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The Role of Shame: A Creative Look at Justice

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THE ROLE OF SHAME: A CREATIVE LOOK AT JUSTICE

by

GABRIELLE L. LORY

(Under the Direction of Laura E. Agnich)

ABSTRACT

The current criminal justice system is often brought under scrutiny for its perceived lack of procedural justice, low rates of victim satisfaction and a pattern of sentencing disparities among populations of racial minorities and people of low socioeconomic status (Palmer, 2015; Hamilton, 2017; Cornwell & Waite, 2009). Alternative justice programs have been growing in number for decades, as well as continually developing their processes to improve outcomes for victims and ameliorate sentencing disparities. This study examines the extant literature on alternative sentencing programs, specifically restorative justice programs, to provide empirical evidence contributing to the development of a creative justice framework as an alternative for traditional sentencing practices. This study aims to create an operational definition of creative justice distinct from restorative justice and deduce its applicability to multiple types of crimes. Semi-structured interviews with practitioners in the fields of criminal justice, law, and victim advocacy, and a content analysis of news articles about the utilization of practices that fit within a creative justice framework were conducted. The interview results describe the participants' experiences with victims, offenders, and restorative justice programs. Additionally, the participants were asked their expert opinions on the development and implementation of a creative justice framework. Overall, participants acknowledged the potential benefits of creative justice, provided suggestions for its use, and discussed the need for the continuation of research

in this area. The limitations, implications, and suggestions for the use of creative justice are discussed to guide future investigations and provide a theoretical basis for a creative justice framework.

INDEX WORDS: Creative justice, Restorative justice, Alternative sentencing, Victim satisfaction, Juvenile justice

THE ROLE OF SHAME: A CREATIVE LOOK AT JUSTICE

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GABRIELLE L. LORY

B.A., University of Georgia, 2016

A Thesis Submitted to the Graduate Faculty of Georgia Southern University in Partial
Fulfillment of the Requirements for the Degree

MASTER OF ARTS

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THE ROLE OF SHAME: A CREATIVE LOOK AT JUSTICE

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DEDICATION

For my grandfather, who consistently reminds me that I'm his favorite because I'm the only one getting my Ph.D. (unlike his sons).

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CHAPTER 1

INTRODUCTION

Purpose of Study

This study seeks to address the lack of literature currently available on alternative sentencing, a collective name for the different non-custodial ways in which courts can punish those convicted of a crime; specifically, “creative justice” sentencing. Creative justice programs are intended to exact justice upon those found guilty of a crime using unconventional methods such as public shaming, and avoid the punitive measures of the current criminal justice system. Additionally, it is intended to provide a new perspective on justice and to suggest significant policy changes in both sentencing and victim services in the field of criminal justice. Given the lack of extant data available on creative justice, the current study addresses a significant gap in the criminological literature and situates creative justice within a theoretical understanding of the role of shame in punishment for crimes.

In order for creative justice sentencing to be an effective process or one considered satisfactory by law enforcement, corrections, community, and victims, it must fulfill one of the five purposes of punishment. Punishment has five purposes: restoration, retribution, rehabilitation, deterrence, and incapacitation (Ariz., 2010). Restoration sometimes punishes the individual financially; being court ordered to pay the victim for physical injury, loss of property, and has rarely been ordered for “emotional distress.” Additionally, it can include the costs of the prosecution and court fees. Rehabilitation includes a variety of programs, such as treatment placement centers, counseling, educational, and vocational programs. These programs alter the criminal’s behavior in order to prevent future crime and ensure their return to society as a functional citizen. These programs are often used in combination with incarceration or probation

(Ariz., 2010). Incapacitation, or incarceration, simply removes the individual from society entirely by either placing them within an institution, house arrest and even execution (Ariz., 2010). Each of these purposes punishes an individual for being found guilty of a crime, and some provide an opportunity to prevent future crime. However, they each use different tactics to produce similar results (Garland, 1993).

Deterrence is a goal of punishment that exists in two types: specific and general. Specific deterrence is the punishment of an individual and is thought to deter them from future crime for fear of further punishment. General deterrence is considered to produce a fear of punishment within society, after hearing of punishment received by individuals. In 1764, Beccaria argued that deterrence is the only just function of punishment and would be most effective with standardized penalties, understood by the public, and enforced fairly (Beccaria & Paolucci, 1963). Additionally, he discussed three components of deterrence: severity, certainty, and celerity. Severity of punishment ensures a criminal is deterred from future crime but must be limited to maintain justice of punishment. The certainty of a punishment, or whether that punishment exists whenever a criminal act occurs, is believed to deter criminals because they're aware of the consequences of criminal behavior. Finally, the punishment must also be swift to prevent future crime. The swiftness, or rate at which punishment is received after the crime, directly influences the likelihood of re-offense; the swifter a punishment, the less likely the offender will commit another crime in the future (Beccaria & Paolucci, 1963). His arguments were later used as contributions to a comprehensive perspective known as utilitarianism, which excludes restitution and retribution as forms of punishment.

Deterrence, incapacitation, and rehabilitation are the three tenets of utilitarian punishment which serves as the theoretical basis for the criminal justice system in the United States today.

Through the assumed public's general knowledge of the law and the consequences faced when those laws are broken, citizens are expected to be deterred from committing crimes. If the initial deterrence fails, the individual will typically be faced with one of two options of punishment, incapacitation or rehabilitation. They will be incapacitated or incarcerated if they are deemed unfit for rehabilitation by a judge. Rehabilitation is intended to restore an offender to a healthy lifestyle, reintegrating them into society after a conviction and/or imprisonment. Using various treatments and forms of therapy, this process leads to lower recidivism rates, but it is used far less often than the conventional deterrence and incapacitation (Garland, 1993; Binder, Guyora, & Smith, 2000; Cullen, 2007).

Retribution occurs when the community is satisfied with the punishment received and reinforces society's belief in law enforcement. Pure retributivists consider deterrence, rehabilitation, and incapacitation to deny an offender dignity in their processes (Honderich, 1984). They consider allowing the offender to repay the victim through their own suffering to be a more dignified punishment by allowing the offender choices in their punishment and an understanding of their crime while also reducing crime rates (Bianchi & Pettit, 1986). Both utilitarianism and retributivism are regularly critiqued and debated amongst scholars, which has resulted in the creation and adoption of hybrid theories. These theories attempt to select the best of both theories in an attempt to create an alternative, more effective theory. This study attempts to operationalize a creative justice perspective that utilizes the punitive measures of utilitarianism while achieving either retributive or restorative goals.

Restorative justice sentencing serves as an alternative to the traditional measures of punishment in criminal justice systems. Restorative justice views crime as not only a crime against the state, but also against the community (Bazemore, Gordon, & Schiff, 2015; Sherman,

Lawrence, & Strang, 2007). It attempts to use cooperative processes to heal the victim, community, and offender. Potentially, restorative justice can be used for any crime with the willing participation of the parties affected. However, offenses such as sexual assault and domestic violence can pose many challenges for the restorative justice process due to the required participation of the victim and the nature of the crime (Miller, 2011). Despite these challenges, restorative justice programs offer various benefits to both victims and offenders all around the world (Shapland, Joanna, Sorsby & Robinson, 2011; Sherman, Lawrence, Strang, 2007).

Restorative justice theory maintains a more comprehensive view of crime when compared to the current system; recognizing how the crime actually harms those involved, rather than focusing on the simple illegality of the act. Instead of merely incarcerating an offender, restorative justice gives that offender a chance at rehabilitation. The restorative justice process is intended to ensure the offender acknowledges their wrongdoing and provides an opportunity for communication between victims and offenders if deemed appropriate (Bazemore, Gordon & Schiff, 2015). Additionally, restorative justice allows the offenders to provide direct community reparations, rather than just being removed from the community entirely (Bianchi & Pettit, 1986). Several facets of restorative justice are shared with what this study defines as creative justice.

Creative justice uses unconventional methods of punishment and intends to allow offenders to provide reparations to their community (Hannan, 2017; Hudak, 2010; Bonisteel, 2006; Goldberg, 1992). These reparations can include varying assignments of community service and are often very specific to the crime committed (Hannan, 2017; Bonisteel, 2006; Morrison, 2014; Hudak, 2010). For example, DUI offenders can be sentenced to participation in “Don’t

Drink and Drive” programs or vandals can be sentenced to repair, and possibly improve, the property they damaged. This differs from restorative justice in that the sentences are less about the acknowledgment of the harm caused by crime and communication about such, but more geared to public shaming and reversal of the offender’s wrongdoing (Hannan, 2017; Hudak, 2010; Word, 2007). Both processes open the lines of communication between the offender and the community as an alternative to incarceration, just in varying degrees.

Considering the low rates of victim satisfaction with the U.S. criminal justice system, negative perceptions of procedural justice, and high rates of recidivism (Leslie, Smirnov, Cherney, Kemp, & Najman, 2017), this study aims to provide an alternative sentencing perspective. By examining the utility and potential applications of creative justice as an academic term and providing a definition and evidence derived from exploratory qualitative research, this study will provide a basis for future research in the fields of criminal justice, criminology, and victimology. Furthermore, this study will identify the potential applications of creative justice sentencing in an effort to determine the potential effectiveness of the creative justice process when applied to various types of violent crimes. Developing a creative justice perspective can address the aforementioned issues with the current criminal justice system in the United States, particularly related to victims’ perceptions of the criminal justice system and rates of re-offending, as well as suggest new forms of punishment for those found guilty of a crime. In this way, the present study seeks to identify ways that the American criminal justice system could be improved.

In this study, the framework of creative justice will be established, and the concept will be defined and operationalized. Qualitative data collected from five in-depth interviews with criminal justice practitioners including criminologists, former district attorneys, and directors of

sexual advocacy centers is analyzed, as well as a content analysis of 10 news articles about creative justice practices. Interview participants have diverse experiences working with both victims and offenders of crimes ranging from misdemeanors to violent felonies, and both sexual and non-sexual offenses. They vary in specialties and experiences, but their expertise in the field of criminal justice and criminology serve as a quality source of data for this exploratory research which will inform future directions for utilizing creative justice in the U.S. criminal justice system as well as future research.

CHAPTER 2

THE UNITED STATES CRIMINAL JUSTICE SYSTEM

Overview

The American criminal justice system is composed of three branches: law enforcement, courts, and corrections. Together, they are responsible for defining crime, enforcing laws, making policy, judging alleged offenders, and sentencing those convicted of crimes (Cole, 2013). The branches are interdependent and have produced the current criminal justice system. Despite the interdependency of these components, the branches have been found to communicate poorly amongst themselves; which often negatively affects the procedural justice, or fairness, perceived by both victims and offenders (Leslie et al., 2017). These adverse effects stem from the criminal justice branches' inability to ensure the proper behaviors intended to be performed by the employees of the branch. Without adequate enforcement of the training required, the individuals within the system can contribute to negative perceptions and/or fail to perform their job correctly.

Victims

Crime victims' experiences within the United States criminal justice system have improved immensely since the 1970's when the Victims' Rights' Movement began to take shape. Prior to this time, the criminal justice system was exclusively state-centered and paid little attention to the victim. As the state considered crime to be against the government, victims received little to no restitution, retribution, or even a perception of justice.

Around the 1940s, scholars shifted their focus towards victims to study how they contributed to their own victimization. Gathering this information gave scholars insight into the experience and harm endured by the victims of crime, an area previously understudied. This new

information served as evidence of a societal need to begin addressing the needs of crime victims. When crime rates skyrocketed in the 1960s, the state began taking an interest in those harmed by crime. In 1966, the President's Commission on Law Enforcement and the Administration was formed and conducted the first ever National Crime Victimization Survey in 1972. The results of this survey contributed to the development of a crime index, illuminated the high rates of underreporting, and gave more insight to the real experience of crime victims.

The Victims' Rights (VR) Movement began in the 1970s as an attempt to draw attention to the ways victims are ignored by the criminal justice system on a daily basis and existed parallel to the women's movement, as both intended to reduce discrimination against minority populations. The women's movement recognized a large number of victims were by-products of the societal subjugation of women and began to advocate for female victims of rape and domestic violence (Young & Stein, 2004). In addition, the women's movement advocated for children's rights, which had historically not been considered victims of any crime. This movement resulted in several changes within victimology, the study of victims, and the criminal justice system.

Once women and children were recognized as victims, victims' services began to open victim service centers specifically for those populations (Young & Stein, 2004). These new centers encouraged counseling, to address the emotional and mental harm now being considered when studying victims. They also reduced a victims' dependency on the criminal justice system for assistance after a crime, which in turn reduced their likelihood to experience secondary victimization. Finally, these domestic violence centers were often run by volunteers and required little financial support (Young & Stein, 2004).

