team members on each case. This approach is most visible in the judicial review meetings and the court sessions the team makes decisions the judge follows through with the clients.

**Areas for Improvement**

While the program is performing well, there are still areas in need of improvement. The one program element that seems to continue to be of concern is the behavioral management model applied to participants. This element is critical for the coercive treatment model to be effective with clients (Marlowe and Kirby 1999). The behavioral management model should be premised upon some basic principles, including reliable detection of behaviors (certainty), swift responses to behaviors (celerity), and appropriate magnitude of program responses. Beyond these basics, it is important for program managers to consider the ratios of responses to behaviors. That is, early in the program it is most important to maintain a fixed ratio of one action to one response while later in the program it is preferable to adopt a variable ratio response (Marlowe forthcoming-a). Participants reported that the magnitude and frequency of incentives did not provide much in the way of motivation for continued pro-social behavior. Participants did not have confidence that their positive actions would result in incentives and did not believe the incentives that were given sufficient to support change.

Secondly, there is some room for improvement in the program managements' sensitivity to the employers of clients. Oftentimes it is quite difficult for drug court participants to get and keep quality employment. This circumstance is further hampered by the extensive, and important, requirements of the program. Program participants understand the need for program rigor but asked for additional sensitivity to their needs to maintain normalized working hours. As mentioned above, there is a growing body of evidence that suggests that stable employment may be one of the most critical factors in creating desistance from life-course criminality among adult offenders (Laub and Sampson 2003). It is extremely important that the NCADC create an environment that is supportive of gainful employment.

## Performance Measures

In the spring of 2006 the National Drug Court Institute published performance measures that were based upon a growing body of research in the fields of substance abuse and drug courts. Proximal drug court program goals were discussed and measures of these goals developed. It is these goals upon which the Natrona County Adult Drug Court is measured.

A recent compilation of NCADC statistics suggests a healthy population and some wonderful outcomes.

**Client Status Report – January 1, 2002 through June 27, 2007**

| | |
|---|---|
| Total Screened (included 15 in process) | 433 |
| Total not accepted or self-refusal | 209 |
| Total Admitted | 209 |
| Total Active | 62 |
| Total Graduates | 101 |
| Total Inactive or terminated | 46 |

## Retention

Empirical evidence clearly supports the assertion that treatment is highly effective when completed (Huddleston et al., 2004). There is a strong correlation in the addictions literature between the lengths of time spent in treatment and participant performance after treatment. The retention rate for drug court participants is an important measure of programmatic success. This rate can be calculated as a ratio of the number of graduates added to the current population divided by the total number of program admissions. For the NCADC this rate translates into 79%. This rate exceeds national averages and significantly improves upon the rates achieved by other court and voluntary treatment admissions approaches (Huddleston, et al. 2004).

## Recidivism

Recidivism rates are operationalized using arrest data. The 101 program graduates entered the program with an average of 8.9 previous arrests. This number represents fairly clear evidence that the population in question is substantially criminogenic. Of these 101 only nine were arrested during program participation. Two of these nine were arrested twice. Thus the in-program recidivism rate is 8.9%. Of the one hundred one graduates, twenty-six have completed the program since July 1, 2006. Only seven of the remaining seventy-five clients were arrested in the year immediately following their program

graduation. This translates into a 9.3% recidivism rate for this group. This compares extremely favorably with national averages of 30-40% for offenders on probation alone and 60-80% with those who serve jail time with no probation (Huddleston et al. 2005).

Of the forty-three program graduates who have been out of the program for more that two years only eleven have been rearrested. This translates into a 25% recidivism rate. This is a dramatic change from the average of 8.9 previous arrests and the astounding average of 2.2 arrests in the year immediately preceding drug court admission.

**Sobriety**

On average, drug court clients currently in the NCADC report approximately 227 days of continuous sobriety. This is measured using drug screens and translates into 7.5 months of clean and sober living.

**Treatment and Other Services**

The NCADC provides a variety of services and service referrals for drug court clients. During the intensive treatment portion of the program, drug court clients receive approximately 9 hours a week of counseling and substance abuse therapy. Beyond the intensive period, clients receive four to six hours a week of treatment. Additionally, the program provides cognitive behavioral therapy, community supervision, mental health and medical referrals, job search referrals, and referrals to anger management and other resources as needed.

