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Theory to Practice

Bridging Drug Courts & Restorative Justice: A Practitioner's Perspective

by Susan Weise

Until recently, I coordinated a Victim-Offender Mediation/Conferencing Program in LaCrosse, Wisconsin. This year I left that position to coordinate our local drug court program. One of the initial challenges for me in my new position was to assess the extent of restorative justice principles found in this new program.

In this article, I offer my personal perspective on how our drug court compares with my past experience of restorative justice practice. For me, restorative justice programs are based on a set of underlying principles and values. Mark Umbreit (1998) has written that program practices can be more or less restorative along a continuum. While a drug court program may not embody all of the principles that we see in restorative justice, it can exist on the continuum of restorative practices. I speak as a newcomer to the drug court movement and I can only speak to our local program's roots and current practices.

Judge John Perlich, one of our local district court judges, initiated the La Crosse County Drug Court. He worked closely with the coordinator of the Justice Sanctions program in La Crosse County to explore the concept and to begin the

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Research & Programming

Community-Based Sentencing Demonstrates Low Recidivism Among Felony-Level Offenders

by Joel Copperman, Sarah Bryer, and Hannah Gray

The Center for Alternative Sentencing and Employment Services, Inc. (CASES), which provides services throughout New York City, aims to increase the understanding and use of community sanctions that are fair, affordable, and consistent with public safety. With a staff of 195 and an annual budget of \$12 million, CASES provides services and supervision for almost 14,000 offenders a year. Since its inception, we have been at the forefront of alternative sentencing for felony level offenders. Our Court Employment Project (CEP) has provided judges with sentencing options other than prison or probation for youth felony offenders since 1967. In 1999, building on the success of our youth program and our credibility in the courts, CASES created the Nathaniel Project, the first alternative to incarceration (ATI) program in New York City to serve mentally ill, adult, felony offenders. Ever cognizant of our role not just as a direct service provider but also as a catalyst for systems change, we have begun a recidivism analysis to document the lasting benefits of our alternative to incarceration programs for felony offenders.

While other outcome measures also describe the success or failure of criminal justice interventions, recidivism rates are often seen as the ultimate indicator of a sentenc-

ing option's effectiveness. Because ongoing criminal activity impacts public safety, taxpayer dollars, and the quality of life of communities, recidivism rates succinctly capture a wide range of issues affected by criminal justice involvement. The recent spotlight on the financial and social cost of imprisonment has increased the use of community sanctions in many jurisdictions. However, barriers still remain to expanding these programs to serve felony offenders, including federal funding restrictions, minimum sentencing guidelines, and public misperception of the threat to public safety posed by felony level offenders. It is our hope that our evidence of the long-term success of community sanctions for felony offenders will result in greater access to the support and resources provided by such programs.

CASES recently began to document the recidivism rates of graduates from our programs for felony offenders. This work takes place in the context of our internal, periodic review of recidivism as well as several larger studies encompassing a range of alternative to incarceration programs in New York City. These larger studies, while generally helpful, do not adequately capture the justice outcomes of the offenders we serve.

For instance, the studies that include young

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offenders group our participants with those in other programs (including programs for drug offenders, women, and youth who did not receive our intervention), making it difficult to separate out and evaluate the impact of our specific interventions (NYC Criminal Justice Agency, 2001; Vera Institute of Justice, 2002). While we have also conducted recidivism analyses of CEP participants in the past, we have not done so since adopting a youth development strategy in 1999. Furthermore, there are almost no recidivism studies that track mentally ill offenders treated in the community. Therefore, our analysis of Nathaniel Project graduates adds important information to this largely empty field. We are pleased to report that the initial results of our analyses are overwhelmingly positive: it is clear that graduates of both of our programs re-offend at a far lesser rate than similar populations.

