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Legal Consciousness Among Youth at the Red Hook Community Justice Center

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Doctor of Philosophy

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a dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
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ABSTRACT

Legal Consciousness Among Youth at the Red Hook Community Justice Center

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Scholarship on legal consciousness—the ways people understand, imagine, and use the law, as well as their attitudes and feelings towards the law and the judicial system (specifically, law enforcement and courts)—has focused primarily on the circumstances and conditions under which adults turn to the law or choose not to. Little, however, is known about the legal lives of young people. This dissertation explores dimensions of the legal consciousness of youth (ages 14-18) involved in voluntary, non-punitive after-school programs at the Red Hook Community Justice Center (RHCJC)—a problem-solving court and community center located near the heart of the economically disadvantaged, predominantly African-American and Latino neighborhood of Red Hook in Brooklyn, N.Y. One such after-school program at the RHCJC is the Red Hook Youth Court (RHYC)—a juvenile diversion program designed to prevent the formal processing of juvenile offenders (usually first-time offenders) within the juvenile justice system. Teenagers interested in serving on the RHYC must complete a training program and pass a "bar exam" in order to become RHYC members, where they help resolve actual cases involving their peers (e.g., assault, fare evasion, truancy, vandalism). Focusing on the training for RHYC membership, I examine the ways in which RHYC participants (both trainees and members) are exposed to certain ideas about the essence and operation of the law and how their legal consciousness is transformed by the RHCJC over the course of their participation with the RHYC. Using Ewick and Silbey's (1998) "before," "against," and "with" the law schemas, I endeavor to identify common features of the legal consciousness of RHYC trainees and members. I argue that RHYC recruits and interviewees exhibit varying degrees of "*against* the law" legal consciousness, but that over the course of training, these youths begin to come "*before* the law." As RHYC members, I assert that the youths are more "*before* the law" than before (i.e., more "*before* the law" than when they were trainees) and that they become "*before* the law" by *becoming* the law or by becoming legal players enacting the law (but not engaging "*with* the law" to serve their own self-interests).

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ACKNOWLEDGMENTS

In March 2008, I presented a paper at the annual meeting of the Southern Anthropological Society entitled "The Thick Fine Print of Clifford Geertz: A "Microscopic" Examination of Some of the Citations and Footnotes in *The Interpretation of Cultures*." The paper argued that one could glean something of the originality of Clifford Geertz's theoretical orientation and narrative strategy by examining his citations and footnotes in *The Interpretation of Cultures: Selected Essays*. As a springboard for this discussion, I noted some of the literature in law and other academic disciplines ruminating on the use of footnotes. It should come as no surprise that footnotes have hardly been lauded for their ability to express and communicate ideas. Indeed, John Barrymore, the American actor of stage and screen, once observed that reading footnotes is akin to "having to run downstairs to answer the doorbell during the first night of the honeymoon."

Although I have not conducted similar research on the style and content of Acknowledgments sections of Geertz's scholarship (or any other scholar's, for that matter), I would hazard to guess that many view the Acknowledgments portion of a work with a similar lack of respect—as the "undercard" to the "main event"—something like a cocktail hour that can be skipped if one is short on time or, by pattern and practice, accustomed to being fashionably late. At least, this is the conclusion I have drawn based on a non-randomized survey of the students I have taught.

Given that I have devoted time and energy to researching and writing a paper on footnotes—and have devoted countless hours to crafting footnotes in many articles and book chapters—it should probably not astonish readers to learn that the pages of a book

devoted to Acknowledgments are among my favorite in works of non-fiction. For it is here that we can often glimpse something about an author's personality and humanity (or lack thereof) absent from, obscured by, or otherwise unavailable to us in the rest of the text. Indeed, it is in the unnumbered or Roman numeral pages of a text devoted to Acknowledgments that we might understand something about those who have influenced the author—people who may or may not appear in, well, the *footnotes* of the book (or its other forms of citations and references).

If readers of this dissertation have made it this far, they might be disappointed to learn that I make no claims, here or elsewhere, that my Acknowledgments will convert those who disdain or simply skip Acknowledgments. Perhaps I will be so lucky to craft such an Earth-shattering Acknowledgments section if and when I transform this dissertation into a book. Until that day—and for present purposes—the best that I can do is to quote from my favorite Acknowledgments.

"Acknowledgments," Douglas E. Foley writes at (obviously) the beginning of *Learning Capitalist Culture: Deep in the Heart of Tejas*, "usually include long lists of people who have helped make the work possible. One's loving wife and long-suffering children, and colleagues, even if they ruthlessly penciled the manuscript, get tossed some gratitude. Sometimes authors' vanity gets the upper hand, and they list the tribulations of life that have left their work and careers mildewing in some musty study. Having suffered like Hamlet, I too am sorely tempted to gush on."[1] Foley does not, but he does allow himself to thank some twenty-five friends and colleagues.

This is not what makes Foley's Acknowledgments section brilliant (although it did resonate with me more than the opening sentences of other Acknowledgments

sections that I have read). Rather, it was his comments in the second-to-last paragraph of the section: "acknowledgments usually thank the 'people' [one has studied] for their friendship and free information."[2] Foley does thank his research subjects/informants, but he also admits that his book "criticizes what they take as good and natural" and expresses the hope that his book will be viewed less as a stab in the back than as a "loving critique."

I, too, wish to thank the "people" I have studied. This dissertation would not have been possible without the kids with whom I spent many afternoons. And I would not have had the privilege of meeting them and learning about their participation with the RHYC had it not been for the generosity of numerous current and former RHCJC staff members (such as Julian Adler, Liz Bender, James Brodick, the Honorable Alex M. Calabrese, Sabrina Carter, Jessica Colon, Sharese Crouther, Leroy Davis, Mouhamadou Diaman, Kate Doniger, Melissa Gelber, Shante Martin, Rachel Swaner, Ericka Tapia, Brett Taylor, and Elise White) who facilitated my early interactions with the kids and answered many of my queries about the RHYC and other youth programs at the RHCJC. While I recognize that this dissertation may, in parts, criticize what RHCJC staff members "take as good," like Foley with *Learning Capitalist Culture*, I hope that this dissertation will be viewed less as a stab in the back than as "loving critique."

The field research for this dissertation was funded by the National Science Foundation (Doctoral Dissertation Research Improvement Grant, Law and Social Sciences Program, Proposal No. 0961077; Doctoral Dissertation Research Improvement Grant, Cultural Anthropology Program, Proposal No. 0961077). Additional support came from an Oberlin College Alumni Fellowship.

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[1] Foley (1994:xiii).
[2] Foley (1994: xiv).

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CHAPTER 1: INTRODUCTION

"The police will pull you over for your pants hanging down," says Daquan, who subsequently grabs his pants and yanks them down a bit for effect.

"They could be walkin' up on you asking you questions for no reason," O'karo states.

"Some are jerks," Wilfredo announces.

"They racist," Anquette opines.

"Sometimes [the police] arrest you for no apparent reason," Natasha laments.

The scene is the mock courtroom at the Red Hook Community Justice Center (RHCJC)—a multi-jurisdictional problem-solving court and community center located in the heart of the Red Hook neighborhood of Brooklyn, New York. A group of African-American and Latino/Hispanic teenagers, fourteen-to-eighteen years of age (although most are fifteen or sixteen), have gathered in the courtroom for a group interview. Each is hoping to earn a place in a nine-to-ten-week long unpaid training program for the Red Hook Youth Court (RHYC)—a juvenile diversion program designed to prevent the formal processing of juvenile offenders (usually first-time offenders) within the juvenile justice system. The teenagers who are selected from the pool of applicants must complete the training program and pass a "bar exam" in order to serve as RHYC members, where they will help resolve actual cases involving their peers (e.g., assault, fare evasion, truancy, vandalism). [3]

[3] In this dissertation, I use the terms "adolescents," "juveniles," "kids," "teens," "teenagers," "young people," and "youths" interchangeably (although "kids" and "youths" appear most frequently and I tend to shy away from using "juvenile" because of its legal evocations and often pejorative connotations). I am not insensitive to distinctions that have been drawn between the "anthropology of adolescence" and the

All of the teenagers who have come for the group interview have done so *voluntarily*. In other words, while some of the teenagers may have been encouraged to apply to the training program by a family member, none of the kids in the group interview is there as a result of a court order or pursuant to a threat of punishment from within the criminal justice system. Yet, as the above-quoted statements suggest, many of the teenagers possess less-than-positive views of law enforcement. While a few kids express the belief that the police "protect the community" or "solve crimes" and while others offer more qualified or nuanced statements, such as, "the police do help out, but they do bad stuff" and "they protect and enforce the law, but some of them abuse their power," the majority of responses reflect a dislike—and sometimes a strong dislike—for law enforcement.

So why are they there? If they have such tepid or negative feelings about law enforcement, how do they perceive the institution at which they are trying to earn a position? How do they envision their role in this place? What do they know—or think

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"anthropology of youth" (see Bucholtz 2002 for a discussion). And while I am appreciative of the contributions of historians, sociologists, and cultural studies scholars who have explored the cultural expressions of twentieth-century youth (see, e.g., Austin and Willard 1998)—as well as cognizant of the dynamics and features of "emerging adulthood" in psychology (see, e.g., Arnett 2000, 2004; cf. Bynner 2005 for a criticism)—my choice of terms reflects the language of my informants. Two of the programs that I studied contained the word "youth" in their titles. Program participants frequently referred to each other as "kids," and RHCJC staff also tended to call RHYC members and other program members "kids." As Barrett (In Press [Introduction]) explains in defense of her use of the terms "kid" and "kids" in her ethnographic account of the Manhattan Youth Part's experiment in attempting to provide legal alternatives for black and Hispanic boys from poor urban communities facing felony charges and possible incarceration, "I most frequently use 'kid' or 'kids,' simply because this is the way that court actors most commonly referred to Youth Part defendants. Phrases such as 'these kids,' 'our kids,' or 'I have a kid' were used repeatedly in conversations by the judge, attorneys, court officers, detention facility personnel, program representatives, and parents. Also, 'kid' is what the average person would use if he or she saw any one of these youngsters on the street, as in, 'Yesterday I saw this kid who was wearing a t-shirt that came down to his knees.' By using common descriptors, rather than those inscribed by the criminal justice system, it is my intention to stand in contrast to the majority of criminal justice research on court-involved youths, which tends to depict them more as criminal justice system objects than as real human subjects." I subscribe to the same logic and reasoning, and thus follow Barrett's lead in this dissertation.

All of the kids' names are pseudonyms. I use the real names of those RHCJC staff members who granted me this permission and for those who did not, I use pseudonyms, as well.

they know—about the law? Perhaps most significantly, how do these feelings, perceptions, visions, and knowledge of or about the law change for those teenagers who are accepted into and participate in the RHYC training program and subsequently serve as RHYC members?

Research across the social sciences indicates a lack of confidence in the fairness or effectiveness of the judiciary in the United States, and in the criminal justice system and criminal law, more specifically.[4] While this crisis of confidence traverses racial categories and spans the socioeconomic spectrum, widespread distrust and lack of faith in the courts and the criminal justice system is particularly pronounced in minority communities.[5] Indeed, a high level of dissatisfaction with police is common among residents of poor, crime-ridden neighborhoods,[6] and African-Americans and the poor, in particular, are considerably more likely to perceive the criminal system as unjust.[7] For example, Hagan and Albonetti examined perceptions of "criminal injustice" and found that African-Americans and members of low socio-economic status (SES) were more

[4] See, e.g., Fagan (2008); Frazer (2007); see also Brisman (2010); Editorial (7/17/09, 2/18/11, 2/20/12); Liptak and Kopicki (2012); Shapiro (2012); cf. Huebner et al. (2004); Liptak (2011). This is not to suggest that trust in government or a lack of confidence in the fairness or effectiveness of justice systems are problems peculiar to the contemporary United States. For international examples, see, e.g., Fahim (7/19/09); Malkin (2011); Slackman (2009); Taussig (2005); see generally Associated Press (3/30/12). For a discussion of concern over the erosion of U.S. citizens' faith in law and the legal system in the early 1900s, see Ewick and Silbey (1998:238 (citing Pound 1906)).

[5] Rottman and Hansen (2001); see also DeKeseredy (2011); Dolnick (2010); Editorial (8/1/07); Hurdle (2007); Perry (2009); Powell (2009); Tyler and Huo (2002); Tyler and Waksladk (2004). For a discussion of studies that suggest that members of minority groups are treated more severely by the criminal justice system, see Agnew (2011:142).

[6] Anderson (1999); Chriss (2007); Huang and Vaughan (1996); MacDonald and Stokes (2006); Sampson and Bartush (1998); Smith, Graham, and Adams (1991).

[7] Fagan (2008); Hagan and Shedd (2005); Jones (2007); Nielsen (2000); Rottman and Hansen (2001); Scott (2002); Sherman (1993); see also Ewick and Silbey (1998:236), who found that "minorities were significantly more likely than whites to experience poor police protection [and] police harassment," and Silbey (2005:336), who, in slightly different vein, notes that "[b]ecause minority populations command and deploy disproportionately fewer social resources of education, income, status, and power, they are less likely to turn to to the law or the courts with their troubles. And when they become subjects of law, their problems are often reconfigured as crimes rather than interpersonal disputes. Thus, race and income interact to explain the differential use of law and courts."

likely to perceive criminal injustice than Caucasians and members of high SES, respectively.[8] While this was true for many of the legal system players, such as the court and judges, the relationship between race and perceptions of injustice was particularly strong for items involving the police, substantiating the findings of previous studies[9] and subsequently confirmed by others.[10]

Furthermore, perceptions of the police can appreciably affect police-community relations. In fact, because law enforcement relies on the voluntary compliance of the citizenry in the performance of its duties, and depends on citizens to report crime and criminals and to serve as jurors and witnesses for the courts, citizens' lack of trust in the police can frustrate crime control efforts.[11] Thus, because perceptions of the criminal justice system in general and the police in particular are linked to cooperation with legal authorities and compliance with the law,[12] it is important to continue to study such perceptions.

Perceptions of the law, legal authorities, and legal institutions begin in childhood.[13] Although such orientations towards the legal system can grow, develop, and vacillate over time,[14] adolescence is a crucial formative period for the development of political and social beliefs.[15] Indeed, perceptions of justice that form in adolescence often persist through adulthood[16] and early-to-middle adolescence is the period when

[8] Hagan and Albonetti (1982).
[9] See, e.g., Block, (1971); Hahn (1971); Smith and Hawkins (1973).
[10] See, e.g., Huang and Vaughan (1996); Merry (1998:22); Smith, Graham, and Adams (1991).
[11] Brunson and Miller (2006); Fagan (2008); Scott (2002); Tyler (2003); see also Bowen (5/15/12).
[12] See, e.g., Bernard (1990); Hagan and Shedd (2005); LaFree (1998); Mann (1993); Piquero et al. (2005); Russell (1998); Tyler (1990).
[13] Chriss (2007).
[14] Piquero et al. (2005).
[15] Flanagan and Sherrod (1998); Hagan and Shedd (2005:267); Niemi and Hepburn (1995).
[16] Carr, Napolitano, and Keating (2007); Hagan and Shedd (2005); Hagan, Shedd, and Payne (2005).

minority youth are likely to first encounter the police on a regular basis[17]—so much so that one commentator recently referred to getting stopped and frisked as a "rite of passage" for African American and Latino youth in New York City.[18] As such, it becomes especially vital to examine *young people*'s attitudes towards and interactions with the police, as well as the court system and law, more generally—particularly those living in socially and economically disadvantaged communities where cynicism and skepticism about the efficacy and fairness of law enforcement officers tends to run high.[19]

Most research exploring what people in the United States think about formal social control has taken place outside the discipline of anthropology; has examined attitudes towards police, rather than the criminal justice system, more generally;[20] and has tended to focus on adult populations.[21] This dissertation (based on fieldwork conducted at the RHCJC between the summer of 2007 and the early winter of 2011) explores dimensions of what I call *youth legal consciousness*—a concept that I have adapted from the notion of *legal consciousness* in the anthropology of law[22] and law and society literature to mean the ways *young people* understand, imagine, and use the law, as well as their attitudes and feelings towards the law and the judicial system (specifically, law enforcement and courts) and the nature and scope of their legal knowledge.[23]

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[17] Hagan and Shedd (2005); Taylor et al. (2001); see also Bowen (11/29/11); Herbert (5/21/07).
[18] Peart (2011).
[19] See Nielsen (2000:1083) who contends that those who are cynical about the law frequently based their opinions on past experiences with the law or legal actors.
[20] See, e.g., Apple and O'Brien (1983); Carter (1985); Huang and Vaughan (1996); Huebner et al. (2004).
[21] Cf. Brunson and Miller (2006); Carr, Napolitano, and Keating (2007); Hurst, Frank, and Browning (2000); Leiber, Nalla, and Farnworth (1998).
[22] I use the terms "anthropology of law" and "legal anthropology" interchangeably throughout this dissertation.
[23] See Brisman (2010/2011 (citing Ewick and Silbey 1991; Hirsch 2002; Merry 1990; Morrill et al. 2005; Mraz 1997; Nielsen 2000; Trubek 1984; White 1990)). My exploration of young people's "legal knowledge" reflects a desire to understand what young people know or think they know about the law, legal processes, and legal players—which I see as a component of *youth legal consciousness*. As such, my investigation of "what kids know about the law" differs from Valverde's (2003) examination of what "legal

Attempting to understand the legal consciousness of a group—youth or adult—is a challenging and occasionally frustrating endeavor. Legal consciousness is protean, malleable, ductile. As Levine and Mellema explain, "people's legal consciousness is constantly evolving; it is tested by, and responds to, new experiences."[24] Similarly, McCann asserts that legal consciousness is "the ongoing activity of meaning-making employing the knowledge and logics, the vocabulary and styles of reasoning that we associate with 'the legal.' Legal consciousness is not a static 'thing,' but rather is a dynamic process of cognition facilitated by legal knowledge accumulated through social experience."[25] Arguably, this "dynamic process of cognition" is further accelerated or catalyzed by situations and social experiences involving impressionable young people involved in a program *designed* to change their legal consciousness. As such, this dissertation reflects less of an effort to catch and preserve the legal consciousness of a certain group of kids at a specific place and time than an attempt to track and highlight the ways in which the kids' legal consciousness was transformed by the RHCJC over the course of their participation with the RHYC. Accordingly, the greater part of this dissertation is devoted to the training program—a period of time in which the kids were exposed to certain ideas about the essence and operation of the law in preparation for their service as RHYC members.

I begin in Chapter 2, by placing my study in the context of the legal anthropological literature on legal consciousness. Next, in Chapter 3, I turn to a description of the neighborhood of Red Hook, Brooklyn, and the RHCJC and its youth

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knowledges" and "legal powers" do and how they work, as well as from Riles' (2004) research on the means and ends of legal knowledge or her (2006) considerations of the hegemony and instrumental character of character of legal knowledge in the human rights arena.

[24] (2001:173 n.2).

programs, before turning to a discussion of youth courts in the United States, in general, and the RHYC, in particular.

The remainder of the dissertation is devoted to three different components or stages of an RHYC member's experience and participation in youth court. Chapter 4 describes the recruitment and interview process for the RHYC of which I provided a vignette at the outset of this dissertation. Although the recruitment section of Chapter 4 reveals little about young people's legal consciousness, this portion of Chapter 4 devoted to recruitment helps illuminate some of the kids' motivations for joining the RHYC, as well as set the stage for the section on the group interview process. The group interview section reveals something of what the kids know or think they know about the law, the ways in which they perceive and envision the law, and how they think or feel about the law and the judicial system (specifically, law enforcement and courts). This section thus offers a sketch, albeit a crude one, of the kids' legal consciousness prior to their training—thereby providing a point of comparison with which to understand their transformation during the RHYC training.

In Chapters 5-20, which constitute the bulk of this dissertation, I follow a group of youths through their training, describing the lessons taught by various RHCJC staff members and highlighting specific and general aspects of the law covered—or avoided, as was sometimes the case. Although these chapters represent (for the most part) the chronological order in which they occurred, they differ in content and style, reflecting the diverse ways in which different RHCJC staff members presented information. Thus, some chapters contain more dialogue and discussion between and among RHYC trainees and RHCJC staff, while others record facilitators' lectures and include far fewer

[25] McCann (2006:xii).

exchanges between kids and staff. Some chapters discuss legal terms and concepts taught to the kids, others describe images of law and justice presented to the kids, and still others depict the "soft skills" and "life lessons" that were presented and which possessed only peripheral—if any—connection to the law. Throughout, I attempt to tease out the kids' perceptions of the operation of authority and power (as manifested in or by the criminal justice system and, most prominently, by law enforcement personnel) and their understandings of key terms or concepts, such as "community," "crime" and "offense," "fairness," "justice," and "law," and to flag where and how these perceptions and understandings change.

Chapter 21, which is loosely modeled after Peletz's presentation and discussion of Islamic court cases in Malaysia, describes and analyzes RHYC proceedings.[26] It is in this chapter that we see some of the ways in which the kids have come to adopt the lessons presented in the trainings about the operation and purpose of the law.

I conclude with Chapter 22, where I endeavor to identify common components or dynamics of the legal consciousness of RHYC trainees and members using Ewick and Silbey's (1998) "before," "against," and "with" the law schemas. I argue that RHYC recruits and interviewees exhibit varying degrees of "*against* the law" legal consciousness (Chapter 4), but that over the course of training (Chapters 5-20), these youths begin to come "*before* the law." As RHYC members (Chapter 21), I assert that the youths are more "*before* the law" than before (i.e., more "*before* the law" than when they were trainees) and that they become "*before* the law" by *becoming* the law or by becoming legal players enacting the law (but not engaging "*with* the law" to serve their own self-interests). While I am careful not to suggest that my findings regarding the

legal consciousness of these youth at the RHCJC are generalizable to all youth (or even to all *Red Hook* youth)[27]—for, as Nielsen concludes, "the social location of subjects, and their experiences that arise from that location, are a vital part of our understanding of legal consciousness"[28]—I do try to demonstrate how my research advances Ewick and Silbey's schemas and contributes to the theoretical possibilities of the larger study of legal consciousness within the anthropology of law.

The Appendix describes my inspiration for this study, how I settled on the RHCJC as a fieldsite, how my study and the questions I initially sought to pursue changed over the course of my fieldwork, and the methods employed to gather my data. Deriving inspiration from Foley, who in the Acknowledgments section of his book suggests that readers examine portions of his Appendix before reading *Learning Capitalist Culture: Deep in the Heart of Tejas*,[29] readers might enjoy taking a non-sequential approach to this dissertation: begin with the "Starting the Study," "Abraham and Andre," and "Developing the Study," sections of the Appendix, next read Chapters 2 and 3, return to the "Methods" portion of the Appendix, and then examine Chapters 4-22.

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[26] Peletz (2002).
[27] Sarat (1990:348) argues for a "legal consciousness of the welfare poor," but acknowledges that there is "considerably more fragmentation and division among people on welfare than might be suggested by . . . repeated references to *the* welfare poor" (emphasis in original).
[28] Nielsen (2000:1086). Or as Merry (1988:885) states rather succinctly, "[l]aw and legal institutions mean different things to different people."
[29] Foley (1994:xiv).

CHAPTER 2: LEGAL CONSCIOUSNESS AND LEGAL ANTHROPOLOGY: A GUIDE

Early legal anthropology was concerned with what the "law" is, whether it can be circumscribed, and whether Western legal categories are applicable in non-Western settings.[30] In the 1960s and 1970s, legal anthropology moved away from these questions (and from an emphasis on law as a structure of rules) towards a more "process-oriented" approach, whereby actors (rather than institutions) became the analytical focus and "disputing" began to replace "law" as the subject of research and inquiry.[31] In the 1980s, legal anthropology gazed introspectively (probably consistent with postmodern turn), leading some scholars to question the utility of the "anthropology of law" as a separate subfield and to either call for its abolition or predict its demise.[32] Comaroff and Roberts, for example, argued that a necessary entailment of the process orientation toward law was that legal anthropology should cease to exist as a discrete field of study.[33]

Academic calls for the "death" or "end" of something—usually with *-ism* or *-ology* as suffixes—are rarely heeded and often bring about the opposite result: greater scholarly attention to whatever was supposed to (or whatever some people *hoped*) would

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[30] See, e.g., Bohannan (1957, 1965, 1967, 1969); Driberg (1928); Epstein (1954); Gluckman (1955); Hoebel (1983); Malinowski (1976); Pospisil (1958); Seagle (1937); see also Geertz (1983); Nader (1969); Rosen (1989).

[31] See, e.g., Nader (1980); Nader and Todd (1978); Sarat et al. (1998); see also Merry and Silbey (1984). According to Merry (1988:890 n.8), "the Anglo-American common law tradition [may have lead] British and American anthropologists to focus on moments of dispute rather than on systems of ordering embedded in the wider domain of uncontested social life" (citing Griffiths 1986; Ietswaart 1986).

[32] See, e.g., Chanock (1983); Comaroff and Roberts (1981); Francis (1984); Snyder (1981a, 1981b); see also Starr and Collier (1989) for an overview. It bears mention that legal anthropology has not been the only anthropological subfield to raise and negotiate existential questions or to critically assess the very concept or entity that has given rise to the subfield. Trouillot (2001:126), for example, contemplates whether "the state" is, indeed, "an object to study" and whether political anthropologists and anthropologists of the state should cling to the word, "state," at all (see also Hann 2001; cf. Aretxaga 2003). For a discussion of "the illusion [of] the political as an analytically distinct sphere," see, e.g., Trouillot (2001:130 n.13).

[33] Comaroff and Roberts (1981).

cease to exist.[34] Legal anthropology was no different, and as a distinct section of anthropology, it did not die. In the mid-to-late 1980s and 1990s, legal anthropology witnessed research on the language and symbolics of law,[35] the use of historical analysis as an aid in understanding relationships of law and power,[36] and concern for continuities between legal orders and wider cultural systems—what has become known as "law as culture."[37] More recent explorations have focused on legal pluralism, the presence of "multiple legal ideologies," to use Malkin's phrase,[38] in colonial and postcolonial states, and the global growth of human rights legal regimes.[39] Recent areas of inquiry have also focused on what the law *does*[40] and on the "gap between the law on the books and the law in action."[41] Such recent approaches have eschewed the "law-first" paradigm[42]—the top-down process to understanding law in law schools in which cases and statutes are scrutinized to discern legal rules—in favor of a bottom-up method that seeks to uncover law's reach and comprehend its meaning and role in everyday life. *Legal consciousness*, as a concept, orientation, or subject, represents such a bottom-up method.[43]

A number of definitions or descriptions have been proffered for *legal consciousness*. Trubek employs the term, *legal consciousness*, to refer to "all the ideas

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[34] See Brisman (2005, 2007).
[35] See, e.g., Bentley (1984); Conely and O'Barr (1990, 1998); White (1984).
[36] See, e.g., Moore (1986); Starr and Collier (1989).
[37] Rosen (1989a, b); see also Geertz (1983); Rosen (2006).
[38] Malkin (2005:362).
[39] See, e.g., Goodale and Merry (2007); Merry (1988, 1992, 1997, 2000); Messer (1993); Wilson (2000).
[40] See, e.g., Merry (1990); Greenhouse et al. (1994); Ewick and Silbey (1998); Peletz (2002); Goodale and Merry (2007).
[41] Silbey (2005:323).
[42] Sarat and Kearns (1993).
[43] Nielsen (2000:1058) conceptualizes the shift as a turn from an "instrumental conception of law" toward a "constitutive perspective that views law as one of many competing forces that affect and shape social life." As Nielsen (2000:1058) explains, "[i]n contrast to instrumental approaches in which law is treated as autonomous from social life, normative systems, and social institutions, the constitutive perspective examines law as it is connected to and embedded in these other arenas, allowing an examination of the cultural constraints and social norms that influence law." According to Nielsen, "[o]ne aspect of this shift

about the nature, function, and operation of law held by anyone in society at a given time,"[44] while Merry uses it to mean "[t]he ways people understand and use the law."[45] For Ewick and Silbey, *legal consciousness* means "the ways in which ordinary people—rather than legal professionals—understand and make sense of law . . . and legal institutions, that is, the understandings which give meaning to people's experiences and actions."[46] While "[c]ourt appearance or formal legal experience is not irrelevant in shaping legal consciousness," Ewick and Silbey explain, "neither is it necessary."[47]

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has been to study the 'legal consciousness' of ordinary citizens, exploring how they think about the law and how their understanding of legal institutions and legal rules affects their day-to-day lives" (2000:1058).

[44] Trubek (1984:592). It bears mention that while historical studies of legal ideology and consciousness predate the mid-1980s, the term, *legal consciousness*, did not gain traction until the mid-to-late-1980s and early 1990s. See Silbey (2005:341-46).

[45] Merry (1990:5). Merry (1990:5) defines *consciousness* separately as "the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their commonsense understanding of the world." For her, *consciousness* "is not only the realm of deliberate, intentional action but also that of habitual action and practice" (1990:5).

[46] Ewick and Silbey (1991-92:731, 734 (footnote omitted)). As I will describe below, investigations of *legal consciousness* have centered on "ordinary people" (see also Nielsen 2000:1056; Silbey 2005:327) and "average citizens" (Hull 2003:630), rather than "legal professionals." This focus suggests that "legal professionals" are somehow *not* ordinary people (when, in fact, their experiences with areas of law outside their "expertise" may be no different from those of "ordinary people" without *any* involvement with the law and its various arenas). In addition, implicit in Ewick and Silbey's (1991-92) distinction between "ordinary people" and "legal professionals" is the assumption that (1) "legal professionals" are an undifferentiated mass (i.e., that bailiffs, correctional officers, court officers, judges, lawyers, parole officers, police officers, and probation officers all possess the same legal consciousness); and (2) "legal professionals" are, in some way, more aware of—or *conscious*—of their *legal consciousness* than "ordinary people." Twenty minutes in a law school classroom should disabuse one of the notion that law students—future lawyers—engage in any analytical, critical, or self-reflective examination of "the nature, function, and operation *of law*" (although they do, at times, learn the nature, function, and operation of specific bodies of law, e.g., constitutional law, criminal law, property law). Although time and space do not allow for a more elaborate discussion, I would suggest that those contemplating studies of legal consciousness give serious thought to abandoning the "ordinary people"-"legal professionals" distinction and consider research on, for example, the legal consciousness of public defenders (or prosecutors or police officers) with respect to both criminal law and other areas of law that they may encounter in their daily lives outside work. In some respects, one could argue that this dissertation starts us down this path by examining the legal consciousness of youths who, at the beginning, are "ordinary people" (described in Chapter 4), but who undergo legal training and take a bar exam (described in Chapters 5-20), transforming them into "legal professionals" (or, at least "quasi-legal professionals") who hear cases and get paid for doing so (described in Chapter 21).

[47] Ewick and Silbey (1991-92:736).

In later work, Ewick and Silbey endeavor to understand the different ways in which people "use and think about law."[48] Ewick and Silbey begin their book, *The Common Place of Law: Stories from Everyday Life*, by asking: "What are the different conceptions of law that encourage some people to call a lawyer if their neighbor's dog disturbs their trash, and others to accept the losses and pain that may be caused by defective products, unsuccessful surgery, or discrimination? To what degree do Americans understand their lives through legal concepts and processes?"[49] As with their earlier research, Ewick and Silbey explore these questions and others through the lens of legal consciousness, but their definition or notion of legal consciousness is phrased differently. In *The Common Place of Law*, they "use the phrase 'legal consciousness' to name participation in the process of constructing legality."[50] While Ewick and Silbey acknowledge that people often do not become aware of the law and their relationship to it until "formal law—and the violence embedded in it—makes an appearance"[51]—a statement that I re-quote in the Appendix and an idea that I allude to in Chapter 1[52]—they explain that "[a]s a collective construction, consciousness is . . . not reducible to what individuals think about the law."[53] While Ewick and Silbey recognize that "ideas and attitudes" are part of or help develop, form, and shape consciousness, consciousness is more than just "ideas and attitudes." Rather, they assert that "legal consciousness is a

[48] Ewick and Silbey (1998:xi).
[49] Ewick and Silbey (1998:xi).
[50] Ewick and Silbey (1998:45). "Legality," in turn, is defined by them as "the meanings, sources of authority, and cultural practices that are commonly recognized as legal, regardless of who employs them or for what ends. . . . [L]egality is a social structure actively and constantly produced in what people say and in what they do" (Ewick and Silbey 1998:22, 223).
[51] Ewick and Silbey (1998:250).
[52] As suggested in Chapter 1, many Red Hook youths, by virtue of their race, age, and class, have had *some* sort of interaction with "the violence of formal law" (e.g., stops and frisks by the police).
[53] Ewick and Silbey (1998:247).

process. Consciousness is participation—through words and deeds—in the construction of legal meanings, actions, practices, and institutions."[54]

For Nielsen, "ideas about law, both conscious and unconscious, shape how people make sense" of their daily interactions with others, what they deem to be problematic (or not), and what remedies or responses they believe are possible.[55] The study of legal consciousness, she explains, "not only explores how people think about the law (consciousness about law) but also the ways in which largely *un*conscious ideas about the law can affect decisions they make."[56] She continues:

> Legal consciousness research examines the role of law (broadly conceived) and its role in constructing understandings, affecting actions, and shaping various aspects of social life. It centers on the study of individuals experiences with law and legal norms, decisions about legal compliance, and a detailed exploration of the subtle ways in which law affects the everyday lives of individuals to articulate various understandings of law/legality that people have and use to construct their understanding of their world.
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> Legal consciousness also refers to how people do *not* think about the law; that is to say, it is the body of assumptions people have about the law that are simply taken for granted. These assumptions may be so much a part of an individual's worldview that they are difficult to articulate.