**Description of NCADC Graduates**

NCADC graduates exhibit tremendous change in lifestyles and activities when compared with their pre-program behaviors. On average, the graduates are employed full-time, paying child support or reunified with their families, and have resolved all of the legal issues that accumulated over years of criminal and delinquent activities. They work in service industries, construction, and for oil/natural gas companies. They pay taxes and several of them are working at achieving educational goals which will make them even more employable. It is safe to say that on average they are not under-employed. They have received an average of fifteen months of substance abuse treatment and have remained drug and alcohol free for over eight months while in the program. Importantly, they have internalized their sobriety and are meeting life on its own terms. While long-term success is never guaranteed, this group of citizens is much better prepared to deal with the difficulties of life than they were prior to program admission.

## Recommendations

There are four basic program recommendations that emerged from this evaluation. The first two of these reflect the desires of program participants. The second set of recommendations emerged from staff surveys, staffing and court observation, and the focus group participants.

## Moral Reconation Therapy Group (MRT)

Participants were genuinely concerned and disappointed to hear that the MRT group was to be lost due to budget cuts and the maternity leave of one of the staff members. Participants stated that this group was among the best of the services offered to them during their program tenures. This cognitive-behavioral approach has enjoyed widespread acclaim as well as strong support in the literature particularly in the field of drug courts (Little 2006).

This group has been replaced, hopefully temporarily, by a goals group that will be facilitated by the supervisory personnel. Materials to be used were designed by Hazelden specifically for drug court programs.

## Drug Testing Times

The issue of drug testing was a core concern of the members of the focus group. The concern was not that testing should occur; all agreed that it should. The issue was the time at which testing is available. Several participants expressed growing pressure from employers to be at work during "normal business hours." One suggestion that was supported by the entire group was that the program allow for testing earlier in the morning. Obviously, this concern has to be balanced with the resources available to accomplish this time-intensive task.

## Sanctions and Incentives

The Natrona County Adult Drug Court relies on a point system for incentives for participants. This system awards points for each week that a client accomplishes the prescribed tasks and participates well in treatment and other program requirements. These points are put on a "white board" during the drug court session. There are certain point total requirements that must be met to advance through the program. While this approach seems to inspire some positive change, there is room for improvement. There is a significant amount of new research that deals directly with behavior management and drug courts (cf. Marlowe forthcoming-a). This research suggests that greater effectiveness can be achieved when a more complex model is applied. Program participants almost uniformly reported that while the sanctions seem to produce behavioral change, the incentives program was ineffective in creating behavioral change.

The recommendation is that the team attends training on sanctions and incentives and then develops a more principled approach to this key element of the drug court process. There are also several articles and book chapters that will be published soon to help program staff better understand these principles.

## Change Organizational Culture (A Bit)

Participants complained of feeling as though they are second-class citizens. While this complaint is fairly common in drug courts, there might be room for a discussion about communication styles and the messages being sent to participants through program policies and procedures. One of the commonly referenced concerns was the inability of participants to come through the front doors of the office building. This policy is apparently not a drug court policy but one put in place by the contractor who does the drug testing. While it may be difficult to change the policy, it did represent a genuine concern among participants.

## Conclusion

It is clear that the Natrona County Adult Drug Court is functioning at an efficient and effective level. Program outcomes are excellent on their own but they are further illuminated when compared to other programs from around the nation. The program is clearly living up to its mission statement and meeting the program goals. In fact, it would appear that the NCADC could serve a greater role for the State of Wyoming as a Mentor Court. The State of Wyoming could use two or three of these courts to help train new drug court professionals as they begin the monumental task of creating a wholly new operating system for a court.

There is no shortage of potential participants in Casper and the surrounding communities. While budget cuts have reduced NCADC's capacity for growth, the above recommendations can help the program to better serve the population in Natrona County. Future growth should still be considered; the problems of drugs and alcohol do not appear to be going away anytime soon. Clearly, the Natrona County Adult Drug Court is working well with the resources it has been given.

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## BOOK REVIEW
## By Edward J. Schauer, Ph.D.