The Court Employment Project

Numerous studies have found that the strongest predictor of recidivism or entry into the correctional system for adults is prior incarceration (see, e.g., Benda, Corwyn and Toombs, 2001). CASES' Court Employment Project (CEP) targets jail- and prison-bound youth based on the belief that it is possible to divert youth from the path of future criminal activity through early intervention. CEP is a non-residential alternative-to-incarceration program for teenage felony offenders. Many of the youth entering our program have had prior criminal justice contact: no less than a third have been

arrested at least once before entering the program. For most participants, their intake case marks their first felony arrest, and indicates escalating criminal behavior. Without the advocacy of CASES' Court Representatives, who stand before judges and explain how CEP would meet the needs of the defendant and the concomitant needs of public safety, our young participants would be facing a significant period of incarceration, an event that would not only disrupt their academic and social development but

tence. Our criteria specifies that participants must be incarcerated at the time of intake or at arraignment, or, if out on bail or out on their own recognizance (ROR), they must meet one of the following conditions: have a prior arrest, if indicted on a Class B or C felony; have an open case, if indicted on a Class D or E felony; or have a prior felony conviction. (In New York State, felonies range in severity from A to E. Examples of A felonies include first-degree murder and criminal possession of four ounces or more

Agencies must push the envelope of what types of offenders are acceptable for community supervision.

also increase their likelihood of future criminal involvement.

Operating in the Supreme Court in the Bronx, Brooklyn, Manhattan and Queens, the six-month program is designed primarily for young felony offenders ages 15-20 who have relatively stable living situations and no serious substance abuse or mental health problems. In keeping with CEP's mission to serve as an alternative to incarceration, our intake criteria is designed to target only defendants likely to receive an incarcerative sentence if not diverted to the program. To arrive at our intake criteria, we analyzed court outcome data to determine the combination of the offender's instant offense, criminal history and bail status that would be most likely to produce a jail or prison sen-

of a controlled substance other than marijuana. Examples of E felonies include possession of more than eight ounces of marijuana and attempted commercial burglary.)

CEP Top Intake Charges

Each year CEP intakes approximately 400 youth between the ages of 15-20 with felony charges in the Supreme Courts in the Bronx, Manhattan, Queens, and Brooklyn; all of the youth are facing time in jail or prison. Fifty-two percent of these youth are charged with violent offenses such as assault, robbery and weapons possession; 33% are charged with drug offenses such as possession and/or sale of a controlled substance; and 15% are charged with non-violent prop-

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erty offenses such as grand larceny.

Once in the program, CEP staff uses a youth development model to emphasize youths' skills and abilities (rather than focusing on their deficiencies) and to help them set high expectations for their own educational, vocational and social development. Structured around a system of case management, each year CEP provides 400 youth with on-site art therapy, mentoring, substance abuse prevention, and outdoor and art activities. Our educational support services include school placement, basic literacy classes, computer and multimedia skills training, and GED preparation. We also offer a range of transitional job services that encourage participants to plan for careers rather than jobs, impart basic job readiness skills, and reinforce the connection between school and career. Since 2000, CEP has won four national awards for our youth development programming.

CEP Recidivism Study Results

To assess program impact on recidivism, CASES tracked a sample of youth who graduated from CEP and found that within two years of graduation, 80% had no new criminal convictions. The sample included the 118 graduates who completed CEP between September 2001 and February 2002, and captured any new criminal convictions occurring within the five boroughs of New York City. While each participant had committed at least one felony offense prior to entering the program, only 12% were convicted on a felony charge after completing CEP. Furthermore, although 57% of participants in the study entered CEP on violent charges, only 4% were re-convicted for violent crimes; the vast majority of the re-convictions were for property and drug offenses.