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[54] Ewick and Silbey (1998:247). In a similar fashion, Hirsch (2002:16, 26) asserts that "[t]he specific understandings that people have of law are a central aspect of legal consciousness, and such understandings, as revealed through interviews and casual conversations, are profitably analyzed in relation to patterns of court use. . . . Legal consciousness, in the sense of an individual's understandings of law, is studied through observation and analysis of non-linguistic and linguistic behavior (e.g., interviews, court testimony)."

In part, I was able to avoid the pitfalls of reducing the kids' legal consciousness to what they thought about the law by not limiting myself to interviews of RHYC trainees and members; sitting in on RHYC recruitment, training, and hearings afforded me the opportunity to observe the kids' "words and deeds"—their "participation . . . in the construction of legal meanings, actions, practices and institutions." But I was also able to avoid some of the pitfalls of reducing the kids' legal consciousness to what they thought about the law because what they thought about the law changed over the course their involvement with the RHYC. While legal consciousness is intrinsically active and variable, the changes in the kids' legal consciousness were more pronounced because of their involvement in a program set up for that very purpose—to alter their legal consciousness. Thus, to some extent, I was able to avoid a reductive description of the kids' legal consciousness (and to heed Ewick and Silbey's cautionary instructions) because of the built-in nature of the RHYC program.

[55] Nielsen (2000:1056).

[56] Nielsen (2000:1058).

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> Legal consciousness affects not only how people think about invoking the law or the general utility of law but also how people interpret events in their everyday lives. The law shapes what remedies respondents believe are possible and plausible, as well as respondents' understanding of these common everyday events as a troubling, yet unavoidable and unremediable, part of social life. [57]

Similarly, Marshall states that "legal consciousness is more than just the meaning that people assign experience; it must also include the social and cultural practices of enacting those meanings. Legal consciousness is reflected in what people say and do, in addition to what they think,"[58] while Hirsch claims that "[l]egal consciousness is constituted in relation to the legal processes available to people, the ideas and practices of legal professionals and laypeople, and also discourses circulating locally and internationally."[59] And finally, for Hoffmann, *legal consciousness* refers to "how people make sense of law and legal institutions and how people give meaning to their law-related experiences and actions,"[60] while for Cowan "[l]egal consciousness research seeks to understand people's routine experiences and perceptions of law in everyday life. The focus above all, then, is on subjective experiences, rather than on, for example, law and its effects in society."[61]

To date, scholarship on legal consciousness—which, drawing on the definitions discussed above, I conceptualize as the ways people understand, imagine, and use the law, as well as their attitudes and feelings towards the law and the judicial system

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[57] Nielsen (2000:1059, 1087 (internal footnote omitted)). In Chapters 5-20, I discuss how the kids do *not* think about the law, but there, I mean it not in terms of assumptions they have about the law, but the ways in which they are taught or encouraged not to think about the law—taught not to question *why* certain laws exist, *whether* such laws *should exist*, whether the application and enforcement of certain laws is consistent and fair, whether the potential reasons for or benefits of a particular transgression to the respondent could outweigh the harm or potential harm to "the community" (however defined).

[58] Marshall (2005:89 (citations omitted)).

[59] Hirsch (2002:15).

[60] Hoffmann (2004:692-93).

[61] Cowan (2004:929 (footnote omitted)).

(specifically, law enforcement and courts), and the nature and scope of their legal knowledge, including their legal literacy[62]—has focused primarily on the circumstances and conditions under which people turn to the law or choose not to[63]—what Silbey refers to as "people's recourse to the law."[64] Some scholars have considered the legal consciousness of a particular group, such as welfare applicants and/or recipients[65] and working-class and poor people,[66] as well as the legal consciousness of people in a specific working or social space, such as jurors in capital punishment cases,[67] women on the street engaged in illegal activities,[68] women responding to unwanted sexual attention in the workplace,[69] and taxicab employees' perceptions of the laws and rules that regulate their workplace. Others have explored people's legal consciousness with respect to a particular legal issue or specific type of problem, such as same-sex couples' attitudes and beliefs about marriage[70] and how experiences with and attitudes toward offensive public speech vary by race, gender, and class.[71] Still others have identified common features and variation in legal consciousness of a group or place, but have placed greater emphasis on and appear more driven to understand legal consciousness in relationship to broader

[62] See Chapter 1; see also Brisman (2010/2011 (citing Ewick and Silbey 1991; Hirsch 2002; Merry 1990; Morrill et al. 2005; Mraz 1997; Nielsen 2000; Trubek 1984; White 1990)).
[63] Engel 1984; Greenhouse 1986; Greenhouse et al. 1994; Hirsch 2002; Hoffmann 2004; Merry 1990; Nielsen 2000).
[64] Silbey (2005:335).
[65] Cowan (2004); Ewick and Silbey (1991-92); Sarat (1990).
[66] Merry (1986, 1990).
[67] Fleury-Steiner (2003, 2004).
[68] Levine and Mellema (2001).
[69] Quinn (2000); Marshall (2003, 2005).
[70] Hull (2003).
[71] Nielsen (2000).

issues of power, legal hegemony, or resistance to law.[72] And finally, some scholars have considered legal consciousness as intertwined with "rights consciousness" and identity.[73]

Despite such diversity and despite calls by some researchers for investigations into how law and law-like processes affect young people and shape their everyday lives—and despite U.S. culture's general fascination with the lives of young people[74]—"little is known about the legal lives of young people."[75] In the late 1980s and early 1990s, the U.S. public *speculated* about young people's legal lives—or, rather, their *illegal lives*—and expressed fear about out-of-control teenagers, ruthless young criminals, and "'wolf-packs' of 'super-predators,'"[76] little attention was devoted to how young people really understood**,** imagined, and used the law. While the impending threat of the "super-predator" has proven false, there has continued to be little consideration of young people's attitudes towards and feelings about law and the judicial system. Although there exists significant anthropological research in youth identity[77] and youth (sub)cultures,[78] there remains a gap in the literature in what I term, *youth legal consciousness*. This dissertation attempts to fill this gap by examining the legal consciousness of youth voluntarily involved with the RHYC in the socially and economically disadvantaged neighborhood of Red Hook in Brooklyn, New York.[79]

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[72] See, e.g., Ewick and Silbey (2003); Peletz (2002); Silbey (2005); see also Sarat (1990).
[73] See Coutin (2000); Engel and Munger (2003); Fleury-Steiner and Nielsen (2006); Goodale and Merry (2007); Greenhouse (2008); Hirsch (2002); see also Nielsen (2006); Riles (2006).
[74] See, e.g., Collins (2010).
[75] Adelman and Yalda (2000:37).
[76] Chura (2010:xvi); see also Barrett (In Press [Introduction]); see generally Schrialdi and Ziedenberg (2001). To some extent, a different version of this fear still exists (see, e.g., DeFalco 2012).
[77] See, e.g., Scheper-Hughes (1992); Stephens (1995); Mead (2001).
[78] See, e.g., Amit-Tala and Wulff (1995); Anderson (1999); Foley (1990); MacLeod (1987); Taylor (2001); Thornton (1995); Willis (1977).
[79] As noted in Chapter 1, I make no claims in this dissertation for having defined, outlined, or described the legal consciousness of *all youth* or *all Red Hook youth*, but I do not even profess to having discovered and revealed the legal consciousness of *all the youth involved with the RHYC*! Had I studied RHYC

My study of how young people relate to (the) law is guided by Ewick and Silbey's tripartite categorization of *above the law***,** *before the law*, and *against the law*. Ewick and Silbey describe *before the law* as "encompass[ing] traditional conceptions of the ideal of the rule of law . . . 'before the law' is the story law tells of itself."[80] In the "before the law" form of legal consciousness, "the law is described as a formally ordered, rational, and hierarchical system. . . . Law is understood to be a serious and hallowed space in which the mundane world is refigured in importance and consequence. Often in these situations people express loyalty and acceptance of legal constructions; they believe in the appropriateness and justness provided through formal legal procedures, although not always in the fairness of the outcomes."[81] This variety of legal consciousness might well describe the legal consciousness of the working-class and poor citizens with relatively little formal education whom Merry studied— people who "turned to the courts believing that the law was awesome and powerful, capable of uncovering the truth, applying laws firmly, and providing some kind of justice. Their ideas reflected the dominant legal ideology of American society."[82]

In the second form of legal consciousness—*with the law*—the law is described and "'played' as a game, a bounded arena in which preexisting rules can be deployed and new rules invented to serve the widest range of interests and values."[83] This arena, Ewick and Silbey explain, is a stadium of "competitive tactical maneuvering where the pursuit of self-interest is expected and the skillful and resourceful can make strategic

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respondents, rather than RHYC *trainees* and *members*, I would have likely reached very different conclusions about youth legal consciousness.

[80] Ewick and Silbey (1998:226).

[81] Ewick and Silbey (1998:47).

[82] Merry (1986:253).

[83] Ewick and Silbey (1998:48).

gains."[84] In contrast to the "before the law" schema, which embodies the ideal of the rule of law, "with the law" is "a pragmatic account of social practice . . . a view of law as a ground for strategic engagements orchestrated to win in competitive struggles . . . ."[85] Or, as Nielsen conceptualizes it, when one is "with the law," one utilizes or treats (the) law instrumentally—to serve one's own purposes when it favors him/her and when it can be made to do so.[86]

According to Ewick and Silbey, "the forms of consciousness we call 'before the law' and 'with the law' are the warp and woof of modern American legal ideology."[87] Although these two schema "express[] vastly different and contradictory images of legality," Ewick and Silbey explain, "together they constitute a hegemonic conception of law."[88] Ewick and Silbey continue:

> At any moment, the law is both a reified transcendent realm, and yet a game. Empirically, the threads we analytically describe as independent schemas (before and with) require each other in order to be intelligible and thus are not separable. Challenges to legality for being only a game, or a gimmick, can be repulsed by invoking legality's transcendent reified character. Similarly, dismissals of law for being irrelevant to daily life can be answered by invoking its gamelike purposes. Through these forms of consciousness (and the opposition between them), legality can be an uncontested and unrecognized power that sustains everyday life.[89]

In contrast to the "before/with the law" tandem, which functions to reproduce hegemony, the "against the law" schema represents a challenge to legal hegemony. To be *against the law*—Ewick and Silbey's third category—does not require one to be engaged in crime or otherwise acting in ways that are illegal and hence *against the law*. Rather, "[p]eople exploit the interstices of conventional social practices to forge moments of

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[84] Ewick and Silbey (1998:48).
[85] Ewick and Silbey (1998:227).
[86] See Nielsen (2000:1060, 1086).
[87] Ewick and Silbey (1998:231).

respite from the power of law. Foot-dragging, omissions, ploys, small deceits, humor, and making scenes are typical forms of resistance for those up against the law."[90] Thus, those who are "against the law" are not necessarily committing proscribed acts or omissions; instead, they find the law unhelpful (and maybe even corrupt) and "fashion solutions they would not be able to achieve within conventionally recognized schemas and resources."[91]

In promulgating this tripartite typology, Ewick and Silbey make clear that the categories "are variable, and individuals may express within their own lives and experiences the full range of variation."[92] Legal consciousness, they repeatedly emphasize, "is neither fixed nor necessarily consistent; rather, it is plural and variable across contexts, and it often expresses and contains contradiction. . . . [L]egal consciousness varies across time (to reflect learning and experience) and across interactions (to reflect opportunity, different objects, relationships or purposes, and the differential availability of schemas and resources)."[93]

Perhaps because Ewick and Silbey assert that legal consciousness is variable, contingent, and contextual, other scholars have found helpful the "before the law," "with the law," and "against the law" schemas. For example, Aviram, in her study of Israeli conscientious objectors—those who had been recently released from prison following

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[88] Ewick and Silbey (1998:231).
[89] Ewick and Silbey (1998:231).
[90] Ewick and Silbey (1998:48).
[91] Ewick and Silbey (1998:48). It bears mention that Nielsen disagrees with Ewick and Silbey as to whether efforts to resist the law are (or may be considered) *cynical*. Ewick and Silbey (1998:49) asserts that "[r]arely . . . are . . . efforts to resist the power of law cynical; more often, people undertake small subterfuges, deceits, and other violations of conventional and legal norms with a strong sense of justice and right." Nielsen, on the other hand, explains that when people are "against the law," they are "cynical about its authority and distrustful of its implementation" (2000:1060).
[92] Ewick and Silbey (1998:30).
[93] Ewick and Silbey (1998:50, 53).

their to refusal to perform obligatory military service—identifies a fourth schema: "*above the law*."[94] The "above the law" perspective allows one to observe the legal realm as "a separate framework from other experiences, one that can be entered or exited at will."[95] For many of the Israeli conscientious objectors whom she interviewed, prison was not only "transitory, coincidental and absurd," but also a "rest," a "retreat," and "a break from their daily lives."[96] They were "above the law" in the sense that they were floating over or detached from prison as the ultimate punishment that the state could impose for commission of a crime[97]—emotionally, psychically, psychologically, and spiritually free despite their incarceration. To put it another way, they were "above the law" because they were within a legal institution, or legally defined situation, but were experiencing it "extra-legally" or "supra-legally" or through "non-legal cultural lenses."[98]

Although Aviram identifies a fourth schema, she maintains that "above the law" should be considered an addition to Ewick and Silbey's varieties of legal consciousness, rather than an effort to contradict or disprove their typology. In the chapters that follow, I attempt to do the same—add to Ewick and Silbey's varieties of legal consciousness, rather than dispute or refute their typology. But instead of adding another schema (a fifth schema), I endeavor to further flesh out the hegemonic legalities of "before" and "with

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[94] Aviram (2006:188).
[95] Aviram (2006:188).
[96] Aviram (2006:191, 192).
[97] I refer to prison as the "ultimate punishment" in Israel, rather than the "penultimate punishment," because capital punishment in Israel is permitted only for crimes against humanity, crimes against the Jewish People war crimes, genocide, and war crimes. The only person to be executed by the State of Israel is Adolf Eichmann, who was hanged in 1962 after his 1961 conviction for his participation in Nazi war crimes during the Holocaust. (Meir Tobianski, an Israeli soldier, was executed by firing squad during the 1948 Arab-Israeli after having been falsely accused of treason, court martialed, and found guilty; he was exonerated one year later.)
[98] Aviram (2006:195, 196).

the law" by examining how an "*against the law*" legal consciousness is transformed through participation with the law into a legal consciousness of "*before the law*."

Related Concepts: Legal Socialization, Legal Cynicism, and Procedural Justice

Before turning to my study of the legal consciousness of youth at the Red Hook Community Justice Center, a word about related terms and concepts is in order.

Legal socialization is "the process through which individuals acquire attitudes and beliefs about the law, legal authorities, and legal institutions. This occurs through individuals' interactions, both personal and vicarious, with police, courts, and other legal actors."[99] While some define legal socialization more narrowly than legal consciousness—as "the process that leads people to embrace the authority of law and their obligation to obey the law"[100]—even the more capacious formulation of legal socialization, as offered by Piquero et al.,[101] Chriss,[102] Fagan and Tyler,[103] seems less expansive than legal consciousness, which considers how individuals imagine the law, as well as how they perceive it and what they know about it. In addition to being a more inclusive concept than legal socialization, legal consciousness is the more common and more widely employed concept and term; there also seems to be a bit of a disciplinary divide: legal consciousness appears to be the preferred concept or term in anthropology (specifically legal anthropology or the anthropology of law) and socio-legal studies,[104] whereas legal socialization appears more frequently in criminology and sociology.[105]

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[99] Piquero et al. (2005:267); see also Chriss (2007); Fagan and Tyler (2005).
[100] Buss (2011:329).
[101] Piquero et al. (2005).
[102] Chriss (2007).
[103] Fagan and Tyler (2005).
[104] See, e.g., Cowan (2004); Engel (1984); Ewick and Silbey (1991-92); Fleury-Steiner (2003, 2004); Greenhouse (1986); Greenhouse et al. (1994); Hirsch (2002); Hoffman (2003); Levine and Mellema

Legal cynicism has been understood as "'anomie' about law[106] or "the extent to which individuals feel disengaged from legal norms, perceive that others are so disengaged that legal norms have no validity, or perceive legal norms as useless in guiding behaviour in the marketplace."[107] The concept and term has had little currency in anthropology, but has attracted the attention of researchers in criminology, sociology, and socio-legal studies, who consider it a "dimension" of legal socialization.[108]

Theorists of "legal cynicism" generally fall into two different camps. Some emphasize "oppositional values."[109] This is a subcultural argument, in which negative dispositions towards the legal system and the police are validated and the "code of the street" is normative and legitimized. Others, on the other hand, contend that the normative value system is not wholly oppositional, but attenuated, based on experiences of police illegitimacy and procedural injustices.[110]

Cumulatively, research findings have favored the second camp. Sampson and Bartusch have argued that legal cynicism, or "anomie" about law, is distinct from subcultural tolerance of deviance, and instead an important source of it is the social-ecological structure of neighborhoods.[111] Inner-city contexts of racial segregation and concentrated disadvantage breed cynicism and perceptions of legal injustice. Moreover, just because crime may be concentrated in some inner-city neighborhoods, there is not consistent evidence that implies that those people inhabiting them are tolerant of that

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(2001); Marshall (2005); Merry (1990); Morrill et al. (2005); Mraz (1997); Nielsen (2000); Sarat (1990); Trubek (1984); White (1990).

[105] See, e.g., Chriss (2007); Fagan and Tyler (2005); Piquero et al. (2005).

[106] Samspon and Bartusch (1998).

[107] Karstedt and Farrall (2006:1018).

[108] See Piquero et al. (2005:270).

[109] See, e.g., Cohen (1955); Leiber, Nalla, and Farnworth (1998); Anderson (1999).

[110] Tyler (1988, 1990, 1998, 2001, 2002, 2003); Tyler and Huo (2002); Sunshine and Tyler (2003); Warner (2003).

crime.[112] Therefore, one's personal views that crime/delinquency is wrong does not necessarily translate into support for the mechanisms used to enforce such conduct (i.e., laws, courts, police).

More recently, Carr, Napolitano, and Keating examined the origins of legal cynicism among youth from high-crime urban neighborhoods, finding that most youth in these areas are negatively disposed toward police and that this is grounded in their lived experience of negative encounters with law enforcement.[113] They also found that these attitudes were not about young people rejecting the rule of law outright, as Anderson put forth,[114] but rather about attenuation,[115] where youth can be cynical of police but still believe that police should have a role in crime control as long as they are procedurally just.

Finally, *procedural justice*—"people's subjective judgments about the fairness of the procedures through which the police and courts exercise their authority"[116]—is the most prevalent of the terms and one that is encountered frequently in the law and legal scholarship. To some extent, the concept of procedural justice—the process-based criteria that individuals draw upon to evaluate whether they have been treated fairly[117]—overlaps with legal cynicism: feelings that one has been dealt with unfairly by the police or that a court's processes were not equitable, impartial, or just might contribute to an individual's legal cynicism. But procedural justice is more of an event-based concept, rather than a normative sentiment, and its calculus often occurs *ex post*—after an

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[111] Sampson and Bartusch (1998).
[112] Ellison (1991); Sampson and Barusch (1998); Shoemaker & Williams (1987).
[113] Carr, Napolitano, and Keating (2007).
[114] Anderson (1999).
[115] Warner (2003).
[116] Tyler (2003:284).
[117] Brunson and Miller (2006: 618, 636).

encounter with the police, the courts, or some other arm of the criminal justice system.[118] Thus, it is possible to feel that procedural justice occurred in a specific situation, but to possess cynicism about the law and legal players, more generally. Conversely, it is possible to feel that procedural justice did not occur in a specific instance—that the police did not act fairly during the course of an investigation or arrest or that the court did not employ equitable, impartial, or just procedures or rulings in a case—but to still feel an overall, day-to-day confidence and faith in the legal system.

Research has endeavored to assess the meaning of procedural justice for those who come in contact with the criminal justice system. As Wissler,[119] Lind,[120] Lind and Tyler,[121] and Paternoster and colleagues[122] have demonstrated, people are willing to accept decisions when they think criminal justice officials or legal institutes are acting fairly.[123] Similarly, Tyler has argued that citizens generally hold favorable views towards institutions that are perceived as unbiased, while holding negative views of those that are believed to be partisan or discriminatory.[124] Elsewhere, Tyler has suggested that public trust and confidence in police and courts is not related to performance or outcomes, but on how fair people feel they were treated,[125] and Tyler and Huo have proffered that when

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[118] See generally Paternoster et al. (1997).
[119] Wissler (1995).
[120] Lind (1998).
[121] Lind and Tyler (1988).
[122] Paternoster et al. (1997).
[123] See also Ewick and Silbey (1998:36) for a discussion. Harrington and Merry (1988:720), in their analysis of the structure of the community mediation movement in the United States and their ethnography of the practices of mediators in local programs, note "the persistent use of satisfaction as a measure of success and the enduring belief that if people feel good afterward, the process is a success." Similarly, Silbey (2005:337), in her review of the history and theoretical promise of studies of legal consciousness, notes research that has found that "people evaluate their legal experiences in terms of processes and forms of interaction rather than the outcomes of those interactions or abstract rights. People care . . . about having neutral, honest authorities who allow them to state their views and who treat citizens with dignity and respect, and when they find such processes, they use and defer to them."
[124] Tyler (1990).
[125] Tyler (2001).

citizens perceive justice system agencies to be fair, they are more likely to comply with the law, legal authorities, and court mandates, increasing institutional confidence.[126]

I could have conducted my fieldwork through the lens of *legal socialization*, *legal cynicism*, or *procedural justice*. Indeed, given Fagan's research on the RHCJC[127] and the RHCJC's purported goal of attempting to restore (the Red Hook community's) trust in the criminal justice system,[128] it might have been appropriate to examine the RHCJC with *legal socialization* or *procedural justice* glasses. I chose *legal consciousness*, however, in order to stay truthful to anthropology, for anthropologists have developed, built upon, and drawn on the literature of legal consciousness (rather than legal socialization, legal cynicism, or procedural justice). This decision was not made only out of respect for disciplinary preferences or divides. Although I found the literature of *legal socialization*, *legal cynicism*, and *procedural justice* helpful, *legal consciousness* is the most capacious of the terms (see figure at the end of this Chapter),[129] and studying RHYC trainees and members with the widest lens (that of *legal consciousness*) enabled me to learn and observe more about the kids' relationship to law and its players—which I describe in Chapters 4-21. Before doing so, however, I offer (in the next chapter—Chapter 3) a description of the neighborhood of Red Hook, Brooklyn, and the RHCJC and its youth programs, and a discussion of youth courts in the United States, in general, and the RHYC, in particular.

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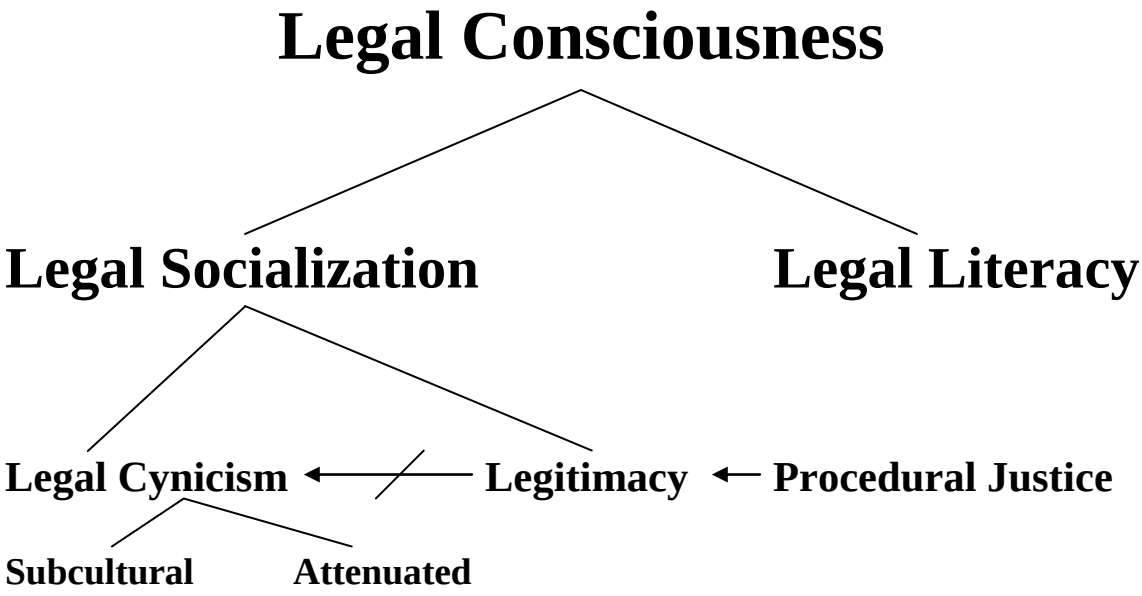
[126] Tyler and Huo (2002).
[127] See, e.g., Fagan and Malkin (2003).
[128] See, e.g., Worth (2002).
[129] To the best of my knowledge, no one has endeavored to articulate the relationships of *legal consciousness*, *legal cynicism*, *legal socialization*, and *procedural justice* to each other. But Nielsen (2000:1059 n.6) lends some support for my assertion that *procedural justice* is a subset of *legal consciousness*.


Legal Consciousness
Legal Socialization
Legal Literacy
Legal Cynicism
Legitimacy
Procedural Justice
Subcultural
Attenuated

CHAPTER 3: RED HOOK, THE RHCJC, AND YOUTH COURTS

According to Ewick and Silbey, "[a]lthough we can talk about the law as if it were a singular and distinct entity, we have learned that we cannot observe it outside of its particular, and thus variable, material and historical manifestations."[130] Extending this line of thinking, Nielsen argues that "[s]tudies of legal consciousness, always are embedded in particular locations, be they neighborhoods; jury rooms; the workplace; prisons or public interest organizations. Researchers may be more or less attentive to the constraints imposed by location, and may make it an explicit or implicit part of their analysis, but, fundamentally, all studies of law and rights include the study of locations."[131] Moreover, "[s]ituating a study of legal consciousness in a single organization has advantages. All the employees participating in the study were subject to a single set of legal rules and, more important a single set of policies and procedures. Thus, differences in behavior and meaning cannot be attributed to differences in law or policy."[132] Accordingly, this chapter describes the location of my study of legal consciousness—the Red Hook Community Justice Center in the Red Hook neighborhood of Brooklyn, New York. I begin by employing a wide-angle lens to depict Red Hook before switching to a more macro-lens to examine and portray the Red Hook Community Justice Center. Following these two sections, I switch back to a wider-angled lens in order to situate the Red Hook Youth Court within the broader youth court phenomenon.

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[130] Ewick and Silbey (1998:18).
[131] Nielsen (2006:220) (internal citations omitted).
[132] Marshall (2005:91).

Red Hook, Brooklyn[133]

Red Hook is a mixed-use neighborhood in South Brooklyn located on a peninsula in the New York Harbor.[134] Despite its view of the Statute of Liberty and proximity to the lower Manhattan financial district, Red Hook is isolated from the rest of Brooklyn and New York because it is surrounded by water on three sides and cut off from the rest of Brooklyn by the Gowanus Expressway.[135] Subway service exists only on the periphery of the neighborhood, making trips to Manhattan and other parts of Brooklyn a challenge.[136]

From the mid-eighteenth to mid-nineteenth centuries, Red Hook exhibited a vibrant and multi-ethnic waterfront lifestyle.[137] Although always considered a tough neighborhood—Al Capone started his criminal career there and mob violence and union corruption defined the waterfront piers—Red Hook was perceived as a destination for European sailors looking to jump ship and was regarded as "brimming with life" by residents who enjoyed its movie houses, shopping district, and public pool and bathhouse.[138] But beginning in the 1950s, population exodus and economic

[133] Portions of this section have appeared in Brisman (2009a:14-16).

[134] Kasinitz and Hillyard (1995); Kasinitz and Rosenberg (1996). Red Hook is comprised of four census tracks: 0055, 0057, 0059, 0085 (see Fagan and Malkin 2003).

[135] Dickey and McGarry (2006); Donovan (2001); Jackson (1998); Kasinitz and Hillyard (1995); Kasinitz and Rosenberg (1996); Levinson (2000); Reiss (2000); White et al. (2003).

[136] Kasinitz and Hillyard (1995); Zukin (2010:164). To get to Red Hook, one can take the B61 bus, which runs between Windsor Terrace and Downtown Brooklyn, stopping in Downtown Brooklyn near the Jay Street-Borough Hall subway stop (A, C, F lines) and near the Borough Hall stop (2, 3, 4, 5, M, R). One can also take the water taxi to IKEA (see below) from Pier 11 near Wall Street in Manhattan. Note, however, that on June 20, 2011, closed for nine months of rehabilitation, creating further challenges for those wishing to use public transportation to and from Red Hook (Graham 2011; Seaton and Parker 2011).

[137] Bernardo and Weiss (2000); Donovan (2001); Kasinitz and Hillyard (1995); Kasinitz and Rosenberg (1996); Malkin (2009); Scanlon (2009). For a brief history of Red Hook—from 1636, when Dutch settlers established a village at the waterfront of what is now known as South Brooklyn and called it "Roode Hoeck" (also spelled "Roode Hoek") because of the red soil and hook-shaped peninsula, to 2008—see Scanlon (2009); see also Bernardo and Weiss (2006:57, 133-34, 139); Jackson (1998:187-90). For a more in-depth history, see Reiss (2000).

[138] Reiss (2000:11-12); see also Jackson (1998); Kasinitz and Hillyard (1995); Kleinfield (2009); Scanlon (2009); Schwartz (1949); Willensky (1986).

disinvestment started to transform Red Hook into a socially isolated,[139] blighted, and

[139] Wilson (1987; 1996); see also Wacquant and Wilson (1989); see generally Connolly (1977). I use the term "social isolation" with some reservations. According to Goode and Maskovsky (2001:12-13), under the Wilsonian conception of "social isolation":

> state policies such as affirmative action and market forces ha[v]e created segregation (apartheid) for the inner-city poor. [They] have produced isolation from middle-class role models, resulting in increasingly 'pathological' behavior among those left behind, and [have] further increased the spatial concentration of unemployment and substandard housing, crime, drug use, and other social ills as a consequence. Although supporters of this perspective argue for massive 'structural' solutions to poverty, they do not dispute the assumptions about individual pathology that are the cornerstone of the right's attack on the poor. Indeed, Wilson in particular has not only insisted, over the course of his long and influential career, that unwed motherhood, participation in the informal economy, drug use, and crime are measures of bad, ghetto-specific behaviors; he has also admonished the left for neglecting to admit the failings of inner-city residents, arguing that the left's silence on these matters has fueled the rightward shift in social welfare policy. (internal citations omitted)

In a slightly different vein, Young (2003:396) argues that:

> [p]hysical, social and moral boundaries are constantly crossed in late modernity. . . . [T]hey are transgressed because of individual movement, social mobility, the coincidence of values and problems both sides of any line and the tremendous incursion of the mass media which presents city-wide and indeed global images to all and sundry while creating virtual communities and common identities across considerable barriers of space. Boundaries are crossed, boundaries shift, boundaries blur and are transfixed. The socially excluded do not, therefore, exist in some 'elsewhere' cut off spatially, socially and morally from the wider society.