Emerging from the social movements of the 1960s and early 1970s, the VR movement brought awareness to the mistreatment of minorities, both victims, and offenders, within the criminal justice system. As the movement took shape, it increasingly focused on the goal of making procedural changes in how the criminal justice system operates. Eventually, legislation began to appear in various states, including protections for victims' procedural rights and varying interests. The legislation varied across states and types of offenses but guaranteed similar rights to victims such as information, protection, and restitution (Cassell, 2012). In 1984, the federal government created legislation known as The Victims of Crime Act (VOCA). This act established The Office for Victims of Crime, which was then held responsible for the Crime Victims Fund. The fund supports victim compensation, notification, and assistance programs by using billions of dollars procured through offender restitution. The benefits of the fund depend on the state in which the crime was committed, but generally include counseling costs, funeral expenses, lost wages, and medical expenses. The compensation can range from \$500 - \$100,000 depending on the state and claim. The funds take several weeks or months to process and limits victims' eligibility to apply (National Center for Victims of Crime, 2003).

Typically, the direct victim of a violent crime is eligible for compensation, but in some circumstances, they can only receive benefits if they were physically injured (National Center for Victims of Crime, 2003). This excludes many victims of violent crime who were psychologically traumatized by their experience. Additionally, most compensation programs require the victim report the crime promptly, cooperate with the police, submit an application within a specific time, have costs not covered by other programs, and not have been involved in misconduct during the crime (National Center for Victims of Crime, 2003). These requirements significantly

limit the eligibility of victims to apply and can make it incredibly difficult to receive compensation.

To date, thirty-four states have created bills of rights for victims, but the United States Constitution still lacks an amendment affording the rights of compensation, information, and protection to victims. The implementation of the Crime Victims' Rights Act serves as an indicator of another wave of victims' rights reform (Cassell, 2015). As a part of the Justice for All Act of 2004, victims were afforded eight specific rights: protection from the accused, notification of the offender's release, speak at criminal proceedings, consultation with prosecutor, restitution, free from unreasonable delay, treated with respect, and to not be excluded from proceedings (Young & Stein, 2004).

When comparing studies conducted before and after the implementation of the Crime Victims' Rights Act, the status of victim satisfaction with the criminal justice process has remained questionable (Haney, 2016; Laxminarayan et al., 2013; Norris & Thompson, 1993). It's been suggested that the system is alienating (Erez, 1990), there is an overall lack of sympathy for victims by practitioners (Elias, 1984), and a lack of understanding of victim's needs among practitioners (Shapland et al., 1985). On the other hand, Wesley Skogan (1989) did find high levels of satisfaction with police interactions when dealing with crimes such as burglary.

Norris and Thompson (1993, pg. 527) found that fewer than one in five victims found police to be "very helpful." They sampled 264 adult victims who had experienced a crime within the last six months, selected from a pool of 12,226 randomly chosen households in Kentucky. The participants completed an 18-point crime incidence questionnaire. In addition to finding low levels of satisfaction among victims, the study emphasized alienation as a cost of criminal

victimization. They found that a victim's positive perception about their proceedings outweighed the importance of an actual arrest of their offender. These results imply that policies improving police behaviors would prove beneficial to victims, regardless of their case outcome. Maguire (1984) suggested police should improve their arrival time when called, sympathetic attitude, ability to convey information to the victim, non-differential treatment of victims, and thorough investigations. If these changes were made at an organizational level, it would foster a more positive response to a victim's needs and produce higher levels of satisfaction (Maguire, 1984; Norris & Thompson, 1993).

These suggestions are reflected in the work of Erez and Bienkowska (1993). The authors used a national sample of Polish victims to identify various forms of victim participation in the judicial process. After random sampling from this pool, questionnaires were distributed, and the results were analyzed. Their findings confirm that all kinds of victim participation led to higher levels of satisfaction. They state that "process control," or the victims' perception of their inclusion in the proceedings, is an essential facet of procedural justice as well as a top indicator of victim satisfaction (Erez and Bienkowska, 1993, pg 58; Tyler, 1988)

More recently, studies report similar findings in regards to fair treatment and victim satisfaction. In a systematic review of the literature, researchers analyzed 22 articles in order to identify variables related to victim satisfaction and to emphasize the differing legal preferences among crime victims. These differences are dependent on the willingness of the victim to participate in any activity with an offender and their comfort level discussing the incident. (Laxminarayan et al., 2013). This report also found interactions with police and perception of fair treatment to be significant indicators of victim satisfaction with the judicial system. When victims feel stigmatized or ignored by law enforcement officers when reporting,

the criminal justice system is no longer capable of processing the case effectively, and this can lead to low rates of reporting crime (Norris & Thompson, 1993; Cassell, 2015; Armour, 2012; Reuland & Mikami, 2013).

Studies consistently report that victim satisfaction is highly dependent on their perception of fair treatment, involvement in the case proceedings, and satisfaction with the punishment of their offenders (Young & Stein, 2004; Tyler, 1988; Cassell, 2015; Cassell, 2012; Laximinarayan et al., 2013; Reuland & Mikami, 2013; Armour, 2012). Therefore, it can be stated that victim satisfaction can be improved through increased training for criminal justice personnel. Additional opportunities for victim participation during the court proceedings and more effective forms of punishment for offenders could also benefit victims. Crime victims would experience less secondary victimization at the hands of practitioners and feel more assured in the justice exacted on their offender. Enacting these policies would improve procedural justice, through decreased levels of isolation and disrespect, therefore increasing levels of victim satisfaction.

Procedural justice refers to the fairness of resolution practices used by the criminal justice system and includes the citizens' 'voice' concerning those proceedings. The theory of procedural justice encompasses the fair treatment of victims and alleged offenders by law enforcement. It includes the adequate preparation of victims for criminal proceedings, case outcomes, the victims' and offenders' ability to contribute to their proceedings, the notification of an offender's release to victims, and general treatment of victims and offenders by law and medical practitioners (Haney, 2016). Additionally, procedural justice has been identified as significantly influential over the community's perception of police legitimacy, and citizens' willingness to cooperate with state officials (Leslie et al., 2017). When victims and offenders have negative

perceptions about procedural justice, they are less likely to cooperate with police. However, effective policing relies heavily on the voluntary cooperation of the public (Murphy, 2009). In order to effectively prevent and control crime, the criminal justice system must take precautions to ensure procedural justice by both law enforcement and corrections officers.

Negative perceptions of procedural justice have been identified as one of the leading factors of poor victim satisfaction within the criminal justice system (Haney, 2016). The importance of procedural justice has been identified, particularly stating that “victim inclusion, choice, and empowerment may be the best predictors of mental health outcomes” (Herman, 2003 p. 163). When a victim is denied the right to participate in criminal proceedings, they often interpret this lack of information and communication as a display of their worth. Feelings of low self-worth contribute to feelings of depression, anxiety, and can even lead to secondary victimization (Herman, 2005; Clark, 2010). Secondary victimization is defined as the behavior and attitudes of social service providers that are “victim-blaming” and incentive, which further traumatizes victims who are being served within their institutions (Campbell & Raja, 1999). Research has concluded secondary victimization is more likely among those victims experiencing low levels of procedural justice (Orth, 2002).

Acknowledging the voice given to citizens uncovers the similarities of communities and police, which often share their conception of a collaborative and crime-free society (Tyler & Fagan, 2008; Tyler & Jackson, 2014). Considering the public’s opinion on crime and criminal proceedings has proven to be effective in maintaining law-abiding communities and is a tactic commonly used in restorative justice practices such as circle sentencing. Expectedly, communities without a voice experience more crime and can perceive the criminal justice system

to be unpredictable in its frequency and severity of punishments given (Bradford, 2014; Meares, 2009).

A study conducted by Campbell and Raja (1999) found socioeconomic status, gender, race, type of crime, and previous victimization to influence an individual's experience within the criminal justice system. For example, women are often given more leniency in their sentences when convicted of a crime but are more subject to secondary victimization, or continued traumatization by law and health practitioners, when reporting a crime compared to their male counterparts (Hamilton, 2017; Palmer, 2015). Campbell and Raja (1999) investigated secondary victimization or negative experiences experienced by a victim attempting to seek help. A lack of support, feeling judged by medical practitioners responsible for their treatment, or an unresponsive treatment plan can all result in secondary victimization. The authors distributed a questionnaire to a representative sample of mental health professionals registered with the Illinois Department of Professional Regulation which assessed the participants' beliefs about secondary victimization and their role played as mental and physical health professionals. The authors were concerned with victims' perception of their role due to the higher standards they are held to when caring for victims of sexual assault. In addition to caring for their physical ailments, the professionals must take extra precautions in order to avoid the revictimization of their patient. Without taking these precautions, the experience of the victim may only worsen in their pursuit of help after an assault.

Campbell and Raja (1999) identified several patterns within the data collected from the surveys. First, the results suggest community service providers can potentially further the harm experienced by victims attempting to seek help from them. Campbell and Raja (1999) found over half of the sampled therapists to believe that medical practitioners were conducting counseling

practices that contribute to secondary victimization. The most significant response found, with eighty-nine percent of practitioners agreeing, was that the medical rape exam traumatizes rape victims. The results did not differ when the researchers controlled for the age, gender, race, credentials, or work setting (Campbell & Raja, 1999). These responses should serve as a point of concern when the professionals responsible for caring for victims of sexual assault are mostly in agreement treatment only further victimizes. Second, the authors found that women of different races and socioeconomic statuses had vastly different experiences with victim services in their community. They found those professionals with more experience treating women of color, and victims of lower socioeconomic status were more likely to agree that current victim service practices can be harmful. These results coincide with extensive research on the perception of violence against women of color being a less severe crime (Bernard, Brandon, Fox-Genovese, & Purdue, 1992; White, 1985; Campbell & Raja, 1999). It is clear social stereotypes pervade the medical health community and can adversely affect the experience of victims of varying demographics (Campbell & Raja, 1999).

Currently, not all medical practitioners participate in any training in treating victims of violence, but it's been reported that eighty-five percent of therapists believe the training is necessary (Campbell, Raja, and Grining, 1999). These results suggest educating mental health professionals about treating victims of violence should be mandatory, expansive, and address secondary victimization as a significant risk. In addition, similar training should be conducted in other social systems, such as the legal personnel and general medical practitioners (Campbell, Raja, & Grining, 1999). The results of Campbell, Raja, and Grining's (1999) study illustrate the complex nature of community service professionals' reaction to victims of violence, noting the need for improved and mandatory training of any individual responsible for treating victims.

Additionally, the study further validates that a victim's demographics determine their experience when seeking help after an assault.

Offenders

The discrepancies found in the treatment of victims are reflected similarly in the treatment of offenders within the same populations. Studies have identified race, gender, socioeconomic status, citizenship and legal status to moderate incarceration rates and sentencing outcomes (Thomson & Zingraff, 1981; Hamilton, 2017; Valadez & Wang, 2017; Nowacki, 2018). More than sixty percent of the incarcerated population in the U.S. are racial minorities, with African-American men being six times as likely to be incarcerated as white men (Sentencing Project, 2015). Men receive sentences more than sixty-three percent longer than women on average, and women are twice as likely to avoid incarceration (Starr, 2012). After examining over 70,000 offenders, a study found education and income level to affect the severity and length of sentences exacted on individuals found guilty of a crime. Those with higher levels of education and income receiving less severe and shorter sentences than those of low education or socioeconomic status (Mustard, 2001).

When an individual is treated fairly by authority figures, it strengthens their status and encourages respect, while unfair treatment can result in reduced perceptions of police legitimacy (Murphy & Cherney, 2011). A lack of procedural justice leads to lower levels of respect between the police and community and a lack of cooperation between the community and criminal justice system. To reduce the marginalization, or disparagement, of offenders and improve victim satisfaction, the criminal justice system must take efforts to improve the public's perception of law enforcement. Improving the perception would result from crime victims' satisfaction with the process and a more effective process of punishment and rehabilitation for offenders. The

consistency of discrimination, lack of procedural justice, high recidivism rates, and the positive results of restorative justice studies further emphasize the need for change in the corrections system of the United States, with less generalized sentences seeking to address more than just punishment.

More individualized processes of punishment have been suggested as a potential source of alleviation of the discrepancies noted in sentencing patterns and lack of procedural justice (Zehr & Mika, 1998; Armour, 2012). Sentences geared toward the actual offense and/or offender, such as victim-offender mediation, have been found to be successful in community restoration and improved victim satisfaction (Armour, 2012). These specified sentences act as an alternative to traditional incarceration and include things such as participation in victim-offender mediations, various community service projects, and even basic public shaming (Bazemore, Gordon, Schiff, 2015; Johnstone, 2011; Kenny & Leonard, 2014). These types of sentences may be more likely to address the needs of victims, offenders, and the community when compared to simple incarceration.