This preliminary analysis does not include the use of a comparison or control group. Nevertheless, the import of these findings is made more salient when held against the backdrop of outcomes for other court-involved youth. According to the Correctional Association of New York, among 16-18 year olds in New York City who are arrested and sent to city jail, 70% will return within a year of their release (Correctional Association of New York, 2002). Jeffrey Fagan's 1996 study of New York City youth aged 15-16 charged with robbery found that 76% were rearrested and 56% were re-incarcerated within a two-year period (Fagan, 1996). In 1999 the New York

State Division of Criminal Justice Services studied youth sentenced to the custody of the New York State Office of Children and Family Services and found that 75% were rearrested and 62% reconvicted within three years of their release (Frederick, 1999). When contrasted with the success of CASES' graduates, the outcomes presented in these studies strongly indicate the comparative benefits of providing court-involved youth with support and resources in their communities.

The Nathaniel Project

According to the Bureau of Justice Statistics, 81% of those inmates who suffer from mental illness in state prisons have prior criminal histories. For many individ-

of intake, and 88% have histories of psychiatric hospitalizations prior to enrollment.

Candidates typically face three to seven years in prison and 69% enter the program on a violent charge. They undergo a multi-step screening and risk-assessment process, including a careful review of their psychiatric and criminal history. Once accepted, our staff assists participants in engaging in treatment and obtaining supportive housing, and public benefits—all crucial elements in establishing stability and avoiding criminal involvement. The Project monitors participant progress, reports regularly to the sentencing court, and offers guidance and supportive counseling for a two-year period. The Nathaniel Project succeeds in providing services and support for mentally ill

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and they do so in a manner that improves public safety,
saves tax dollars, and benefits the community.***

uals afflicted by severe mental illness, incarceration is but one step in a cycle of imprisonment, release, relapse, and re-arrest. CASES' Nathaniel Project seeks to interrupt this cycle by offering judges a sentencing option that addresses the illness itself through a combination of intensive case management and community-based treatment. It is the first program in New York City to offer an alternative-to-incarceration for men and women with serious mental illness who have committed felony level offenses.

Operating in the Supreme Court in Manhattan, the Project considers any prison-bound defendant who has been indicted on a felony charge, has a severe and persistent mental illness as defined by the New York State Office of Mental Health, including bipolar disorder, major depression, and schizophrenia, and is motivated to engage in treatment.

Psychiatric Diagnosis

All Nathaniel Project participants have been diagnosed with a DSM-IV Axis I psychiatric disorder such as schizophrenia, bipolar disorder, schizoaffective illness or major depression with psychotic features. Eighty-eight percent have co-occurring substance abuse disorders; 92% are homeless at the time

individuals who are often excluded from care because of their multiple needs and the stigma of the "forensic" label. Over the past four years, we have served 71 individuals with serious and persistent mental illness who are facing prison time on a felony offense. Most are repeat offenders, and many are predicate felons. Nearly all are homeless, and many have a co-occurring substance abuse disorder. A snapshot of our participants revealed that:

- 83% of clients are both mentally ill and chemically addicted (MICA);
- 92% were homeless at time of release from jail; and
- 84% were not engaged in treatment at the time of arrest.

The program has demonstrated remarkable success in engaging participants in treatment—to date 67% of eligible clients have completed the intensive two-year program.

Our recidivism analysis for Nathaniel participants took a different form than the CEP analysis. Because the population served by Nathaniel is older than the CEP population, we were able to use the participants as their own control. We tracked our graduates' criminal histories for one year prior to entering the program and compared these histories to their contact with the justice sys-

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tem for one year after graduation. Until recently we have not had enough program graduates to conduct this kind of analysis with meaningful statistical results. In the last year, however, we have attained a critical mass of 13 individuals living in the community for at least one year after completing the program, thus allowing us to collect and analyze recidivism outcomes.

Our initial results have shown that Nathaniel Project graduates living in the community pose little risk to public safety. Whereas the 13 participants who graduated from the program at least a year ago were convicted a total of 33 times during the year before entering the program (including the conviction leading to program participation), they were convicted only four times during the year after graduation, and never on a violent charge. While all of the graduates entered the program with the equivalent of a felony level charge, they were not convicted of a single felony charge during the year following graduation.