I would certainly share Goode and Maskovsky's concern that Wilson couples "social isolation" with "'pathological' behavior among those left behind"—that Wilson neglects to dispute "the assumptions about individual pathology that are the cornerstone of the right's attack on the poor." (Although it bears mention that Wacquant and Wilson (1989:25), when describing the term, the "underclass," assert that "it [the underclass] must denote a new sociospatial patterning of class and racial domination, recognizable by the unprecedented concentration of the most socially excluded and economically marginal members of the dominated racial and economic group. It should not be used as a label to designate a new breed of individuals molded freely by a mythical and all-powerful culture of poverty.") I would also agree with Young's critique of the "binary of inclusion/exclusion where the excluded exist in an area which is spatially segregated and socially and morally distinctive" (2003:390 (citation omitted))—his assertion that while exclusion and the setting up of barriers are characteristics of late modern society, borders are increasingly permeable and transgressed. Rather, I use the term "socially isolated" to refer to groups of working poor people who are *physically* isolated or disconnected from the rest of the city and, as a result, are removed from (and come into contact far less with) middle-class role models. Instead of coupling "social isolation" with "increasingly 'pathological' behavior among those left behind," as Wilson does, I conceptualize "social isolation" as stemming from *geographic* isolation—for, as Young (2003:396) recognizes, "transport systems leave whole tracts of the city dislocated from the rest"; the consequence of this spatial isolation is not just lack of interaction with middle-class role models, but a lack of opportunity to access the cultural and social capital that comes with middle-class connections. In applying the term "social isolation" to Red Hook, I in no way mean to suggest that Red Hook residents possessed (or still possess) some sort of "individual pathology" that makes them responsible for their own failings. I make no assumptions about their abilities (past or present). Rather, I simply mean to suggest that the physical isolation of Red Hook cut off many Red Hook residents from the rest of Brooklyn and from Manhattan

violent neighborhood.[140] In the 1980s, Red Hook was considered one of the most crack-infested communities in the nation[141]—what Wacquant would refer to as a "hyperghetto."[142] In a special report, *Life* magazine offered the following description:

> The Red Hook housing project in South Brooklyn has faced its share of problems common to inner cities—crime, unemployment, teenage pregnancy—but the community always pulled together to battle the difficulties. Then three years ago crack hit the Hook, and today every one of the project's 10,000 residents is either a dealer, a user or a hostage to the drug trade. Violent crimes have more than doubled in the past three years, and police attribute the entire increase to crack, a potent form of cocaine. At the local clinic, 75 percent of the cases are crack related. But the true extent of the epidemic cannot be measured in numbers. Crack has permeated every corner of the Hook's 33 acres and 31 apartment buildings. Each day maintenance men raise and lower an American flag over a swarm of dealers who hang out on playground seesaws, slides and jungle gyms. Vials and hypodermic needles litter the grounds. Shoot-outs erupt almost daily between rival operations, and one local bar owner has been forced to serve customers from the relative safety of his apartment. The only businesses left around the project are a few auto body shops and candy stores, and GiJo's pizzeria. But many of the candy shops sell drug paraphernalia under the counter, and GiJo's, according to city councilman Stephen DiBrienza, is a major drug supplier. Even a neighborhood ice cream truck sells vials of crack. . . .[143]

Red Hook continued to experience economic disinvestment and violence in the late 1980s and early 1990s, and the neighborhood received notoriety in 1992 when Patrick Daly, a popular elementary-school principal, was killed by a stray bullet from a shoot-out between rival drug dealers.[144] Sensational news coverage of the tragedy spurred some

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(which, though visible from the docks, often seemed lightyears away—a perspective shared by Maldonado (2010:30)), thereby depriving Red Hook residents of a certain level of socio-economic diversity in their day-to-day activities (and the benefits thereof); when Red Hook became plagued with crime and drug problems, fewer people came to Red Hook, thereby further augmenting the social-spatial isolation of Red Hook residents.

[140] Jackson (1998); Reiss (2000).

[141] Barnes and Holt (1988); Fagan and Malkin (2003); Scanlon (2009).

[142] Wacquant (2001); see also Wacquant and Wilson (1989).

[143] *Life* (1988:93).

[144] Fried (1993); see also Berman and Feinblatt (2005); Bleyer (2008); Carter (2004); Donovan (2001); Fahim (2010); Helmore (2003); Hynes (2008); Jackson (1998); Perrottta (2005); Reiss (2000); Temple-Raston (2004); Zukin (2010).

residents to propose changing the name of the neighborhood from "Red Hook" to "Liberty Heights"[145] (see Image 1 and 2 below).

Image 1: Liberty Heights, October 2008. Photograph by Avi Brisman.

[145] Berman and Fox (2005:77); Reiss (2000:25). Note, however, that Fagan and Malkin (2003:915) point to the Daly shooting as "one of the galvanizing events in the establishment of the Red Hook Community Justice Center"—a point to which I will return below.

Image 2: Liberty Heights, October 2008. Photograph by Avi Brisman.

James Brodick, former Project Director at the RHCJC, described his first experience coming to Red Hook in the late 1990s:

> So, my first experience was getting off the train at Jay Street/Borough Hall and running a little bit late to work, and I said, "Oh, well let me catch a cab," and I got in the first cab, and I had an address to go to and it said 135 Richards Street, so I said, "135 Richards Street," and they go, "No, we don't go there." So, I'm thinking, "Okay, maybe he just doesn't know where 135 Richards Street is." I got out of the cab, wasn't thinking, and then I said, "This is stupid. I should just say what neighborhood I'm going to, right?" Once you're there, you figure it out. So, I stopped the next cab and I said, "I'm going to Red Hook." "Why are you going to Red Hook?" and I said, "I'm going to work," and they're like, "No, we don't go there." So, at that point, I started to realize, "What the hell am I getting into?" you know? I mean I don't know what it is. People have their perception of the Bronx [where James is from], so I never think the neighborhood is bad, right? I mean I might have lived in a pretty decent area, but I've known friends who lived in housing developments. How much worse could Red Hook be?[146]

By 2000, the drug addiction and drug-related violence in Red Hook had abated from its highs in the 1990s—as it had throughout New York City[147]—although the mainstream media continued to depict Red Hook as "crime-ridden"[148] and as "a grime warren of guns, drugs and gangsters."[149] Nevertheless, while crime rates had been falling precipitously in the eight years prior to 2000,[150] Red Hook was, according to the 2000 Census, still a disadvantaged neighborhood with more than seventy percent of its 11,000 residents living in public housing projects—called the Red Hook Houses—built in 1938 for the families of dockworkers and one of the largest public housing projects in New York.[151] Of this predominantly minority neighborhood (95% of those living in the Red

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[146] Interview with James Brodick—July 26, 2007.
[147] Fagan and Malkin (2003); Malkin (2009)
[148] Katz (2000).
[149] Levinson (2000).
[150] See, e.g., Blumstein and Wallman (2006:2); Zimring (2007:v); see also CNN (2001); see generally Staples (2012).
[151] Bleyer (2008); Carter (2004); Dickey and McGarry (2006); Fagan and Malkin (2003); Graber (2010); Jackson (1998); Perrotta (2005); Temple-Raston (2004). The percentage of residents living in public housing projects takes on added significance when one considers research that has found that New York City children who live in public housing perform worse in schools than students who live in other types of housing (see Fernandez 2008). For a competing perspective—an article about "notable" individuals who grew up in New York City Housing projects and "landed at the top of their fields"—see Alvarez and Wilson (2009).

Hook community consider themselves African-American or Latino), close to a third of the men and women in the labor force were unemployed, nearly a quarter reported receiving public assistance, and over sixty percent of families with young children reported incomes below the federal poverty line.[152] In 1999, the median annual household income in Red Hook was $27,777 (for the Red Hook Houses it was $10,372)—well below the New York City median of $38,293.[153]

At the time of this writing, data from the 2010 Census are not available for Red Hook. (Although the majority of residents still live in public housing projects, the 2010 Census data will likely reflect the expanding gentrification of Brooklyn neighborhoods, including Red Hook.[154]) What is clear is that the Red Hook of today is a far cry from the *Life* magazine description of 1988—or from when James Brodick first ventured into the neighborhood. For two straight years in the early aughts, not a single homicide was reported and the 76th Precinct was named the third *safest* precinct in New York City.[155] In contrast to the 1980s and early 1990s, when the name, "Red Hook," conjured "images of guns and . . drug-infested streets,"[156] Red Hook is now celebrated as one of the city's "newest hip neighborhoods."[157] It is more likely to get its name in the papers[158] for the IKEA store that opened on Beard Street in June 2008,[159] for its vibrant art scene,[160] and

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[152] White et al. (2003); see also Bleyer (2008); Fagan and Malkin (2003).
[153] White et al. (2003); Fagan and Malkin (2003).
[154] Zukin (2010:178); see also Bagli (2008); see generally Harvey (2008:33, 34, 38).
[155] See Lippman (2007).
[156] Howard (1998:28).
[157] Bleyer (2006). Despite this moniker, readers should remember, as noted above, Red Hook's seventeenth-century Dutch origins. Historians frequently refer to Red Hook as part of "Old" Brooklyn—the parts of Brooklyn closest to Manhattan that had already been built by the time of World War I (see, e.g., Willensky 1986:47).
[158] In fact, in June 2010, George Fiala and Frank Galeano began *publishing* a new monthly community newspaper—*The Red Hook Star-Revue*—serving Red Hook, Carroll Gardens and Cobble Hill
[159] See, e.g., Albo (2008); Calder and Liddy (2008); Chen (2008); Editorial (6/21/08); Fahim (2008); Firger (2008); Higgins (2009); Klein (2008); McLaughlin (2008); Rothstein (2009); Witt (2008).

for efforts to maintain and expand its maritime industry[161] than for its drugs, crime, and violence.[162] Red Hook has also become a destination for people visiting the RHCJC—some from around the world to see its operations, others a little less volitionally.[163]

Red Hook Community Justice Center[164]

Launched in June 2000 and operating out of a refurbished parochial school that had been empty since the 1970s,[165] the RHCJC—a collaborative effort between the King's County District Attorney's Office, the Center for Court Innovation, and the Office of Court Administration[166]—is the nation's first multi-jurisdictional community court[167] (see Image 3, 4, 5).

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[160] See, e.g., Bleyer (2006); Graeber (2008); Kennedy (2007); Scelfo (2009); Schweitzer (2008); Vigilante (2011). Note that some date the growth of the art scene in Red Hook to the 1970s. Jackson (1998:189) explains that in the 1970s, painters and sculptors began buying inexpensive row houses through a city program that subsidized housing for artists. Similarly Reiss (2000:24-25) describes the restoration of warehouses in the mid-1970s—spaces that were then rented to glassblowers, marble cutters, stage-set designers, and coppersmiths.

[161] Bagli (2008, 2009); see also Buiso (2009); Kleinfield (2009); Zukin (2010:164, 191); see generally Reiss (2000:28-34); cf. Leland (2012).

[162] In a "Local Stop" feature on Red Hook, Rueb (2010:MB3) writes: "The Brooklyn neighborhood of Red Hook may be most famous these days for affordable Swedish design, but a group of artists is giving the once rough-and-tumble peninsula a softer, more creative edge." Note, however, that IKEA's entry into Red Hook was not without controversy and conflict. For a discussion of community resistance to IKEA's efforts and plans to open a store in Red Hook, see Zukin (2010).

[163] Although community courts, by definition, "are located in facilities within the community being served" (Kaye 2004:130 n.17), the Criminal Court of the RHCJC handles the misdemeanor cases arising in three police precincts in Brooklyn, NY—the 72nd, 76th, and 78th—which encompass Park Slope, Prospect Heights, Red Hook, Sunset Park, and Windsor Terrace (Hynes 2008; Perrotta 2005).

[164] Portions of this section have appeared in Brisman (2010/2011:1048-49).

[165] The building—a Tudor Gothic edifice—was built in 1909 as Visitation Roman Catholic School (Reiss 2000:40). The "groundbreaking ceremony" for the RHCJC took place in June 1998 in an improvised sandbox because there was no earth to move (see, e.g., Farrell 1998; Holt 1998); the RHCJC opened its doors on April 3, 2000.

[166] Hynes (2008); see generally Farrell (1998); Holt (1998).

[167] According to some commentators (see, e.g., Fagan and Malkin 2003; Stern 2002), the inspiration to create the RHCJC grew, in part, out of the killing of Patrick Daly—a point alluded to above. Indeed, as Donovan (2001:7) reports, "[t]he movement to create the center began after Patrick Daly, a beloved principal at P.S. 15 on Sullivan Street, was killed in a drug-related gunfight in December 1992 as he searched the Houses for a nine-year-old boy who had left school crying after a fight." This attribution is supported by both Judge Calabrese and Sabrina Carter, a Red Hook resident and RHYC coordinator at the time of this writing (see, e.g., Frazier et al. 2011; Kluger et al. 2002). In many ways and for many people, the RHCJC represents to Red Hook what the court represents to the residents of "Hopewell" is

Image 3: Red Hook Community Justice Center Building , January 2011. Photograph by Gregory Vershbow. Reprinted with permission.

Greenhouse's (1988:689) research—a symbol that "marks the convergence of multiple lines of differentiation: between past and present, insiders and outsiders, harmony and trouble, and more."

Image 4: Red Hook Community Justice Center Building, August 2007. Photograph by Avi Brisman.

Image 5: Red Hook Community Justice Center Building, August 2007. Photograph by Avi Brisman.

Community courts—a type of problem-solving court—attempt to address neighborhood-specific problems, such as low-level criminal cases (including so-called "quality-of-life" offenses, such as loitering, panhandling, prostitution, public urination, and vandalism), domestic violence, drugs, and landlord-tenant disputes by trying to change the behavior of litigants with strategies based on therapeutic jurisprudence rather than just adjudicating facts and legal issues and determining guilt or innocence.[168] At the RHCJC, a single judge (Judge Alex M. Calabrese) hears cases that under ordinary circumstances would appear in three different courts—civil court, family court, and

[168] According to the Honorable Judith S. Kaye (2004:128), who served as Chief Judge of New York from 1993-2008 and who helped establish the RHCJC, problem-solving courts try to *resolve* cases, rather than just *adjudicate* cases: "The underlying premise is that courts should do more than just process cases—really people—who we know from experience will be back before us again and again with the very same problem."

criminal court.[169] Such a consolidation purportedly allows court players to search for and identify the root causes of an individual's or community's problems and to offer coordinated, rather than piecemeal, responses.[170] Thus, for example, in criminal court at the RHCJC, Judge Calabrese can choose from an array of sanctions and services at his disposal. While he may employ standard sentences such as jail time or fines, he can also select from a menu of alternative sanctions, including community restitution projects, on-site job placement, educational workshops and GED classes, and domestic violence, drug treatment, and mental health counseling.[171]

In addition to functioning as a problem-solving court with a therapeutic jurisprudential slant and as a model for community courts in Australia, Canada, and the United Kingdom,[172] the RHCJC serves as a community center, offering a wide range of programs for neighborhood residents, some of whom have no cases pending.[173] "We do a lot of strange things for a courthouse," former Deputy Director Kate Doniger explained to me early in my fieldwork. Indeed. The RHCJC offers (or has offered) the following programs for neighborhood residents: (1) Red Hook Youth Court (RHYC), where

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[169] Ronalds-Hannon (2010); Wilson (2006); see also Breyer (2009); Farrell (1998); Fisler (2005); Fried (1999).

[170] See Berman and Feinblatt (2001, 2005); see also Carter (2004); Eaton and Kaufman (2005); Helmore (2003); Kaye (2004); Worth (2002); but see Fagan and Malkin (2003); Malkin (2003, 2005, 2009).

[171] Katz (2000) explains that while Judge Calabrese's sentences "may seem soft," his "second chances come with a price. Follow through, he warns, or 'you will be back before me, which is not a good idea. Got that?" Doniger (2008:2) notes that while the RHCJC offers a GED program, a housing resource center, job training, substance abuse treatment, and other social, services, and that community service is often a large part of the sentences meted out by Judge Calabrese, the sentences are no cakewalk: "Lest you think this is just a liberal panacea, be assured that sentences in such community courts often are tougher with respect to low-level crime, and the counseling/treatment alternatives usually last far, far longer than the time spent serving the applicable jail sentence." Similarly, Kaye (2004:136) makes clear that "some defendants reject the opportunity to participate [in drug treatment], preferring jail time to the rigors of court-monitored treatment." Various studies have found that between eight and thirty-five percent of defendants who are offered the opportunity to enter a drug court program decline on the grounds that jail time is "easier time" than participation in a treatment program (see Kaye 2004:13n.49).

[172] See, e.g., BBC News (2005); Canadian Press (2005); Carter (2004); Doward (2004, 2009); Editorial (4/11/07); Fyfe (2009); Ronalds-Hannon (2010); Shore (2007); see also Kaye (2007).

[173] See Dickey and McGarry (2006:374).

teenagers resolve actual cases involving their peers (e.g., assault, fare evasion, truancy, vandalism); (2) Youth Expanding Community Horizons by Organizing (Youth ECHO), a teen leadership and community organizing program in which Red Hook youth develop a message campaign about an issue affecting their lives (such as policing and jails, school, drugs, and health) (see Image 6, 7, 8); (3) Police-Teen Theater Project (PTTP), a program that brings Brooklyn teenagers and New York Police Department (NYPD) officers together to learn about acting, improvisation, and theater; (4) Rites of Passage, a program for young people (ages eleven through eighteen) that addresses issues young people face as they move through puberty, and which helps them develop positive self-images and a more comprehensive and healthier understanding of gender and gender relations in contemporary society; (5) a summer internship program that places juvenile offenders in positions with non-profit organizations, elected officials, and governmental entities (such as city council, the district attorney's office, and Legal Aid) (see Image 9); (6) a mentoring program for juvenile offenders; (7) a GED program; (8) the Red Hook Public Safety Corps, an AmeriCorps program (for ages eighteen through sixty-eight) (see Image 10); and (9) the Red Hook Youth Baseball League (see Image 11), among others.

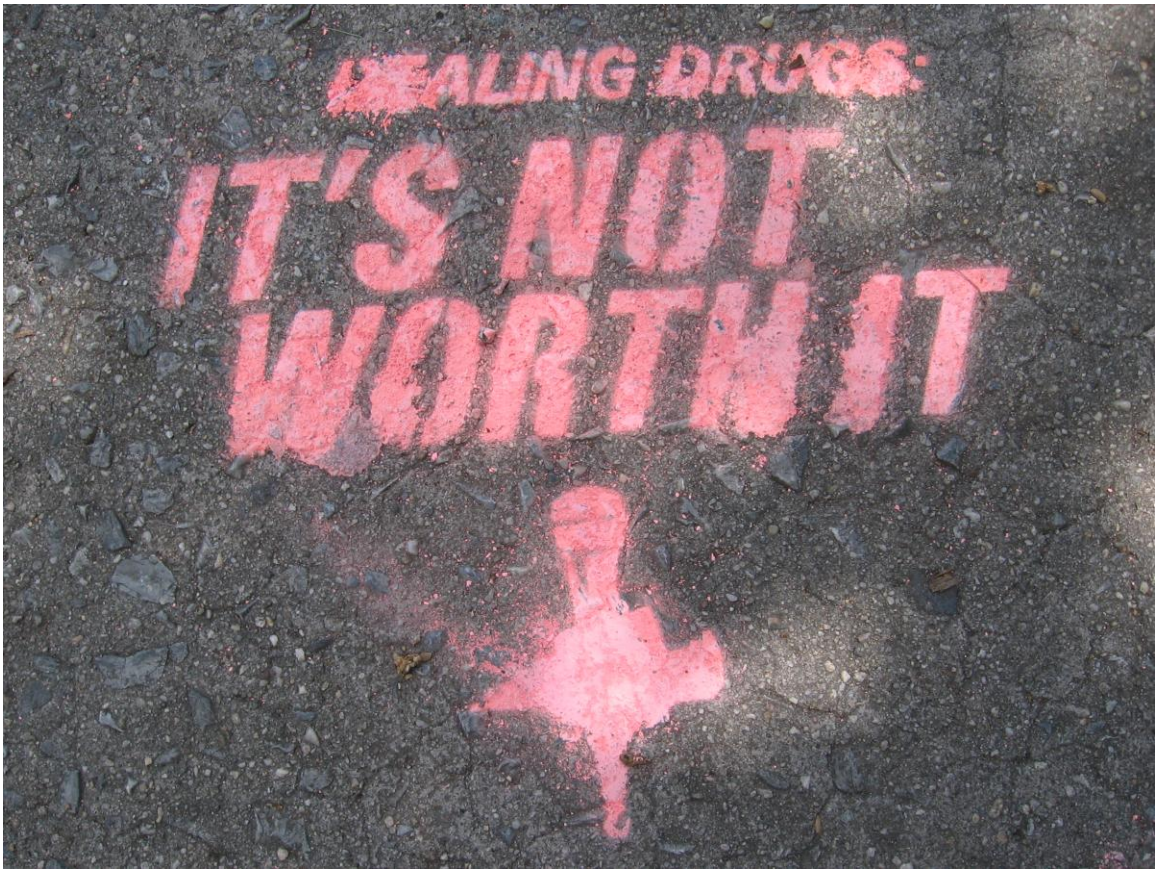

Image 6: Youth E.C.H.O. 's "Drug Dealing: It's Not Worth It" Campaign August 2008. Photograph by Avi Brisman.

Image 7: Youth E.C.H.O.'s "Drug Dealing: It's Not Worth It" Campaign, August 2008. Photograph by Avi Brisman.

Image 8: Youth E.C.H.O.'s "Fast Money is Trash Money: Stay in School" Campaign, June 2009. Photograph by Avi Brisman.

Image 9: Youth Opportunities Fair for Summer Internship Program, Summer 2008. Photograph by Avi Brisman.

Image 10: Red Hook Public Safety Corps Volunteer Flipping Hamburgers at National Night Out Against Crime, August 2008. Photograph by Avi Brisman.

Image 11: Red Hook Youth Baseball League Championship Game and Trophy Day, June 2007. Photograph by Avi Brisman.

My fieldwork focused on the youth involved in the RHYC, Youth E.C.H.O., and PTTP (although I did have some contact with the youth and staff involved with some of the other programs). This dissertation describes my study of the legal consciousness of RHYC members.

Youth Courts[174]

Youth courts—also known as teen courts, peer juries, and student courts[175]—are juvenile diversion programs designed to prevent the formal processing of juvenile

[174] Portions of this section have appeared in Brisman (2010/2011:1051-54).
[175] Schneider (2007:5); see also Frey (2007).

offenders (usually first-time offenders) within the juvenile justice system.[176] Youth court offenders (called "respondents" at the RHYC, as part of the effort to avoid the stigma of official processing for criminal and delinquent behavior[177]) are typically individuals between eleven and seventeen years of age who have been charged with misdemeanor or status offenses such as assault, disorderly conduct, fare evasion, harassment, possession of marijuana, possession of a weapon, theft (including shoplifting), truancy, and vandalism (including graffiti).[178] The goal of youth court is to hold offenders accountable for their actions, encourage them to take responsibility for their transgressions, offer them opportunities to make restitution for violating the law, and provide them with "fair and beneficial" sanctions that try to address the underlying reasons for their behaviors (e.g., counseling, mediation, mentoring, substance abuse

[176] Schneider (2007:5); Stickle et al. (2008).

[177] Although Stickle and colleagues acknowledge that teen courts provide juvenile offenders with the opportunity to avoid the stigma of official processing (2008:137, 140), they also point to research that has found that, "instead of taking away the negative label, diversion programs simply change the label. . . . Youth going through [teen court] may see the program as providing official labels. If these youth are put in front of their peers they may feel embarrassed. [Teen court] may be stigmatizing rather than reintegrative, a possibility that should be examined in future research" (2008:153, 154 (citing Frazier and Cochran 1986)). Essentially, Stickle and colleagues argue that what matters most is the experience of the young person in teen court. If the experience is embarrassing, then it does not matter, Stickle and colleagues suggest, if a neutral, mild, or "softer" label was applied to the young person; he or she will still feel stigmatized. On the other hand, Stickle and colleagues imply, if a young person's experience is reintegrative, then he or she may not feel stigmatized even if a negative term is given to him or her. Studies of the stigmatizing meaning and weight of different labels have taken place in other arenas. A survey of mental health care providers found that referring to people with addictions as "substance abusers" was more likely to "elicit and perpetuate stigmatizing attitudes that appear to relate to punitive judgments and perceptions that individuals with substance-related conditions are recklessly engaging in willful misconduct" than referring to such individuals as people with "substance-use disorders" (Kelly and Westerhoff 2010:207).

[178] Schneider (2008:7); see also Doward (2004); Robertson (2005); Sherman and Hack (2008:24); Stickle et al. (2008:137); Worth (2002). At the RHCJC, youth between the ages of fourteen and eighteen hear cases of respondents between the ages of ten and eighteen. I have found that the average age of the youth hearing the cases is fifteen; respondents tend to be the same age or younger, although I have never encountered a respondent who was younger than twelve. Note that, while youth courts may hear a wide range of cases, certain types of offenses are more common in some youth courts than others—usually for demographic reasons. For example, the Red Hook Youth Court tends to receive a lot of fare evasion and truancy cases, and very few dealing with trespassing. The Staten Island Youth Court hears a lot of shoplifting cases, as well as cases involving petty larceny, possession of marijuana, weapons possession, and graffiti.

evaluations and treatment, tutoring, and other educational support).[179] The hope is that youth courts will help protect youth offenders from contact with seasoned or "hard core" offenders (who are prosecuted and punished in regular juvenile court or adult criminal court) and help youth offenders avoid the negative repercussions of a juvenile court record (because offenders who successfully complete their youth court sanctions and who continue to stay out of trouble will frequently have their records expunged).[180] In addition, youth courts offer some relief to the overburdened juvenile justice system without increasing recidivism.[181]

As of 2006, there were more than 1250 youth courts represented in almost all fifty states, processing more than 100,000 cases a year.[182] While youth courts possess some degree of variability,[183] they tend to follow one of four models: the adult judge model, the

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[179] See Schneider (2008:7, 9, 11); Sherman and Hack (2008:24); Stickle et al. (2008:138-40); see also Forgays and DeMilio (2005:116).

[180] Stickle et al. (2008:139-40); see also Rosenberg (10/13/11, 10/18/11); Stelloh (9/22/10).

[181] See Schneider (2008:7, 9, 29); Stickle et al. (2008:137, 139); see also Rosenberg (10/13/11, 10/18/11). Stickle and colleagues describe how the popularity of youth courts is "rooted in their effort to curb the pattern of repeat offending that is so familiar to juvenile offenders," and explain that "[o]ffenders also have the opportunity to have their record expunged if they stay out of trouble and successfully complete their sanctions. Essentially these youth are given the opportunity for a second chance, where they can learn from their mistakes and move forward without having an official record." According to Schneider (2008:5), "[y]outh courts divert about 9% of the juvenile arrests that would otherwise have to be handled by the traditional, overburdened juvenile system and they accomplish all of this on an average budget of less than $50,000."

[182] Schneider (2008:9). Stickle and colleagues, citing 2002 data, claim that youth court programs "process nearly 100,000 cases per year" (2008:137). Schneider, citing 2004 data, claims that "110,000 to 125,000 youth offenders are served in youth court programs each year" (2008:9, 29). Given the rapid growth of youth court programs—to the point where it is now referred to as a "national movement"—it seems safe to surmise that the figures from both sources underestimate the current number of programs, cases, and offenders served (Stickle et al., 2008:137, 138).

Between January 1, 2007 and July 1, 2010, the RHYC received 1829 referrals and accepted 1750 cases. (Reasons for not accepting a case include the age of the offender—too young or too old—or the nature of the offense—too severe.) Of the 1750 cases accepted, 583 proceeded—an average of 167/year. (A case might not proceed because the youth has moved or because he or she or his or her parents are unwilling to participate.) In comparison, the Washington D.C. Youth Court—one of the largest in the country—heard 675 cases in fiscal year 2010 (Rosenberg 10/13/11).

[183] According to Schneider (2008:20), "[y]outh courts may have great variability in what they are called and, to some extent in their behaviors, but there are more similarities than differences when it comes to processing cases, bring them through the system, imposing sanctions, and following the sanctions through to their completion."

youth judge model, the peer jury model, or the youth tribunal model. As Stickle and colleagues explain:

> The adult judge model is the most commonly used model nationally among [youth courts]. Youth are assigned to the roles of defense and prosecuting attorneys, clerk, bailiff, and jury. The adult judge presides over the hearing and has minimal involvement. Attorneys provide opening and closing statements and question the offender. The jury is responsible for deciding on appropriate sanctions for the offender. The youth judge model runs similarly to the adult judge model but uses a youth judge rather than an adult judge. The peer jury model does not involve attorneys. The jury members directly question the offender, under the supervision of an adult judge, and are responsible for providing sanctions. The final model, the youth tribunal model, uses three or four youth judges to question the offender and determine sanctions. No jurors or attorneys are present for this type of hearing. An adult supervisor is in the room to oversee the hearing.[184]

Regardless of the model, in virtually all youth courts, the youth offender must admit to involvement in the offense and must agree to participate in the hearing.[185] As Melissa Gelber, former Coordinator of Operations at the RHCJC explained to me during my first week of fieldwork, "This is a completely voluntary process. They [the youth offenders] always have the possibility to opt out. . . . They're not shackled to anything."[186] And in all youth courts, youth who are not part of the criminal justice

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[184] Stickle et al. (2008:138n.1). According to Schneider (2008:12), "[t]here are four general models of youth courts: adult judge, youth judge, youth tribunal, and peer jury. Frequently, youth courts adopt one of the four models or a combination of them. In [one study], the adult judge was the most frequently adopted model." Note, however, that according to Rosenberg (10/18/11), evidence suggests that the youth courts that give the most autonomy to the teenagers themselves are the ones that work best.

[185] Schneider (2008:9n.2); Stickle et al. (2008:139, 143); see also Rosenberg (10/13/11). According to Frey (2007), in 93% of youth courts nationwide, the youth offender muck acknowledge guilt in order to participate.

[186] Whether the process is indeed "voluntary" is a matter of debate. After the RHYC receives a referral, an RHYC staff member phones the family of the youth offender to set up an interview and hearing date. If the guardian does not set up an interview and hearing date, the RHYC sends a letter to the parent or guardian of the youth offender informing him/her that the police have written up a report of the child's offense, which can adversely affect the child in the future if stopped by the police. If the parent or guardian does not respond to the first letter, a second letter is sent out warning that "[w]hile the youth court process is voluntary, failure to respond to this notice will be noted in the precinct and youth court records" (Butler 2004). If the youth does appear for an interview and hearing and receives a sanction, but fails to complete it, the referring agency or entity is notified and the respondent is subject to the sanctions of the referring agency or entity. For a discussion of "voluntariness" in the context of community mediation—specifically,

system play a role in hearings or proceedings. As Schneider explains, "youth courts offer youth, who are not part of the criminal justice system, a chance to participate in the decision-making process for stopping juvenile delinquency and improving the juvenile justice system. . . . Youth courts provide volunteers with opportunities to have 'hands-on' experience in the legal system as well as to participate in a personal growth event."[187]

The RHYC, which began in 1998 prior to the opening of the RHCJC,[188] combines elements of the youth judge model and the peer jury model, and consists of a peer jury, a youth judge, a youth bailiff, and two youth attorneys—one representing the community, called the "Community Advocate," and one representing the offender/respondent, called the "Youth Advocate." "We didn't just want young adults in a traditional court setting," Melissa Gelber explained to me with respect to the decision to not to adopt the "adult judge" model. Thus, unlike juvenile court or adult criminal court, RHYC members rotate rolls, so that a "Youth Advocate" in one proceeding might be a juror in the next and a "Community Advocate" the following week.

In a typical RHYC proceeding, the Community Advocate begins with an opening statement, describing to the jury (usually consisting of eight youths) the ways in which

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the position that "referrals from police, prosecutors, and judges [are not] inherently coercive as long as the parties consent to participate in mediation," see Harrington and Merry (1988:718-19).