Alternative sentencing programs, such as restorative or creative, maintain the offender's right to participate in their own proceedings, which leads to improved perceptions of procedural justice. These sentences also provide an opportunity for the offender to make reparations with both the community and victim of their crime, something not offered through incarceration (Campbell et al., 2006; Dominey, 2006; Newton, 2016). Allowing the offender such opportunities could potentially produce higher rates of victim satisfaction and improve procedural justice overall.

Sentencing

Federal sentences are determined by preset guidelines developed by the United States

Sentencing Commission. This set of rules is intended to provide honest, uniform, and proportional punishments across varying levels of crimes and offenders (Mustard, 2001). Although the Comprehensive Crime Control Act of 1984 allows judges to step outside the guidelines, there are still explicit rules prohibiting discrimination. The law states race, sex, national origin, religion, and socioeconomic status as factors to be ignored while determining sentencing (Marion, 1993). Despite these boundaries, criminal justice scholars have long questioned the possibility of personal and systemic biases affecting an offender's experience through the criminal justice process (Valadez & Wang, 2017; Michael, 2014; Hagan, 1974; Hamilton, 2017; Randall & Zingraff, 1981).

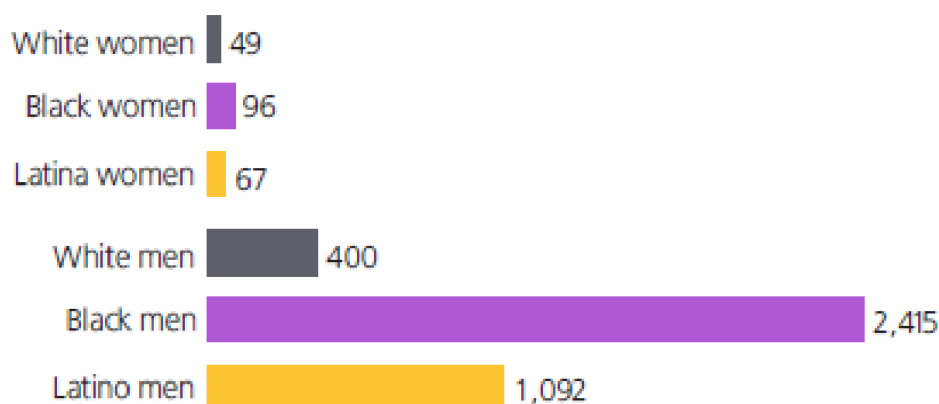
Studies have found blatant discrimination such that black men are more than six times as likely to be incarcerated when compared to white men and are likely to receive a sentence ten percent longer for similar crimes (Starr and Rehavi, 2013; Mustard, 2001; Hamilton, 2017; Starr, 2012; Sentencing Project, 2015; Nowacki, 2018; Flexon, 2012; Valadez & Wang, 2017). Similar research has undergone scrutiny for suggesting the same discrimination, finding race, age, gender, and socio-economic status to result in differential sentencing (Hagan; 1974, Thomson & Zingraff, 1981). These studies are limited both methodologically and conceptually, as there is inadequate longitudinal data, and the field of study is highly circumstantial. Without comprehensive data collected over time, the conclusions drawn by these specific studies are empirically weak and open to scrutiny. However, more recent studies have been able to validate the long-held notions of sentencing disparities further (Burch, 2015; Flexon, 2012; Valadez & Wang, 2017).

Figure 1 below was created by Carson (2018), for the Sentencing Project, after analyzing trends in United States' corrections from 1925-2017 and emphasizes the discrepancies occurring

within the traditional criminal justice system. The program is a Washington D.C. based advocacy and research center intended to reduce the rates of incarceration and address the sentencing disparities found.

Figure 1: Sentencing Disparities

Rate of Imprisonment per 100,000, by Gender, Race, and Ethnicity, 2016



Source: Carson, E.A. (2018). *Prisoners in 2016*. Washington, DC: Bureau of Justice Statistics.

Melissa Hamilton (2017) used a multilevel mixed model to test the effects of various factors at the case and group level; to explore the implications of non-uniform punishments. Hamilton (2017) used Commission datasets from 2008-2015 to collect longitudinal data, including numerous variables affecting an individual's sentence. She examined criminal history, gender, race, citizenship, trial penalty, and other explanatory variables in her analysis of federal sentencing cases. These were chosen to address the potential discrimination, the state of mass incarceration, and the blatant inconsistencies in penalties received. Hamilton's (2017) study confirms the impact of extralegal variables on sentencing, explicitly noting consistent leniency towards women. Additionally, the study highlighted some racial disparities in varying regions

but failed to establish implicit discrimination through an inability to identify “minority status” as a consistent indicator of more severe sentences. Her multilevel analysis allowed her to make distinctions among individual cases, regional variances, and systematic effects. Hamilton (2017) only found age and gender to impact sentencing systemically but confirmed that high rates of discrepancies, with regards to race and socioeconomic status, were occurring within specific regions.

Studies in social psychology have indicated various health risks posed by social isolation including depression, cognitive decline, and higher rates of mortality (Cornwell & Waite, 2009). The severity of the perceived isolation, of both victims and offenders, determines the effect it has on an individual. Research confirms that social participation and perceived social support are both integral to an individual’s well-being (Cornwell & Waite, 2009; House, 2001). Marginalized populations such as racial minorities, sexual minorities, and people of low socioeconomic status often perceive an isolation from social systems; those feelings are reinforced when faced with harsher punishments and fewer resources (Palmer, 2015; Hamilton, 2017; Elias, 1984; Bienkowska & Erez, 1993; Cornwell & Waite, 2009).

Regardless of race, gender, or socioeconomic status offenders are marginalized by their restricted community involvement, limited employment eligibility, disenfranchisement, and ban from public assistance (Sentencing Project, 2014; Moore, Tangney, & Stuewig, 2016). The incarceration of an offender removes them from society, strips them of their freedoms, and ensures they are unable to continue to break the law. From the moment of conviction, individuals are labeled as a “criminal offender” and enter a highly stigmatized population of people. They also experience restrictions of financial loans, college enrollment, custody of children, and even driver’s licenses (LeBel, 2012). These structural sanctions make it virtually impossible for an

offender to reintegrate themselves back into society, thus resulting in stigmatization and increasing the probability of reoffending (Braithwaite, 1989). In order to address the feelings of isolation for both victims and offenders, this study examines the potential for creative sentencing to improve outcomes in the U.S. criminal justice system.

CHAPTER 3

REINTEGRATIVE SHAMING

Reintegrative shaming theory (RST) was proposed by John Braithwaite (1989) while arguing for an integrative method of punishment, rather than the stigmatizing policies of the traditional corrections system. After analyzing the restorative justice procedures utilized by Asian police forces, he concluded continued delinquency was less likely when the offender is confronted based on morality rather than deterrence. Focusing on the actual wrongdoing of the crime, and the damage it has caused others improves the effectiveness of the punishment and reduces the chance of recidivism. Offenders met with authoritarian punishments, or even no punishment at all, both result in higher rates of delinquency when compared to more restorative programs (Braithwaite, 2002). Braithwaite (1989) states the stigmatization of offenders is a contributing factor to the criminal justice system's failure to reduce recidivism. He argues that reintegrative shaming is a preventative measure while stigmatizing offenders only enhances the existing issues with the criminal justice system, such as high recidivism rates and low rates of victim satisfaction.

Braithwaite (1989) summarizes reintegrative shaming society is expressing strong disapproval of a criminal act while maintaining a respectful relationship with the offender. He argues that when the shame is communicated in this manner, offenders internalize this shame and use it as motivation to reinvest in social connections. The offender's reinvestment in social connections reinforces a commitment against reoffending (Ahmed et al., 2001; Tyler et al., 2007). Braithwaite (1989) argued offenders would only receive the dialogue, forgiveness, and acknowledgment needed to enforce this commitment through restorative justice practices. The structure of restorative justice practices provides an opportunity for reintegrative shaming that

does not exist within traditional punitive measures. Victim-offender mediation, circle sentencing, victim-impact panels, and conferencing all provide an opportunity for dialogue between victim and offender. This dialogue is assumed to insert shame into the process, but the respect and forgiveness felt by the offender lend to the reintegrative nature of the process (Braithwaite, 2002).

Reintegrative shaming focuses the punishment on the criminal act, rather than the individual, and is followed by efforts to reintegrate offenders into the general population. Stigmatization, by contrast, occurs when the offender is simply isolated from the community with no opportunity for restoration (Mongold & Edwards, 2014; Braithwaite, 1989). The traditional criminal justice system in the United States relies almost solely on deterrence and incapacitation; it does not readily provide measures of reintegration for offenders after release. When no mechanism of reintegration exists, the shame received rests with an individual rather than their illegal behaviors (Braithwaite, 1989). The shame felt often leads to an offender feeling like an outcast from society, which weakens their social connections (Gilbert, 2016). These weak social connections often leave offenders to seek out criminal subcultures in order to feel acceptance and social support, which leads to reoffending and higher recidivism rates (Braithwaite, 1989).

Scheff (1994) states that the process of acknowledging and working through shame in a cooperative and inclusive manner is central to the reintegration of an offender. Doing so encourages the balance between the offender and society to be reinstated, and reduces their likelihood to seek out criminal subcultures. Reintegrative shaming theory argues that shame is the underlying cause of alienation and harmful behavior, like crime (Braithwaite, 1989; Gilligan, 2001; Nathanson, 1997). As a result, how a community manages shame is directly responsible

for how the crime's damages are resolved and how an offender is punished. Reintegrative shaming encourages the offender to acknowledge the wrongdoing while maintaining their dignity while stigmatizing shaming marginalizes the offender and fails to punish them effectively (Morrison, 2006). An effective punishment would address the damage done to the community, reduce the likelihood of reoffending, and reintegrate the offender back into society after completing their punishment. The shame associated with crime is projected onto an offender and often leaves them feeling alienated by their community. If this occurs, they are more likely to re-offend and continue to perpetuate harm to themselves and others. However, when an offender's shame is addressed through the cooperation of offender and community, a sense of solidarity can reemerge. This balance between an individual and their community reduces the likelihood of criminal behavior and ensures more effective forms of punishment (Braithwaite, 2002; Morrison, 2006).

The theoretical basis for restorative justice practices rests within RST due to their shared goals of punishment: healing and reintegration. Reintegrative shaming theory, as exhibited through restorative justice practices, views crime as an injury to an individual rather than the state (Braithwaite, 1989; Johnstone, 2011). The focus is on the victim's needs and how the offender can address the wrongdoing (Braithwaite, 1989; Armour, 2012). The punitive approach of the US criminal justice system leaves offenders isolated, stigmatized, and punished without any reparations distributed to the community. Maintaining a restorative justice focus ensures the offender takes responsibility for their actions while maintaining their dignity and providing an opportunity for retribution. An offender's voluntary participation in the restorative justice process leads to an internalized sense of shame in the offender, which can then act as a deterrent from future criminal activity (Braithwaite, 1989; Johnstone, 2011; Bazemore et al., 2015).

Therefore, offenders are responsible for compensating the community they've damaged and are also less likely to repeat their offense (Armour, 2012; Sherman et al., 2013).

In order for shame to be utilized effectively within the criminal justice system, shame acknowledgment must be encouraged, and shame displacement should be avoided. Ahmed (2001) describes shame acknowledgment as adaptive maintenance of healthy relationships beginning with acknowledging both the harm done and shame associated with the criminal act. Next, offenders must take responsibility for their actions; exhibiting through such as participation in their proceedings or restorative justice practices. Finally, the offender must make amends through either symbolic gestures or compensation to all those affected. If any of these three steps fail, the process shifts to shame displacement and is rendered an ineffective punishment (Ahmed, 2001; Morrison, 2006). Where the current criminal justice system often fails to complete the process of shame acknowledgment, the theory of restorative justice thrives by allowing offenders to take responsibility for their actions and repair the harm they've caused.

CHAPTER 4

RESTORATIVE JUSTICE

The history of restorative justice has been simplified into five stages: pre-state, weak state, strong state, the Keynesian welfare state, and the currently evolving state (Braithwaite, 1999; Weitekamp, 1999). Ancient Greek, Roman, and Arab civilization utilized the restorative approach in their forms of punishment. During this pre-state stage, restorative justice dominated criminal justice systems as most used shame acknowledgment rather than shame displacement (Ahmed, 2001; Weitekamp, 1999). They chose to punish the offender through by forcing the offender's acknowledgment of the harm caused and mandating compensation for their victims and community, through either physical or symbolic gestures. This was accomplished through processes similar to the current circle sentencing and victim-offender mediations (Braithwaite, 1989).