Their success is significant, both in comparison to that of their peers and to their own histories. In New York, 64% of mentally ill offenders tracked after release in a 1991 study were rearrested within eighteen months (Feder, 1991). Our clients have long histories of criminal activity and all have committed at least one serious felony offense before entering the program. In fact, 55% of our participants have at least five arrests in their overall criminal history; 49% had more than five years of contact with the criminal justice system; 98% have spent time in city jail; and 19% have been to state prison. As demonstrated by their incredibly low rate of recidivism, CASES offers the critical connections to community treatment and support that offenders with mental illness need to successfully break the cycle of incarceration.

Implications for Practice

In the last several years, there has been increasing attention on the re-entry needs of the more than 600,000 offenders who leave state and federal prisons each year. Research institutes and community-based agencies have investigated how to engage returning offenders in services and help them be productive members of society. While this work is important, it is equally if not more important to devote resources to determining and applying the most appropriate sanction for each offender before s/he goes to prison. As the devastating impact of prisons on offenders, their families, and their communities continues to be

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Court Representatives: Building Bridges Between CASES and Judges

CASES' Court Representatives link the court to the community and comprise perhaps the most crucial element of our alternative to incarceration programs. Serving as ambassadors, advocates, and boundary spanners, CEP's Court Representatives and the Nathaniel Project's Forensic Clinical Coordinators convince court players to place felony-level offenders in our care and then ensure the court's on-going comfort with the sanction throughout the client's tenure in the program. While both of these projects provide community supervision to felony-level offenders, the precise roles of the court representatives reflect court players' views of the divergent public safety risks of youth and adults with mental illness as well as the varied needs of these separate populations.

Nathaniel Project's FCCs

Nathaniel Project Forensic Clinical Coordinators (FCCs), all of whom are experienced social workers, serve as "boundary spanners," who are conversant with the language, culture and operations of both the criminal justice system and the mental health system and who act as translators and advocates within each system. FCCs must explain to court players the nature and trajectory of mental illness, reassuring them that offenders with mental illness will not necessarily pose an undue risk to public safety. In turn, FCCs assist mental health service providers in overcoming their fears of a justice-involved client, reassuring them that adults with mental illness who have committed a crime can still be receptive to treatment.

Forensic Clinical Coordinators start the intake process after receiving a referral from judges, prosecutors, defense attorneys or community mental health workers. Once having received permission from the defense attorney, the FCC interviews the client either in jail or in the holding pens at the courthouse. This initial screening consists of an hour-long, semi-structured interview that serves several purposes. It helps the FCC determine the presence of a Serious and Persistent Mental Illness (SPMI), assess risk, and begin the engagement process with the offender. Staff takes this opportunity to

gather information about the individual's psychiatric, substance abuse, and housing histories, assessing the presence and history of a mental illness as well as the potential risk to the community posed by release. They also talk to the potential client about his/her important personal relationships, goals for recovery, expectations from the program, and responsibilities to the program if accepted. Of equal importance is the FCC's care to treat the offender with respect, to reach out and make physical contact through a handshake, and to give the offender hope that treatment can in fact work. After the initial interview, the program psychiatrist completes a second comprehensive mental status examination, and the FCCs continue to gather information about the client by requesting medical records and contacting the client's family, friends, and mental health providers.

Once a defendant is accepted by the Nathaniel Project, FCCs advocate for the client with the judge, prosecutor, and defense counsel, educate them about the client's psychiatric needs, and work to convince these decision-makers that releasing the client to the Nathaniel Project would evince a better outcome for the client and the community than sending the person to prison. This can be an easy task or an extremely difficult one, depending on individual attitudes about mental illness, the political climate, and the nature of the client's offense and history. In some cases, staff go to court ten times or more, submit numerous written reports, and have lengthy meetings with prosecutors, defense counsel and judges to help them understand how the program works, why the client will benefit from treatment, and to address their concerns about public safety. These efforts are almost always successful in gaining a client's release to the program.