[187] Schneider (2008:7, 29). Similarly, Stickle and colleagues (2008:139) state that "volunteers may also benefit from their involvement with the [youth court]. Youth volunteers take an active role in providing consequences for the illegal actions of their peers." Note, however, that some youth who play a role in the hearings and proceedings were, at one point in time, offenders/respondents. Indeed, many youth courts actively encourage and recruit offenders/respondents to participate in youth court hearings and proceedings as judges, jury members, bailiffs, and lawyers after the completion of their sanctions (see, e.g., Forgays and DeMilio 2005:116; Schneider 2008:16; Sherman and Hack 2008:25; Shiff and Wexler 1996; Stelloh (9/22/10); Stickle et al. 2008:140). As Rosenberg (10/18/11) explains, when youth play a role in youth court proceedings after they have been an offender/respondent, the experience "shifts teenagers from being a subject of the court process to an active participant." Rosenberg (10/18/11) then quotes Jeffrey Butts, Director of the Research and Evaluation Center at John Jay College of Criminal Justice, for the proposition that this shifting of roles is very important for minority youth, who frequently feel as if "the system" is unfair: "'If it seems patently unfair, why should I play this game? It's rigged against me. That's part of the reason you want them to come back as [members]. You're more likely to believe in justice if you see it as

the offender/respondent's actions could have negatively affected the community. The Youth Advocate, who has previously spent time meeting with and interviewing the offender/respondent, then presents an opening statement stressing the offender/respondent's positive qualities. After the opening statements, the offender/respondent takes the stand and is given the opportunity to tell his or her side of the story or to make any statements he or she would like to make. The jury then questions the offender/respondent about the offense and his or her actions, behavior, and demeanor more generally, including his or her relations to parents, teachers, and peers. The jury seeks to understand the person, as well as the offense (and the circumstances around, and potential reasons, for it). After jury questioning, the judge, bailiff, Community Advocate, and Youth Advocate are permitted to ask questions. The Community Advocate and Youth Advocate then issue their closing statements (with the former stressing the potential negative impact of the offender/respondent's actions on the community and the latter emphasizing the offender/respondent's positive qualities). The jury then deliberates privately to review the facts of the case and the characteristics and attributes of the offender/respondent, and to determine what sanction, if any, is appropriate for the offender/respondent.[189]

In order to serve on the RHYC, interested youths must fill out an application (which includes an essay), participate in a group interview, complete a nine-to-ten-week training course (with classes and workshops held after school twice a week for two hours), and take a bar exam. Youth who pass the bar exam and who have had good attendance at the training sessions are invited to become "members." The training course

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fair and evenhanded. Being [a member] helps communicate that.'"

[188] See Howard (1998).

includes a wide range of classes and workshops led by RHCJC staff and court officers, including Legal Aid Society lawyers who work at the RHCJC, assistant district attorneys who work at the RHCJC, and AmeriCorps volunteers stationed at the RHCJC. Some of the classes and workshops are specific to youth court and cover such topics as restorative justice; offenses, consequences, and sanctions; understanding the youth offender; courtroom demeanor; roles of (youth) court personnel (e.g., judge, bailiff, jury, foreperson, community advocate, and youth advocate); and opening and closing statements. Other classes and workshops are broader in scope and have applicability beyond youth court (e.g., critical thinking, objectivity, and precision questioning).

In the next chapter, I describe in greater detail recruitment and group interviews for the RHYC. In Chapters 5-20, which follow a group of kids through an RHYC training cycle, I explore the ways in which the RHCJC transforms what young people know about the law, how they understand and imagine the law, and what their attitudes and feelings are towards the law and the judicial system. In Chapter 21, I turn to RHYC cases to further examine youth legal consciousness, including how youth court members *use* the law to achieve certain ends.

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et al. (2008:139); see also Sherman and Hack (2008:25).

CHAPTER 4: RHYC RECRUITMENT AND GROUP INTERVIEWS

Recruitment

Apparently, kids do not eat lunch in high school. Or, at least, they do not eat lunch in the *cafeteria*. When I was in high school in Poughkeepsie, New York, lunch was a full-fledged period, equal in duration to any other period. It could be scheduled during any of the eight periods in the day and students were permitted to sign up for more than one period of lunch. Thus, it was not uncommon for some students to have two or even three periods of lunch each day. My father, however, thought that devoting even one full period to lunch was a waste of time, so I took a second foreign language instead (Latin). If I was hungry—although I cannot recall eating much of anything during school hours while in high school—I would take furtive bites of a tempeh sandwich while Mr. Steinmeyer would hold forth on the misogynistic melancholy of Jaques in Shakespeare's *As You Like It* or would scarf down an apple in the hallway before Mr. Landry's lectures on the evils of sex and drugs or would nibble at pretzels while dissecting feral felines in Mr. Abramowitz's A.P. biology class. But I think the only time I ever ventured into my high school's cafeteria was on a Saturday morning to take the PSATs. Thus, I have no sense of whether the eating practices and locations of high school students today have changed. What I do know is that it is not "cool" to eat in the cafeteria at the Secondary Schools for Law, Journalism, and Research in the Park Slope neighborhood of Brooklyn, and that it is even less cool to eat cafeteria food.

I was on the bus with Shante—one of four RHYC coordinators during the course of my fieldwork at the RHCJC—and Shaina, an AmeriCorps member.[190] We were headed to the Secondary Schools for Law, Journalism, and Research to recruit students for youth court.[191] As the bus got closer to our destination, Shante began pointing out places where she would eat when she was a high school student. At the time, this struck me as insignificant. Perhaps Shante was trying to be helpful—offering restaurant recommendations in case I was hungry. Or maybe she was just reminiscing about her high school days.

When we got to the school, we stopped at the desk, showed IDs to the security guard (Shaina did not have one, but it did not seem to matter), received passes, went through the metal detector and bag check, and then took the elevator up to the fourth floor. There, we were greeted by a woman, Joan, who was Shante's contact. Joan led us

[190] Over the course of my fieldwork, four women, all in their mid-to-late-twenties, served as coordinators for the RHYC: Shante, Nancy, Ericka, and Sabrina. The high turnover was not a reflection of the nature of the coordinator position or the environment of the RHYC. All five women were bright, energetic, passionate about their work, and committed to the RHYC members and the overall purpose of RHYC. In fact, three of them had been RHYC members during their teens. Rather, leadership changed as a result of new opportunities for the women: one left to run a charter school (her lifelong dream), another transitioned to a new position opening up at the RHCJC, and so on. Although the women had different styles, different strengths, and different attitudes towards the RHYC, the macro (and even many of the micro) operations of the RHYC remained unchanged over the course of my study. Transitions between coordinators were always smooth. Were I to observe a filmed or taped youth court proceeding from 2007-2011 and asked to approximate the date and guess the coordinator, I would be hard-pressed to do so (although the composition of the RHYC members would probably give it away). In other words, although a given youth court proceeding might subtly reflect the current RHYC coordinator (or the coordinator who had trained the members), the RHYC was never *the product* of a (specific) RHYC coordinator.

Because AmeriCorps is a fixed-term national service program, there was even greater turnover with AmeriCorps volunteers. While some approached their work with the RHYC more zealously than others and while some were more effective teachers, leaders, and assistants to the RHYC coordinator than others, the same observations about the impact of the RHYC coordinators on the nature, spirit, and practice of the RHYC apply to the AmeriCorps volunteers—and probably more so.

[191] At the time of this recruiting trip (Fall 2008), three separate high schools operated in the same building (the John Jay Educational Complex): the Secondary School for Law, the Secondary School for Journalism, and the Secondary School for Research. Prior to 2003 or 2004, the building had been home to one school—the John Jay High School. But John Jay closed due to low performance and three new high schools opened in the edifice. In 2011, the Secondary School for Journalism changed its name to Park Slope Collegiate. Also in 2011, a fourth school opened in the John Jay Educational Complex—Millenium Brooklyn High School.

to the cafeteria and told us that we could walk around and talk to the kids sitting at the tables. While the noise in the cafeteria was deafening with kids laughing, giggling, flirting, and joking around, the place was clean and lacked the mildly nauseating smell of high starch, high fat, high sodium, mass-produced, "mystery food." "No one's eating," I observed. Somehow, Shante and Shaina heard me over the din and clued me in to high school eating practices (or lack thereof), which explained Shante's restaurant tour and tips on the bus.

Shante had brought a stack of flyers (see the Youth Court Flier at the end of this Chapter) and applications (see the Youth Court Application at the end of this Chaper). (As noted at the end of Chapter 3, kids who are interested in youth court must fill out and submit an application. A portion of those who apply are invited for a group interview. A percentage of those who interview are then selected to participate in the fifteen-week training course—with classes and workshops held after school twice a week for two hours—culminating in a bar exam. Youth who pass the bar exam and who have had good attendance at the training sessions are invited to become "members.") Shante handed Shaina a bunch of flyers and applications, and Shaina bounced off to distribute them. Then Shante turned to me, did the same, and told me to go wherever I wanted. While I was touched that Shante trusted me enough to pitch the RHYC to kids (who were almost entirely African American or Latino/a or Hispanic), I demurred and explained that I wanted to observe how she recruited and how the kids responded to her description of the RHYC. I was worried that Shante might be annoyed or disappointed that I wanted to watch rather than help out, but she did not seem troubled in the least and we set off together in the opposite direction of Shaina.

Boldly, Shante approached a group of kids and started talking to them about youth court—what it was, how often it met, and the fact that they could get paid. As a recruiting strategy, I would have thought that getting paid would be the first thing that Shante would mention. But Shante seemed interested in stressing the academic and public service benefits of the RHYC program. I was impressed, but thought it might be viewed as patronizing if I commended her on this, so I kept silent. In one instance, Shante told a group of boys who seemed uninterested that they could meet girls at the RHYC. This got their attention and each boy accepted a flyer and application.

As Shante explained to me, when we were moving on to the next group of kids, she found it harder to recruit boys than girls, and thus she was willing to try to lure boys with the promise of meeting girls if that could pique their interest. But for the most part, Shante stuck to her points about the academic and public service benefits of joining youth court, adding only afterwards the financial or social benefits. Occasionally, a kid—always a boy—would express disbelief that the program paid. Shante would then reveal that the program paid $100, which would induce more incredulity, followed by an excited expression of interest, "Sign me up." The kids never asked how often they would receive $100 or how many hours they would have to work to earn it, and Shante never volunteered the information, although the flyer indicated both: "Members serving on the court earn $100 per month for 5 hours of service per week." I could see why. "One-hundred dollars" sounds a lot more appealing than "five dollars an hour" (which is what it would be in a four-week month).

Although some kids asked Shante questions about the RHYC (which she answered), Shante rarely tarried. This was not out of politeness for having interrupted the

kids' conversation. Nor did Shante seem to think that she would jinx her chances of receiving a completed application if she stayed to chat with the kids longer than a few minutes, although many of the kids did appear to look around and squirrel away their applications, as if they were receiving some sort of contraband. (In fact, some kids took and hid Shante's materials so stealthily that it was as if they feared getting caught disobeying the "advice" of Roderick Heffley, who in the film, *Diary of a Wimpy Kid*, counsels his younger brother, Greg, never to sign up for anything at school: "You fly below the radar! That way you never raise anybody's expectations."[192]) Rather, Shante seemed to sense that if she talked for too long, the kids would zone out—the initial eye-contact and engagement replaced by glazed over expressions.

If Shante had a criteria for selecting which kids to approach, it was not clear to me. Even with her above-mentioned goal of attracting more boys, she seemed not to privilege a group of boys (or mixed-sex group with more boys than girls) over a group of girls (or mixed-sex group with more girls than boys). We just moved from group to group, table to table, with Shante starting up conversations with the kids, handing out flyers, applications, and pens (with the RHYC logo and contact information on them) to those kids who seemed interested—or, at least, *willing*—to take the materials. A few kids took the applications enthusiastically. Far more did so begrudgingly or with blank expressions on their faces. And some kids simply said no, they were not interested. Shante seemed utterly unfazed by those kids who declined; she would just smile and move on. After about an hour, we reconvened with Shaina and left.

In addition to recruiting at the Secondary Schools for Law, Journalism, and Research, RHYC coordinators often visit the Brooklyn School for Collaborative Studies

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indebted to Aidan Patrick Hartt Rogers for introducing me to the film, *Diary of a Wimpy Kid*.

(located just on the other side of the Gowanus Expressway in the Carroll Gardens neighborhood of Brooklyn) and the School for International Studies in Cobble Hill. Sometimes the RHYC coordinator is invited to a high school to make a presentation about the RHYC. At other times, the RHYC coordinator reaches out to a school to inquire if she can make a visit to recruit for youth court. RHYC coordinators also attend events like the After School Learning Academy (ASLA) Fair at the Urban Assembly School for Law and Justice (SLJ) in downtown Brooklyn, where a dizzying number of organizations (between 28-42 the times that I was present)—many of which are "off-site" (in contrast to school-based clubs and teams)—set up tables with information about their after-school programs. Recruitment, in my experience, tends to work better at the fairs, in part because the kids may feel less self-conscious about expressing interest in an after-school program, and in part because the RHYC coordinator often pitches RHYC as a *job* at these fairs, rather than an extracurricular activity—perhaps as a means of distinguishing the RHYC from other programs. Finally, RHYC and their AmeriCorps helpers hang flyers, such as the one at the end of this Chapter, around Red Hook (e.g., on telephone poles, on bulletin boards at the entrance of mini-marts and stores), and rely on word-of-mouth from current and previous RHYC members.[193]

Although the RHYC hears cases year-round, the sessions in which it holds hearings run five-to-six months, meaning that there are two cycles per year. RHYC members who wish to continue their participation with the RHYC—and many of them frequently do—must fill out a new application and write an essay explaining why they

[193] As noted in Chapter 3, the RHYC—like many other youth courts—actively encourages and recruit offenders/respondents to apply to be RHYC members after the completion of their sanctions. Although many respondents at the RHYC express interest in becoming members after their proceedings, few follow through. Over the course of my study, I encountered only two RHYC members who had been respondents.

want to stay involved with youth court, what they learned or felt they accomplished as RHYC members, and what they feel they bring to RHYC. Most RHYC members who want to continue are invited back. Some, however, are not, usually for reasons pertaining to absences or tardiness, under-performance at school, or lack of assertiveness and initiative in hearings and in youth court, more generally. Others may discontinue their involvement with youth court because they age-out, move, or wish to pursue different after-school interests. As such, the RHYC almost always finds that it needs to recruit new members as a term comes to an end. This means that the RHYC must recruit twice a year. Recruitment and interviews normally begin around the time that a RHYC term begins, and the training for potential new members runs concurrently with the RHYC cycle, so that the youth court session ends just as the training comes to a close and the bar exam is administered.

Recruiting through the above-discussed means may generate any number of applications. But to take an example, recruitment in the fall of 2008 resulted in 170 applications. Of these applications received, seventy-five kids were invited for group interviews spread out over the course of three days—thus, approximately twenty-five kids per group interview. (Some applicants may not have been eligible because of their age. Other applicants may have lost interest or not responded to phone calls inviting them for interviews.) Of the seventy-five kids invited for interviews, a quarter to a third may not have showed up. Of the kids who showed up, some were not invited to attend training and others decided that fifteen weeks of twice-a-week unpaid training was too great a commitment. Thus, after the interviews, there might have been thirty-five kids remaining out of the initial 170. By the time training began, of the thirty-five kids

invited, maybe thirty attended the first session. Over the course of the fifteen weeks, attrition further whittled down the numbers, meaning that less than half actually took the bar exam. Of those who took the bar exam, some did not pass and others who did were not invited to join (often because they had missed too many training sessions), leaving about six kids as new members.

Although recruitment for the RHYC may not reveal much about what young people know about the law or how they think about it, recruitment does illuminate some of the paths that youths take to participation in the RHYC, as well as their reasons for doing so. I now turn to the specifics of RHYC group interviews—the next step towards RHYC membership.

Group Interviews

I arrived at the RHCJC a little bit before the 4:30 pm start of RHYC group interviews. Fearful that Ericka, the Youth Court coordinator, might have begun early, I bounded up the steps (after passing quickly through the metal detector) and turned left down the hallway to the mock courtroom where the interviews would be held. Ericka was standing at the door to the mock courtroom and about a half-dozen kids were inside sitting on chairs and filling out some papers. Ericka told me that she would give the kids a few more minutes and then get started. So I dropped my stuff off, ran to the restroom, and came back.

When I returned, Ericka and the kids—there were now about ten of them—were seated in a circle. Ericka introduced herself as the RHYC coordinator and explained that

she had been a RHYC member back in the late 1990s before the RHCJC had opened. She then asked, "Does anyone know what the Justice Center is or does?"

There were some murmurs.

"The building at large?" she tried to clarify.

More murmurs. It was not clear to me whether the kids did not know what the RHCJC was or if they were just shy. Finally some ventured, "A court?"

Ericka spared the kids further discomfort and began explaining that the RHCJC was a "multi-jurisdictional court, meaning that it had three courts in one building: family, housing, and criminal." In contrast, Ericka continued, when one goes to court "downtown" (i.e., downtown Brooklyn), there are separate courts for each, but that at the RHCJC, one judge—Judge Calabrese—hears all three kinds of cases.

Ericka then turned to a description of the RHYC: "it's a court where kids hear low-level cases like graffiti, fare evasion, bringing a knife to school, and so on—small offenses that don't go to the big judge." I smiled at this phrase, "the big judge." Judge Calabrese is probably two or three inches shorter than I—and at five-foot-nine, I do not exactly have to duck my head when walking through doorways.

Perhaps sensing that the interviewees might be dismissive of these kinds of cases, Ericka informed the kids that having an arrest for fare evasion on one's record—something that might seem trivial—could affect job applications. "When kids come to youth court, they're already guilty," Ericka explained. "[But] it's not like you're a criminal when you come here," Ericka quickly clarified. "[The RHYC] is a diversion program—a program to make sure young people don't commit crimes over and over."

Although referrals come from the 72nd, 76th, and 78th precincts, as well as directly from schools such as SLJ and the Secondary Schools for Law, Journalism, and Research, adult-involvement in the RHYC is limited, Ericka informed the kids. "Youth Court members run the entire program," Ericka said, adding that after she meets with the respondent, she has little control over the proceedings.

From here, Ericka explained the different roles that RHYC members perform in hearings, highlighting the duties of the jurors and the community and youth advocates. She stressed that in RHYC proceedings, the jurors ask the bulk of the questions and then deliberate in order to come up with a sanction for the respondent.

Ericka paused. "What *is* a sanction?" she asked.

"The decision they make," one of the kids offered.

Ericka nodded, causing me to wonder whether she actually thought the word, "sanction," meant "decision" (rather than "penalty" or "reward") or whether she was simply happy to have someone participate, even if the definition offered was not accurate. Ericka then turned to the nuts-and-bolts about RHYC training and membership. Training would take place on Monday and Thursday afternoons from 4:30-6:00 pm for ten weeks. "Training is unpaid," Ericka stated. Although this was hardly news—the flyers and announcements clearly state that "Accepted applicants must complete an unpaid 9 week training to prepare for service"—a few kids still groaned and a couple mumbled, "What???"

Asserting herself, Ericka restated that the kids would not be paid for training. In December, at the end of their training, they would take a bar exam, which elicited more groans and expressions of incredulity. "You have to be able to question and listen,"

Ericka offered as justification for the exam. Those who pass the bar exam and are offered membership with the RHYC will need to commit to coming to the RHCJC on Tuesdays and Wednesdays after school from 4:30p.m.-:7:30p.m., during which time they will hear three-four cases.

Having finished her introductory remarks, Ericka said that the interviews would now begin and that "participation and maturity" were qualities she was looking for in the candidates. She then indicated that they would go around the circle and introduce themselves. Each kid would need to say his/her name and a word to describe himself/herself that began with the first letter or his/her name. Ericka started and said, "Excited Ericka," and then added that she was not excited that day, which I found to be an odd admission given that she was trying to attract people to the program.

"Kirk Kool," said the boy sitting to Ericka's right. "With a *K*," he added, so as to justify the misspelling.

"Now you say my name," said Ericka.

"Huh?" said Kirk.

"You're supposed to say my name and then your name," Ericka explained.

Kirk looked even more confused.

"Here, like this," said Ericka.

"Kirk Kool, Excited Ericka," Ericka said. "Now you," Ericka continued, pointing to the girl to her left. (Ericka was making this more complicated.) "You say, 'Kirk Kool, Excited Ericka,' and then your name."

The girl thought for a moment and replied, "Confident Carol."

"Say it," Ericka ordered.

"Confident Carol."

"No, 'Kirk Kool, Excited Ericka, Confident Carol.' Say it," Ericka repeated.

Carol sat silently.

"This is how you learn people's names people," Ericka announced to the group. "You're going to be working with each other." She turned to Carol.

Carol mumbled, "Kirk Kool, Excited Ericka, Confident Carol."

"Louder," Ericka said, but then pointed to the girl sitting to Carol's left, sparing Carol the agony of repeating her name a fourth time.

"Annoying Ashley," the girl to Carol's left said.

Ericka looked like she was going to jump out of her chair and strangle her.

"Oh, wait, sorry," Ashley said, "I forgot."

Ericka relaxed.

"Ok," said Ashley. "Kirk Kool, Excited Ericka, Confident Carol, Annoying Ashley."

"Gooooooood," said Ericka, drawing it out. "Wasn't that easy?" she asked almost spitefully.

The icebreaker "name game" continued, but took far longer than they might have. And a few kids trickled in after introductions had already begun, dragging chairs to join the circle. This made it impossible for the kids who had just arrived to state the names of everyone before them, so Ericka gave up with this requirement and simply let the kids state their names and an adjective describing themselves.

When they had finished, I had jotted down the names of the following kids:

1. Ashley
2. Carol

3. Dandre
4. Devonte
5. Kirk
6. Mark
7. Matthew
8. Precious
9. Ronda
10. Sean
11. Walter
12. Jayden
13. Chandell
14. Nykesha
15. Tavaris
16. April[194]

With introductions over, Ericka explained the first activity. She had put up signs on the walls of room and told the kids that she would make a statement and that they would have to walk towards and stand by the sign that best represented their position with respect to the statement. The signs, which Ericka had hung in the four corners of the room, read as follows:

Strongly Disagree Strongly Agree

Disagree Agree

"OK?" Ericka asked. The kids nodded and murmured their assent. "OK. Statement number one. School is important to me."

Most of the kids shuffled to the "strongly agree" corner. A couple opted for the "agree" corner. Ericka asked the kids in the "strongly agree" corner why they felt that school was important to them. Kirk stated that school was important because you need to

[194] It took me awhile before I could place the names that I had written down with the faces in the room. In addition, two kids, whose names I did not learn, strolled in after the group interview was well underway, bringing the total for the day to eighteen. Thus, in the description of the group interview that follows, I try

"go to school to move ahead," while Dandre offered that school afforded one the opportunity to "gain knowledge" and "to learn things. "You are a bum if you don't go," he added. Quietly, Ronda explained that she attended school to "get[] an education to achieve [her] goals." Nodding, Mark said that school would provide a "greater chance to have a greater life . . . ." His voice trailed off and Ericka encouraged him to speak up. "Money," he said. A couple of kids laughed, but when Mark turned to them, they indicated that they agreed.

Turning to the kids standing in near the "agree" corner, Ericka asked them to explain their position. One girl said that going to school and getting a degree would give her "credibility," while another said that she would be more "respected" if she went to school. I was hoping that Ericka would ask the first girl why she thought getting a degree would give her "credibility"—and in whose eyes. And I wanted to know whom the second girl thought would respect her more for attending school. But Ericka did not probe further. Nor did she ask the girls why they only "agreed" with her statement rather than "strongly agreed" with her statement. Instead, she asked the boy who was standing near the "agree" sign why school was important to him. Clearing his throat and stepping forward toward Ericka, the boy said that "there are people who've been successful without a high school education." He then took a step back as if preparing to defend himself. But Ericka just said "Ok" and without suggesting to the boy that his answer was not really relevant to the question of why school was important *to him*, turned to the one boy standing by the "strongly disagree" sign. I was eager to hear the boy's explanation, as did everyone else. "Sometimes I don't want to get out of bed," the boy said matter-of-

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to attribute statements to specific kids. But this is not always possible given the size of the group, the speed with which kids often spoke one after another, and the difficulty of identifying who had said what.

factly. As with the previous statement, this answer seemed to have little explicit connection to the question. In fact, someone who does not want to get out of bed to go to school may believe that school is important. He just may not like school or may feel that there are instances where he would be better served staying in bed. But Ericka just shrugged and announced, "Next statement. Graffiti is wrong."

Once again, the kids shuffled around the room, but the distribution was more even. This time, Ericka began in the "strongly disagree" corner. Dandre stated that graffiti is "antagonizing" and that "you can go to jail for doing it." Ronda proffered that there is "no reason for tagging" and that "you could get arrested." Neither kid seemed to be standing in the right place because both of these answers seemed indicative of a position that graffiti is, indeed, wrong.

Ericka jotted down their responses and then turned to the kids standing by the "disagree" sign. "[It's] a way someone expresses himself," the first boy, Jayden, said. Unlike Dandre and Ronda's statements, Jayden's answer seemed appropriate for the place where he was standing. Those near him under the "disagree" sign offered similar perspectives: "it's art," "it's freedom of expression."

Ericka noted these comments and then asked the kids standing by the "agree" sign why they thought "Graffiti is wrong." "I agree it's art, but sometimes what you write can offend people," Chandell said. "It's wrong . . . it's someone's property," the girl next to Chandell replied.

Ericka acknowledged these positions. "So, why is graffiti wrong?" Ericka asked the kids standing by the "strong agree" sign. One of the kids volunteered, "Graffiti is art. As long as it's not on someone else's property." Another kid ventured that graffiti was

wrong because it "messes up someone's stuff." And Kirk asserted that "you can do graffiti in a positive way."

I was struck by the disjuncture between what the kids said and where they stood. While those standing near the "agree" and "disagree" signs offered responses that correlated with their respective signs, those standing near the "strongly agree" and "strongly disagree" signs made statements that seemed to contradict their physical position in the room. No one, however, seemed to notice or care. None of the kids said, "Hey, man, you're in the wrong spot." Nor did Ericka ask, "So, if you think graffiti is art, why are you standing near the 'strongly agree' sign?" It seemed that for her, it was most important to encourage the kids to speak and that the signs were merely a conduit for discussion.

While I did wonder whether some of the kids had difficulty understanding negatives or double-negatives, as the case may be, two aspects of the kids' answers intrigued me. First, while I believed that many kids might regard graffiti as an art form and means of expression, I was not expecting as many kids to say as much—especially given the fact that they were interviewing for a position in a program where they might have to sanction someone for doing graffiti. I wondered whether the kids would express a dislike for OSHA and Board of Health rules if they were interviewing for a position at McDonald's or if they would express tolerance for shoplifting if interviewing for a position as a cashier at IKEA. Second, I was intrigued by the fact that a couple of the kids' answers seemed to reflect whether they thought a punishment was involved or what they thought the punishment was, rather than their attitudes towards the activity—graffiti. In other words, while I was not surprised that some kids saw graffiti as vandalism and

property destruction (although none of these kids viewed graffiti as an indication of disorder and decline, à la Wilson and Kelling (1982) and subsequent proponents of "broken windows"[195]), I was not expecting some of the kids to state that graffiti is wrong *because* it can result in punishment, such as arrest or jail. Perhaps I should not have been surprised. As Neilsen (2006:226) observes in her comparison between people's perceptions of offensive speech in public places versus offensive speech in the workplace, "[Ordinary people] do not say that offensive speech in a workplace should not be tolerated because it is offensive or because it perpetuates workplace inequality or even because it is unproductive. They say that sexually suggestive speech in the workplace setting should not be tolerated because the law does not tolerate it. A tautology to be sure, but it makes apparent that the law is the fundamental source of authority for how individuals understand offensive public speech." Nevertheless, I had assumed that kids would not ascribe some sort of moral standard based on—or only by virtue of—its legal status. But as I would learn in the RHYC training sessions—and as I would see on a daily basis at the RHYC hearings—many kids appeared to make judgments based on the legality of various conduct; very few seemed inclined to question the wisdom, purpose, rationale, fairness, or justice of proscriptions against certain behavior.

"Third statement," Ericka announced. "Racial profiling exists in my community."

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[195] In "Broken Windows: The Police and Neighborhood Safety," Wilson and Kelling (1982) argue that broken windows and graffiti convey the sentiment that 'no one cares' in or about the surrounding community. According to them, these indicia of uncontrolled space can send the message that authorities have relinquished control of the area and that disorder is tolerated. If left unchecked—if broken windows are not repaired and if graffiti is not covered up—the neighborhood can rapidly descend into incivility and criminality. The "broken windows" thesis became the basis for the aggressive crackdown on "quality of life" violations in New York City and elsewhere (see, e.g., Giuliani 2012; Weber 2012). The RHCJC was established in large part to address so-called "quality-of-life" offenses and it subscribes to the "broken windows" model of addressing small disorder problems in that hopes that doing so will forestall bigger crime problems and contribute to public safety (see, e.g., Berman and Fox 2005; Daloz 2009; Fagan and Malkin 2003; Fried 2003; Howard 1998; Katz 2000; Malkin 2003; Meekins 2006; Mirchandani 2008).

Initially, none of the kids moved. They seemed confused. So Ericka explained that racial profiling means that the police "target a particular race more than another." This was all they needed. But in contrast to the previous statements, there was far less crisscrossing movement by the kids. Many of those standing in the "strongly agree" or "agree" corners did not budge. A few shifted from "agree" to "strongly agree" and vice versa. Only those who had been standing in the "strongly disagree" and "disagree" corners walked across the room. And they seemed to do so more quickly than before. Perhaps they were warming up to the game? Perhaps they felt more confident about their positions?

When the movement stopped, the room looked markedly different. The spaces by "strongly disagree" and "disagree" were empty. On the other side of the room, kids jockeyed for position close to the "strongly agree" or "agree" signs—as if they felt that physical distance from the signs would represent conceptual distance from agreeing or strongly agreeing with the statement, "Racial profiling exists in my community." But it did not seem to really matter. The fact that the "strongly agree" and "agree" signs were on the same side of the room and that all of the kids had picked one or the other meant that the groups bled into each other, so that it became difficult to discern where the "strongly agree" group ended and the "agree" group began.

Ericka essentially collapsed the categories by simply asking whether anyone wanted to explain their position, instead of specifically inquiring why someone "strongly agreed" or "agreed" with the statement. Dandre stepped forward and stated, without any hesitation, that the "cops target young black men." The rest of the boys all nodded.

Kirk then offered an example of where he was riding a bicycle on a sidewalk and a white person was also doing it (on the opposite side of the street) and the cops pulled him over, not the white guy. More nods.

"Some police officers often offend Puerto Ricans and Black people—treat us like we're not smart," said Nykesha.

"Teachers too," someone else added. "They talk to you like you're dumb."

"That's not racial profiling," a small girl, who had not yet spoken a word, piped up. "That's *racism*."

"No," replied another girl—another first-time speaker, "it's not just police officers who do it."

The kids were getting into it. I looked Ericka and she smiled, pleased that the kids were showing some enthusiasm. I was hoping that Ericka might opine on whether she thought that "racial profiling" was restricted to the discriminatory practice by *law enforcement officials* of targeting individuals based on the individual's race, ethnicity, or national origin, whether she held a more capacious definition (e.g., any government enforcement—airline, customs, police—that targets racial or ethnic minorities), or whether she equated "racial profiling" with "discrimination" and "prejudice." But instead, Ericka simply said, "Well, that brings us to our next statement: People in my community are racist."

Most of the kids stayed put, although a few standing near the "strongly agree" sign tried to push over into the "agree" area. One boy boldly walked across the room and stood by the "disagree" sign, and a girl, Carol, walked halfway across the room and then

stood in the middle—as if to suggest that he was "neutral" or that none of the signs represented his position.

"Who wants to go?" Ericka asked, looking more in the direction of the "agree" sign.

"Storeowners think that black kids will steal something," said one of the kids.

"Latino and African Americans attack each other for no reason," replied another. I was having trouble keeping track of who was saying what.

"People will call me a 'spic' when I'm walking down the street," a third (Matthew) confided.

"They treat us different," said a fourth.

"Yeah," said Kirk, "sometimes the majority looks at you funny because you're a minority."

"Yeah, like what was said before," a sixth kid stated, gesturing in the direction of Nykesha, who had made the comment that police officers treat Puerto Ricans and African Americans as if they are not intelligent, "a white person will think that a black person isn't all that smart."