Capital punishment reigned supreme during the weak state stage, as monarchies were just beginning to take over civilizations in the late 18th century. Restorative justice was used less during this time because the crime was perceived as harm against the state, rather than individuals. As the state strengthened, formal police units and penitentiaries were formed, and restorative justice remained relatively unused. The Keynesian welfare state refers to the development of new professions, such as social work, intended to facilitate the punishment and rehabilitation of offenders. Finally, the contemporary state includes a revival of restorative justice practices within the last few decades (Braithwaite, 1999; Weitekamp, 1999). While most of these stages have included various forms of restorative justice, typically including forms of reconciliation or restoration they all entail offenders attempting to make amends for their crimes and aim to restore order after a conflict (Strang, 2017). Essentially, restorative justice views

criminal acts as an attack on social connections and attempts to heal them as a way to address the violation of the law (Kenny & Leonard, 2014).

Historically, traditional systems of justice have shared restorative justice ideals and have been recognized worldwide as potentially beneficial for both victims and offenders (Kenny & Leonard, 2014; Braithwaite, 1999; Strang, 2017). Braithwaite (1996, p. 327) even claimed, “I have yet to discover a culture which does not have some deep-seated restorative traditions. Nor is there a culture without retributive traditions.” The core tenants of restorative justice include the cooperation of victims, offenders, and communities in an attempt to understand the injustice and therefore prevent future crime (Braithwaite, 1999; Braithwaite, 1996; Strang, 2017; Kenny & Leonard, 2014). In North America, restorative justice did not gain momentum until the 1970s in response to victims’ dissatisfaction with the criminal justice system. The restorative justice movement grew from within the victims’ rights movement, which advocated for increased victim participation and fought for the right to compensation (Armour, 2012; Bazemore et al., 2015; Kenny & Leonard, 2014).

In 1974, two teenagers were sentenced to meet with and pay restitution with the owners of twenty-two properties they had vandalized in Kitchener, Ontario. This was the first victim-offender mediation in Canada and is known as the “Kitchener experiment.” In this case, the property owners met the offenders face-to-face, and with the assistance of a facilitator, came to a conclusion on the appropriate type and severity of punishment. This event also is considered a forerunner of the restorative justice movement in the United States (Armour, 2012; Peachy, 1989). While several more programs modeled after the Kitchener experiment were implemented in Canada and New Zealand, it wasn’t until the 1990s that restorative justice was considered mainstream in the U.S. (Armour, 2012; Johnstone, 2011; Umbreit, 1998).

In 1994 the American Bar Association officially endorsed victim-offender mediation, which typically involves the victims and offenders of crimes such as minor assaults. The two parties meet with a facilitator present in order to ensure a productive conversation ensues between the two, focusing on the harm caused to the victim. The discussion is intended to produce an agreement between all the affected parties on the type and severity of the punishment needed to address the crime (Armour, 2012). Afterward, hundreds of programs were created across North America and Europe, giving rise to societal acceptance of restorative justice practices as valid forms of punishment (Umbreit, 1998). The programs varied in their approaches to treatment and procedures, therefore producing different results of effectiveness. However, each was able to allow the opportunity for an offender to make amends and reduce their likelihood to re-offend by abiding by the most widely accepted working definition of restorative justice, as stated by Tony Marshall: “a process whereby all parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future” (cited in Kenny & Leonard, 2014, p. 47). The programs are typically just guidelines for what restorative justice measures include and sources of funding, not mandated utilization of restorative practices (Mongold & Edwards, 2014).

Based on reintegrative shaming theory, restorative justice uses shame acknowledgment to repair the harm done to a community while rehabilitating an offender and preventing future crime. Restorative justice practices such as victim-offender mediation and circle sentencing bring the offender and community together. This cooperation prevents an offender from feeling alienated from society, which reduces their likelihood of reoffending and allows them to publicly acknowledge their wrongdoing (Kenny & Leonard, 2014; Morrison, 2006). After the offender has accepted responsibility, they are given a chance to make amends with their community

through acts of community service or symbolic gestures to their victims. This process acknowledges the needs of those affected by the crime and reduces recidivism rates, both of which the current criminal justice system fails to do (Armour, 2012; Johnstone, 2011; Morrison, 2006).

CHAPTER 5

RESTORATIVE JUSTICE PRACTICES

Restorative justice sentencing provides an alternative to the current system, straying from the formal, punitive measures of punishment used in the US criminal justice system (Armour, 2012). The approach allows offenders to acknowledge their actions, take responsibility for their illicit behavior, and accept the consequences chosen within their sentence. The process is intended to gather the various individuals affected by the crime such as the victim, the offender, and the family of the victim and provide them with a safe space for communication. This safe environment is created through controlled setting, victims' voluntary participation, and use of trained mediators or facilitators.

Although restorative justice programs may vary in style, all are intended to address the harm done by crime in the community (Bazemore et al., 2015; Fulkerson, 2001; Braithwaite, 1989). The programs do not exclusively punish the offender, but also provide avenues of communication, opportunities for reparations, and make significant efforts towards reintegration. Restorative justice views crime as an injury to an individual and their practices are very reflective of such, focusing on victim-offender interaction (Mongold & Edwards, 2014; Armour, 2012). Several forms of restorative justice exist; they include victim-impact panels, victim-offender mediation, circle sentencing, and conferences (Bazemore et al., 2015; Armour, 2012). These programs exist in lieu of the formal criminal justice system but may also occur in conjunction with formal punishments.

Victim-Impact Panels

Victim-impact panels are constructed in order to allow the offender to communicate directly with victims of a crime similar to one they have personally committed. These sessions

are run by a trained facilitator, and all communications are voluntary. Typically, a small panel of volunteer victims explain the effects of their victimization to a larger group of offenders. While the specific victim of that offender is not commonly included in the panel, it provides an opportunity for the offender to recognize the consequences of their actions more thoroughly than traditional, punitive criminal justice processes (Fulkerson, 2001).

The panels are structured in order to remain non-confrontational and do not allow offenders to address or respond to the victims. The victim is simply given an opportunity to express their feelings, and the offenders are meant to understand the effect their actions had more fully. Studies of victim-impact panels have found the process to be beneficial to both victims and offenders, who reported lower levels of anxiety and depression among those who had participated in a panel compared to those processed through the traditional criminal justice system (Mercer, Lorden, & Lord, 1994; Fulkerson, 2001).

Victim-Offender Mediation

Victim-offender mediation places the affected parties face-to-face. The purpose of opening this dialogue is for victims and offenders to agree upon the consequences of the crime committed mutually and to provide the offender with an opportunity to apologize directly to their victim (Bazemore et al., 2015; Dhimi, 2016; Armour 2012). With the assistance of a trained mediator, the victim is able to recount the effects of the crime to their offender, directly contribute to the restitution plan set up for the offender, and even ask questions related to the offender's motivation or if they had learned anything from their crimes. These mediations give victims an active role in the judicial process, an essential aspect of procedural justice, and provides offenders with an opportunity to make amends (Umbreit, 2000; Erez and Bienkowska, 1993).

Research has found the typical outcomes of victim-offender mediations to be a simple apology, an act exhibiting the internalization of their shame and their attempt at symbolic reparations for their community and victim. The cases are typically property offenses, referred to mediation after an admission of guilt, but the mediation can also act as a precursor to the deposition in hopes of avoiding prosecution (Dhami, 2016; Bright, 2018). The offender admits responsibility, acknowledges the harm perpetrated, expresses remorse, offers restitution, and provides reassurance that the crime will not be committed again (Dhami, 2016; Armour, 2012). Research has found that these dialogues offer victims a sense of closure, and is commonly considered more important to a victim's healing than restitution, or restoration (Umbreit, 2000).

Circle Sentencing

Another restorative justice practice is circle sentencing. This expands the reach of victim-offender interactions to include the community in which the crime took place. This process typically consists of the victim, representatives of law, community members, the offender, family, and even friends of victims and offenders (Bazemore et al., 2015; Kenny & Leonard, 2014). All the participants work together to create an understanding of the crime and identify the necessary steps for healing all those affected. The structure and applicability of these programs vary drastically according to the community, the type of offense, and the willingness of participation (Kenny & Leonard, 2014; Lilles, 2002).

Modern circle sentencing is based on the indigenous practices of Native Americans who used talking circles to settle disputes involving both native and non-native people. Using circle sentencing must begin with a guilty plea by the offender, be considered worthy of an intervention of the offender, and have a clearly identifiable victim. These cases can include things such as property offenses, theft, and arson (Kenny & Leonard, 2014). The process begins with an

invitation to the entire community, and those who decide to attend are then seated in a circle. The circle is facilitated by either a chosen member of the community or a judge, and they are responsible for maintaining the integrity of the dialogue. Introductions of all participants are made, the charges are read, and then the offender's legal representation makes opening remarks. Afterward, members of the community and the victim are allowed to speak. The sessions can span anywhere from two to eight hours and are often split into two meetings. The final sentence received is officially imposed by a judge but includes the recommendations of the victim and community (Lilles, 2002; Kenny & Leonard, 2014; Daly, 1997).

First, the effectiveness of the program depends mainly on the relationship between the criminal justice system and the community as it requires a collaboration between the two. If the community and police have distrust, they will be unable to produce satisfactory results for neither the victim nor offender. Without proper education within the community and trust for the police, the program would be rendered useless in any region suffering from a lack of procedural justice and education. Second, there are critical factors required for a case to be deemed appropriate for circle sentencing including an offender with a positive attitude toward the process, a victim willing to participate and provide feedback, and the dedication of the support groups behind each (Coates, Umbreit, & Vos, 2000; Daly, 1997; Lilles, 2002). If the individuals involved in the case are hesitant to participate or outwardly defiant, the program would be ineffective in its ability to improve victim satisfaction and prevent future crime (Bazemore et al., 2015; Kenny & Leonard, 2014). Finally, the number of people able to participate in the program depends entirely upon the voluntary participation of all those affected as well as logistical support, such as community funding. Despite these restrictions, restorative justice programs have still been shown to reduce rates of repeat offending, increase victim satisfaction regarding

procedural justice, and produce reports of rehabilitated or reformed offenders (Bazemore et al., 2015; Miller, 2011; Sherman et al., 2013).

Conferences

Restorative justice conferences are set up to be conversational processes, as an exchange between the victim, offender, and community (Snow & Sanger, 2011; Dhimi, 2016). The goals of the conference are similar to that of victim-offender mediations and other restorative practices, focusing on the offender's accountability and victim's compensation. It differs from mediation or circle sentencing in that it exists as a problem-solving method aimed at allowing citizens to resolve problems internally (Maxwell & Morris, 1994; IRP, 2015). The conferences allow victims and families the opportunity to confront offenders and provides offenders with the opportunity to learn how their actions affected others in a formal setting. The setting encourages offenders to internalize their shame, while affording the community a chance for healing, instead of isolating the offender from the community (Snow & Sanger, 2011; Strang et al., 2006). While facilitators are present during these sessions, they remain emotionally removed from the encounters and emphasize direct communication by the affected parties. These conferences are held to the same standard as in victim-offender mediations, requiring the voluntary participation of all parties, community support, and a cooperative offender (Snow & Sanger, 2011; Bazemore et al., 2015).

Restorative conferencing is utilized by criminal justice systems in New Zealand, Australia, parts of Europe, and the United States (Maxwell & Morris, 2000; 2001; O'Mahoney, 2012). New Zealand developed the first conferencing program, based on the processes of the indigenous people of New Zealand. The Children, Young Persons and their Families Act of 1989 introduced family group conferences as an alternative sentencing program for youth justice

proceedings in New Zealand where the conferences are facilitated by youth justice coordinators who allow the victim to share the impact of the offender's crime. Conference participants are then allowed to share their recommendations for punishment which can either be accepted or denied by the professionals and victim (Maxwell & Morris, 2001). This original restorative conferencing program has been since adapted and implemented in multiple countries including Australia, Ireland, South Africa, and the United States (Maxwell & Morris, 2001; 2006).

Studies of restorative conferencing have measured participant involvement, the satisfaction of participants, and the effectiveness of those coordinating the conferences (Campbell et al., 2006; Kenny and Leonard, 2014; Dominey, 2006). Offender behavior was also observed during these structured meetings, explicitly noting indications of shame and their attitude towards the victim. In these evaluations, researchers found the majority of young people to prefer conferencing over the court, 78% of victims in Northern Ireland youth conferencing felt as if the offender had acknowledged the harm caused, and the community perceived the conferences to be producing positive results (Campbell et al., 2006; Maxwell & Morris, 2006; 2001; 1993; Griffin, 2004).