Because the recovery trajectory for those who are mentally ill is never a straight line, the FCC's role becomes even more important once a client is released to the program. The FCCs report back regularly to the judge on client progress through written reports and client appearances. These reports must

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documented (see Clear & Rose 1999, Mauer & Chesney-Lind 2002, and Rose & Clear 1998), this "up-front" work becomes even more crucial. It is our belief that the tremendous financial and social cost of incarcerating offenders must be undertaken with great care, and, when possible, offenders who can be supervised in the community without risk to public safety should be.

In order to shift the current criminal justice climate in which jail and prison are overused forms of punishment for felony offenders, agencies must push the envelope of what types of offenders are acceptable for community supervision. CASES' experience and recidivism analyses show that agencies that promote community supervision need not stop short of advocating for felony-level offenders who have committed violent offenses. Strong court representatives can convince court players to place truly prison-bound offenders in the community. Moreover, the advocacy and public relations work of court representatives combined with programming that includes close monitoring and intense engagement with the client can serve to influence the culture of sentencing practices so that it regularly incorporates community sanctions as a viable sentencing option for felony offenders.

Conclusion

To evaluate the success of CASES' programs for felony offenders exclusively in terms of the recidivism rates of our graduates overlooks other important contributions our programs make to the quality of life of our participants and their communities. However, recidivism rates are indeed important measures of CASES' performance. We are extremely proud of our initial findings indicating that participants in our programs recidivate at a far lesser rate than their peers. We are also very aware of the important policy implications surrounding these promising outcomes. Our programs serve populations many other community-based programs may be hesitant to serve, including violent and mentally ill felony offenders, and they do so in a manner that improves public safety, saves tax dollars, and benefits the community. We hope that this study and others like it will expand this under-served population's access to the services and support needed to successfully exit the justice system.

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be honest and straightforward about a client's struggles in the program, while at the same time placing those struggles in the clinical context of relapse and recovery. Thus, the FCCs are continually educating judges about the nature of mental illness, while providing them with all the information necessary to make decisions that protect public safety.

Court Representatives for CEP

Court Representatives for the Court Employment Project (CEP) are the front-line advocates who convince court players to place felony-level youth offenders under community supervision. As such they are both the public face of CASES as well as ambassadors for the use of alternative to incarceration programs in general.

Court Representatives begin their work by scanning court dockets for charge-eligible cases, and responding to referrals from defense attorneys, prosecutors and judges. The Court Representatives first make a determination of whether the combination of the detention status and charges makes the youth likely to receive a jail or prison sentence. If this threshold is met, the Court Representative interviews the youth to determine that the youth has the motivation to complete the program, no serious substance abuse or mental health problems, and a relatively stable living situation.

This initial screening interview also

serves as an important first step in engaging the participant in the program. The Court Representative talks to the potential participant to determine if s/he will thrive in CEP's structured programming. The interview covers issues related to peers, school, family, and community and begins the process of identifying the participant's strengths and areas for growth. This interview is also used to inform the participant of what s/he can expect to receive from CEP's services and what will be expected for program completion.

Once the Court Representative has determined that the participant is facing jail or prison time, understands CEP's requirements, and has the motivation and ability to succeed in the program, the Court Representative makes the case in court for the participant to enter the program. The Representative stands before the judge with the defendant, his or her lawyer, and the prosecutor and explains how CEP would meet the needs of the defendant and the concomitant needs of public safety. If the judge agrees with our recommendations, Court Representatives make a commitment to keep the judge apprised of all developments concerning the case, both positive and negative. These reports submitted either verbally or in writing are always timely, thorough and honest. This approach both builds judicial trust in the program and reflects the importance of that trust for the ongoing success of the program. ■

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