Ericka turned towards the kids standing closer to the "strongly agree" sign, although it was really just a line of kids standing across the width of the room. "White people think that black people do the most crimes," said one of the kids.

"Store owners look at me like I don't know what I'm doing," bemoaned another.

"Yeah," said Precious, "this one time, I was in there [a store?] with my cousin and the owner look at me like I'm about to start something."

Ericka nodded, as if to confirm that she understood and perhaps empathize. "Why are you standing in the middle?" she asked the girl who had chosen not to align herself with a corner.

"Some people don't like white people because they think they're taking over, but some of them are nice and friendly," said Carol. "Some parents in my community," she continued, "don't want their kids around me because of the color of my [dark] skin."

Carol's response did not really answer Ericka's question as to why she had picked the middle, but Ericka did not probe further, perhaps just excited that someone was demonstrating enough enthusiasm to bend the rules of the game. "Why do you disagree?" Ericka asked the boy standing alone by the "disagree" sign.

"My neighborhood isn't racist, just a lot of judgmental people [live there]," he said. This was a nice distinction and the kids seemed to recognize as much, nodding and murmuring assent.

"Number five," announced Ericka, when things had quieted down a little bit. "People who commit crimes are bad."[196] A mass migration ensued. Most of the kids had "strongly agreed" or "agreed" with the statements "racial profiling exists in my community" and "people in my community are racist." Upon hearing "people who commit crimes are bad," the kids shifted to the "disagree" corner of the room with a couple positioning themselves near the "strongly disagree" sign.

"Why?" asked Ericka when the movement around the room had stopped. Ericka gestured in the direction of the "disagree" group.

"Because it means that what you did is bad, not who you are," Kirk explained.

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[196] In some group interviews, the statement was read as "People who commit crimes are bad," and in others, the youth coordinator announced, "People who commit crimes are bad people."

"What about you?" asked Ericka, looking at the girl next to Kirk "What do you think?"

"Yeah, I'm with Kirk" the girl said. "Committing a crime is a bad choice. It doesn't mean you're a bad person, just that you made a bad choice."

"It doesn't mean that someone should judge you," said Sean, who was standing next to the girl. Ericka frowned, as if trying to understand. Sean must have picked up on Ericka's expression of confusion. Searching for the words, Sean added, "Just because you commit a crime doesn't mean that they should *call* you 'bad.'"

Ericka did not respond. She seemed to be weighing Sean's response. Or perhaps she was trying to figure out what he meant. I, too, had initially been confused by Sean's answer. But then it dawned upon me. The first two kids had interpreted the statement, "people who commit crimes are bad," as a moral equation: "people who commit crimes" = "people who are bad." Thus, the first two kids were trying to draw a distinction between people who are bad and people who do bad things or make bad choices. Sean, on the other hand, was approaching "bad" as a label. For him, "people who commit crimes are bad" had meant "people who commit crimes should be stigmatized as 'bad.'"

I must have smiled as I reflected on Sean's interpretation of the statement, for she nodded at me and then said, "Ok. Good, Sean." Sean breathed a sigh of relief.

"Who's next?" Ericka said and, before anyone could answer, pointed to a heavy-set boy, Walter, who had seemed completely uninterested in everything that had transpired at the group interview. "Kids are dumb, they want to be what they see," Walter said rather nonchalantly.

Walter seemed to be referring to kids who imitate the criminal actions of peers or adults. At least that is how I interpreted his statement. But before I could gauge anyone else's reaction—or do much more than wonder whether Walter considered himself to be a "dumb kid"—the girl standing next to Walter stated: "It depends on the crime you commit. You might not have enough money."

A couple of people chuckled. The girl, blushing backpedaled. "No, I mean, there's a difference between stealing to raise a kid and stealing because you want something"—the implication being that the former was an acceptable reason for theft, while the latter was not.

"Yeah, ok," said a couple of kids and the girl who had just spoken smiled shyly and seemed to relax.

"Other perspectives," Ericka called out.

"It don't change your personality," offered Ronda who seemed to be standing in between the "disagree" and "strongly disagree" sign.

Ericka nodded and indicated that she wanted more answers. But I was not sure she had picked up on Ronda's subtle distinction. Some kids had interpreted "people who commit crimes are bad" as a declarative statement; others as the conditional statement—"if you commit a crime, then you are bad." Ronda, on the other hand, was offering a different type of conditional statement—"if you commit a crime, then you will become a bad person." It was as if Ronda was disputing the perspective that transgressions have some sort of transformative power—that they change a person—that once a person commits a crime, he's gone over the edge (or gone over to the dark side).

"Some people have problems and they need help and they make the wrong choices," said the next interviewee, a boy standing by the "strongly disagree" sign.

"Some people are pushed to do bad things," blurted out a girl who stood by the "disagree" sign.

"What?" asked Ericka, but it was more "What do you mean?" than a request to repeat the statement or an expression of incredulity.

"Like if a guy is beating up his girl and she can't take it anymore and she shoots him," the girl explained.

"Oh, shit!" said one of the taller boys, who then immediately put his hand to his mouth.

"Ooooo," the collective chorus crowed.

"Sorry," said the boy.

Ericka smiled and shook her head in mock disapproval. Then, turning back to the girl, said "That's domestic violence."

"Anybody else?" Ericka asked.

"They might need money," said Mark, who had been standing near Walter. The two of them had been rolling their eyes at each other in response to various comments from the start.

"You might need to get something done," asserted Ashley. Before I could wonder what "get something done" meant, the lanky boy who had just swore pounded his fist into his hand. "Yeah, beat-down," said a voice that I could not identify.

A few kids giggled.

"Quiet, quiet," said Ericka. "Last person."

"You could be in the wrong place at the wrong time," said a girl.

"Ok," said Ericka. She had appeared to forget about the few kids standing on the side of the room with the "strongly agree" and "agree" signs. "People who commit crimes deserve to be punished."

"Let's go around," said Ericka, once the kids had settled on their spots. It seemed more like a reminder to herself than an order or a plan.

Ericka asked for a volunteer from the "strongly agree" corner. Tavaris raised his hand and stated, "If they don't get punished, they'll keep doing it."

"Good," Ericka replied. She then nodded at Dandre, who had also raised his hand.

"When you do something wrong, you don't think about it," Dandre said. I could not tell whether he meant that people do not think about the consequences of their actions—that they do not engage in a cost-benefit analysis of committing a crime—or whether Dandre felt that people can commit crimes without feeling guilt or remorse. Either way, I was having a difficult time figuring out what Dandre's statement had to do with the question of whether people who commit crimes deserve punishment. But Dandre then added, "if you make your bed, you have to lie in it"—a point that resonated with Ronda, who asserted, "you should pay your consequences." She meant, "you should pay for the consequences of your actions," but everyone seemed to understand.

Ericka nodded and then turned to the "agree" corner. "Let's get someone from here," she said.

April stepped forward and declared, "a whole bunch of people will start doing it over and over."

Ericka acknowledged April's response and asked the kids standing in the "disagree" corner why they did not feel that people who commit crimes should be punished.

"It should be based on who you did," Precious explained. For a moment, I thought that Precious meant that whether one receives a punishment should depend on whether one has killed one kind of person (the president? a small child? an upstanding citizen?) rather than another (a homeless person?). But Precious clarified that the nature of the crime should determine whether one receives a punishment. I was tempted to inquire whether Precious believed that some crimes should not be punished—that perhaps one should simply receive a warning or that some crimes should go unenforced—or whether she felt that the *extent* of the punishment should be linked to the nature of the crime. Before I could say anything—Ericka had given me permission to interject if and when I wanted to—Precious offered an example of how a person arrested for smoking crack really needed treatment, not punishment. I was impressed and wondered whether Precious knew that the RHCJC promotes and practices therapeutic jurisprudence—that Judge Calabrese frequently sentences criminal defendants to treatment in lieu of incarceration.

Precious was on a roll. And she knew it. She started to say something else, but Ericka interrupted her: "Excellent, excellent."

The compliment seemed to make Precious self-conscious, for she stumbled a little bit and then, in a softer voice than before, invoked the Eighth Amendment's prohibition against "cruel and unusual punishment." This was the first time any of the kids had made reference to a specific constitutional provision and I wondered where and when Precious

had learned about it. I also was curious whether she thought that imprisoning a crack addict instead of providing him or her with drug treatment constituted "cruel and unusual punishment" and what else she might consider to be "cruel and unusual punishment." But by the time I had formulated the question, Precious had finished speaking and Ericka again complimented her before moving on.

Ashley spoke next, explaining that she thought that "murder" and "stealing" were different. "They *are* different," I wanted to interject. "Don't you mean that the *type* of punishment should be different, not *whether* someone gets punished?" But everyone seemed to understand that Ashley, like Precious, was trying to make a point about proportionality, for there were nods and murmurs of assent when Ashley concluded.

"Ok," said Ericka, clapping her hands. "Strongly disagree."

Kirk volunteered and stated that "some people commit crimes to do it on purpose." Other people, Kirk continued, commit crimes "without knowing" that what they have done is a crime or "to help their family out."

Essentially, Kirk was distinguishing between the "sneaky thrill" of breaking the law,[197] crimes committed without knowledge that a particular act is proscribed (which is almost never an excuse), and those transgressions committed in response to mitigating circumstances. It was not clear why Kirk had decided to stand near the "strongly disagree" sign. His three examples seemed to suggest that he might support punishment in some circumstances, but not in others. (Recall that in response to the statement, "Graffiti is wrong," Kirk had asserted that "you can do graffiti in a positive way.") But despite the inconsistency between his statements and his choice of where to stand in the room, his point was far more nuanced than his earlier pronouncement about graffiti.

Indeed, many of the kids distinguished different types of crimes and varying levels of intent in response to the statement "People who commit crimes deserve to be punished," whereas in response to "Graffiti is wrong," they had offered more binary perspectives. In a short span of time, had they learned the answer to many legal questions: "It depends"?

"I like the police," Ericka announced.

The responses were similar to those noted at the beginning of Chapter 1. While a few interviewees expressed the belief that the police "protect the community" or "solve crimes" and while others offered more qualified statements, such as, "sometimes they help you," "they do help out but they do bad stuff," "some police officers are bad, but not all," and "some do their job, but some are racist," the majority of responses reflected a dislike, bordering on disdain, for law enforcement. For example, one of the kids described an instance in which he witnessed cops throwing a couple of kids on the hood of their car after stopping them for riding their bikes in the middle of the street. A few of the kids readily associated "the police" with corruption. One of the kids who stood by the "disagree" sign stated that "some cops disrespect *their own rules*," while a second, standing next to him, asserted that "protect and enforce the law, but some of them abuse their power." A boy positioned under the "strongly disagree" sign compared cops to *Training Day* (the 2001 film starring Denzel Washington as a rogue detective).

I was not surprised that there were no kids who said that they *liked* the police. Those who stood by the "strongly agree" or "agree" sign had indicated that they thought that the police might serve an important role (such as protecting a community, solving crimes, or ensuring that "chaos" or "war" would not unfold, as Dandre had suggested). One boy near the "agree" sign had stated, "at the end of the day, they're just doing the[ir]

job"—a sort of "Nuremberg defense" and hardly an expression of fondness. But while I did not expect the kids to *like* the police, I did not anticipate that so many of them would reveal such wariness and contempt. Admittedly, the RHYC is not some sort of "junior police academy," such as NYC's Law Enforcement Exploring program,[198] but it is a pro-social youth program where members adjudicate cases involving their peers—most of whom have been arrested. Were the kids at all aware of this tension?

"Last statement," Ericka announced. "If you see someone doing a crime, it is important to do something about it." The kids moved slowly to new places, but their gait suggested fatigue from standing, shuffling, thinking, and speaking in public, rather than lack of interest. "Who wants to go first?" Ericka asked, when the dust had settled.

Sean, who was standing by the "agree" sign raised his hand. Almost immediately, he thrust it back in his jeans, causing them to sag even further, and mumbled, "I would want someone to do something . . . if it were to happen to me." Tavaris, standing next to Sean then piped up, "If you don't say something, it's going to keep on happening"—a sort of reprisal of his statement earlier that "If they don't get punished, they'll keep doing it" (in response to "People who commit crimes deserve to be punished"). Precious, who was also standing in the "agree" corner, added, "You should protect the community

[198] Law Enforcement Exploring is a community service, career-oriented program designed to educate young men and women, ages 14-20, about law enforcement. According to the "Law Enforcement Fact Sheet" that I picked up at the ASLA Fair at SLJ in downtown Brooklyn on September 29, 2009, "Exploring reaches out to New York's young adults in all of its diverse neighborhoods to help break down barriers between young adults and law enforcement officials. Explorers are taught the importance of higher education, self-discipline in reaching their goals, and are encouraged to see Law Enforcement as an attainable and attractive career choice." One of the other promotional materials contained a full-page glossy image of uniformed young people standing in a military column. And a third document announced "Before Wearing One Of These . . . Prepare Yourself With One Of These . . ."—with images of patches of the D.E.A., F.B.I., N.Y.P.D., and U.S. Customs accompanying the phrase, "Before Wearing One Of These," and an image of a patch containing the "Law Enforcement Explorer" insignia accompanying "Prepare Yourself With One of These." All of the promotional materials indicated that additional information could be located at http://www.nyexploring.org—a website with more images of uniformed young people saluting and carrying flags.

you're in," and Devonte rounded out the "agree" group with "it's like protecting someone's life."

"Good, good," Ericka said, acknowledging all four responses. "What about you guys?" she asked, pointing to the "strongly agree" crowd.

One of the kids said that if he saw someone "really hurting someone, [he would] report it to the police immediately." The boy's response was a bit odd. Would he refrain from calling the police if someone was hurting another person, but it did not seem like a vicious assault? If so, was this because he thought that the police should not be summoned unless the incident is serious?

A second boy interrupted my ruminations. "They could hurt you as well," he said.

Ericka moved her head back and forth as if weighing the boy's statement. But I could not tell whether she was trying to figure out if she agreed with him or if she was mulling over the distinctions between the two statements of the boys in the second group. Ericka's statement had been, "If you see someone doing a crime, it is important to do something about it." The first boy in the "strongly agree" group had interpreted "doing something" as calling the police. The second boy's response seemed to suggest that "doing something" entailed physically intervening in a robbery or assault rather than calling to cops.

Without giving an indication that she had reached a decision, Ericka turned to the two other people in the "strongly agree" group. "The whole point of the police being there is to make the place more safer," a third boy explained—a position that seemed to imply that one should summon the police not because of some sort of moral imperative or

concern for another's well-being, but because public and personal safety is their raison d'être. Ronda then said, "you don't want it to happen around the community," which suggested that she thought that by "doing something," one could deter others from engaging in whatever crime she had witnessed.

A few kids had decided to stand in the middle of the room. "The neutral group," Ericka said. "What about you guys?" although the group was mostly composed of girls.

Dandre explained, "you may get a bad reputation with your peers." I was tempted to ask Dandre whether he thought that he *should* do something, but that he would not because he feared being labeled a "snitch." I was also curious as to whether Dandre's answer would change if he were to witness the crime by himself. Would he be less willing to act in a group? A case of the bystander effect? What if he were by himself and the crime he witnessed did not involve anyone he knew? What then?

"Girls?" Ericka inquired. "Any of you want to say anything?"

"It's different if it's your family member," one replied.

"Yeah," said a second girl, "if it's my family member getting hurt, I'm going to say something." It was not clear whether she meant that she would say something to the assailant/perpetrator or to the cops.

A third girl nodded and indicated that she felt a sense of responsibility if "you see someone getting raped"—the first time that anyone had actually mentioned a specific crime. Not wanting to be left out, the fourth girl said, "you should help because that's someone's life."

"OK, like what Devonte said," pointing to Devonte who had been one of the "agree"-group volunteers and who had said he would do something because "it's like protecting someone's life."

Someone had moved from the "disagree" crowd into the middle of the room. "What about you?" Ericka asked.

"If you don't [do something], it's on your conscience, but you don't know who you're helping out," the boy said. His comment made me think back to Precious's earlier statement that punishment "should be based on who you did."

"So, if you see someone beating up an old man, you might want to intervene, but it could be Bernie Madoff, in which case, you might not want to help him out?" I wanted to ask, but did not.

"I suppose," Ericka said in response to the boy's reservations about helping out someone he did not know. Then, turning to the "disagree" crowd, "Why wouldn't you do something?" she asked. It was less a question, more of an indictment.

"I don't want to risk my life, but I might report it," Mark ventured.

"Yeah," Kirk followed, "don't do it if it can put you in danger." He seemed to be offering advice to Mark, rather than stating his personal belief.

A third boy added, "sometimes it could be self-defense."

"But if it's clearly *not* . . . .?" I mumbled to myself.

"Alright," said Ericka, looking at the kids congregated under the "strongly disagree" sign. "You guys." She almost sneered.

No one replied.

"Nothing?" Ericka asked.

"If someone's getting beaten up, that was nothing to do with you. . . ." one boy ventured, his voice trailing off.

"I can't hear you," Ericka said.

"If you jump in, you're just gonna get beat up too," the boy said, his reasoning not all that dissimilar from an earlier statement from the "strongly agree" crowd.

"Uh huh," Ericka said, "and . . . ." I wondered whether she was aware that she was challenging the kids more so than she had done previously.

Walter leaned against the wall. "It's not my business what's going on."

"If it's not your business to pay attention to what's going on, then why are you here? Why are you interested in youth court?" I wanted to interject.

Walter's response seemed to empower his mates. "Yeah," said someone standing next to Walter, "it's none of your business."

"There are a lot of snitches in this world," someone else said.

"You could get hurt for snitchin'," a fifth person said.

"Uh uh," said the sixth boy in the group—I realized the whole group was composed of boys—"it's none of your businesses if you see someone killing someone."

Ericka looked dumbfounded. "Whoa whoa," she said. She was clearly troubled by the boys' harsh positions regarding snitching. "What about this," she offered. With a look of consternation, Ericka asked the kids what they would do if a "good girl" who has "no problems with anyone" were to come home and see that someone had written threats on her door.

"She has an idea of who it is," Ericka continued. "What should she do?"

It was a terrible example. Ericka's initial statement had been "If you see someone doing a crime, it is important to do something about it." In her hypothetical example, the girl had not witnessed a crime being committed.

"The girl goes upstairs and talks to her neighbor," Ericka said. "The neighbor knows who did it. Should the neighbor say something to the girl?"

The kids looked confused. No one said anything. I squirmed in my seat wondering whether Ericka would make any of the kids respond to her scenario.

Fortunately, Ericka spared them. She confessed that this was a true story and that it had happened to her—that she had come home and that someone had written something on her door about her cousin.

The kids started murmuring. I worried that Ericka was losing control of the group. But they settled down and Ericka explained that the situation was on-going—that she knew who it was who had written things on her door or that she had an *idea* of who it was and that she was trying to figure out what to do.

"Don't get them arrested," one boy said.

"It's not that serious," another boy added.

"But it's threats to my family," Ericka protested.

Ericka seemed genuinely perturbed by the kids', particularly the boys', responses. And I could not help but recall rapper Cam'ron's declaration in a 2007 interview on *60 Minutes* that he would not call the police even to protect neighbors from a serial killer.[199] Somehow, she regained her composure and indicated that the "corner game" was over

[199] See "Stop Snitchin'," "*60 Minutes*," Anderson Cooper, correspondent, April 19, 2007, http://www.cbsnews.com/stories/2007/04/19/60minutes/main2704565.shtml; see also Katel (2007:120, 126, 134). Cam'ron went so far as to admit that he had refused to aid an investigation in which *he was*

and that the kids were to grab chairs and sit in a circle again. Rather dutifully, the kids complied with some picking up chairs and others dragging them until they had formed an amoeba-like shape in the center of the room. Once the kids were seated, Ericka explained that she was going to pose some questions to them and that needed to answer them.

"Why do you want to join youth court?" Ericka asked, leaning forward. "Why are you interested in youth court?"

The kids looked at each other, then at Ericka, and then back at each other. A few raised their hands.

"Ok. You, you, and then you," Ericka said, pointing at the kids who had raised their hands.

One girl explained that she was interested in child psychology. "I want to help friends with their problems," she said. Carol then indicated that she wanted to be a lawyer. Matthew followed, describing how he wanted to be a judge or a lawyer, but then adding that he usually gets into trouble on the street.

"Yeah, it would give me something to do instead of running the streets," Devonte said.

Sean, nodding, explained that he wanted to "be active instead of roaming the streets." His voice trailed off and Ericka asked him to speak up. He mumbled something about wanting "to help the community," and then slouched back in his chair. He seemed defeated.

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shot, on the grounds that talking to the police about a crime "would definitely hurt [his] business" (quoted in Katel 2007:134).

"Yeah, I want to help the community be a better community," Ronda followed—her comment causing Sean to perk up.

Ericka looked at Kirk, who was sitting next to Ronda. Kirk thought for a moment and then stated that youth court would be the first step towards achieving his goals. Ericka asked Kirk what those goals were and Kirk replied that he wanted to be a "criminologist" and that "this"—youth court—was "the start of that."

"Some of my friends have been here," Ashley stated, when Kirk was done finishing.

"Oooooo," said cooed a couple of boys. "Trouble."

"Naw, naw. Not like that," retorted Ashley, frowning at them. "They worked here. They weren't, you know, um, res-pon-dents." She said "respondents" slowly and annunciated each syllable. I think it was a new word for her.

A couple of other kids then stated that youth court would be "a good opportunity" and a "new experience." "I want to learn about law and stuff," a third one added.

"Hey," said Ericka, snapping her fingers in the direction of Mark and Wally, who were sitting next to each other. They had been whispering to each other and giggling occasionally during the group interview, but had gotten a bit louder when the other kids started explaining why they wanted to join youth court.

"Why are you guys here?" Ericka asked. It sounded like an interrogation. The boys jolted back in their chairs, the smirks on their faces gone. Ericka seemed almost a bit surprised by how effectively she had induced cooperation. Softening her tone, she then asked: "Why do you two want to join youth court?"

The boys looked at each other. Then Mark replied, "I want my own money," as if it were obvious.

"Yeah," said Walter. I expected him to say something to the effect of, "it's all about the benjamins"—slang for $100 bills, which bear Benjamin Franklin's image.[200] But instead, Walter paused and looking at his hands, confessed: "Money's not coming around for my Moms like it used to. I just wanta help out."

"I'm not sure how far $100/month is going to go," I thought to myself and then chided myself for my initial reaction. Walter, who had seemed so tough and aloof, now just seemed like an overweight Momma's boy. I almost felt sorry for him. When other kids had expressed interest in the law or pro-normative goals of becoming psychologists, lawyers, or judges, Walter's facial expressions conveyed feelings of condescension and derision. It was as if he were saying, "What a bunch of sissies! What a bunch of goodie-two-shoes." Saying that he wanted to help his mother address her financial woes revealed a kind and thoughtful side to him—at least it did to me at that time. His peers, however, did not seem to notice. Or if they did hear what Walter said, they did not interpret his statement as sign of sensitivity. A good number of Red Hook kids grow up without fathers and thus saying that one has to work to help out "Moms" is less an expression of emotion than a reflection of common household composition and shared socio-economic realities. Had Walter's statement come across as "soft," the other kids in the room might have jumped on him. As Torrey Maldonado explains in his account of Red Hook middle-schoolers—and as I confirmed (albeit to a slightly lesser extent)—Red

[200] *All About the Benjamins* is also a 2002 movie starring Ice Cube and Mike Epps, and *It's All About the Benjamins* is the fourth single released from the 1997 Puff Daddy album *No Way Out*.

Hook kids (especially boys) go to great lengths to act "hard;" public displays of sensitivity can result in one getting "punked."[201]

Ericka seemed surprised by Walter's admission. She looked down at her sheet. "What do you hope to get out of youth court?" she asked. Then, realizing how some of the kids had already answered this question in response to "Why are you interested in youth court?," she looked back down at the sheet. "Yeah, ok," she added, indicating that she did, indeed, mean to ask the question.

"It would be a good experience for getting a job," one kid, who had not spoken in response to the previous question, replied.

"Yeah, it'd be a good experience," another repeated.

"I could learn how a courtroom works," Mark suggested. It sounded like a question.

Ericka seemed eager to move on. "What strengths and skills do you bring to youth court?" she asked.

It seemed like a straightforward question, but the kids looked confused. Finally, Ronda said that it was important to be "active" and to "keep your head up no matter what" and to "be respectful to each other." Sean added that youth court "teaches you to be a better person" and that "it helps to change you to be a better person," although it was not clear whether he meant that youth court has this kind of impact on RHYC *members* or on RHYC *respondents*. A third kid, perhaps thinking about the previous questions, replied that youth court was "about getting money the right way, not getting 'fast cash.'"

It was Ericka's turn to look confused. All three kids had answered her question by stating what they wanted to *get out of* youth court, not what they thought they *could*

bring to youth court. She hesitated and was about to clarify what she had meant with her question when Matthew raised his hand and said that he was "responsible" and the he "speaks his mind at the right time."

"Good, good," Ericka replied. "That's good to know about you. Those are good skills."

Ericka's acknowledgment served to clarify matters and, in so doing, opened the floodgates:

"I can communicate with everyone," said Jayden.

"I like to communicate with people and I'm very intelligent," Precious declared, folding her arms in front of her chest. "Well, I'm strong, confident, smart, friendly, and can influence a lot of people to do the right thing," Carol proclaimed, looking first at Precious and then at Ericka. This was one of the few times that I had heard a Red Hook youth describe himself or herself as "intelligent" or "smart."

Ericka chuckled. She was enjoying the kids' competitive spirit.

"I'm open-minded and respectful," stated Chandell.

"I bring leadership and can make people listen to me," asserted Nykesha.

"I'm really dedicated to what I do," suggested Tavaris.

More answers followed. I was having trouble keeping up and wondered why the kids' ability to generate adjectives to describe themselves had not manifested itself during the icebreaker where the participants had been asked to state their name and a characteristic that matched their name.

One girl mentioned that she was "caring, motivated, and strong." A boy stressed his abilities with respect to "public speaking," although he had not said much during the course of the interview. Another boy talked about his "determination."

"What about you?" Ericka asked, pointing to Walter.

Walter shrugged. "I like to help out." He was hardly convincing.

Ericka pointed to a girl across from him. The girl blushed, then started giggling, burying her head in the shoulder of her friend next to her, then blushed some more.

"Ok," she said. "I'm cool."

She paused. Then started laughing again. Her laugh was contagious.

"Smiles," she said, laughing some more. It was hard for her to speak. "I bring smiles to everyone," she managed to add.

"Apparently," Ericka said, moderately amused.

"And what about you?" Ericka asked Dandre when the laughter had quieted.

Dandre looked at his feet and kicked at something imperceivable on the floor. "Good listener," he grunted without indicating whether he was talking about himself.

Ericka studied her sheet, as if trying to decide what to ask next. "Describe one challenging situation you have experienced. What did you do to overcome the challenges?"

In my visits to RHYC group interviews, this question was asked infrequently. It was easy to see why. Most of the answers were heart-breaking.

One girl talked about calling the cops on her father, but did not elaborate as to the circumstances. Matthew, nodding, mentioned that he called the cops on his father because his father was beating his sister. Carol spoke about how her brother in Yonkers

was killed. The person who shot him called her and threatened her. Carol explained that she told another brother, who told her stepmother, who convinced her to go to the cops.[202] "Man, that was tough," she said, looking down and shaking her head from side-to-side. She meant going to the cops, not the death.

Another girl talked about how a friend of hers was getting raped by the girl's stepfather and that she convinced her friend to tell her teacher. A boy, who was sitting next to her and who had been bouncing his leg up and down with nervous energy, all of a sudden stopped and said, "A lot of people in my family smoke [marijuana], but I'm avoiding it, not getting dragged in."

"A lot of people in my family are negative and don't think I'll graduate, but I will," said the boy next to him with a completely flat affect. Sean, picking up on the change in topic, then talked about how he used to cut class a lot, but that he had made a decision to stop cutting class and start attending on a regular basis. He sounded moderately positive, as if trying to convince himself that he would, indeed, continue to attend school on a regular basis. Dandre, nodding, described how one time, he cut school and got in trouble with his parents. "They grounded me for like six months, Dandre explained. "I never did *that* again." And Kirk added a story about resolving a dispute between two people with whom he was friends, but who were not friends with each other.

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[202] As in Maldonado's (2010) account, stories of "deadbeat" dads—or nonexistent dads (fathers who were "ghost," to use Maldonado's term)—were not uncommon. In fact, in an effort to increase non-custodial fathers' emotional engagement and financial support of their children, the Midtown Community Court (MCC), the RHCJC's sister community court in Midtown Manhattan, runs a program called "Dads United for Parenting." Those MCC staff members involved with "Dads United for Parenting" eschew the term "deadbeat dad" (they prefer "dead broke dads" to "deadbeat dads") and encourage the men in their program to "D-UP"—to embrace their paternal responsibilities. Although I did not study the program and had only a handful of conversations with MCC staff about it, I cannot help but think that the fact that the program is referred to as "D-UP"—that it evokes phrases like, "Time to saddle up" and "Gotta man up"—fuels, rather than dispels, masculinist tendencies.

Not one of the kids had really answered the second part of Ericka's question: "What did you do to overcome the challenges?" But it did not matter. It seemed as if there was a collective understanding that many of the challenges that the kids faced were either insurmountable or simply a part of their daily lives. Perhaps that is why they responded so matter-of-factly. Perhaps that is why they had divulged what might, in many social circles, be experiences that one kept private—or, at least, ones that one did not share with a group of strangers. Still, the air in the room seemed heavy. And it was quieter than it had been all afternoon. I had no reason to suspect that the stories were not true.

Ericka looked around the room, trying to gauge whether anyone else wanted to answer her question. A few people who had not spoken looked down at the floor or past the group at the wall.

Slowly and deliberately, as if to emphasize that she was moving on, Ericka said: "What are some skills that you want to further develop?" This question, like the previous one, was asked infrequently during youth court interviews. But unlike the question pertaining to overcoming challenges, this one did not elicit such somber responses.

"Being able to listen to what someone else is saying," replied one boy, presumably interpreting Ericka's question to mean, "What are some skills that are important for youth court?"

"Helping other people," another said.

Ericka seemed about to interject and clarify that she wanted to know what skills *they* wanted to *further develop*, not which skills are desirable for RHYC members. But before she could do so, Matthew stated, "Communication and responsibility."

Ericka nodded.

“Yeah, communication,” a girl piped up.

“Communication.”

“Communication.”

“Communication and making better decisions.”

“Communication.”

“‘Communication’ seems to be popular,” Ericka said, smiling. The kids chuckled a little bit.

“OK,” said Ericka, shifting gears. “I’m going to read a scene to you.” She paused and looked around the room, as if to ascertain comprehension. The kids seemed engaged, so she continued: “It is a beautiful sunny day. Your friends want you to go with them to the park. You have been coming to trainings every Monday and Thursday for three weeks. This afternoon, the training is on the role of the judge and bailiff. What do you do?”[203]

No one replied.

“Well?” asked Ericka.

“I would go to the training and tell my friends that I couldn’t go,” one kid finally stated.

“Good,” replied Ericka.

“I would try to ask them if I could meet up with them afterwards,” another kid said, encouraged by Ericka’s reply to the first response.

A third kid followed suit: “Training is more important.”

Sean, in a monotone: "Youth court is more important than hanging with my friends."

Ericka nodded and looked around the room. "Anything else?" she asked.

"The same thing," said Dandre, jerking his thumb in the direction of Sean, who was sitting nearby.

Ericka sighed. "Presumably, these are the answers she wants," I thought to myself. "What's the problem?" I wondered.

"I don't have money unless I come to Youth Court," Ashley said matter-of-factly.

"Yeah," Ronda said. "I'd replan it."

"Yeah," Jayden added, "the park is always going to be there."

"You could do both." Tavaris seemed to be continuing Jayden's thought: "It's a sunny day, which means it's the end of the year, which means no more classes. You can go to the park during the day and training in the evening." It was an interesting response, although Tavaris seemed to have temporarily forgotten that it was currently October and that the training would run through December.

"What about you?" Ericka asked, nodding her head in the direction of Kirk. Kirk, who was slouching in his chair, sat up and leaned forward. "If I really can't make it, call to say I can't make it." He seemed to be offering a general rule, rather than a specific response to Ericka's hypothetical.

"It depends on family—if family needs them there," Walter chimed in.