Despite these significant results, restorative justice research is commonly limited by a lack of longitudinal and program evaluation data. These limitations stem from a lack of consensus among scholars on the working definition of restorative justice, as well as an established history of prominently offender-oriented, or strictly punitive, policies (Johnstone, 2011; Armour, 2012; Maxwell & Morris, 2001). Restorative justice practices, however, are victim-oriented because they focus on repairing the harm done against the victim rather than solely stigmatizing the offender. On the whole, extant research provides support for the potential of the restorative justice model to reduce recidivism rates and have steadily increased the

acceptance of such programs into criminal justice systems around the world, including the United States (Kenny & Leonard, 2014; Gaudreault, 2005; Campbell et al.,2006; Maxwell & Morris 1993;2001;2006).

Evaluations of existing restorative justice programs report significant percentages of offenders noted as displaying an appearance of internalized shame and frequently expressed their punishment was just (Campbell et al.,2006). When offenders internalize their shame, they are more likely to reintegrate themselves into society, with their shame serving as motivation to reestablish social connections. Strengthening these connections is an integral part of an offender's reintegration into society and reduces their likelihood to re-offend (Braithwaite, 1989). The traditional criminal justice system's forms of punishment typically result in the stigmatization of offenders, rather than reintegrative shaming, which serves as an explanation for high rates of recidivism (Braithwaite, 1989; Moore, Stuewig, & Tangney, 2015). The creative justice perspective combines the use of punitive measures with restorative ideals; attempting to punish the offender while addressing the harm done and preventing future crime.

CHAPTER 6

CREATIVE JUSTICE

Overview

The potential of the restorative justice model has been sufficiently examined and identified through numerous studies (Armour, 2012; Miller, 2011; Sherman et al., 2013; Kenny & Leonard, 2014). While a lack of consensus on the definition and preferred practices still exist, the possible impact of such programs encourages further research into alternative sentencing (Maxwell & Morris, 2000; O'Mahoney, 2012; Campbell et al., 2006; Kenny & Leonard, 2014). Creative justice provides another example of theoretical possibilities. The term "creative justice" has not been systematically defined by researchers, but the application of the concept can be witnessed in a small number of courtrooms throughout the United States. For the purposes of this paper, creative justice will be defined as the practice of using alternative methods of sentencing offenders found guilty of a crime instead of traditional forms of sentencing involving jail, prison, or community corrections. Creative justice sentences typically use the shame felt by an offender as a deterrent to future crime in a way specific to their crime, in order to more readily address the damage caused by the said action. The creative justice process simultaneously punishes the offender while providing an opportunity for them to repay their community. There no formal guidelines to follow, but the sentences use punitive measures to reach restorative goals.

Creative sentences are left entirely up to the judges' discretion and have yet to include a crime victim in the proceedings, although future research may eventually lead to such practices. While no formal guidelines exist, the sentences typically involve a form of public shaming or directed community service. They have been given to juveniles, non-violent offenders, violent offenders, and even sex offenders in rare circumstances. In each instance, offenders are given the

option between a traditional sentence and the creative sentence as determined by the presiding judge. Despite the voluntary nature of creative justice, the role of shame played in the sentences is critiqued for the potential stigmatization of the offenders (Peters, 2013; Morrison, 2014; Bonisteel, 2006). Despite this critique, reports of lowered recidivism within courts using creative sentences, the voluntary nature of the program, and community satisfaction with the resulting punishment give reason to further investigate its' effectiveness and applicability (Hannan, 2017; Kickham, 2013; Hudak, 2010; Campbell, 2015)

Similar to restorative justice, creative justice provides an alternative method of punishment intended to rehabilitate offenders rather than isolate them. Additionally, they both require the offender to acknowledge their wrong-doing, provide reparations, and attempt to improve victims' overall experiences with the criminal justice system (Bazemore et al., 2015; Kenny & Leonard, 2014). Finally, both provide the offender the option between formal and alternative sentencing, which must be agreed upon by all parties before enacted. These goals can be accomplished through a variety of means, and this study aims to establish the creative justice process as a legitimate and valid form of punishment.

Creative justice practices can be witnessed sporadically throughout federal, state, and local courts. The process still lacks definition, has yet to be empirically tested and is therefore left open to interpretation. However, lower recidivism rates and continued use among judges serve as evidence of the functionality of creative justice practices (Hannan, 2017; Kickham, 2013; Racine, 2015; Word, 2007). The success of these creative sentences is attributed to a sense of internalized shame produced within the offender, reducing their likelihood to re-offend. Sentences also are designed to directly address the harm caused by the crime, resulting in higher levels of the victim and community satisfaction (Kenny & Leonard, 2014; Hannan, 2017;

Maxwell & Morris, 2001). The creative justice perspective combines aspects of the traditional criminal justice system and restorative justice practices, using both deterrence and reintegrative shaming simultaneously.

Current Applications

As research continues to examine the potential of alternative sentencing as a way to improve victim satisfaction and procedural justice, media outlets have begun to take notice. In the summer of 2017, an article describing the sentencing methods of a judge in Lake County, Ohio was published in *Cleveland Magazine* (Hannan, 2017). The article provided numerous examples of Judge Cicconetti, who has been using creative sentencing since the 1990s.

In 1997, Judge Cicconetti sentenced a man found with an unlicensed gun to investigate the morgue and view corpses (Holley, 2016). In 1996, Cicconetti reduced the sentence of a man who had shot his dog if he were to wear a Safety Pup outfit and visit local elementary schools (Holley, 2016). He is also well-known for sentencing DUI offenders to decorating a float for their annual Mardi Gras parade with signs saying things such as “buzzed driving is drunk driving” (Hannan, 2017). He has also recently begun mandating that DUI defendants download a rideshare application for their phone in order to discourage their drunk driving the next time (Barry, 2017). Finally, a woman who skipped out on her taxi fare was sentenced to walk the same trip she had taken in the cab within 48 hours – her trip was 30 miles (Holley, 2016; Hannan, 2017). The sentences can be described as using punitive measures to reach restorative goals, seemingly melding traditional and restorative justice practices to form a creative sentence. These restorative goals are met through the acknowledgment of the harm done by the crime committed, encouraged acceptance of responsibility by the offender, and attempt to repair the harm done by the criminal act.

Further investigation of media outlets uncovered several articles discussing creative sentencing across the country. A district judge in Harris County, Texas, Ted Poe, began doling out creative sentences when he sentenced a man to publicly apologize to his wife whom he had beaten in addition jail time. Poe also ordered a shoplifter to pace outside of the store from which he had stolen with a sign advertising his thievery (Shatzkin, 1998). After causing an accident that killed an army veteran, a 22-year-old man was sentenced by Circuit Judge G. Richard Singeltary to writing the soldier's family a postcard weekly – for 15 years (Hudak, 2010). Judge Peter Miller has sentenced hundreds of shoplifters to carry a poster saying “I stole from this store” in Putnam County, Florida (Hudak, 2010). The Massachusetts Appeals Court sentenced a young man who had vandalized his neighbor's house to get a job in order to pay one-thousand-dollar restitution for damages caused (Kickham, 2013). Circuit Judge Beverley Nettles-Nickerson sentenced a woman to clean houses after discovering she had been falsely claiming to be Hurricane Katrina evacuee in June of 2006 and receiving financial benefits from the state of Michigan (Bonisteel, 2006). Judge Marvin Wiggins of Alabama gave dozens of offenders the opportunity to donate blood rather than pay fines or get jail time (Racine, 2015). Table 1 below shows crimes committed, and the various creative sentences applied (Hannan, 2017; Morrison, 2014; Holley, 2016; Hudak, 2010; Bonisteel,2006; Racine, 2015).

While these news articles provide evidence that creative sentencing has been in use for decades, such sentences are still limited by their lack of theoretical framework and are critiqued as such. Judges utilizing creative sentencing have no formal guidelines to follow, but their sentences fall within the realm of creative justice through their use of punitive measures to reach restorative goals. With a purpose of repairing the harm done to the community, creative sentences focus on two primary tenants: public shaming and less frequently, community reparations (Hannan, 2017;

Hudak, 2010; Shatzkin, 1998; Stephanie, 1992). Restorative justice attempts to address and understand crime, and traditional criminal justice practices typically aim to deter offenders from future crime; creative justice uses punitive measures to deter offenders while simultaneously addressing the harm done to the community and victim. The sentences described in Table 1 exhibit how these goals are met; through a system in which offenders are shamed for their unlawful actions while simultaneously paying back their debt to society.

Table 1: Creative Justice Sentences

Year	Convictions	Creative Justice Sentence	Role of Shame
1992	repeat petty thief	wear a t-shirt for a year that read "I am on felony probation...my record plus two six-packs equal four years."	stigmatic
1992-2017	DUI convictions; Probationers	organize a float in an annual parade with signs such as "Buzzed Driving is Drunk Driving" and to pass out candy along the route	reintegrative
1999	teenagers threw rocks off a bridge, damaging a sheriff's cruiser	stand outside the local fairgrounds with a sign stating, "we threw rocks from the route 2 bridge, we are sorry."	stigmatic
2002	low-level felons on probation	participate in a weekly book club	reintegrative
2005	a woman abandoned 40 cats at a local park	spending the evening in the park in which she abandoned the cats (the sentence was ended when temperatures grew too cold)	stigmatic
2007	theft	carry a sign reading "I stole from a local store."	stigmatic
2007	man slapped his wife	take yoga classes in order to manage his anger	reintegrative
2010	misdemeanor marijuana possession	pay court costs or run two miles without stopping	reintegrative and stigmatic

The shaming methods used in creative justice are intended to ensure the offender's acceptance of their wrong-doing while allowing them an opportunity to compensate for their actions. The concept falls within the framework of Reintegrative Shaming Theory, suggesting the creative sentences will act as a formal control of crime through the use of informal social controls such as shame (Braithwaite, 1989). As an offender is held accountable for their crimes, they are expected to internalize the shame associated and therefore deter them from future criminal activity (Braithwaite, 1989; Mongold & Edwards, 2014). The creative sentences also typically involve a direct plan of action for community reparations, which is common among programs based in RST. However, the reparations are not decided upon by within a community discussion but instead is left to the discretion of the judge presiding and victims are not included in the proceedings (Braithwaite, 1989; Hannan, 2017; Morrison, 2014).

While similar methods typically just allow an opportunity for compensation of the victim, creative justice methods provide more direct avenues of community reparations. This process of punishment is generally met well by victims, offenders, and the community (Hannan, 2017; Word, 2007; Campbell, 2015). Victims' perceptions of procedural justice improve, offenders are given the option to avoid punitive punishments, and the community benefits from overall reduced crime (Racine, 2015; Hannan, 2017; Word, 2007; Campbell, 2015). Despite these positive results, alternative sentencing, which can include creative justice, is often critiqued by scholars and criminal law practitioners. Critiques include the perception of the sentences being "cruel and unusual punishment," the potential for inciting violent attitudes in the general population and threatening the criminal justice system's evolution from pre-colonial practices (Hudak, 2010; Shatzkin, 1998; Morrison, 2014). Future research will be able to determine the

legitimacy of these critiques, but the constitutionality of creative justice sentencing has been approved by the courts.

The case of *United States vs. Gementra* in 2004 by the 9th Circuit Court of Appeals resulted in the legal basis behind creative justice practices. Gementra was accused and convicted of stealing mail and had a previous criminal record. As a part of 100 hours of community service, he was sentenced to stand in public with a sign explaining his crime for 8 hours and claimed it was a violation of the Eighth Amendment; protection against cruel and unusual punishment by the courts. The judge provided reasoning for the sentence, arguing it would better promote the rehabilitation of the offender and would benefit society more than a jail sentence for Gementra. Gementra's appeal was denied, thus providing future judges with the opportunity of creative sentencing (Hanna, 2017; U.S. v. Gementra, 2004).

Comparison of Creative and Restorative Justice

Alternative sentencing programs, such as restorative justice, stemmed from a societal need to improve the criminal justice system (Johnstone, 2011; Gaudreault, 2005; Campbell et al., 2006). Scholars identify low victim satisfaction, high recidivism rates, and a lack of procedural justice as crucial indicators of this perceived need (Haney, 2016; Sarat et al., 2014; Campbell & Raja, 1999). Both creative and restorative processes attempt to address these issues through alternative forms of punishment. In order to establish creative justice as a separate entity, some distinctions must be made between the two methods.