**Lines and Shadows**. By Joseph Wambaugh. (New York: William Morrow, 1984. Pp. 383)

In the initial perusal, *Lines and Shadows*, one of Wambaugh's few non-fiction books, appears to be greatly outdated; its publication occurring nearly a quarter century ago. But this work is cogent to the present concern over illegal immigration in the American Southwest. In the reading of this book, this reviewer found himself thinking of the present while wrestling with the past; yet, all-the-while, pondering the future. In *Lines and Shadows*, Joseph Wambaugh chronicles the activities of the San Diego Police Department through its experimental Border Crime Task Force of the late 1970s and early 1980s.

When it was published in 1984, many loyal readers of Wambaugh's books considered *Lines and Shadows* to be his best work up to that time. Probably due to an increasing national concern for immigration into the United States from the southwest, *Lines and Shadows* is again in demand by the reading public in 2008. To meet the demand, the book has been reprinted recently in a paperback format.

The concept of the Border Crime Task Force germinated in the mind of a twenty-five-year-old Border Patrol officer, Dick Snider, as he heard (from the open windows of his room in the hotel in the border village of San Ysidro) the nightly screams of the immigrant victims as well as the shouts and shots of the vicious bandits and rapists preying upon them. Through the windows of his room, kept open for ventilation, Snider could hear the shouts and screams begin as darkness descended in the washes and canyons which immigrants had dubbed "Deadman's Canyon."

Dick Snider was deeply troubled by the alien plight; but it was not until a generation later, that the Border Crime Task Force was begun by the San Diego Police Department based upon his conceptualizations. The actual officers who went on their nightly forays into the no man's land of Deadman's Canyon, E-2 Canyon, and Washerwoman's Flat, were second and third-generation Americans who were chosen for their policing experience and their Spanish speaking abilities.

From its onset, the Border Crime Task Force faced issues and scenarios unlike those experienced by officers on regular beats. First of all, the Task Force members in the field were to pose as aliens in order to lure the bandits into the open. Second, distinguishing between illegal aliens and armed criminals was difficult in the dark of the canyons. The Task Force officers began calling

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themselves "Barfers" after they began using the codeword "BARF!" whenever one of their members sensed imminent danger or when it was time to pull their weapons to forcefully make an arrest.

While the Task Force was his idea, and while he spoke fluent Spanish learned from other children when his parents worked as itinerant agricultural laborers in his youth, it was decided that Dick Snyder could not actively accompany the Barfers' foot patrols since it would be so difficult for him to pass as a bona fide illegal immigrant -- even in the dark of the canyons. Jesus Manuel "Manny" Lopez was chosen by Dick Snyder to head up the Task Force.

Upon its deployment, the Border Crime Task Force achieved results: Border criminals were arrested; others were shot and killed. The Barfers quickly became media icons -- "The Last of the Gunslingers" (p., 143). The frequency of alien victimization declined. But all was not well with the members of the Task Force.

The Barfers found themselves in constant danger every night of deployment. Their grueling nighttime schedule placed serious strain upon their minds and upon their relationships. Solace, renewed dedication, energy, and increased bravery were sought by some through heavy alcohol consumption. Others were wounded by the bullets, knives, and clubs of their adversaries.

The media praise for the successes of the Border Crime Task Force also proved to have deleterious effects upon the Barfers. The standards for bravery and success were set incredibly high in the public perceptions. Barfers often felt that they had to aspire to meet media-portrayed expectations; thus they attempted to live the lives of mythical heroes. This in turn lead to ever heightened performance expectations and taking increased chances.

Due to the media-supported hero myth, individual Barfers tended to be frequently propositioned in cafes and bars for sexual liaisons. While such approaches might support the officer's self-esteem or even self-actualization, this factor, in and of itself, caused many marital, interpersonal, and personal difficulties.

Lastly, while the governments of Mexico and of the United States supported the Border Crime Task Force at its inception, neither were as supportive later as the Barfers struggled through the quagmire of legality in the performance of their duties. They found that when patrolling the border, there was a very fine line of differentiation between legal police action and the illegal.

*Lines and Shadows* is indeed one of Joseph Wambaugh's finest products. It is an exciting and gripping historical account of an aggressive visionary police immigration experiment − written by a master storyteller. This work gives insight from yesterday to help understand, solve, and alleviate the related and current international problems of alien plight, illegal immigration, and human

trafficking. *Lines and Shadows* is a valuable component of the literatures of criminal justice, international law and politics, and history.