"Huh?" I thought to myself. "What does family have to do with this? Ericka's scenario involved going to the park with friends."

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[203] On some occasions, this question was modified and "shopping" was presented as a hypothetical alternative to attending youth court training. At other times, a trip to the beach was proposed instead of an

"You should go to all trainings," announced Ericka, making it clear that there was a "correct" response to her question. "You should go to all the trainings," she repeated. "Every training is a different topic. We don't go back."

"Youth court cases are confidential," Ericka continued. "During your training, you observe a case where the respondent is a kid from your school. The next day, she comes up to you and says, 'It was that skinny kid in the back of the jury that gave me community service wasn't it?' I could tell she had it out for me. You can tell me. I just want to know."

Ericka looked up. No one moved to speak. "So what do you do?" Ericka asked in a tone suggesting that she thought this was obvious.

"I'd say, 'you shouldn't have done what you did,'" said Precious.

"Yeah, it's a job, you did what you did, deal with it," asserted Carol.

"I can't tell you," Matthew followed.

"Just walk away," added Mark.

The answers started to come more quickly: "I would just say I don't know," someone maintained. "You deserved it. You shouldn't have done what you did," a girl replied.

"If it was me, I wouldn't want someone to tell my business," Walter stated—the assumption being that he would not say anything.

Ericka looked at Ronda. Looking determined, Ronda announced: "I would say, 'I cannot share that with you. That case is confidential.'"

"Yeah," Sean added. "The same thing."

"You took the oath. So it's like breaking it," Dandre followed.

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outing to the park.

"I would lie," Kirk said, slouching back in his chair. A few people giggled. "I'd say I was I asleep. 'I don't know what you're talking about.'" It seemed like an honest answer. Or, at least, it seemed like something that Kirk might say based on what I had learned about him over the course of the interview. "And it might even been an effective response," I thought to myself. "But not something I'd necessarily want to admit during an interview."

"I'd just say straight up, 'it's confidential," Carol declared forcefully.

This scenario also had a "correct" answer. "You should say that it's not up for discussion," Ericka advised the kids. "Everything is confidential. You sign an oath."

"Is there anything else you want me to know? Is there anything you need to ask me or tell me before you leave this room?" Ericka asked. She sounded exhausted and hopeful that no one would say anything.

The kids seemed tired too. A couple of kids asked about the requirements for participation in youth court, and a few others—those who had walked in late—inquired about the responsibilities and time commitment involved with the RHYC. One kid indicated that he would not be able to attend trainings twice a week from mid-October to mid-December. Ericka told him that he could not participate in the program. When the kid mumbled something about having wasted his time interviewing, Ericka replied that he might have met some new people, although she did not say it with much conviction. Other kids also started to mumble about various responsibilities and commitments they had, but Ericka did not want to hear them. "You gotta learn to prioritize. You commit to one thing that you can handle," she announced for the benefit of everyone.

Ericka continued, "By the end of this week, I'll make my decision. I'm only going to take 40 into the training. If you haven't heard by the end of the week, call me. If you want it, you call me or email." Ericka then gave the kids the number to the RHYC office and her extension.

"You're all free to go," she said, slouching down in her chair.

It was 5:50 p.m.

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Over the course of my fieldwork, I attended a number of RHYC group interviews and at least one with each of the different youth court coordinators. Regardless of who was running the interview, the script was pretty much the same. The coordinator would begin with an introduction about the RHCJC (i.e., how it is a community center and multi-jurisdictional community court) and the RHYC (e.g., its purpose, how it differs from other courts, the various roles that members take in hearings, the type of sanctions respondents can receive, time commitment required by members, stipends). Next, she would provide an overview of the interview session (its purpose and expectations for participation), as well as an overview of the process to earn membership in the RHYC. From here, the interview would consist of the icebreaker "name game," the "four corners" game, and the discussion involving questions such as why the kids were interested in youth court, what they hoped to take away from their youth court experience, and how they would address various hypothetical situations.

Just as the group interview format remained the same, irrespective of the coordinator in charge or the number of kids at the interview, the kids tended to offer

similar answers and comments from session to session, although no one kid ever appeared more than once for an interview. While there were often disparities in the number of kids who selected a particular corner in the "corner game," their responses, nevertheless, bore a strong resemblance to each other from session to session. Thus, for example, in one session, a large number of kids "disagreed" with the statement that "Graffiti is wrong." In a second session, conducted later that week, a large number of kids "agreed" with the same statement. Their explanations and reasons, however, were almost identical. As such, I feel I can make a number of observations about RHYC interviewees' attitudes and feelings towards the law, legal players, and the judicial system.

First, I was often surprised that some kids seemed to distinguish "right" from "wrong" based on the law (or what they thought the law was), rather than some other standard—a personal or religiously-inspired notion of appropriate/acceptable behavior. At least, this was the conclusion that one could draw from the responses to the "graffiti is wrong" statement. But the kids seemed not to subscribe to a law-based standard when evaluating the statement, "people who commit crimes are bad." Although most kids "disagreed" or "strongly disagreed" with this statement, their responses varied. Some chose to distinguish between "bad people" and "people who make bad choices" or "people who do something that is bad." Others elected to discriminate between different types of crimes, with crimes of passion (e.g., in response to domestic violence) or crimes associated with securing basic necessities (i.e., stealing to feed one's family) more acceptable in their calculus than crimes property crimes committed for sheer financial or material gain (i.e., stealing because you want something). A few kids also seemed to

acknowledge the discretionary element of law enforcement when they would disagree with the statement, "people who commit crimes are bad," and would offer answers about being in the "wrong place at the wrong time."

Second, the greatest amount of agreement seemed to come about when the youth court coordinator would state, "Racial profiling exists in my community" and/or "People in my community are racist" (although sometimes the youth court coordinator would just offer the first of these two statements). But it was not always clear to me whether kids' responses reflected a narrow or broad definition of "racial profiling," as discussed above, or whether kids thought that it was easier to identify "racial profiling" by the cops than "racism" by community members and store owners. It is also worth pointing out that none of the youth court coordinators ever asked the kids where they came from when they made statements about their communities. Some of the kids who join the RHYC are not from Red Hook. Those who reside in Red Hook may consider all of Red Hook to be their community, "the Front" to be their community (in contrast to the renovated west side, i.e., the area west of Richards street, referred to as "the Back,"[204] or just a particular house in the Houses.[205]

Third, in some interview sessions, the "corner game" statement, "If you see someone doing a crime, it is important to do something about it," would result in heavily populated polarized positions with most of the kids standing near either the "strongly agree" and "strongly disagree" signs and few near the "agree" and "disagree" signs. In other sessions, "strongly agree" and "strongly disagree" were largely empty, with far

[204] Jackson (1998:187, 189); see also Donovan (2001).
[205] As I would come to learn—and as I describe in the ensuing chapters—while the meaning and scope of "community" were never openly discussed in RHYC trainings or in the context of RHYC hearings, the RHCJC encouraged (or, at least, did very little to discourage) a very capacious conception of "community."

more kids congregating in the more moderate "agree" and "disagree" corners. But just about every time, the responses were similar. The kids always assumed that "committing a crime" meant a *violent* crime or a crime involving a victim. No one ever interpreted "crime" as something that would *not* entail a risk to his/her life—such as committing graffiti or hopping a turnstile.[206]

Their answers were also very gendered. The boys whom I observed interviewing for spots in the RHYC training program seemed to be far less willing to "do something"—far less willing to call the cops than the girls, far less inclined to intervene personally than girls. While part of this reluctance appeared to stem from the fact that an expression of concern for another can result in one's being labeled "soft" (a point alluded to above)—and that concern for another *boy* could raise questions about one's sexuality, thereby threatening one's reputation and running the risk social ostracization, or worse[207]—the boys also seemed far more apprehensive about being seen as a "snitch." For the boys, there was no distinction between "doing something" and being a "snitch"; the boys definitely seemed to think that "doing something" meant "snitching" (or could

[206] This interpretation of "crime" as "*violent* crime" (or this equation of "crime" with "*violent* crime") could be attributed, at least in part, to the superpredator moral panic of the late 1980s/early 1990s, which transformed the political and media discourse about crime committed by juveniles—a discourse that, one could argue, has not changed despite subsequent refutation of the supposed impending threat of the superpredator. As Barrett (In Press [Introduction]) explains, "political and media discourse . . . tended to conflate the concept of *juvenile crime* with the concept of serious *youth violence*," despite the fact that "the vast majority of offenses committed by youths involve property and public disorder crimes, not violent crime." It is possible that the kids picked up on this discourse, leading them to construe "committing a crime" as "committing a violent crime."

[207] Maldonado's *Secret Saturdays* is essentially an account of how one boy comes to grapple with his concerns for his best friend, who suddenly starts getting into trouble and begins spiraling out of control. As Maldonado explains, the protagonist, Justin, a Red Hook middle-schooler, must negotiate his feelings without publicly expressing worry, so as not to come across as "gay" (2010:47). In Maldonado's book, those who earn the moniker, "homo," irrespective of their actual sexuality, frequently encounter—or run the risk of encountering—verbal and physical assaults. The youths that I encountered at the RHCJC did not express as strident homophobia as those in *Secret Sundays* and I even encountered a number of openly lesbian girls, who were treated with respect and whose sexuality seemed to be a non-issue for everyone in their group. But the unwritten imperative of acting "hard" and keeping one's emotions to oneself was definitely present among the youths I studied.

only mean "snitching") which, for them, was taboo.[208] The girls were certainly aware of informal proscriptions against "snitching" and were certainly fearful of the ostracism they perceived they might encounter if they did "snitch." But they demonstrated greater empathy for the victim and carved out an exception to the "anti-snitching" ethos if the victim was a close friend or family, or if a certain type of crime was being committed (e.g., rape).

In addition, the kids almost never seemed to think that a crime could have an impact on *one's own community*. (Ronda's statement, "you don't want it to happen around the community," quoted above, was a rare exception.) While some kids expressed a willingness to "do something" because they would want someone to "do something" if they were being attacked or assaulted, they rarely reflected a willingness to "do something" for the larger common good; it was only with their own personal safety (or those of close family and friends) in mind. This is not to suggest that the kids were always so self-centered. Indeed, some kids, when asked later why they wanted to join youth court, would offer answers such as, "I want to help the community be a better community." But with respect to "doing something" in response to witnessing the commission of a crime, the kids appeared unable to look beyond their own self-interests. It never seemed to dawn upon them that a crime to a stranger-victim (or a property crime not involving *their* property) could have an impact beyond the individual victim or that by not "doing something," they increased the potential that they or someone they knew could fall victim to the same criminal—an odd disconnect given their comments about

[208] This type of equation is not uncommon, although it is becoming less accepted. Ice-T (Tracy Marrow), the rapper and founder/frontman of the group, Body Count, which gained much notoriety in the early 1990s for its vigilante justice-supporting song, "Cop Killer," makes the following distinction: "'When you and your partner are involved in crime, and both of y'all get caught and you tell on your partner, that's

specific and general deterrence, and the need to punish people who commit crimes. As I will explain in Chapters 5-21, RHCJC staff (and RHYC staff, in particular) worked hard to convince RHYC trainees that even low-level, public disorder crimes could have significant, wide-ranging effects on a "community."

Most importantly, and rather oddly, I might add, the kids never equated youth court with "doing something." It was rather surprising to see the kids predict that they would not report or otherwise attempt to thwart a crime in progress—or for the kids to profess a belief that one should not "do something" in such circumstances—while interviewing for a position with the RHYC when they would very much be "doing something." Admittedly, youth court hearings occur *ex post*—after the commission of a crime—whereas the hypothetical scenario suggests intervention *at the time* of the crime. But youth court is still a type of involvement, and I hardly think that even the most resistant interviewee would (have) contemplate(d) declaring, "I don't want to hear this case. It's none of my business."

Finally, a few comments on the responses to the youth court coordinator's questions, "Why do you want to join youth court?" and "Why are you interested in youth courts?," are in order. As noted at the outset of Chapter 1, youths attempting to become RHYC members are not juvenile offenders. Occasionally, an interviewee has been arrested or has been a respondent in an RHYC proceeding. But the overwhelming majority of the kids have no criminal record. The lack of a criminal record does not mean that someone has not committed a crime, of course. He/she could have simply avoided detection or apprehension. But the point is that youth court interviewees are not

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snitching. . . . If I know somebody's in the neighborhood raping girls—you supposed to tell the police about that sucka. That's not snitching'" (quoted in Katel 2007:120)).

"troubled youth," for lack of a better phrase. While they may have *troubles*, as all adolescents do at some juncture, RHYC interviewees are fairly "straight." That said, many of the kids convey the sentiment that it is just a matter of time before "something bad happens" or they "screw up" and run afoul of the law. For example, Matthew, Devonte, and Sean all expressed the belief that serving on youth court would keep them off the streets. It is possible that all three boys were similar in their predilections and propensities—and possessed a mature sense of their potential for deviancy—or that their predictions reflected their perception of their odds (as poor kids of color) of avoiding trouble with the N.Y.P.D., warranted or unjustified. It seems far more likely, however, that they, like so many other kids who participate in RHCJC youth programs, have been conditioned to believe the perception that poor, urban kids who do not have after-school activities will sooner, rather than later, get into trouble on the streets. This is not to dismiss the realities of the street life that they may encounter, but it is surprising how many RHYC kids almost self-identify as "at risk."[209]

Of course, not all of the kids indicated a desire to join youth court to avoid the potential "evils" of the streets. Some, as noted above, described the RHYC as a "good opportunity" or as offering "a new experience." Others expressed a desire to have a job and earn money.[210] And, indeed, for some, youth court represented one of the few ways that they could bring money home, if their family needed it, or earn disposable income. According to Rampell, "[r]ecessions disproportionately hurt America's youngest and most inexperienced workers, who are often the first to be laid off and the last to be

[209] In contrast, the kids involved in Youth E.C.H.O. vehemently rejected the "at-risk" characterization when it was applied to them (Swaner and White 2010:17).

[210] Indeed, almost all of the RHYC members whom I interviewed over the course of my fieldwork thought of RHYC as a *job*, rather than as an after-school activity (although some did think of it as "both").

rehired."[211] In August 2009, "the teenage unemployment rate—that is, the percentage of teenagers who wanted a job who could not find one—was 25.5 percent, its highest level since the government began keeping track of such statistics in 1948. Likewise, the percentage of teenagers over all who were working was at its lowest level in recorded history." Indeed, in the Fall of 2009, the RHYC received a record number of applications. When I asked Ericka why so many kids might be interested in youth court, she speculated that many of the kids' parents were "feeling the recession"—that economic woes were prompting or requiring kids to seek their own source of income. "You want those Air Jordans," Ericka said, mimicking a mother of a Red Hook teen, "go get them yourself. I ain't buying them for you."

To her credit, Ericka, like the RHCJC staff, more generally, recognized that money might be a draw for some kids or that some kids would not be able to participate in youth court if they were not paid—their parents would make them get a job (if they could get one). As such, all the youth court coordinators that I met alternated between referring to youth court as a "job" and as an "after-school program," and, when recruiting, always informed prospective members of the stipends RHYC members could earn. Sometimes the stipend was one of the first things they mentioned, on other occasions it was revealed towards the end of their pitches. But the youth court coordinators never shied away from the financial incentive—openly discussing it and advertising it on their fliers.

When monetary desires or concerns were not proffered by the kids as reasons for wanting to join youth court, law-related career goals often were. "I want to get into law enforcement," "I want to be a police officer," and "I want to be a lawyer when I grow up"

(2009:B1).

are frequent refrains. While these were not uncommon aspirations for teens, many of those kids who revealed such hopes (like RHYC interviewees, more generally), frequently and simultaneously endorsed proscribed behavior (e.g., graffiti), expressed disdain for cops, and resented racial profiling by the N.Y.P.D.[212] Admittedly, it is possible for one to condemn racial profiling *and* aspire to become a police officer—one does not need to engage in racial profiling in order to be a police officer (although many may think so). But the kids who conveyed a dislike for law enforcement and its practices (an "*against* the law" legal consciousness), while aiming to become a police officer, correctional officer, or other player in the judicial system, did not connect their present perceptions and experiences with their long-term hopes—they did not view their future occupational goals as a means of rectifying present injustices. These kids seemed to convey little concern for or discomfort with (or even *recognition of*) this apparent contradiction—or, at least, this *tension*—between their negative attitudes, beliefs, and experiences and their pro-social/pro-normative aspirations—perhaps lending support, then, to both Ewick and Silbey's,[213] Greenhouse's,[214] and Peletz's[215] observations that people's attitudes towards the law and its institutions often reflect a degree of ambivalence.[216] Unfortunately, I was unable to explore this contradiction or paradox

[212] One of my favorite examples involved a boy who expressed strong anti-police sentiments and who railed against the "evils" of snitching. When it came time to describe why he wanted to join youth court, he replied without an inkling of doubt that he wanted to be a prosecutor. He seemed completely oblivious to the fact that prosecutors represent the government in cases against criminal defendants, who have been *arrested by the police* (or some other law enforcement entity), and that prosecutors rely heavily on witnesses—many of whom would meet the boy's definition of "snitch."

[213] Ewick and Silbey (1998:228, 245, 246).

[214] Greenhouse (1988:691).

[215] Peletz (2002:290).

[216] More generally, Agnew (2011:171), while discussing the assumptions of positivistic criminologists, notes that not only do different respondents provide different information about the same phenomena, but that "it is sometimes the case that respondents do not even agree with themselves. In particular, respondents often give different reports about the same phenomena when interviewed on separate occasions" (citation omitted).

much further because, as I demonstrate in Chapters 5-21, actively and openly discussing and negotiating such tensions in the context of RHYC training and membership was not encouraged.

EXTRA! EXTRA!

RED HOOK YOUTH COURT WANTS YOU!

The Red Hook Youth Court is recruiting teens, ages 14-18, to hear court cases of other teens who want to learn about law and serve their communities. While applications must be enrolled in school or a GED program, there are no academic requirements.

Accepted applicants must complete an unpaid 9 week training to prepare for service. **Members serving on the court earn $100 per month for 5 hours of service per week.**

Please call (718) 923-8260 for an application and to sign up for an orientation.

Applications are Due No Later than **April 3, 2009**

RED HOOK YOUTH COURT
P (718) 923-8260 F (718) 923-8221
88 Visitation Place (between Van Brunt & Richards Sts.)
Brooklyn, NY 11231

Date received:_____ <**FOR OFFICE USE ONLY**>
Date of interview:

This application must be received by our office prior to your Orientation Session.

Name:_____ Date of Birth:_____

Age:_____ Gender:_____

Address:_____Apt. #_____Home Phone (___)_____

City:_____State:_____Zip Code:_____

Neighborhood:_____

What subway/bus lines are accessible to you?_____

School Name:_____Grade:_____

School Address:_____

City:_____State:_____Zip Code:_____

What time are you dismissed from school?_____

What languages do you speak fluently?_____

Please list any training/special skills:_____

_____

_____

Have you ever held a job before?_____

If yes, please explain:_____

_____

_____

Are you available to attend hearings from 4:30-7:00PM on Tuesdays and Wednesdays?_____

How did you hear about the Youth Court Program: _____

Emergency Contact:

Name:_____

Relationship to Child:_____

Phone Number:_____

The following information is used to ensure that the program orientation and training are arranged to meet the needs of all participants. This information will not be used to evaluate applicants.

Have you ever used services at the Red Hook Community Justice Center before?_____

If yes, please describe:_____

Have you ever been arrested or convicted of a crime?_____

If yes, please explain:_____

_____

Please describe any physical or medical issues our staff should be aware of:_____

_____

_____

Do you take any prescribed medications? Yes_____No_____

If yes, specify medication and reason:_____

_____

_____

Are you in Special Education? _____

Please list any special needs you may have: _____

_____

Additional Comments:_____

_____

_____

I hereby certify that the information provided in this application is true, correct and complete. If selected as a Youth Court Member, I understand that any misstatement of facts on this application may result in dismissal from the program.

_____

Signature **Date**

CHAPTER 5: RHYC TRAINING: AN OVERVIEW

In Appendix A of *Street Corner Society: The Social Structure of an Italian Slum*, William Foote Whyte recounts how he had initially assumed his study "should present a description and analysis of a community at one particular point in time, supported of course by some historical background."[217] Over the course of his fieldwork in Cornerville, however, Whyte "came to realize that *time* itself was one of the key elements in [his study]."[218] As Whyte explains:

> I was observing, describing, and analyzing groups as they evolved and changed through time. It seemed to me that I could explain much more effectively the behavior of men when I observed them over time than would have been the case if I had got them at one point in time. In other words, I was taking a moving picture instead of a still photograph.[219]

My examination of the legal consciousness of youths involved with the RHYC at the RHCJC more closely approximates a "moving picture" than a "still photograph," to use Whyte's terms. While the constantly evolving nature of legal consciousness can make it difficult to observe, describe, and analyze, I do not wish to suggest that one cannot create a still image of youth legal consciousness. Someone studying youths in a context other than an after-school program associated with the law might have little occasion to observe or otherwise explore the youths' conceptions, ideas, and understandings of the law and its players,[220] and thus, might well paint a "portrait" of

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[217] Whyte (1993:323).
[218] Whyte (1993:323 (emphasis in original)).
[219] Whyte (1993:323).
[220] See generally Neilson and Paxton (2010:8 n.2, 12), who contrast organizations or groups with high and low potential for political skills development. Organizations that effectively promote political skills among their members possess higher potential for political skills development and are more likely to promote *political consumerism* (the notion that individual consumption choices might be imbued with political beliefs, ethics, or principles) than sports clubs or clubs for outdoor activities. I think the same argument could be made in the context of legal consciousness—that organizations and groups that run programs that actively and openly engage with law-related issues will be more likely to promote *legal consumerism* (the

their legal consciousness, to mix metaphors. In many ways, Chapter 4's description of RHYC recruitment and group interviews could be considered a "snapshot" of youths' legal consciousness *prior* to their RHYC training and membership.

As noted at the end of the Recruitment section of Chapter 4, the RHYC conducts two nine-to-ten-week training courses per year. Over the course of my fieldwork, I followed one group of kids through the entirety of their training and attended a few sessions in each of the other training cycles that took place during my time at the RHCJC. In Chapters 6-20, I follow a group of kids through their RHYC training. Because the RHYC training is a law-related curriculum conducted over a couple of months that is *intended* to change the kids' legal consciousness,[221] the kids' legal literacy and legal knowledge grows and expands, and their attitudes towards legal players and their

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notion that individual choices and decisions might be imbued with beliefs, ethics, or principles reflecting an awareness or consideration of the law and (il)legality)—and thus this was one of the main reasons that I selected the RHCJC as my fieldsite.

While I agree with Ewick and Silbey (1998:20) that studies of legal consciousness need not be conducted at "formal institutional location[s]" (and that an "institutionally centered" approach drastically restricts how we might understand "the operation of law in everyday life, as well as the operation of everyday life in law"), because young people in the United States have few opportunities to interact with the law and its players (a point to which I return in the Appendix), the discourses and logics of *youth legal consciousness* are far more accessible in an institution of formal social control. Even after selecting the RHCJC as my fieldsite, I found my study of *youth legal consciousness* more fruitful and rewarding in the law-related programs and, as my fieldwork progresses, I elected to spend far less time with the kids involved in the Red Hook Youth Baseball League and other non-law-related programs than with the kids who participated in the RHYC, Youth E.C.H.O., and PTTP. To the best of my knowledge, none of the kids involved with the RHYC, Youth E.C.H.O., or PTTP had been or were subsequently involved with another RHCJC program—law-affiliated or otherwise (although it is possible that a few kids involved with the RHYC, Youth E.C.H.O., PTTP or some other RHCJC program might have played in the Red Hook Youth Baseball League when they were younger). Had I encountered kids who had participated in multiple, different RHCJC programs—or had I been presented with the opportunity to study kids who moved from one program to the next—I would have seized this occasion for it would have provided me with a chance to explore the parameters of Nielsen's (2000:1061) claims regarding the "contingency" of legal consciousness—that legal consciousness "may change according to the area of social life about which the researcher asks, with reference to the social location of the subject, and the subject's knowledge about the law and legal norms."

[221] While the RHCJC never used the term, *legal consciousness*, it was clear from the training—and as I will discuss in the ensuing chapters—that the RHCJC wanted to change the kids' legal consciousness in a specific ways. For a comparison, see Hirsch (2002:16) whose fieldwork in Tanzania involved her working with local activist groups organizing for broader legal rights for women—groups "working to change legal consciousness."

perceptions of law and justice necessarily change. In Chapters 6-20, I describe the ways in which this group of kids was exposed to various legal players and aspects of the law during their training cycle, and suggest how their legal consciousness may have been influenced over this time. In so doing, I present a challenge to Nielsen's repeated assertion that "[o]nly through in-depth interviews can legal consciousness emerge,"[222] while lending theoretical support to Ewick and Silbey's observation that "legal consciousness is a process"[223] and to Nielsen's contention that "legal consciousness is contingent and changing"[224]—that "meanings, ideologies, rights, conceptions of rights, law, and social relationships are not static categories, but are continually being constructed, negotiated, altered and resisted. . . . legal consciousness is a fluid process. It is culturally produced, constructed and reconstructed continuously as different problems are at issue, as different areas of law are implicated."[225] As such—and to extend Whyte's analogy—my attempt to depict (rather than *capture*) the kids' legal consciousness more closely resembles a "dolly shot" or "tracking shot" (where the camera is mounted on a camera dolly) than a "still shot" taken with the help of a tripod.

I begin with an overview of a typical training schedule. As I have previously mentioned, the RHYC had a number of different coordinators while I was conducting my fieldwork. The schedule and curriculum, however, remained mostly the same. This meant that after I followed one group of kids through their training, I could attend a training session in any subsequent cycle and know, based on the title of the day's session listed on the schedule, what would be covered. The fact that the RHYC has kept the

[222] Nielsen (2000:1061; 2006:222).
[223] Ewick and Silbey (1998:247).

same curriculum over the years also suggests that my outline of the training schedule reflects, to the best of my knowledge, current RHYC training practices.

In Chapters 6-20, I offer session-by-session descriptions and analysis of the training sessions for the cycle in which I followed a group of RHYC trainees from the beginning to the end of their training. Although this training cycle lasted nine weeks, I focus on the first seven weeks of training which, like most training cycles, were devoted to developing certain skill sets and teaching the trainees different substantive and procedural aspects of the RHYC and the law, more generally. (The last two weeks of all of the training cycles that occurred during my fieldwork were devoted to reviewing the material of the first seven weeks, to practicing Youth Advocate and Community Advocate opening and closing statements, to "mock trials," and to the kids' bar exams.)

Each chapter covers one training session so that two chapters correspond to one week of training. While this makes for a large number of (frequently short) chapters, because some sessions were more lecture-oriented, with different facilitators imparting information, whereas others involved lots of dialogue and discussion, splitting the sessions into individual chapters hopefully makes the shift in presentation less jarring and easier to read. In addition, it affords me the opportunity to highlight specific concepts and ideas about the law as the kids encounter them, as well as to chart (where possible) changes in the kids' understanding about certain terms.

I offer one final note (or caveat) before turning to the description of a typical RHYC training schedule. Over the course of my fieldwork, I endeavored, to the best of

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[224] Nielsen (2000:1060). Later, in the same article, Nielsen (2000:1061) states that "legal consciousness is contingent, it may change according to the area of social life about which the researcher asks, with reference to the social location of the subject, and the subject's knowledge about the law and legal norms."
[225] Nielsen (2006:218, 221).

my ability, to maintain objectivity in recording my observations about the RHCJC, its staff members, its programs, and the kids who passed through its doors. While I would like to think that I exercised impartiality in my data collection, because my interest in youth legal consciousness can be traced back to criminal cases early in my legal career involving the nature and extent of young people's understanding of the law, I was not without opinions about what I heard and saw, what effect I thought the RHYC and its training sessions were having, and what I thought the RHYC and those training sessions could do (differently). These opinions or perspectives emerge, to varying degrees, in the descriptions of the RHYC training sessions and cases. The purpose is not "to check the quality [of the kids'] legal knowledge according to some professional judgment of what constitutes the law and legality"[226] (although I am somewhat less forgiving with some of the facilitators for the RHYC training sessions). Rather, reactions and responses to the nature and scope of the information presented to the kids—as well as to what is omitted—serve as tools to flag and analyze concepts integral to the RHCJC's efforts to transform the kids' legal consciousness.

A Typical RHYC Training Schedule

Based on the group interviews (which I described in Chapter 4), the RHYC offers spots in its training program to a number of kids. While the number of trainees can vary from cycle to cycle, the figure always well-exceeds the number of membership slots available in the RHYC. RHYC coordinators anticipate attrition and thus it is not uncommon for coordinators to invite to training six-to-seven times the number of kids they can actually accept as new members. Indeed, it is not unusual for one-third of the

[226] Silbey (2005:348).

kids invited to training not to show up to the first day of training. Because the RHCJC expects the number of RHYC trainees to dwindle over the course of the training program, it made one significant change to its training schedule during the course of my study.

When I started my fieldwork at the RHCJC, the first training session consisted of welcoming trainees and introducing them to the RHYC. During the course of my study, the RHYC shifted the schedule so that the first training session was actually not a session at all about youth court, but a workshop conducted by NYPD officers entitled, "What to Do When Stopped by the Police" (which, for sake of brevity, I refer to as the "wtdwsbtp" workshop)—a workshop that had previously been conducted midway or two-thirds of the way through the RHYC training. I was told that the reason for moving the wtdwsbtp workshop—which I describe in the next chapter—to the beginning of the RHYC training program was that RHCJC staff expected kids to withdraw and that if they learned anything before quitting the training, it would be the lessons of the wtdwsbtp workshop. As Shante Martin, who served as one of the RHYC coordinators while I conducted my fieldwork and subsequently as Director of Youth Programs, explained to me in an interview, "We want to have it earlier, become some of the kids tend to drop off, and we like for them to be able to know what to do when stopped by the police, even if they're not a part of our youth court. So I think it's important to have [the workshop] in the beginning, and hopefully in the future we can [continue to\ have it earlier, rather than later."

Aside from the change involving the wtdwsbtp workshop, the RHYC typically adhered to—and, as far as I know—continues (more or less) to stick to the following schedule:

Week I
Welcome/What to do When Stopped by the Police[227]
Understanding the Youth Court/Restorative Justice

Week II
Offenses, Consequences, and Sanctions
Understanding the Youth Offender

Week III
Critical Thinking
Objectivity

Week IV
Precision Questioning/Courtroom Demeanor
Roles of the Court

Week V
Judge and Bailiff
Community Advocate (CA) Opening Statements[228]

Week VI
CA Closing Statements
Pre-Hearing Interview/Youth Advocate (YA) Opening & Closing Statements[229]

Week VII
Write and Present YA and CA Opening and Closing Statements
Customer Service[230]

Week VIII
Mock Trials and Evaluations
Mock Trials and Evaluations

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[227] As noted above, the first session used to be entitled, "Welcome and Introduction to the Red Hook Youth Court." After the wtdwsbtp workshop was moved to the beginning of training, RHYC coordinators sometimes held the "Welcome and Introduction to the Red Hook Youth Court" session during the following training day. On other occasions, RHYC coordinators shortened the welcome and combined it with the wtdwsbtp workshop, or combined the welcome and introduction with the "Understanding the Youth Court/Restorative Justice" session. In the cycle that I followed from beginning to end—and which I describe in detail in the ensuing chapters—Ericka, the youth court coordinator, combined the welcome and introduction with the "Understanding the Youth Court/Restorative Justice" session.

[228] During some cycles, the session on "Community Advocate Opening Statements" was combined with the session on "Community Advocate Closing Statements."

[229] During some cycles, "Youth Advocate Opening Statements" and "Youth Advocate Closing Statements" were held as separate sessions. Sometimes they were scheduled as separate training sessions, at other times, the intention was to combine the material into one training session, but not everything would get covered, thereby requiring a second session.

[230] During some cycles, the session on "Costumer Service" was combined with some "example scenarios" and/or the start of the "Mock Trials and Evaluations."