First, creative sentencing does not typically involve face to face mediations between an offender and their victim (Hannan, 2017; Stephanie, 1992; Morrison, 2014; Castro, 1992; Latronico, 2009). The sentences are handed down directly from a judge but maintain the requirement that all parties must willingly participate. This method of sentencing has been

critiqued for the discretionary power given to the judge, claiming the sentences can be either too harsh or too weak (Bonisteel, 2006; Stephanie, 1992; Morrison, 2014; Peters, 2013). Unlike restorative justice methods, where victims are able to explain the effects the crime has had on their lives directly to the offender (Bazemore et al.,2015). Thus far, creative justice sentences have had little need for these types of mediation due to the limited scope of applicability but may eventually begin to include programs such as these.

Second, the goals of reparation vary drastically between creative and restorative justice. While restorative justice provides a structured setting for communication between victims and offenders, creative justice focuses on the debt owed to society. The structured environments offered by restorative justice mediations and panels promote closure for both the victim and offender but fail to address the harm on a societal level (Armour, 2012; Gaudreault, 2005; Kenny & Leonard, 2014). What creative justice lacks in victim-mediation, it makes up for in community restoration. The offenders endure punishment intended to improve the lives of those harmed while increasing political participation among communities.

Finally, the most significant distinction between these two sentencing methods is the type of offense associated with each program. In most literature reviewed, creative justice sentencing has been limited to misdemeanors, non-violent crimes, and often first-time offenders (Hannan, 2017). The sentences are solely intended to address community strife and prevent recidivism among low-level offenders. Restorative justice, on the other hand, has been used in cases of violent crimes such as sexual assault and homicide (Bazemore et al.,2015; Armour, 2012).

Role of Shame

The traditional criminal justice system uses shame to stigmatize offenders. Once an individual is considered a criminal, they are insufficient in their ability to maintain social

connections. Without these social connections, offenders are less likely to be rehabilitated, tend to feel marginalized by society, and often re-offend (Braithwaite, 1989; Gilbert, 2016). Although the traditional system aims to prevent future crime, high recidivism rates and mass incarceration serve as evidence that an improvement is needed (Leslie et al., 2017).

Restorative justice practices provide structured settings, such as victim-impact mediations and restorative conferences, in which shame is implicitly built. The shame experienced is thought to stem from the dialogue between the offender and those affected by their crime. This type of communication is not offered in the traditional system and has been found to create a more comprehensive understanding of the crime within the offender (Bazemore et al., 2015; Johnstone, 2011). Braithwaite (1989) stated the shame felt by the offender is internalized and reduces their likelihood to re-offend. This form of shame is thought to aid an offender's reintegration into society because it offers the offender an opportunity to make amends to their victim and community, in a respectful setting. When offenders feel respected, the shame experienced remains reintegrative rather than stigmatic and produces higher levels of satisfaction for both offenders and victims (Braithwaite, 1989; Maxwell & Morris, 2001; Miller, 2011).

Creative justice utilizes shame in a manner comparable to restorative justice. Instead of the shame displacement used by the current criminal justice system, creative justice attempts to acknowledge the shame associated with criminal behavior. In practice, creative justice sentencing intends to use shame as a tool to reduce recidivism rates, address the needs of victims, and punish offenders simultaneously. While shame plays a part in all criminal justice systems, creative sentencing is commonly geared towards exploiting that shame. The most commonly used creative sentence involves some sort of public shaming, specifically geared towards addressing the offense. Creative justice uses shaming as a means to a restorative justice end, but

the types of shaming determine whether it is reintegrative or stigmatic. Creative sentences are determined by individual court judges so the severity of punishment, considered necessary by Beccaria and Paolucci (1963) will exist on a type of continuum. The continuum includes the both the judges' and offenders' perception of the severity, certainty, and swiftness of the punishment.

The sentences used stigmatic shaming in order to have the offender accept responsibility for their actions, provide an opportunity for community restoration, and prevent future crime. The offender's consent to their creative sentences implies that participants accept responsibility for their actions upon agreement to the sentence. Whether an offender is sentenced to specific community service or a form of public shaming, the offender repays the community through their work as well as the raised awareness of crime. The use of public shaming inherently involves the offender and their crime becoming public knowledge, and with this, the people will gain more perspective on the crimes being committed within the community. Additionally, the reduced recidivism rates witnessed in courts using creative sentences benefits society through reduced rates of crime overall.

CHAPTER 7

METHODS

Study Purpose

The current study is exploratory given the dearth of research on creative justice practices. Therefore, this study aims to further distinguish creative justice as an academically legitimate form of alternative sentencing and to address this gap in the literature. This study also intends to expand on currently limited data regarding the applicability of creative sentencing to more severe crimes, the implications of creative sentencing, and how the process could be best utilized. Findings from this study suggest policy changes in an effort to address high recidivism rates and low levels of victim satisfaction with traditional criminal justice processes in the U.S (Mustard, 2001; Hamilton, 2017; Light, 2014; Starr and Rehavi, 2013; Campbell and Raja, 1999; Orth, 2002; Haney, 2016). Presenting restorative justice as a comparable practice, the current study attempts to contribute to the literature on both creative justice and restorative justice in general. To this end, this study will collect and analyze data from practitioners of criminal justice and victim services in the rural Southeastern United States. The overall purpose of this study is, therefore, to determine the applicability of creative sentences, contribute to the theoretical framework of creative justice, produce suggestions for future research, and contribute to the discussion about the role of shame in punishment by identifying trends of thought among experts in the fields of criminology, law, and victim services.

Recruitment Strategy

For the purposes of this study, ten practitioners of criminal justice were recruited to be interviewed. The participants were chosen using a purposive convenience sampling method and included professors of criminal justice and criminology, certified victim advocates, and former

felony trial attorneys in diverse locations. The respondents were chosen based on their expertise, varying roles, and experiences within the criminal justice system in an effort to gather diverse data with regards to the participants' responses. Subjects were identified through their publications online, involvement in victim services, or expertise in the field of law. This strategy was used to provide in-depth data, collected from individuals with extensive knowledge of the topic and hands-on experiences with both victims and offenders.

Beginning in the Fall of 2017, the potential participants included in the sampling frame were contacted by email. The sample frame was limited to ten individuals including practitioners of criminology, law, and victim advocacy. Five respondents agreed to participate; one from Canada and the other four from the Southeastern United States, resulting in a fifty percent response rate overall. Due to the exploratory nature of the research, I used purposive sampling or selecting "incidents, slices of life, time periods, or people on the basis of their potential manifestation or representation of important theoretical constructs" (Patton, 2001, p. 238) as well as convenience sampling given the exploratory nature of this research. The participants were chosen based on their expertise and the perceived ability to contribute to the development of a creative justice perspective, as well as the convenience of their accessibility (Glaser and Strauss, 1967). A standard recruitment email was sent to the ten individuals identified, asking for their participation in an approximately one-hour-long interview about creative justice, restorative justice, and their theoretical applications. The email explained their involvement was being requested due to their expansive knowledge of the criminal justice system, and that their confidentiality was guaranteed if they chose to participate. No information was received as to why the other five respondents denied the request to be interviewed.

Each of the five interviews was conducted in person and digitally recorded on a hand-

held device. Before each interview began, respondents were reminded their participation was voluntary, their responses were confidential and were provided with information on available counseling services due to the sensitive nature of the discussion. In accordance with IRB approval, the participants signed an interview consent form before the interview began, found in Appendix A. To ensure the anonymity of the participants, all data was deidentified after transcription, and the participants are exclusively referred to by the pseudonyms of Greg, Molly, Jack, Debra, and Hannah throughout the study.

Greg is an assistant professor in the Department of Criminal Justice and Criminology at a rural, Southeastern University in the United States. While earning his Ph.D., he worked with a national institute to investigate victimization and have since continued their work in the field. He is currently researching the victimization of vulnerable populations and the perceptions of professionals working with victims of domestic violence and has been active in the field since 2015. Molly serves as the Assistant for Victim Services at a regional sexual assault center in a rural, Southeastern city in the United States. She works as a victim advocate, responsible for supporting and guiding a victim of sexual assault through their options of how to proceed both legally and personally. Additionally, she has been certified in child forensic interviewing, a process used to elicit information from a child if they have experienced or witnessed a crime.

Jack is an Associate Professor and program coordinator at a university in central Canada, where he has served since 2006. He has completed a master's degree in Criminal Justice Administration and has a doctorate in Sociology. In between his two degrees, Jack worked at a young offender's center, served as a counselor in a halfway house, and was trained as a family group conference facilitator. Preceding the family group training, Jack was responsible for facilitating the rehabilitation of both violent and nonviolent offenders. Afterward, his interest

was sparked regarding restorative justice and victim services which eventually led to their current position.

Debra worked for a public defender's office for close to thirty years, beginning as a paralegal while earning her law degree. After she earned her degree, she served as a public defender from 1995 to 2016 in a variety of courts around California. She handled both juvenile and adult cases, including a vast range of offenses such as nonviolent misdemeanors, homicides, sexually violent crimes, and even officer-involved shootings. She currently serves as a full-time lecturer in the Department of Criminal Justice and Criminology at a rural, Southeastern University in the United States; having been recognized for her expertise and experience as a practitioner of law.

Finally, Hannah is an Associate Professor of Criminology and Criminal Justice at a university in an urban, Southeastern region of the United States. Since earning her Ph.D. in sociology in 2006, she has published over 30 peer-reviewed journal articles regarding crime, juvenile delinquency, and program evaluation. She primarily serves as a criminal justice program evaluator and has conducted multiple program evaluations of juvenile courts using restorative justice practices, using both qualitative and quantitative data. Her experience with offenders has been mostly limited to juveniles committing low-level misdemeanor offenses.

The interviews were semi-structured; despite a prepared list of questions the discussion often drifted from the specific questions posed. These detours were welcome, organic developments of the conversation that provided a more well-rounded data from the respondents regarding their experiences. The length of interviews ranged from eighteen minutes to one hour, depending on the participant's previous knowledge of the topic and the number of diversions from the interview protocol. The interview questionnaire can be found in Appendix B.

Content Analysis

This study also includes a directed content analysis of ten news articles and a published interview regarding creative justice. All content was available to the public and found through an online search using Google News and searching the terms “creative justice” and “creative sentencing.” This method was utilized due to the lack of peer-reviewed literature regarding creative justice and serves as supplementary data. The articles were selected based on their discussion on the use of creative sentencing, and the legitimacy of the news outlet providing the information. If several articles discussed the same instance of creative justice utilization, only one was chosen in order to provide comprehensive data and avoid repetition. The content was selected from news sources in various regions around the United States and served as evidence of creative justice being used in multiple settings. Once chosen, the articles were systemically read and assigned labels, indicating whether they were about a specific court case, creative justice overall, or an argumentative piece about creative sentencing. These categories condensed the discussion of creative justice, focusing on the implications of the writings rather than the frequency of terms.

The published interview analyzed was conducted by *Cleveland Magazine* gathering information from a municipal court judge in Northeast Ohio, Michael Cicconetti, well-known for his creative sentences. Cicconetti was in private practice for thirteen years before he began serving as a judge and was acknowledged for his unconventional methods even as a prosecutor while serving in private practice. He has served as a judge for over thirty years now and has been distributing creative sentences throughout that time. He has received nationwide attention for these sentences with a discussion of his work on the Today Show, Good Morning America, Fox News, and even Dr. Phil. In addition to media coverage, Judge Cicconetti was presented with the

American Judges Association's Chief Justice Richard W. Holmes Award of Merit for his innovative sentencing practices. This award is presented to a judge "for outstanding contributions to the judiciary" and has been previously received by Justice Sandra Day O'Connor and Chief Justice Warren Burger. His long-standing history with creative sentencing and an abundance of news articles covering it served as motivation to include the interview. The interview was conducted in June of 2017 and not only discusses Judge Cicconetti's practices but gathers his insight on the use of creative justice in the court system.

Transcription and Coding

The interviews were coded using open and focused coding to establish common themes and concepts from the response. Open coding allows researchers to more efficiently investigate non-numerical data, identifying significant relationships within the given text. Considering all the evidence for this study was text-based, I was able to use this coding system to establish patterns of thought and identify key terms. Once these terms were defined, I used selective coding to relate categories to one another systematically, and further refine each relationship discovered (Strauss & Corbin, 1990). This comparative method stems from the Grounded Theory; an approach meant to explain the functions of the social world theoretically (Strauss & Corbin, 1990; Glaser & Strauss, 1967). This systematic methodology involves the construction of theory through the gathering and analysis of data. As I reviewed the collected data, repeated ideas such as juvenile justice, victim satisfaction, and the varying risks of creative sentencing emerged. These repeated concepts were then coded inductively and according to the similarities noted in the data. From these coded texts, I was able to establish categories concerning creative justice and the relationships between them. Utilizing this methodology initiates the process of

forming a robust theoretical explanation of creative sentencing programs and creates a foundation of literature to be used by future researchers.