Week IX
Mock Trials/Jeopardy Review Session
BAR EXAM

RHYC coordinators attempt to arrange for different RHCJC staff members to lead the different training sessions[231] (although during some cycles, scheduling issues might result in an RHCJC staff member leading more than one session over the nine-week period). RHYC coordinators like to tap into the expertise of the different RHCJC staff members—for example, the session on the role of the bailiff might be taught by a court officer, while the sessions on the Community Advocate might be led by a prosecutor and those on the Youth Advocate by a public defender. In addition, by rotating the facilitators for the training sessions, RHYC coordinators can introduce RHYC trainees to more of the RHCJC staff (perhaps helping the kids to feel more comfortable at the RHCJC) and can expose RHYC trainees to different career paths within the criminal justice system. While those leading a training session are given a curriculum which I occasionally excerpt or quote from in this chapter, these facilitators are granted wide latitude to deviate from the suggested exercises and activities in the curriculum.

On four occasions, I was asked to conduct a training session. The first time, I was asked to lead the session on "Understanding the Youth Court/Restorative Justice." Twice, I was asked to facilitate the "Offenses, Consequences, and Sanctions" session. The fourth session I was asked to conduct was the "Roles of the Court" session. When I conducted the "Understanding the Youth Court/Restorative Justice" session, I was a last-minute fill-in and the Director of Youth Programs (the RHYC coordinator's boss) told me to do whatever I wanted and ignore the curriculum, unless I really needed some ideas.

[231] The same RHCJC staff member, however, will often conduct the same session in subsequent cycles.

Fortunately, on the day that I was asked to lead this session—the "Understanding the Youth Court/Restorative Justice" session—I had with me my teaching notes for a lecture (entitled "Social Control, Deviance, and Crime") that I was going to present to my Introduction to Sociology class at Kingsborough Community College (KCC), where I was teaching that term. The lecture was to begin with a problem-exercise, which I called "Ranking Crimes." So I decided—and received approval—to use the "Ranking Crimes" problem-exercise as a way of broadly touching on the topic, "Understanding the Youth Court/Restorative Justice." "Ranking Crimes" was a success—or, at least, the kids reported enjoying it—and subsequent youth court coordinators invited me to conduct the problem-exercise in subsequent sessions. Due to scheduling availability, however, youth court coordinators found it easier to have me run the "Offenses, Consequences, and Sanctions" session and to include my problem-exercise into this session, rather than in the "Understanding the Youth Court/Restorative Justice" session.

During the training cycle where I followed one group of kids through the entirety of their training—described in the following chapters—I facilitated the "Offenses, Consequences, and Sanctions" session and the "Roles of the Court" session. The "Understanding the Youth Court/Restorative Justice" session was led by Ericka, the youth court coordinator for this cycle. To demonstrate the nature and substance of the "Offender, Consequences, and Sanctions" that I did not run, I describe in Chapter 8 the "Offenses, Consequences, and Sanctions" session conducted during a different cycle—the cycle in which I ran the "Understanding the Youth Court/Restorative Justice" session. Chapter 8 also includes a description of the "Offenses, Consequences, and Sanctions" session that I did lead (and which included the "Ranking Crimes" problem-exercise that I

conducted) during the cycle where I followed one group of kids through the entirety of their training. Chapter 9 continues the chronology of the cycle where I followed one group of kids through the entirety of their training with the "Understanding the Youth Offender."

CHAPTER 6: WEEK I: WHAT TO DO WHEN STOPPED BY THE POLICE WORKSHOP

Sergeant Felix Alicea, a balding man in his late-thirties or early forties, began by asking the trainees[232] to name some "cop shows." The kids responded with *Cops*, *NYPD Blue*, *Law & Order*, *CSI*, and *Reno 911*, among others.

"What's so great about these shows?" the Sergeant Alicea asked.

"The drama," one girl responded.

"The comedy," a boy replied.

"They're interesting," a second girl stated.

"They keep you involved," a third girl declared.

"OK. The comedy. The drama. They're interesting," Sergeant Alicea said, repeating the kids' answers. "They keep you involved. Good."

"What about *Bad Boys*? The movie?" Sergeant Alicea asked. "Have you seen *Bad Boys*?"

A few kids raised their hands or nodded. Sergeant Alicea then explained that while he "loved" the television shows that the kids had mentioned, those programs, like *Bad Boys*, "are fantasy world."

"In the movie," Sergeant Alicea continued, "Martin Lawrence is a narcotics officer—right? And he's assigned to a particular case that turns out to be a homicide case that becomes a human trafficking case that becomes a drug case again and then a gun case and then back to drugs."

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[232] Note, however, that not all of the kids in attendance were RHYC trainees. Because this workshop is part of the "menu" of sanctions from which RHYC jurors may select, some of the kids in attendance at these workshops had been RHYC respondents or had been sent(enced) to the workshop by Judge Calabrese in Family Court.

"It doesn't happen this way in real life," Sergeant Alicea explained. "In real life, officers are designated to specific areas."[233]

"And . . . .?" I thought to myself. "How about mentioning the fact that there aren't nearly as many violent crimes as depicted on TV?

"Here's what 'real' police work is like," Sergeant Alicea stated. Sergeant Alicea then pulled up a chair and sat down. He motioned to one of the four officers (he referred to them as "cadets") who had come with him to the RHCJC for this workshop to grab a chair and sit next to him. With the two cops sitting side-by-side, Sergeant Alicea pretended to be driving a patrol car.

"How was your weekend?" Sergeant Alicea asked, turning to his partner.

"Good," his partner replied. "Yours?"

"Good. I took the kids to a ballgame."

Pause and period of silence.

"What are you doing after work?"

"I've gotta go to the kids' school and see this play that one of them's in. My wife doesn't want to see it."

"Oh."

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[233] *Bad Boys*, a 1995 American action-comedy film directed by Michael Bay, produced by Don Simpson and Jerry Bruckheimer, and distributed by Columbia Pictures, should not be confused with *Bad Boys*, a 1983 crime drama directed by Rick Rosenthal, produced by Richard De Lello, and distributed by Universal Studios. The latter film, starring Sean Penn, Esai Morales, and Ally Sheedy, is set in a juvenile detention center. The former stars Martin Lawrence (as Marcus Burnett) and Will Smith (as Mike Lowrey)—Miami police officers assigned to reclaim a large consignment of drugs stolen from a secure police vault. While Sergeant Alicea is correct that the film begins as a narcotics case and then involves a homicide, his depiction was a little misleading. Burnett and Lowrey did not investigate the homicide. They just happen to come across a dead body in the process of trying to track down the stolen drugs. And the movie certainly does not become one involving human trafficking or gun shipments. There are plenty of guns involved—there is lots of shooting—but the whole movie pretty consistently circles around Burnett and Lowrey's efforts to reclaim the stolen drugs. To be fair, cinematic accuracy was not Sergeant Alicea's goal. He was simply making reference to the 1995 *Bad Boys* to make the (valid) point that in real life, officers involved in narcotics cases would not investigate homicides.

Another pause and period of silence.

"Have you seen the new *X-Men* movie?"

"Naw. My wife wanted to see . . . ."

Standing up from his chair, Sergeant Alicea asked the kids: "What did you think of that?"

"This is boring," one responded.

"But something good might happen," a girl offered.

"Can you imagine a show based on true police work?" Sergeant Alicea inquired. "How long do you think a cop show like that would last? How long would it take you to change the channel? 30 seconds?"

"Most officers spend about 8 hours and 35 minutes—a full shift—in their cars driving around," Sergeant Alicea explained. "A lot of police work is sitting around waiting for something to happen."

"So why not mention that not every shift entails arresting someone?" I thought. "Unless it does. Or, at least, why not indicate that cops can solve problems without arresting someone or even issuing a desk summons?"

"In real life, each of these crimes would be handled by a separate unit," Sergeant Alicea said in reference to *Bad Boys* again, "Each officer has their own responsibility."

"What's the main thing police officers use?" Sergeant Alicea asked, switching gears.

"A patrol car?" one kid suggested.

"A walkie-talkie?" another offered.

"Your badge?" a third guessed.

"His handcuffs?" a fourth responded.

"The thing you use to write tickets?" a fifth kid answered.

After a little bit of guessing, Sergeant Alicea responded slowly. "I don't want you guys to get nervous," and he started to reach for his gun, "but the main thing that a police officer uses is . . . A PEN!."

Sergeant Alicea then held up a pen for everyone to see. "Realistically, an officer uses this," Sergeant Alicea waived his pen, "more than his firearm," and he patted his gun. "Ninety percent of police work is writing."

"I do community affairs," Sergeant Alicea continued. "This," he said, still waving his pen, "is basically my job. I've done so much paperwork over my nineteen years on the force—one more until retirement—enough to fill up this room."

I was a bit dubious. "Maybe his paperwork has resulted in paper production/consumption by other players in the criminal justice system that, when combined, could fill a good portion of the mock courtroom," I thought to myself. "But *the whole* room? Alicea's making police work sound like academia. But then, I suppose he's entitled to a little bit of hyperbole in order to disabuse the kids of the notion that being a cop is all about high-speed chases and shootouts . . . ."

Sergeant Alicea interrupted my somewhat snide pontificating by talking about police hierarchy. "What's my rank?" he asked the kids.

"You're a detective because you have no uniform," one boy replied. (Sergeant Alicea was wearing slacks, a white button down shirt, and a blue and grey-patterned tie.)

"You're a *sergeant*," another said.

"How'd you know that?" Sergeant Alicea asked.

"Because," the second boy replied, rolling his eyes, "you introduced yourself as *Sergeant* Alicea."

"Can a sergeant tell a detective what to do?" Sergeant Alicea asked.

"Yes," he replied, answering his own question. "There's a structure."

"A detective," Sergeant Alicea continued, "is a specialist in something."

"I can tell any police officer what to do," Sergeant Alicea declared. ("More hyperbole," I thought. "I'd like to see what [NYPD Commissioner] Raymond Kelly would have to say about that.")

"Can I tell an off-duty officer to get me a cup of coffee?" Sergeant Alicea inquired.

Some of the kids responded, "yes," others in the negative.

"No," Sergeant Alicea stated. "Can I tell a uniformed police officer to get me a cup of coffee?"

This time, more kids responded "yes" than "no."

"No," Sergeant Alicea corrected them. "It has to be within the scope of the job." ("What about a donut?" I wondered. "That's within the scope of the job, no?")

"My goal [for today]," Sergeant Alicea continued, "is to reveal the reality versus the fantasy of the job."

"How should you refer to a 'plain clothes officer'?" Sergeant Alicea asked. It was not clear whether he was still on the subject of police hierarchy or had moved to a different topic.

Some kids responded "detective," others replied "sergeant." One kid yelled out "undercover cop."

Sergeant Alicea explained that when a cop is in plain clothes, he should be referred to as "a plain clothes officer."

"He has a rank," Sergeant Alicea explained, "but the rank is not known. Even three-star or four-star chiefs who are in plain clothes should be called 'plain clothes officers.'"

Sergeant Alicea then informed the kids that while plain clothes officers cannot be identified by their badges (because they are not visible when an officer is in plain clothes), plain clothes officers are assigned to vehicles and thus can be identified by their license plates.

It was not clear why Sergeant Alicea had asked these questions about rank. To show that not all cops act like Detective Alonzo Harris (the rogue cop played by Denzel Washington in *Training Day*)? Had I missed something in the process of jotting down notes or making cynical comments to myself?

It soon became clear. "Is it easy to accept orders from someone else?" Sergeant Alicea asked.

"No," some of the kids said.

"No," Alicea reiterated. "Even if a cop swears [at you], it isn't an invitation for you to start swearing back. It's [still] important to do what cops say."

'What do you do if a cop starts swearing at you?" Sergeant Alicea continued. "How would you report it?"

None of the kids responded, so Sergeant Alicea told the kids to try to obtain the officer's name and/or badge number or, if it is a plain clothes officer, to note his or her license plate number. Sergeant Alicea cautioned, however, that the kids should be

discreet and should not make a show of recording the officer's identification information. "Try to remember the situation as best as possible," Sergeant Alicea advised. "And if it's a plain clothes officer, try to get the license plate number because most officers arrive in a vehicle or are not too far from their vehicle."

I wondered what Sergeant Alicea might say if I asked him what would happen if one started blatantly writing down an offending/offensive officer's identification information. Would they confiscate the paper and pen? Would they attempt to cover up their name and badge the way the U.S. Customs agent had in the Honolulu International Airport a few years ago when I told him that I was going to report him for taking three mangos that I had wanted to eat on the plane.

Sergeant Alicea told the kids that if an officer uses foul language when speaking to them, they had a couple of options. "You could go to the precinct and say that you're looking for the supervisor—the 'sergeant at the desk' or the 'lieutenant at the desk.' You could call 3-1-1- and say, 'I want to make out a civilian complaint.'" Sergeant Alicea then explained that if they called 3-1-1, they could make their compliant anonymously or they could identify themselves and that either way, an investigation would proceed. "But if you identify yourself," Sergeant Alicea continued, "you could be contacted for follow-up."

I wondered whether complaints in which the caller identified himself or herself were treated more seriously and whether they were investigated more rigorously than anonymous calls. I also wondered whether the officer named in a complaint by a caller who identified himself or herself could gain access to the complaint and the information about the complainant and then hunt him or her down. But I was not going to ask.

Sergeant Alicea had already made certain with his advice that few kids, if any, would call to report verbal harassment by NYPD officers and, if they did, they would not identify themselves. Thus, I was not at all surprised that instead of informing the kids about New York City's Civilian Complaint Review Board (CCRB), Sergeant Alicea changed topics and explained that the kids and "his cadets" would now engage in some role-playing skits.

"I need some volunteers," Sergeant Alicea commanded loudly.

"Why are you yelling?" a girl asked Sergeant Alicea.

"It's not yelling," Sergeant Alicea explained. "It's using an authoritative voice. I want you to use a forceful voice [when you pretend to be cops]."

Sergeant Alicea repeated his request for a couple of volunteers. "I don't want any of you kids to hurt my officers," Sergeant Alicea joked. "No karate or judo flips. No WWF wrestling. No UFC."

Finally, two kids (Wilson and Jada) volunteered and Sergeant Alicea gestured for them to step outside the mock courtroom with one of his cadets. Sergeant Alicea explained that he wanted all the kids who were in the room to be sure to laugh *at the skit*, but not *at the actors*. Then he began describing how each of the five boroughs has a "dispatch." "A call to 911 goes to one of the dispatches and from there to central and from there to one of the divisions or precincts . . . ." Sergeant Alicea started to say.

The cadet who had escorted the two trainee-volunteers outside poked his head into the mock courtroom and indicated that the kids were ready. He then joined the three other cadets in the center of the room, closing the door behind him.

"Ok," said Sergeant Alicea. "This skit is called 'Kids in the Park.' My cadets are kids hanging out in the park."

The cadets pretended to be kids hanging out in a park, laughing, joking, and playing music loudly. A few moments later, the two trainee-volunteers walked in. Both were wearing cop hats, blue NYPD shirts, and a belt with an empty holster. Everything was way too big for them, making them seem even more childlike in their garb.

"We got a call that someone has a gun," Wilson said.

One of the cadet-kids started to walk away. "Stay where you are," Wilson commanded him.

The female cadet-kid said something that I could not hear to Jada. "Up against the wall," Jada said and gestured to the female cadet-kid and the other two male cadet-kids to move towards the nearest wall. Wilson continued to tell the cadet-kid who had started to walk away to stop, but made no effort to physically detain him. Meanwhile, Jada continued to order the other three cadet-kids, "Up against the wall." After the sixth time, Sergeant Alicea ended the scene and asked for a round of applause.

"What did the volunteers do correctly?" Sergeant Alicea asked.

A couple of the trainees indicated that Wilson had been "polite" when he went over to talk to the kids. Sergeant Alicea agreed. Others pointed out that that Wilson and Jada "went right over to them [the cadet-kids]" and "didn't act sheepishly or shy." Again, Sergeant Alicea agreed. One trainee noted that Wilson and Jada had attempted to keep "all of the action in front of them." Sergeant Alicea concurred a third time. But when a couple of the trainees complimented Wilson for explaining why he and his partner (Jada) had shown up, Sergeant Alicea disagreed, explaining that tactically, police

officers do not want to tell people why they have suddenly arrived at a given location because doing so "tips their hand and allows those who might have [committed a transgression] to try to figure out ways to get away [without apprehension]."

Sergeant Alicea then distinguished between "voice control" and being vulgar and rude. Sergeant Alicea explained that if an officer speaks loudly and forcefully, he is not being rude. "He's only being rude if he says, 'Get the BLEEP over there you BLEEPS!,'" Sergeant Alicea shouted, pretending to swear.

Sergeant Alicea asked for another round of applause for Wilson and Jada, and then gestured for them to sit down.

"Would it have been ok for the teenagers [the cadet-kids] to play music loudly at 2 p.m.?" Sergeant Alicea asked.

Most of the trainees responded "yes."

"What if it were 2 a.m. instead of 2 p.m.?" Sergeant Alicea inquired.

Most of the kids responded "no."

Sergeant Alicea then asked Wilson and Jada what instructions they had received. Wilson replied that they had been told to pretend that they had just received a call that "someone has a gun."

"Someone's snitchin!'" a trainee yelled out.

Ignoring the comment, Sergeant Alicea turned to his cadets and asked whether any of them had a gun. When they replied in the negative, Sergeant Alicea inquired, "Why would someone say that? Why would someone call that in?"

A few of the trainees offered answers about how mentioning a gun might ensure that cops arrive on the scene. Sergeant Alicea nodded and explained, "Sometimes people

exaggerate facts to get cops to show up. Let's say it's 2 a.m. and a person has to get up early the next morning for an interview. Kids are playing music loudly in the park nearby and are keeping him up. He makes a noise complaint, but the complaint goes unanswered. So he calls again. And again. And again. Fed up, the person calls 9-1-1 and instead of saying, 'There are some loud kids outside. I can't sleep,' he says, 'There are some kids outside on the street—in the park. I think one of them has a gun.' This happens all the time. It's unfortunate, but that's what happens."

For the moment, this seemed like a good strategy, and I made a note to consider employing it if I ever wanted police assistance quickly. I was reminded of the time when Fang came to visit Laura and me when we were living in Little Five Points. The next morning, we discovered that the window on the passenger's side of her car had been smashed. I called 9-1-1 and was told that if there was a theft—if something had been taken from the car—then a police officer would be sent over and Fang could make a report. If nothing had been stolen from the car, no one would be sent over, but that Fang could go down to the station to fill out a report.

"Maybe I should massage the facts a little bit if I ever need the police to come and don't think they'll arrive as quickly as I'd like," I thought to myself.

I quickly changed my mind, however, when Sergeant Alicea explained that while people sometimes embellish a situation in order to receive prompt attention, one can make a situation worse in doing so. "The caller is making a bad situation worse," Sergeant Alicea elucidated. "One that could result in a disaster because the kids don't know that the officers think they have a gun and the officers don't know that the kids don't."

"We have to prioritize," Sergeant Alicea continued. "Which is going to get a faster response: someone with a heart attack or someone riding a bicycle on the sidewalk?"

A couple of the trainees replied that the police would respond to the person with a heart attack first.

"Who reports riding a bike on the sidewalk?" a girl asked.

Sergeant Alicea explained that the person riding a bike on a sidewalk could hurt "grandma or grandpa," but acknowledged that the call regarding someone suffering a heart attack would be responded to first.

One of the trainees raised his hand and Sergeant Alicea called on him.

"Would the kid have been allowed to walk away?" the trainee asked, pointing at the cadet who had tried to walk away from Wilson.

"It depends on the situation," Sergeant Alicea replied. "There are a bunch of ways to handle it and there's no 'right' way."

I waited. "Well . . . ." I thought to myself. "And what are the options here?"

But Sergeant Alicea did not saying anything more. Instead, he complimented Wilson for trying to keep the cadet-kid from leaving the scene, but for not straying too far from his partner (Jada) so that she would not have been left all alone with the three other cadet-kids.

"WHAT???" I almost blurted out. "*That's* your answer. Don't give us, 'Well, it depends on the situation.' Don't say that to the kids. What about *that* situation? You have a scenario right there. Can the kid walk away? Don't give us this shit about how

'there are a bunch of ways to handle it and there's no 'right' way.' What would *you* do? What are the kid's rights in that scenario?"

I was incredulous. And furious.

"Were you nervous?" Sergeant Alicea asked Wilson and Jada. The two trainees shrugged.

"Every officer is nervous going into this situation," Sergeant Alicea stated. "That nervous feeling," he continued, "is keeping them sharp."

"You have to stay in control," Sergeant Alicea asserted. It was not clear if he was referring to police officers or advising the kids. "Even if officers are sounding rude or even if you feel mistreated, you should still be respectful of the cops and try to take a deep breath."

"Was it even?" Sergeant Alicea asked the trainees, referring back to the "Kids in the Park" skit. "Was it even? Two cops and four kids?"

A few kids mumbled "no," implying that the situation was unfair in favor of the kids.

"What about one cop and two kids?" Sergeant Alicea asked.

Again, a few kids mumbled "no," suggesting that this would be an uneven advantage in favor of the kids.

"One young adult and two officers. Is that even?" Sergeant Alicea inquired.

"No," a few kids said, a bit more forcefully this time.

"Yeah, the cops could beat up on the kid," someone stated.

Sergeant Alicea shook his head. "How do I know what the young adult has?" he asked. "It's even when I know the situation is safe."

Although I understood Sergeant Alicea's point—that cops can be nervous entering a situation in which there is an unknown—or when they do not know whether someone might have a gun—I found his point troubling. Sure, cops might be nervous, such as in instances where they are outnumbered. After all, they are human. But why not acknowledge how terrifying it might be for a poor, African American kid to be approached by two (larger) police officers carrying guns? Sure, the cops might know what the kid has or does not have on his person. But the kid is probably such as nervous, if not more so, about what the cops could do to him. Why not acknowledge this?[234]

"Could the officers have put the [cadets acting like kids] under arrest?" Alicea asked.

There were mixed responses; some of the kids replied in the affirmative, others in the negative. Instead of answering, Sergeant Alicea asked another question: "Once you put someone in cuffs, is that person under arrest?"

Most of the kids replied, "yes."

"No," Sergeant Alicea said to my surprise. "They [the cops] are just trying to control the situation. Most of the time, they are under arrest. But not necessarily."

"Could they have gotten a summons?" Sergeant Alicea continued with his queries.

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[234] Perhaps what made Sergeant Alicea's refusal to openly recognize how petrifying a police encounter can be to a kid so disquieting was how easy it would have been for him to admit as much. Consider Alicea's response in comparison to the following: "Cops know that people are nervous when they get pulled over, and they expect a certain amount of jumpiness when they approach a car. [Karen Rittorno, a nine-year veteran with the Chicago Police Department] even admitted she's intimidated in the same situation. 'I'm the police and I get scared if I get pulled over,' she said. But did you know that they're on edge, too? You know who they are, but they don't know whether you're a good guy or a bad guy. 'The only thing on his mind when he approaches you is his safety,' [Chicago Officer Mike] Thomas said. 'You know you don't have a gun in your lap, but the officer doesn't know it.' Rittorno, for one, said she assumes everyone has a gun" (Waters 2010). How hard would it have been to preface his comments about police edginess with a statement demonstrating police recognition and understanding of kids' fear and jumpiness in cop-kid encounters?

"Yes," most of the kids replied and a few added "For being in the park after dark."

"Could the female officer [Jada] have frisked everyone?" Sergeant Alicea asked.

"Yes," Sergeant Alicea said, answering his own question.

"Could the female officer [Jada] have searched everyone?" Sergeant Alicea asked.

"No," he replied, again answering his own question. "Going into the pockets—that's a search. Female officers can frisk men and women, but can only search women."

Sergeant Alicea's answer here was a little confusing. Gender is irrelevant in the context of a *frisk*. As long as there is a reasonable suspicion of weapons in the course of a lawful stop—the standard for a *frisk*—both male and female officers can frisk men and women. Whether male and female police officers can *search* members of the opposite sex is a different matter—one that is subject to different police departments' policies, rather than to U.S. Supreme Court jurisprudence on criminal procedure. Essentially, Sergeant Alicea had skipped from explaining the justifications for stopping and frisking the kids (i.e., being in the park after dark) to describing correct N.Y.P.D. procedure (i.e., officers may only search those of the same sex). In so doing, Sergeant Alicea also implied that the sex of the officer and the sex of the person who has been stopped is *the only* consideration in the context of a *search*—omitting the rather crucial question of whether there is *probable cause* to conduct the search. With this set of facts, the officers did not seem to have any legal justification for searching anyone.

Sergeant Alicea continued: "Can a female officer search a dead man?"

"That's gross," a girl retorted.

"Yes," Sergeant Alicea replied. "A female officer can search a dead man. He's dead. He doesn't care."

Sergeant Alicea then indicated that he needed two more volunteers for a second skit. Two girls, giggling two each other, reluctantly agreed and as they were escorted out of the room to change into their police officer outfits, Sergeant Alicea informed everyone else that the case was "a domestic violence scene." He then slid a fake wooden knife under one of the chairs near the center of the room where the skit was to occur and instructed the kids not to say anything to the two trainee-volunteers. Sergeant Alicea's female officer then put a nightgown on over her clothes and lay down on one of the tables and pretended to be asleep.

"What would be a situation where we [police officers] don't need a warrant?" Sergeant Alicea asked as waited for the trainee-volunteers to finish preparing for the skit.

"A 9-1-1 call for domestic violence," Sergeant Alicea stated, answering his own question.

"The majority of times, we don't need warrants," Sergeant Alicea declared.

"What the fuck?" I thought to myself. "The reason that officers do not need warrants most of the time is that there are exceptions to the warrant requirement set forth in the Fourth Amendment to the U.S. Constitution. While Alicea may be correct, warrant exceptions are supposed to be *exceptions*. Why not tell the kids what the Constitution requires *and then* explain that there are exceptions, rather than treating the exceptions as the rule? And why emphasize this? Why tell the kids that police officers often do not need warrants? So that the kids will not ask for one when the cops come knocking on their doors? Alicea seems to be blurring police officers' authority to do certain things

with his obligation to do (or not do) certain things with the *justifications* for doing (or not doing) certain things."

The skit started to unfold. Two of the male cadets, who had stepped outside the mock courtroom, stumbled in, pretending to be drunk. One of them veered over to the female cadet who was pretending to be asleep on one of the tables and woke her up demanding, with slurred speech, that she make him something to eat. The female cadet, angry at being awakened by her drunk husband, began chastising him for coming home late and inebriated. The two started bickering and the second male cadet, who was supposed to the husband's friend, started asking his friend, "Are you going take that? You're gonna let your bitch talk to you like that?"

The situation started to escalate and the husband and wife started to scuffle. The husband pretended to slap his wife and the wife then grabbed the fake knife that was under the chair and started waving it in the direction of her husband. A fourth cadet, pretending to be a next-door neighbor, feigned reporting the incident, which was the trainee-volunteers' cue to enter. The trainee-volunteers entered the scene, but could barely suppress their laughs.

"Cut," yelled Sergeant Alicea before the trainee-volunteers could really do or say anything. "Let's give 'em a round of applause."

"Can the victim become a perpetrator?" Sergeant Alicea asked.

The trainee-volunteers, who had managed to gain their composure, responded in the affirmative, and Sergeant Alicea commended them. "Yes," he explained. "The husband hit his wife—the victim. But then she pulled out a knife."

Sergeant Alicea made a couple of comments about how cops are trained, when entering a scene, to look around. "Did they need a warrant?" Sergeant Alicea asked.

"No," Sergeant Alicea answered.

"What would have happened if the wife had told the officers that everything was ok?" Sergeant Alicea inquired.

The kids looked confused and so Sergeant Alicea rephrased the question, asking the kids what they thought might have transpired had the situation between the husband and wife deescalated before the cops had arrived so that there was no sign of a struggle with a deadly weapon. The kids did not reply and still appeared not to understand what Sergeant Alicea was asking. So he tried a third time: "What would have happened if the officers had come in and arrested the husband and the wife then said, 'Aw, let him go. We ok. It was just a misunderstanding. Let him go. Don't arrest him! I love him!!!'"

The kids giggled. "What would've happened then? Could they have let him go? *Should* they have let him go?" Sergeant Alicea continued.

A few kids mumbled that they would let the husband go.

"No," Sergeant Alicea declared emphatically. "The officer *has to* take the man in, even if the woman tells the officer to let the man go. You have to put him under arrest."

The kids seemed suspicious. So Sergeant Alicea explained that if the cops had showed up, had been told by the woman that everything was ok, and then left, the situation could have escalated again. "The woman could have gotten beaten up more, the husband could have gotten attacked by the wife with the knife again. And so on. The cops have to arrest the husband."

"An officer is required to make an arrest if he witnesses a misdemeanor or a felony," Sergeant Alicea continued.

"According to what? Or to whom?" I thought. "And when? Does this requirement pertain to *any* misdemeanor or felony? Or just in the context of domestic violence? And is this a New York state law? An office policy? I think Alicea's trying to make an important point here, but once again, he is conflating what officers have the authority to do with what officers are obligated to do."

"Was this a difficult situation?" Sergeant Alicea asked, gesturing in the direction of where the domestic violence scene had unfolded.

Some of the kids murmured "yes."

Sergeant Alicea then spoke about the "fear factor of going in—the fear that cops feel in certain situations."

"It's like a sporting event," Sergeant Alicea continued.

"Great," I thought. "Just what the kids need—to feel that cops are on some sort of adrenaline high when they're stopping kids or busting down doors."[235]

"Was the scene even?" Sergeant Alicea asked. It was the same question he had posed after the first skit involving the "kids in the park."

"In both situations, there were [fewer] cops than civilians," Sergeant Alicea stated. "Was this one even?"

Some of the kids, remembering Sergeant Alicea's description from earlier, replied no. Others mumbled something about how it was even because the trainee-volunteers acting like cops were on the wife-victim's side.

"Even if the numbers are the same," Sergeant Alicea announced over the din, "the situation is not even. It's not even until the officer has the situation under control."

It was not obvious what point Sergeant Alicea was attempting to make. Was this Orwellian mathematics, such as 2+2=5? Was Sergeant Alicea trying to comment on issues of perceived power imbalances? Was he trying to suggest that while police officers have the force of law behind them (and guns at their sides), they do not necessarily possess more power in a given situation because they do not know all the variables (e.g., whether someone has a gun, if someone is under the influence and thus potentially more aggressive or hostile)?

Sergeant Alicea did not offer much in the way of context or clarity. Instead, and rather abruptly, he shouted, "SHUT THE BOOP UP! GET THE BOOP OUT!!!" Had Sergeant Alicea not censored his exclamations, I might have thought he suffered from coprolalia.

"Am I being rude?" Sergeant Alicea asked rhetorically. "Yes." Sergeant Alicea proceeded to differentiate between "good cops" and "bad cops," reiterating his earlier point that just because an officer is speaking in a loud, forceful voice does not mean that he is being "rude." A cop is being rude only if he starts swearing, Sergeant Alicea seemed to suggest. "We have some losers on the force," Sergeant Alicea admitted.

Sergeant Alicea then asked for another round of applause for the actors. But my mind was elsewhere. "Does Alicea think that the only time officers are 'rude' or inappropriate is when they swear? Is profanity the only type of police misconduct in his mind? How about talking about Sean Bell or Abnew Louima or Rodney King?"

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[235] While I was disappointed with the way in which Sergeant Alicea described police officers' "fear factor," I was not surprised. "'I'm always on 10,' [Chicago Police Officer Karent Rittorno] said, referring to her

Sergeant Alicea asked for two more volunteers for the third and final skit—a skit which, we were told, would involve a robbery.

While the trainees were changing into their cop costumes, Sergeant Alicea said, "It may sound chauvinistic, but it's harder for females to render control than for smales. I'm not saying that it's 100% across the board, but it's true." It was not clear why Sergeant Alicea had made this comment. Perhaps he wanted to continue developing his point about "even" situations, so as to suggest that the dynamics may be different when there are female officers involved? Perhaps because he wanted to imply that female officers might need to act more authoritatively—and in ways that could be perceived by the kids as rude—in order to gain control of a situation? No one questioned Sergeant Alicea on his comment and Sergeant Alicea said nothing further about it for the trainee-actors were ready and the skit began to unfold.

The white male cadet-actor was pretending to talk on his cell phone when one of the two African-American male cadet-actors (wearing a black hoddie pulled over his head) ran up behind him, feigned sticking a gun in his back, grabbed the phone, and ran off. The female cadet-actor, who had seen it all, asked the "victim" whether he was ok. Before he could respond, she stated, "I saw it. I saw it. The attacker wore an orange jacket, right?" And she continued to describe someone who looked nothing like the African-American "assailant," while the white male cadet-actor, pretending to be shaken up, kept mumbling that he did not remember what his attacker looked like.