CHAPTER 8

RESULTS

This qualitative study was conducted in order to contribute to the literature regarding the alternative sentencing program, creative justice. Currently, an academic definition of the term “creative justice” or “creative sentencing” does not exist. This study intends to address this gap, and further investigate the applicability of such a program. Five practitioners of criminal justice were interviewed in an effort to gather expertise as a preliminary framework of creative justice perspective. The data collected and analyzed for this study produced five themes within two categories. Under the category of potential applications of creative justice, the themes of juvenile justice and first-time offenders were noted. The second category created was risks associated, which included themes regarding the type of crime and community involvement. The following sections will further discuss the findings, as well as make suggestions for future research.

To clarify the differences between the three criminal justice systems discussed in this study, Table 2 is provided below.

Table 2: Comparison of Criminal Justice Systems

	Traditional	Restorative	Creative
Victims	Low satisfaction, limited services, secondary victimization, limited participation in proceedings	Access to more victim resources, less likely to experience secondary victimization, ability to participate, higher levels of satisfaction	Most are “victimless” crimes, but cases with direct victims have reported high levels of satisfaction
Offenders	Low satisfaction, limited opportunities for rehabilitation, no participation in sentencing, stigmatized	Opportunities for rehabilitation and restoration, more participation in sentencing	Complete participation in proceedings, given choice of two sentences, provided opportunities for rehabilitation and restoration
Crimes	All crime – violent, nonviolent, sexual, property, drug, etc.	Typically, non-violent but has been used in cases of sexual assault and domestic violence	Typically, first-time offenders or misdemeanors, but has been used in cases of sexual violence

Sentences	Incarceration, rehabilitation	Rehabilitation, restoration, victim-impact panels, victim-offender mediations, circle sentencing, conferencing	Rehabilitation, restoration, judges' discretion
Procedural Justice	Limited training for law enforcement and medical practitioners leading to low levels	Trained facilitators reduce secondary victimization, higher levels of participation by victims and offenders lead to higher levels	Higher rates of participation by victims and offenders lead to higher levels
Punishment	Deterrence, incapacitation	Rehabilitation, restitution, retribution	Rehabilitation, restoration, retribution, deterrence
Goal / Achievement	Prevent future crime – continued high rates of recidivism	Address and understand crime in order to prevent future crime – lowered rates of recidivism	Use punitive measures to deter future crime, address the harm done to victims and community – lower rates of recidivism, high rates of community satisfaction
Role of Shame	Stigmatic	Reintegrative	Stigmatic and/or reintegrative

Potential Applications

Two themes emerged when analyzing the data, regarding the potential applications of a creative sentencing program. Overall, participants agreed that creative sentencing held potential for future use, pending further research. The responses from participants were geared to address research questions such as: “Do you think creative justice is applicable to non-violent, less serious offenses?” and “Can you offer suggestions for the improvement and/or expansion of creative justice?”. When similar questions were posed within the content, the answers were considered apart of the data to be analyzed. Bonisteel (2006, para 34) quotes Douglas Berman, a law professor at Ohio State University who said, "There's a lot of untapped potential in a new approach to punishment for certain offenders. This is not a pitch for 'let's get rid of all prisons and sit around singing 'Kumbaya' with all the defendants.' This is something that needs to be explored by judges and prison officials and others on a case-by-case basis".

Two overall themes emerged from the interview and content analysis: (1) use of creative sentencing in juvenile courts, and (2) use with first-time offenders.

Juvenile Justice

The majority of participants suggested using creative justice sentencing in youth programs would be more effective than implementing the program for adult offenders. They explained how young offenders would be more likely to internalize the shame associated with their crimes and therefore be less likely to continue illegal activities. Comparatively, adults would be far less likely to accept this responsibility fully and would, therefore, disregard one of the central tenets of creative justice. Campbell (2015, para 10) says “‘1 percent’ of his [Judge Cicconetti] cases get that type of treatment, and he has criteria for his style of justice: Suspects need to be first-time offenders, generally young and impressionable, and “remorseful for what they did.”

Regarding the applicability of creative justice programs, Debra said, “I think that has the potential to blossom with certain classes of offenders. I think that would be really helpful obviously with juveniles — kids don’t have the complication that we have as adults processing notions of shame. Kids understand shame and being made to feel shame. Kids are very protective of their identities, and their sense of who they are, and their egos are very fragile, so you’ve got a particularly fertile audience there.” They continued the discussion later on stating, “I think if this was the young offender, tagalongs, wannabe gang members...if you could bring this to them and have the community participate in it, that would be where the money would be. Because what you’d be doing is reaching out to the to the future violent offenders in their baby infancy stages. Those are murderers; those are robbers, the assault, the big-time drug slingers...but they’re in their infancy. I think it might work there. That’s where I would focus it definitely.”

Hannah agreed there was a potential for creative justice among juveniles, stating “I will say when you work with schools especially, and they talk about discipline problems, they

typically want some sort of restorative or integrative approach to deal with that. So, I think the audience is there and is willing to consider these approaches.” A news article by Bonisteel (2006) also discusses juvenile justice in her article about creative justice. When asked why it works for younger offenders, Mark Wiest, a county court judge in Wooster, Ohio, said “It just gives them something more positive. Usually, we’re telling them when they’re on probation: ‘Don’t do this, don’t do that. Stay out of trouble. Be good. Take your drug test. Pay your money.’ And this is just something different” (Bonisteel, 2006, para 20).

First-Time Offenders

The second suggested continued use of creative sentencing was for first-time offenders. The participants explained how a more specific, less punitive form of punishment was more likely to encourage the rehabilitation of the offender. Hudak (2010, para 10) quotes Putnam County Judge Peter Miller who said, “I’ve had people tell me, ‘Put me in jail. I don’t want to hold that sign.’ That’s how I know it’s working. It holds them out as examples of what happens if you break the law...”. When discussing the success of these sentences, Campbell (2015, para 6) quotes Judge Cicconetti, “I would put my recidivism rate up against anybody’s. You can send someone to jail and make it the sheriff’s problem; they get out and nobody follows up. With these sentences, they’re on probation, and in most cases, I’ll end up taking it off their record.”

Most discussed an offender’s “hardening” as they spent more time in the criminal justice system and suggested the implementation of creative sentencing could reduce the likelihood of such. If an offender is encouraged to accept the responsibility for their wrongdoings and given the opportunity to make amends before the “hardening” begins, there is a possibility of reduced recidivism. Once offenders have reached this point, they commonly disregard the law’s authority in general and claim to have no issue returning to jail. Some participants even reported incidents

with offenders where they claim to desire to return to prison, as they now have invested such large portions of their lives to the system.

Jack and Debra both discussed the “hardening” of a criminal through time spent in the criminal justice system. They explain how older criminals are less likely to accept responsibility for their actions and the shame directed towards them. Debra stated, “What you have to recognize is that you’re already dealing with a population of people who have no self-esteem or have very little self-esteem or have overly inflated self-esteem, that is a coping mechanism for the fact that they ultimately don’t have any self-esteem. In order for public shaming to work there has to be something to build on and there has to be a connection between ‘everyone else and I.’ I think that people will truly understand that they’ve done something wrong and there is a shame component to it, as if they understand that they’re a part of something bigger.”

Jack discussed adult offenders and how they were hardened by their inability to make amends for their wrongdoing, stating “They have never, in any way, shape, or form, been given the opportunity for what they did. So you see guys get out of jail and be like ‘hey I did my time so why isn’t the community taking me back?’. They go on to express how the traditional criminal justice system does little to promote rehabilitation for these offenders saying, “Your accountability is defined by completing a sentence that does very little for the victim, very little for the offender, and virtually nothing for the community.”

Greg said, “You could use creative based approaches, as long as it didn’t result in secondary victimization. I think that’s really the key thing. So as long as you don’t have that as a concern, I think sort of across the board you could implement different strategies”. So, while Greg did agree to the applicability of creative justice, he also discussed another common theme discussed in the interviews: the risks associated.

Risks Associated

The type of crime is highly influential over the risks associated, and applicability of creative sentencing. The participants all agreed that creating a framework for creative justice was worth further investigation. However, when asked about the possibility of using creative sentencing to more violent, or sexual crimes, their answers began to vary. These variations appeared to depend on the gender of the respondent when discussing the applicability of creative sentences for sexual assault crimes; as only male interviewees initially agreed that it would be effective when asked. It's when the sentencing program is applied to these types of crimes that the risks rise exponentially, thus hindering its effectiveness. These risks can be encompassed by the term secondary victimization, which can reduce the likelihood of victim participation as well as victim satisfaction. The participants were asked to discuss the risks for all potential parties of creative sentencing and to identify the most significant factors responsible for determining the extent of such risks. Additionally, due to the theoretical nature of this program, the participants emphasized the potential of unforeseen risks emerging as research continued. This was repeated when discussing the risk taken by offenders when participating.

Type of Crime

The risks faced by both victims and offenders vary greatly, depending on the circumstances of the crime and the demographics of the offender. These risks are faced by any victim and offender within the criminal justice system but vary depending on the type of crime. For example, crimes of sexual violence create more boundaries to victim satisfaction and offender rehabilitation. These types of crimes would be ill-fit with the current structure of creative justice. Additionally, the subjective nature of the sentences could affect offenders

differently depending on their demographics. For example, the gender of an offender could affect the severity or swiftness of punishment doled out by the court judge.

Molly denied its use entirely in cases of sexual violence saying, “So with things like sexual violence...that’s a complicated issue. I don’t see that being effective”. Debra discusses extremely violent crimes saying, “I think it’s too early to say whether or not public shaming would have any significant result.” Hannah says, “I mean if I were a judge I would be very resistant to try to handle a sex offender. My primary concern would be with using some sort of alternative, whether creative or restorative, that these people are just too high risk for recidivism and a threat to public safety.” Debra also said, “I don’t think public shaming is going to work in instances of sexual assault only because what it fails to recognize is the componentry for control of the urge or desire that may come from something that’s organic. We’re talking about public shaming that has to be internalized, understood, and accepted. It’s almost as dependent on the criminal as it is the crime, but I think they’re just going to miss the boat on that.”

Jack was more hopeful for its use in these types of crimes saying, “When you’re talking about violent crimes and in particular sexual... I mean, my first response is yes.” They go on to explain the importance of avoiding secondary victimization and ensuring the shaming remains reintegrative. A similar point was made by Greg who said, “I mean, I really think at that point it is a case by case basis of realistically starting with the victim and sort of moving from there. You have to get their input and then gradually discuss how it might even function in that specific instance to get an idea first. If they seem comfortable with it though if it seems like something they could get on board with then I think it is applicable and could be used. However, if you do talk to them and you’re noticing that they’re very uncomfortable with it then probably not.” Overall, participants agreed the type of crime is directly influential over the applicability of

creative sentencing. Although some responses seemed dependent upon the gender of the interviewee, specifically the applicability of creative justice sentencing for sexually violent crimes. Only males initially agreed on the use of creative sentencing for crimes such as these. As crimes grow in severity, creative sentencing is seemingly less applicable.

Community Involvement

The offender is put at risk by the increased involvement by the community in their potential sentencing. From the currently available data, creative sentencing typically includes offenders being placed in public settings. Doing so exponentially increases the risks of community retaliation and could put the offender in physical harm's way. This risk increases as the severity of the crime committed increases. All participants stated that sexual offenders would experience the highest level of risks, as their crimes are such sensitive and personal matters. In a news article Bonisteel (2006, para 10) quotes Aya Gruber, a law professor at Florida International University, who said, "When you get to sex offenders, it gets a little tricky because sex offenses are so taboo, they're so hated in society, that sentencing a sex offender to an alternative treatment than jail is probably not going to be popular."

Greg stated, "I think if it is going to be used you have to take considerations into account as to what types of programming you could use for the offenders that wouldn't put them in physical harm." Molly emphasized that same point saying, "I mean if they were like out in public holding a sign, there is a risk of violence or public retaliation." Similar comments were made by Debra saying, "I think there might be more damage done to the offender at that point. It could create a place or an opening for more violent crimes in the future." Overall the participants agreed that community involvement heightened the risks of creative sentencing, specifically for the offender who may experience retaliation by the public.

However, it should be noted that not all creative sentences must include public humiliation in order to be effective, as discussed by Racine (2015). She writes, “In 2012, 17-year-old Tyler Alred pleaded guilty of manslaughter. Alred, who was intoxicated, crashed his vehicle, resulting in his friend's death. Because the victim's family did not want a harsh sentence, judge Mike Norman took another approach. Instead of prison time, Alred was sentenced to get his GED, graduate from welding school, take alcohol and drug tests for a year, be involved in victim's impact panels, and go to church.” This sentence contributes to the evidence that shame can be used in both a stigmatic and reintegrative manner within the confines of creative sentencing.

Mitigating Risks

Participants noted these risks could be dampened by ensuring the regulation of the program. Judges must remain within boundaries of sentencing to avoid “cruel and unusual punishment,” otherwise the program would be rendered useless. Regulation should also pervade the cases available for creative sentencing to avoid putting the victim at further risk. These cases should include things such as juvenile offenders, first-time offenders, misdemeanors, and crimes against the community (drunk driving, arson, vandalism). Not only would these cases carry less risk of secondary victimization but are seemingly more cooperative with the defining factors of creative justice. These factors being the acceptance of responsibility by the offender, community reparations, and utilizing the internalization of shame to reduce recidivism.

CHAPTER 9

DISCUSSION

Implications

The process of restorative justice has been developing in theory and application for decades (Maxwell & Morris, 2001). Restorative justice programs have produced positive results regarding victim satisfaction and reduced recidivism (Kenny & Leonard, 2014). However, there is still a lack of scholarship regarding the effectiveness of these programs as well as the potential for their expansion. This study intended to contribute to the alternative sentencing literature and propose the development of a creative justice framework.

Two themes emerged when analyzing the data collected in this study: potential applications and associated risks. Overall, the interview participants agreed that creative justice was a viable option for an alternative sentencing program as long as more research is conducted. 3 out of 5 participants noted that youth offender programs would be the best use of creative sentencing due to the higher probability of youth offenders internalizing shame. For similar reasons, participants suggested the sentences be applied to first-time offenders. Both types of offenders were perceived as more likely to accept responsibility for their wrongdoing, internalize their shame, and reduce their likelihood to re-offend. The discussion of the potential applications of creative sentencing centered around the severity of the crime, and the form of shame experienced by the offender. Participants emphasized the need for creative justice to follow a reintegrative shaming model and limit risks when possible.

The perceived risks associated with creative justice sentencing vary depending on the severity of the crime. As the severity of the crime increases, so do the risks associated with the sentence. All the participants stated secondary victimization was the highest risk to victims

participating in creative justice. Public retaliation and unfair punishments were the risks to offenders most prominent in the data. When offenders are punished in public areas, the community may take the opportunity to harm them. The lack of formal guidelines of creative justice sentencing means sentences are left entirely up to the judges' discretion, which could result in unfair punishments for the offender and could potentially exacerbate existing inequalities with regard to offenders' race, gender, and socioeconomic status. Without formal guidelines, the sentences could potentially become more stigmatic than reintegrative therefore nullifying their true effectiveness. If the risks to victims and offenders were limited, the interview participants agreed creative justice sentencing would be useful in addressing the current problems of the criminal justice system.

Creative sentencing requires countless hours of additional research in order to be utilized in criminal justice policy. This study aims to provide a base framework for such investigations. However, the possible implementation of creative sentencing would significantly alter the current criminal justice system's process of incarceration. Creative justice aims to produce more specialized sentences that may be more capable of addressing victims' needs, whether that be an individual or the community in which the crime took place. The individualized sentencing could also more readily address the harm done by the offender, rather than isolating them from society. These results would stem from the capability of an offender to repair harm caused, which is inherently unavailable if they were incarcerated. Additionally, the offender may be more likely to internalize the shame brought on by their crimes if they are sentenced in an individualized manner. Perceptions of procedural justice could improve within a creative justice framework as victims and offenders may feel the criminal justice system was allowing their participation in the

proceedings. The improvement of procedural justice carries several implications including reduced victim dissatisfaction and lowered recidivism rates.

Limitations & Future Research

The exploratory and conceptual nature of this study lent to a number of constraints for data collection and analysis. The interview participants were capable of providing rich, qualitative data in regard to the applicability of creative sentencing to more violent crimes. However, the lack of empirical evidence available regarding this type of alternative sentencing prevented a significant discussion of quantitative data within the study.

Future research should further investigate creative sentencing as a concept, in order to establish an academic definition. Successfully defining creative justice would create a framework from which future research could originate. An established theoretical framework would ensure more accurate analyses of the program by creating a point of comparison. Ideally, research would then be able to expand to program evaluations of those utilizing the alternative sentencing practices to determine their effectiveness and analyze their role of shame within them.

This research was limited to interviewing only five practitioners of law, criminology, and victim advocacy. While beneficial, these participants were only able to speculate victim and offender perspectives of both restorative and creative sentencing. In addition to the small sample size, 3 of the 5 participants were located in rural areas of the Southeastern United States. Considering the answers provided by these interview participants, future research should also investigate if the gender of interviewees has a significant effect on the nature of their responses considering the applicability of creative sentencing on more violent crimes, specifically sexual assault. Finally, the content analysis of creative justice cases was limited to those which had

received media attention. Limiting the content analysis to these articles limits the data, as not all creative sentences that have actually occurred were included.

Future research would greatly benefit from collecting data directly from the victims and offenders of both sexual and non-sexual crimes including those who had and had not participated in alternative sentencing programs. Future research should also include a larger, more representative sample of practitioners to gain a more comprehensive analysis of experts' opinions. Considering the subjective nature of creative sentences, as judges are solely responsible for determining them, court judges should be interviewed as well. Including this data would communicate a more accurate picture of the effectiveness of a creative sentencing program, determine the effects of the said program upon its participants, and establish court judges' pattern of thought determining sentences. Additionally, an analysis of court records would contribute a more accurate representation of the current state of creative justice in the United States.

Conclusion

This study was conducted in order to establish a framework for a creative justice sentencing perspective. The theoretical concepts currently in existence are highly compatible with restorative justice programs, thus providing empirical evidence regarding the effectiveness of alternative sentencing. The research began with the investigation of reintegrative shaming theory and restorative justice programs. From there, qualitative interviews were conducted to garner information from experts within the criminal justice system. The interviews were semi-structured and focused on the applicability of creative justice sentencing. Finally, a content analysis of articles discussing creative justice was conducted.

The data gathered was analyzed through open and focused coding to establish common themes and concepts from the responses. The interview participants were asked about the potential applications of creative sentencing, the potential risks of its implementation, and suggestions for future research regarding it. From these responses, it can be concluded that creative sentencing is perceived by experts as having excellent potential as a practical alternative sentencing program. This potential, however, is perceived as being dependent on the type of crime, the offender's history, and an immense amount of research dedicated to the concept.

With this data, the creative justice perspective can be operationalized as a criminal justice system that combines the stigmatic shaming of the traditional criminal justice system with restorative justice ideals. Offenders are given the option to participate in creative justice sentencing, aimed to address the harm caused to the community. However, the sentences are occasionally stigmatic, do not include victim-offender dialogue, and often include things such as public shaming. This form of punishment is used by the creative justice perspective in an attempt to have the offender accept responsibility for their crime, prevent future crime, and address the harm caused to the community. Considering the consequences of shame, future research should seek to investigate the occurrences in which the shame presented by creative sentencing is stigmatic. Creative justice focuses on the debt owed to the community, rather than an individual victim, and offenders are typically sentenced to specific community service in order to readily address the harm done. This process attempts to meet the needs of a victim or community, without stripping offenders of all respect and freedom. Additional research must be conducted in order to determine whether stigmatic deterrence or reintegrative shaming techniques are responsible for the reduced recidivism rates associated with creative sentences.

Once completed, the creative justice perspective could serve the criminal justice system in a number of ways. The low rates of victim satisfaction could be significantly improved, disparities in sentencing could be more readily addressed, and the perceived lack of procedural justice could be shifted. The current state of creative sentencing and the reviewed literature indicate it's potential in reaching these goals. Increased victim participation would improve victim satisfaction, and procedural justice would improve as a result of these changes. The reviewed data and responses collected both encourage further research due to the potential effectiveness, while acknowledging the limitations and risks associated with such. As these risks and limitations were rather significant, the received encouragement provides motivation for the development of a theoretical basis for creative justice practices from which a potentially successful program of alternative sentencing could develop.

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APPENDIX A

COLLEGE OF LIBERAL ARTS AND SOCIAL SCIENCES

DEPARTMENT OF CRIMINOLOGY

The Role of Shame: A Creative Look at Justice

My name is Gabrielle Lory and I am a graduate student at Georgia Southern University. This is a study about how applicable “creative justice” is to more serious offenses. I am conducting this research in order to complete my thesis, the final work required to fulfill my Master’s degree in Criminology at Georgia Southern University. I will write a paper based upon my research; but your participation will only require approximately one hour of your time. The benefits to your participation include satisfaction with your contribution to literature that could potentially benefit society overall.

Your identity will never be presented publicly. There are minimal foreseen risks to this study; which may include feelings of embarrassment, frustration, or helplessness. You will be provided with information to counseling services upon request in an effort to alleviate this minor risk. [Statesboro Psychiatric Associates (912-489-1629), A Season Hope Counseling Center (440-632-0332)] Deidentified or coded data from this study may be placed in a publicly available repository for study validation and further research. You will not be identified by name in the data set or any reports using information obtained from this study, and your confidentiality as a participant in this study will remain secure. Subsequent uses of records and data will be subject to standard data use policies which protect the anonymity of individuals and institutions.

The data may be digitally and securely stored for up to 7 years. I hope you will feel free to speak candidly about the topics we discuss. Participation in this study is voluntary. You may withdraw at any time without prejudice to you. No compensation will be provided. If you have questions about this study, please contact the researcher named above or the researcher’s faculty advisor, whose contact information is located at the end of the informed consent.

For questions concerning your rights as a research participant, contact Georgia Southern University Office of Research Services and Sponsored Programs at 912-478-5465. All information will be treated confidentially. There is one exception to confidentiality that we need to make you aware of. In certain research studies, it is our ethical responsibility to report

situations of child or elder abuse, child or elder neglect, or any life-threatening situation to appropriate authorities. However, we are not seeking this type of information in our study nor will you be asked questions about these issues. Your participation implies your consent to be interviewed. The interview is normally tape-recorded and this simply allows to keep track of information. I will submit the interview tape with my paper, and the tape will be destroyed at the end of the semester.

You must be 18 years of age or older to consent to participate in this research study. If you consent to participate in this research study and to the terms above, please sign your name and indicate the date below.

You will be given a copy of this consent form to keep for your records. This project has been reviewed and approved by the GSU Institutional Review Board under tracking number H_18109_.

Title of Project: The Role of Shame: A Creative Look at Justice
Principal Investigator: Gabrielle Lory, Carroll Building 1095, gl00610@georgiasouthern.edu
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Participant Signature

Date

I, the undersigned, verify that the above informed consent procedure has been followed.

Investigator Signature

Date

APPENDIX B

The Role of Shame: A Creative Look at Justice

INTERVIEW PROTOCOL

Please feel free to answer these questions to your level of comfort, and do not provide any identifying information in your responses.

1. What role do you play in the criminal justice system?
2. Do you have more experience with more or less serious offenses? (Violent or nonviolent?)
3. Do you typically interact with victims, offenders, or both?
4. According to your experience, how are the offenses typically dealt with? How are offenders punished?
5. How often are you satisfied with the consequences for the offender?
6. How often are you satisfied with the punitive criminal justice system in place today?
7. What does the term “creative justice” mean to you?

The definition of creative justice used for this research is: the practice of using unconventional methods to exact justice upon those found guilty of crime. These methods typically include forms of public shaming and tend to avoid the more punitive methods of the current criminal justice system.

8. Do you think this concept is applicable to non-violent, less serious offenses? Why or why not?
9. Could it be applied to more serious, violent offenses? Why or why not?
10. What is your experience with the victims and/or offenders of sexual assault? Violent crimes?
11. Do you think the creative justice method could be applied to sexually violent crimes?
12. How do you think this would affect victims and/or offenders of sexually violent crimes?
13. Do you think this style of punishment holds the victim or the offender at a higher risk? What risks would you associate with which?
14. Would it be possible to minimize this risk at all? For either the victim or offender?

15. Have you had any experience with restorative justice (a comparable theory)?
16. How do you think restorative justice affects the victim and/or offender?
17. Do you think social or formal control is more effective when it comes to sanctioning offenders?
18. How much does the type of offense affect the effectiveness of either type of control?
19. How realistic is it to expect a shift from a highly punitive criminal justice system to a more rehabilitative, restorative style? Why?
20. In your opinion, how should the CJ system respond to high rates violent offenses? Sexual assault?
21. Can you offer any suggestions for the improvement and/or expansion of creative justice?