The two trainee-officers then entered and inquired what was transpiring. (It was not clear whether they were responding to a call or whether they were on patrol.) The white cadet-actor started to explain what had happened to him, but the female cadet-actor

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high level of vigilance. 'I take it down depending on their demeanor what I see'" (quoted in Waters 2010).

kept interrupting him with her description of the robber. As she was describing the robber, the second African-American cadet-actor walked into the mock courtroom, dressed like the attacker (e.g., with a black hoodie pulled over his head. "That's the attacker! That's him!!!" the woman yelled, despite the fact that the man looked nothing like the description she had just offered.

The trainee-officers approached the cadet-actor who had been identified by the female cadet-actor. Meanwhile, the "real" attacker reappeared, saddled up next to the female "witness" and male "victim," and, pretending to be a concerned bystander, inquired gently, "Oh, man. Did you get jumped? Are you ok?"

"Cut," announced Sergeant Alicea, who then asked for a round of applause.

"How many of you thought Steve committed the crime?" Sergeant Alicea asked the trainees, pointing to the African-American male cadet-actor who had been "identified" as the robber.

About one-third of the trainees raised their hands.

"How many of you thought Dan committed the crime?" Sergeant Alicea asked the trainees again, this time pointing to the African-American male cadet-actor who had actually committed the crime and who had feigned concern right before the scene ended.

The rest of the trainees raised their hands.

"We were all here," Sergeant Alicea declared. "Obviously, the wrong person got picked up."

"How many of you have friends whom you haven't seen in 2-3 hours?" Steve, one of the cadet-actors, asked.

"Huh?" the kids responded. I was confused by the question too.

"You don't know what your friends were doing beforehand," Steve continued. "When we're at school, we don't see some of our friends for a couple of hours. We don't know where they've been. We need to be careful when they come up to us and ask us to hold something for them. It might be stolen property."

It was not clear what Steve was referring to until Sergeant Alicea jumped in and explained that if the African-American cadet-actor who had robbed Steve had then given the phone to a friend, the friend could have wound up in trouble for possession of stolen property.

"We use the word, 'friend,' loosely," Sergeant Alicea continued. "'Friend' doesn't really have a definition. It's gotten to the point where they're now 'family.' We refer to someone as a 'cousin,' when that person is really just a neighbor who's lived in the community for awhile."

"We need to be careful who we consider 'friends,'" Sergeant Alicea added. "We need to be careful what our 'friends' ask us to do."

"That's the last time I hold someone's coat for them," one girl blurted out—the implication being that someone might be asking her to hold stolen property.

"The last think I want is for you to leave this place paranoid," Sergeant Alicea concluded. "But I do want you to be aware of your surroundings."

Returning to the robbery skit, Sergeant Alicea explained that the woman, although well-meaning, was a "bad witness." He then told a story about getting jumped when he was eighteen and living in the Bronx. "I was a bad witness," Sergeant Alicea confessed. "I couldn't tell the cops where the attacker had gone or what he looked like."

"You gotta try not to have 'tunnel vision,'" Sergeant Alicea added.

Sergeant Alicea then turned around so that his back was facing the group of trainees.

"What color is my tie?" he asked.

A few kids shouted out "red" and "purple" and "yellow." One girl responded correctly that he was wearing a blue and grey-patterned tie. Sergeant Alicea faced the kids. "No one takes time for details," he declared.

"You have to be able to look at a person and start taking down a description," Sgt. Alicea advised the kids. Sergeant Alicea then told a story about how his father was mistreated by a female police officer who tried to make it seem as if Sergeant Alicea's father was carrying an open container. His father was not—he was carrying a closed bottle that did not have a twist off cap. Sergeant Alicea explained that after he heard the story, he accompanied his father to the precinct and filed a complaint. They did not know the officer's name and could describe only what her hair looked like. But Sergeant Alicea's father was able to recall that the female officer had a cut on her hand.

"My father was a good witness," Sergeant Alicea stated proudly. Sergeant Alicea then asked for another round of applause for the actors in the third skit.

Steve's earlier point about possession of stolen property had clearly triggered something in Sergeant Alicea's mind, for he began telling a story about his cousin. One day, back when he was a teenager, Sergeant Alicea recounted, his cousin, Danny, had driven up to him in a white BMW and asked him if he wanted to go for a ride to Coney Island to get some good shrimp. Sergeant Alicea confessed to the group that he was hungry, but that he knew that the car was stolen, and thus declined. "I told my cousin that I wanted to see about a girl," Sergeant Alicea lamented.

"How long do you think my cousin drove around in that car?" Sergeant Alicea asked the trainees.

"Five minutes!" declared one kid.

"Twenty minutes!" announced a second.

"A couple of hours?" guessed another.

"A week," a fourth stated.

"Three days?" a fifth suggested.

"Ten days?" a sixth kid offered.

"5 hours!" a seventh kid stated definitively.

"Three weeks," answered Sergeant Alicea. "Danny drove around in that car for three weeks." Sergeant Alicea explained that he wished that he had had the strength to tell his cousin to dump the car and that they should take a bus to get the shrimp and that he (Sergeant Alicea) would pay. "But I wasn't man enough."

"My cousin wound up getting caught for the car, did time, got out, and then committed homicide and is now doing life," Sergeant Alicea revealed, shaking his head sadly.

Sergeant Alicea explained that he felt somewhat responsible for what transpired to his cousin and that if he had told Danny to return the car, he might been able to prevent Danny from continuing down a path of crime.. "If you know someone who's doing something wrong, tell them," he advised. "They may not change their behavior, but you won't have to live with that regret."

"We all know right and wrong," Alicea said. "We all know how to make a difference."

I was less convinced by the first statement than the latter. "Whose notion of right and wrong?" I was tempted to ask. "The public's? The majority's? The powerful's notion of 'right' and 'wrong'?" This was not to suggest that I thought then—or now—that auto theft should be legal (although I would point out that it is treated as a very different type of offense in New York City than in Juneau, Alaska, which is landlocked and accessible only by air or water). But Sergeant Alicea's comments made it seem as if "right" and "wrong" were objective standards, rather than subjective and contextual.

With the skits over, Sergeant Alicea indicated that there was some time remaining for questions.

"Do you have to memorize all the numbers?" a girl asked.

"We have to remember all the numbers," Sergeant Alicea said, using the girl's term, rather than the word "code."

"Do you have to answer a police officer's questions?" a boy inquired.

"Do you have to answer a police officer's questions?" Sergeant Alicea repeated. "It depends on the situation. You do have to give your name, social security number, date of birth, and where you live if you're under arrest. But you don't have to answer, 'Why did you punch your wife?'"

"When is it ok for an officer to use his gun?" a boy asked.

"When there's extreme deadly force being used," Sergeant Alicea responded, but did not elaborate.

"Yes?" he said, acknowledging a hand.

"Do you have a quota?" another boy asked Sergeant Alicea.

With a straight face, Sergeant Alicea responded, "We don't have a quota, but we do have to answer jobs and we do have to respond to complaints by the community."[236]

Not surprisingly, Sergeant Alicea was eager to avoid further questioning on the issue of quotas, so he stated, ""Officers have to answer to the job. They gotta." He then began describing calls to which he responded—one involving two brothers getting into a knife fight over some soda, another involving kids fighting over a girl, prompting Sergeant Alicea to opine, "No one is worth fighting over for any reason, unless it's life or death." A third case involved a man who had broken his infant's arms and legs because she was crying. "I had to stay professional," Sergeant Alicea stated. "The guy's now doing twenty years-to-life."

"All our officers today acted very professionally today," Sergeant Alicea stated. He seemed to be summing up the lessons of the workshop. "And again, I'm not telling you all officers are perfect. There's a difference when officers are being rude and speaking loudly."

"How do you handle a situation in which the officer swears?" Sergeant Alicea asked rhetorically. "Be calm. Try to be calm. What's important is that the officers remain respectful and that you remain respectful."

Sergeant Alicea advised the kids not to get involved in situations in which their friends(s) was/were getting stopped by the police or getting arrested because that could result in their own arrest. He then told an anecdote in which he was making an arrest and the neighbor of the person he was arresting kept asking Sergeant Alicea questions about

[236] This workshop predated the report by Baker and Rivera (2010), which revealed what many New Yorkers had long suspected about the existence of quotas in the NYPD.

what had transpired. "I told him, 'If you obstruct me again, I will put you under arrest for obstructing governmental administration.'"

"Tactically, there is no right way," Sergeant Alicea continued. "And the right way is being safe."

"It's not easy work," Sergeant Alicea carried on. "Nobody wants to be a police officer growing up. I wanted to be an accountant. But hard times meant I had to drop out of Baruch College. By fate, chance, the grace of God, I wound up as a cop."

Sergeant Alicea paused and I wondered whether he was contemplating revealing whether he had ever contemplated returning to school after he started on the force—he could have become a forensic accountant like Will Ferrell's character, Detective Allen Gamble in *The Other Guys* (2010)—or whether he was pondering revising his statement that "nobody wants to be a police officer growing up." When I was growing up, I knew kids who wanted to be police officers because their fathers were police officers. Hell, I even went through a brief phase of wanting to be a police officer after watching Steven Seagal kick ass as Nico Toscani, a martial arts expert and Chicago cop, in *Above the Law* (1988)—that is, until my father admonished me for having such low aspirations. ("C-students become police officers," he said. "You're not a C-student. And you better not become one.")

I looked around the room to see if I could gauge the reactions of any of the kids who, during group interviews (see Chapter 4), had expressed an interest in law enforcement.

"The majority of police officers want to help people," Sergeant Alicea insisted. "To be a good police officer, you have to want to help people."

I winced. "I'm sure some people become police officers because they want to help people," I thought. "But what about the ones who just want a steady job? Or the ones who like the power . . . .?"

Sergeant Alicea stopped his musings, which came as a relief. He then explained that the "cadets" were participants in a program called "Police Cadet Corps."[237] "These are my college students," Sergeant Alicea announced, gesturing at the four cadets who had joined him at the RHCJC. "They get paid $13.09/hour and get to make up their own schedules—flex time. They get $2500/semester or $5000/year if they go to a CUNY and $5000/semester or $10,000/year if it's a private institution—"[238]

"Sign me up," declared one of the trainees who had seemed fairly hostile to police officers during the group interviews.

"That's big bucks," said another.

"It is," Sergeant Alicea acknowledged. "I've been married for sixteen years and on the force for nineteen years. One more year until retirement. I make $121,000/year . . . ."

"No shit!!!" a couple of kids exclaimed. They had apparently forgotten Sergeant Alicea's comments about using profanity in the presence of police officers. Sergeant Alicea ignored the curses, thanked his cadets, thanked the kids for attending and participating in the workshop, and then indicated that anyone interested in the cadet program could pick up some promotional materials, which he waved in his hand.

I was tempted to pick up some materials in order to learn more about the program, but wanted to give the kids a chance first and they wound up taking all of Sergeant

[237] The program is officially called the "NYPD Cadet Corps" (see http://www.nypdcadets.com/).

Alicea's copies. So I left to find Ericka or Shante or Melissa or Kate or James—or somebody!!! Had this really been the "What to Do When Stopped by the Police" workshop? It seemed more like the "What *Not* to Do When Stopped by the Police" workshop—or the "What to Do When Stopped by the Police So that You Don't Get Your Ass Thrown in Jail" workshop. Whatever a more appropriate title might be, the workshop was certainly not about the kids' *rights*. It bore no resemblance to the workshops for homeless individuals that I used to conduct with Amy Zaremba, a lawyer for the Georgia Justice Project, when I was the Civil Rights Legal Fellow at the Metro Atlanta Task Force for the Homeless.

The kids had been told that cops have a difficult job—one that is stressful and that can cause police officers to become "sad" or "upset." The kids were instructed that they should be respectful and not get angry or become recalcitrant when police officers speak in loud and forceful voices. The kids had been advised to try to stay calm and exhibit self-control when stopped by police officers. They had been encouraged to answer police questions and to dissuade their friends from breaking the law. They had been informed that in situations involving multiple kids and multiple officers, numbers were irrelevant—situations were "even" once the officers had the situations under control. (Thus, the kids had basically been advised to ignore blatant power imbalances.) The kids had been taught how to be "good witnesses" and how to avoid being "bad witnesses" by having "tunnel vision." The kids had been told how to become police officers and college students at the same time (i.e., "cadets"). Most importantly, the kids had been taught that officers are rude or inappropriate only when they swear and, in the off-chance that this

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[238] This is actually a loan. If a cadet does not join the NYPD after college, he/she has to pay back the money at a rate of 3%.

occurs, the kids could report bad police behavior by phoning 3-1-1; no other form of police misconduct occurs.

The kids, however, had *not* been told what information they have to reveal to cops when they are stopped or whether they can be arrested for not carrying identification (even if they state their name, home address, date of birth, and social security number). The kids had *not* been taught what information they do *not* have to disclose to police officers (except that they do not have to answer, "Why did you punch your wife?"—a question they are not likely to receive). The kids had *not* been informed when they could walk away from an encounter with a police officer, what the difference is between a "frisk" and a "search," when officers can pat them down (although they were told which officers—male or female—could pat down and search male, female or dead civilians), or when officers can search them.

The kids learned nothing about the realities of police misconduct other than the fact that some police officers swear. The kids learned nothing about their *rights* and nothing about what they could or could not do in certain circumstances—only what they should or should not do in order to make the police officer's job easier. The kids were not given an opportunity to share the experiences they might have previously had (good or bad) with police officers. They did learn, however, that the onus *is on them* to ensure that an encounter with the police proceeds smoothly and hopefully does not result in an arrest or worse.

CHAPTER 7: WEEK I: WELCOME AND INTRODUCTION TO THE RED HOOK YOUTH COURT & UNDERSTANDING THE YOUTH COURT/RESTORATIVE JUSTICE

I took a seat in the back of the mock courtroom and waited for the training session to begin. Around 4:28 p.m.—two minutes before the supposed start of the training—I looked at my phone and counted eighteen kids. Only eighteen! Ericka, the youth court coordinator for this cycle, had said that she had accepted forty into the training.

At 4:30 p.m. on the dot, Ericka began. She introduced herself as the RHYC coordinator and explained that she had actually been a youth court member back in 1998. She then turned to two individuals whom I did not recognize and introduced them as AmeriCorps members who would be working with the RHYC: Mouhamadou, a recent college graduate, and Sharece, a college student in her final year at John Jay College of Criminal Justice.

Next, Ericka reminded the kids that the training would be unpaid—a statement that elicited only slighter fewer groans than when she had made it during the group interviews. Ericka then explained that she would be able to accept only six (6) new RHYC members and that even if the kids attended all the training sessions and passed the bar exam at the end, they still might not become members. The kids grumbled a bit, but Ericka ignored the griping and announced, "I'm looking for people who are not biased—not judgmental."

While Ericka had been speaking, more kids had trickled in (I counted a total of twenty-five) and Mouhamadou and Sharece had passed out a document entitled "Youth Court Training Personnel Policy and What we expect from you." When all the kids had received copies of the handout, Ericka instructed them to flip the first page and look at

the training schedule on the second page. Ericka made a couple of comments about the schedule and then turned back to the first page. Ericka skipped the first three paragraphs[239] and explained the RHYC's expectations regarding commitment and attendance, participation, dress code, and requirements for acceptance to youth court.

Ericka then stressed the importance of respect—respect for each other, respect for Mouhamadou and Sharece, respect for the RHCJC staff who would be leading the training sessions in the coming weeks, and respect for her. "I demand respect," she said one last time, looking around the room. The kids were quiet, their eyes fixated on Ericka. Ericka slowly nodded her head, as if she were agreeing with her own statement—or perhaps to encourage the kids to nod and demonstrate that they would, indeed, behave respectfully.

When she was satisfied, she turned to the dry-erase board that had been wheeled into the center of the room and asked the trainees what types of rules they thought they should have for their training sessions. There was no response.

"Well, what do you want?" Ericka asked, seemingly flabbergasted that the kids were all silent.

"One Mic," said Dymond. She was not referring to the song by American hip-hop artist, Nas, but to the shorthand expression for "one person speaks at a time."

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[239] The first three paragraphs provide as follows:

> Welcome to the Red Hook Youth Court training! As a member of the Youth Court, you will work to help individual teens and to serve your community as a whole. Community members, schools, local families, and local law enforcement officers, as well as the staff of the Red Hook Youth Court count on your service.
>
> As a trainee, you have been selected for your performance including your attitude, attendance, critical thinking and skill development. We are confident that you will be part of a strong and productive team.

Ericka nodded, wrote the suggestion on the dry-erase board, and looked back at the kids. "What else?" she asked.

"Respect," said another girl, Imperia. Ericka paused, as if trying to decide whether to say, "Weren't you listening? Didn't I say two minutes ago that 'respect' is an absolutely essential component of our training?" But Ericka said nothing and wrote "respect" on the board.

"Confidentiality," declared Jeromy.

"No yelling," suggested Matthew.

Ericka wrote both of these rules on the board.

"Positivity," someone offered.

"Participate!" Jeromy stated firmly.

"No fooling around."

"Maturity."

"No profanity."

The proposed rules came more quickly and Ericka struggled to acknowledge the suggestions and write them down. After a few minutes, the kids stopped offering ideas and Ericka took a step back to look at the board. She then repeated them one-by-one, nodding at she said each one.

I expected Ericka to add to the list—and perhaps she might have had the kids not generated so many rules—but she did not. Instead, she continued to nod and then, seemingly satisfied, turned back towards the kids and asked them what they knew about youth courts.

To ensure that the Court is as effective as possible, there are certain expectations of all trainees. These expectations are listed below.

I waited in eager anticipation. I was curious to see what the kids knew or thought they knew. Part of me predicted that they would not know much, if anything at all. After all, I do not think I had even heard of youth courts until after I had finished law school. But the other part of me guessed that the kids might know *something* given that they had now filled out an application for youth court and attended group interviews.

Ericka waited patiently. This was a harder question than "what kind of rules would you like to have?" and Ericka's expression suggested that she wanted the kids to take their time thinking about what they knew about youth courts.

"Teens on the jury making decisions for other teens," Matthew offered after a few minutes.

"It's fairer than the supreme court," Jeromy said. (As I note in the Appendix, the Supreme Court of the State of New York is the trial-level court of general jurisdiction in the New York state court system.)

"A stepping stone to showing you what's going to happen," a girl added. It was more of a question than a statement.

Ericka nodded in response to all of these. Then she said, "Back in the early 1990s, Red Hook was horrendous. . . . Lots of shootouts. Lots of poverty. Lots of drug dealing." All true statements, but I wondered about their relevance and where she was headed.

Ericka then recounted, as I did in Chapter 3, how Patrick Daly, the popular elementary-school principal, was killed by a stray bullet during a shoot-out between rival drug dealers. "After Daly died, people started paying attention to Red Hook," Ericka explained. According to Ericka, this heightened concern led to the eventual

establishment of the RHYC, which was housed at 135 Richards Street—the same public housing address where James Brodick first worked and to which no taxicab would transport him. "Youth court started because they [community stakeholders] saw that a lot of young people needed some guidance," Ericka said, concluding her history.

Switching gears, Ericka spoke about the current RHYC, explaining that youth court hears low-level criminal cases. She started to name the types of cases, looking up at the ceiling, as if trying to remember them all, and then, recalling that they were listed at on the third page of the handout, instructed the kids to turn to that page. Many already had. The list, which included parenthetical explanations and examples, appeared as follows:

Truancy

Theft (includes Shoplifting)

Vandalism (Destruction of Property)

Graffiti

Assault

Possession of a Weapon (Boxcutters, knives, etc)

Possession of an Illegal Substance (Marijuana)

Harassment (Stalking, teasing, etc.)

Fare Evasion

Disorderly Conduct/Criminal Mischief

Trespassing/Criminal Trespass

Loitering

Resisting Arrest

Reckless Endangerment

Ericka read the list aloud and then commented that the "main cases" that come to the RHYC concern fare evasion and truancy; trespassing cases, on the other hand, are extremely rare. She paused and then added, "If any of you don't know what these are, let me know and I'll explain."

None of the kids said anything.

"Ok," Erica said, as if challenging them, "Who knows what disorderly conduct is?"

Someone in the back yelled out, "acting crazy in the train station."

Another yelled out, "acting out of order."

Ericka accepted these answers, explaining to the kids that if they were too loud on the subway or playing their music too loudly, they could get a ticked for disorderly conduct. Ericka also told the kids that they should tell their friends about disorderly conduct and what it means—an example of how the RHCJC viewed RHYC participants as a potential source of legal information for their peers and neighborhoods.

"Where do we get referrals from?" Ericka asked, again seeming to switch gears.

Before anyone could answer, Ericka stated that some cases come directly from the 72nd, 76th, and 78th precincts, while others come from the Department of Probation in downtown Brooklyn. Then, as if sensing that she might have overstated the extent to which the RHYC hears truancy cases, added, "we don't get all truancy cases."

Ericka paused, as if trying figure out what else she wanted to tell the kids about youth court. She then stated that youth court does not determine guilt or innocence. Rather, it tries to generate a "fair and beneficial sanction." "It's based on how he

responds," Ericka continued, referring to the respondent. "The jury determines what the sanction is. Later on, you'll learn what proportionality is."

Satisfied that she had provided the kids with a sufficient overview of youth court, Ericka instructed the kids to get into pairs. The kids did as they were told and Ericka, with the help of Mouhamadou and Sharece, passed out a photocopy of someone's Record of Arrest and Prosecution (known as a "RAP sheet"). Once each kid had a copy, Ericka instructed the kids to look at the RAP sheet and figure out when the individual was born, when he was first arrested, and how many times he had been arrested. She then erased the list of rules that were still on the dry-erase board and wrote the questions she had just posed:

1. What's the individual's DOB?
2. When was he first arrested?
3. How many times has he been arrested?

She then crossed out the first question and replaced it with "How old is he?" Then she added:

4. What are the majority of his arrests for?

I looked at the barely legible RAP sheet photocopy. The individual surely had had his share of run-ins with the law. Born on 11/22/1961, he was first arrested sometime in 1977 (pleading guilty to a reduced charge on 3/31/1978). The arrests seemed to be for things like larceny, robbery, drug possession, and the like, with an occasional assault thrown in there. But it was tough to count the number of arrests because of the poor copying and because the words on many of the photocopied pages were cut off. After a few minutes, I gave up and looked around the room.

Two girls who were seated near me asked for help. Without thinking about how I was crossing over from observer to participant, I tried to show the girls how to read the

RAP sheet. I explained to them that not everything on the sheet was an arrest—some entries were dispositions. I also tried to explain that it was possible for the individual to have been charged with multiple crimes stemming from the same "incident, event, activity," I struggled to find the right word.

The girls looked at me with blank expressions on their faces. A bit frustrated by my inability to explicate the nuances of a RAP sheet, I suggested that the girls look at the two columns that were legible—"Arrest/Arraignment Charges" and "Disposition and Related Data"—and to examine the dates in the latter column to try to determine what had transpired on those dates and whether an arrest had occurred.

The blank stares turned to expressions of confusion. So I gave up and simply asked the girls what the individual had gotten arrested for over the years. Hunched over the RAP sheet, head close to the table, eyes squinting, the girls studied their sheets. After a couple of minutes, they triumphantly declared, "Larceny! Grand larceny, petty larceny. Larceny!" I nodded and, pointing to maybe the fifteenth or sixteenth page of the handout, indicated that in the late 1990s, indicated that we actually started to see a pattern whereby the individual's were for larceny *and* narcotics—which we could interpret as a growing need to steal to support his habit.

The girls seemed pleased and continued to thumb through the RAP sheet.

"He wasn't so bad here," said one of the girls, pointing to years 1990-93.

"Yeah, or here," said the other girl, pointing to 1995-96. "Yeah, he did like *nothing* then."

"Well, actually," I replied, smiling, "he was in prison during those years. "See, here, it says 'DOWNSTATE CORR FAC.'" I gestured towards the bottom of one of the pages. "He was committed 10-23-90 and released on 5-11-93."

"Oh," said the girls in unison.

"That doesn't mean that he didn't commit any crimes while in prison," I quickly added. "He might not have been a good boy. But if he did anything, it didn't show up on his RAP sheet."

The girls chuckled when I said, "he might not have been a good boy," and then turned to see what everyone else in the room was doing. The chatter had grown louder during the time I had been talking to the girls and now appeared to reach a climax.

Hushing the kids, Ericka indicated to the kids that it was time to reconvene. When everyone was reassembled, she asked: "How old was he—how old was he when we was first arrested?"

"Sixteen," said one girl.

"Seventeen," said another.

"Seventeen."

"Sixteen."

"Sixteen."

A few kids mentioned some other ages, but sixteen or seventeen seemed to be the predominant response. Ericka nodded in response to both and then, without indicating which was correct, asked, "What is he getting arrested for?"

"Controlled substance," some kids said.

Ericka started to respond, but the girls with whom I had been chatting suddenly yelled out "Larceny!"

Ericka nodded to the girls and the girls looked at me, smiling. Then, backtracking a little bit, Ericka said that the individual had had a lot of arrests for controlled substances, larceny, and robbery.

"How many times has he gotten arrested?" Ericka inquired.

The kids' answers varied widely:

"Twenty-seven, no, twenty-eight times," someone said.

"Fifty." This figure produced some laughs.

"Twenty-five."

"Twenty-seven."

"Twenty-one or twenty-two."

"Twenty-eight."

"Yeah, twenty-one or twenty-two."

"Twenty-five."

Ericka waited until the kids had stopped shouting out answers. Then she said, matter-of-factly, "Twenty-six."

I expected Ericka to explain how she had arrived at this number. But she did not. Instead, she asked the kids whether they thought any of the "outcomes"—e.g., fines, imprisonment—were benefiting the individual. "Do you think it worked?" Ericka inquired.

"No," the kids answered in unison.

"What kind of person is he?" Ericka asked.

Someone responded that he was a "drug addict." Ericka nodded. "More than thirty years he's been on drugs," she said.

Ericka then wrote "Restorative Justice" on the dry-erase board. "What do you think this means?" she asked.

A heavy-set girl raised her hand and Ericka called on her. "You keep doing something and don't get help for it," the girl answered.

"That's sort of it," Ericka replied kindly. She then looked around the room. When no one else volunteered, Ericka continued: "Basically, you're *restoring* justice. You're restoring justice back into the community. You're giving back to the community. You're giving that person [the respondent] the opportunity to speak for themselves—that's what Youth Court is all about."

Sort of. "Restorative justice" does connote returning things to the state "as they were, I was tempted to interject, but it is a pretty capacious concept that can mean different things in different contexts.[240] I thought about telling the kids a little bit about

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[240] For example, Mackinem and Higgins (2009:viii) distinguish "restorative justice" (also called "community justice" or "transformative justice") from "retributive justice":

> In retributive justice, crime is a violation against the state. The courts attribute blame and then provide the appropriate punishment. Victims and communities serve as witnesses for the state. Conversely, restorative justice maintains that crime concerns the victim, the offender, and the community. Crime creates an obligation to make things right. The court ensures that the victim, offender, and community find mutually acceptable means to restore that which has been damaged. To the traditional court response of punishment, restorative justice adds other potential responses, including restitution and community service. These options allow for the violation to be resolved, for the victim to receive compensations, and for the community to be improved.

While Mackinem and Higgins' definition is not incorrect, it is incomplete. From their perspective, restorative justice is a set of alternatives *within* the system of formal justice and formal social control. Others do not contest the notion of restorative justice as that which focuses on the relationships between offenders, crime victims, and the community, and which endeavors to repair the harms and ruptures to social bonds resulting from crime. But they remind us that restorative justice has roots in the non-statist, communitarian modes of justice of indigenous peoples in Canada, Australia, and New Zealand, and question the progressive possibilities of restorative justice practices contained formal criminal justice. For

some of restorative justice's historical roots,[241] the differences between "restorative justice" and theories of punishment, such as deterrence, incapacitation, and retribution,[242] and linkages between restorative justice and abolitionist and anarchist criticisms of the formal criminal justice system.[243] Although Ericka had given me carte blanche to participate, this was her first day with the new trainees and I was worried that fleshing out Ericka's definition might undercut her authority in the eyes of the kids or be interpreted by her as a criticism of the way she was running the program. So I remained silent.

Ericka then said something that I found surprising—and the first time I had heard a youth court coordinator say anything to this effect: "I really don't like getting fare evasion cases because I understand . . . . You forget your Metrocard, you double-up."[244]

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them, the "restorative justice initiative, administered in a governmental context—and subject to bureau-professional capture—*may extend the net of social control deeper into the community*" (Hughes 2005:248 (emphasis added)); in order for conflicting interests to be reconciled, for rifts in communities to be healed, and for the revitalization of the social fabric to occur, the state and its agents must be only minimally involved.

[241] See, e.g., Gaarder (2009); Hughes (2005). It probably bears mentioning that some of the concepts and ideas that we associate with "restorative justice" predate use of the term. For example, Driberg (1928:65), in describing primitive law in East Africa, writes: "Law does not create criminal offences, it does not make criminals: it directs how individuals and communities should behave towards each other. Its whole object is to maintain an equilibrium, and the penalties of primitive law are directed, not against specific infractions, but to the restoration of this equilibrium. It is constructive, always constructive and palliative. A crime consists in a disturbance of individual or communal equilibrium, and the law seeks to restore the pre-existing balance." The notion of "restoration of an equilibrium" and "restor[ing] the pre-existing balance" resonates with the language and principles of contemporary "restorative justice" even though the term, "restorative justice," is absent from Driberg's account.

[242] See, e.g., Mackinem and Higgins (2009).

[243] See, e.g., Gaarder (2009); Hughes (2005); Sullivan and Tift (2005).

[244] In New York, students receive school-issued MetroCards, which permit students to make three "swipes" per day. For purely illustrative purposes, consider that during the first-half of 2012—from January 1 through June 24—NYPD officers arrested 1,228 bus "fare-beaters"—102% more than in the previous year. (During the same period in 2011, NYPD officers arrested 609 people for boarding buses without paying.) The highest number of arrests occurred in the Bronx, followed by Manhattan (Donohue 2012). According to NYPD Commissioner Ray Kelly, 61 million unpaid subway and bus rides are taken each year—totaling approximately $100 million in loses (see Donohue 2012). Note, however, that while the New York City Transit Authority attributes a lot of fare evasion cases in Staten Island to students, one should not assume that the supermajority of fare evasion on buses and subways are committed by students, nor should one attribute the rise in arrests to increased incidences of fare evasion by students. According to NYPD

I was shocked. This was the first time that a youth court coordinator had admitted, in front of all the kids, that she had problems with the enforcement of some of the laws that produced some of the cases coming before the RHYC. What a relief!

During the first week of my fieldwork, I sat in on a RHYC case involving a boy who had been caught with a box-cutter in his pants while entering his high school. The boy's reasoning had been entirely plausible—he had spent the previous day helping his uncle move and had been given the box-cutter to help open boxes. When he was done for the day, he put the box-cutter in his pants. The next day, he threw on his pants without checking their pockets and headed off to school. "Entirely conceivable," I remember thinking to myself at the time. "I leave things in my pants all the time. Tissues, notes, mints, and pens have all accidentally—and unfortunately—wound up in the wash. Sometimes, when I head to campus or to court or wherever, I have multiple packs of mints and multiple pens because I don't remember that I already have them in my pants. So while a knife is an unfortunate thing to forget to remove from one's pants before going to school, the fact that it occurred and the proffered reason aren't too remarkable. What's the big deal? Why put this kid through all this? Why adopt, what is essentially, a strict liability standard?"

Troubled by this case, I approached Shante, who was then the youth court coordinator, and who served as the Director of Youth Programs (Ericka's boss) during the cycle the I followed from Week I through the bar exam. Shante explained that they (the RHYC) did not know all of the facts surrounding the "weapon possession"—the way she said it made it sound as if the kid had brought an AK-47 assault rifle to school—and

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Commissioner Ray Kelly, the increase in arrests for fare evasion during the first half of 2012 was due to increased enforcement (see Donohue 2012).

that it was not the job of the RHYC to determine facts. Shante had made it seem as if *every time* a kid shows up at RHYC, he/she has done something wrong. Granted, all respondents in RHYC cases must admit guilt before a hearing can be undertaken, but being guilty of an offense and doing something wrong are not the same thing; they are not synonymous. Frequently, they overlap, but not always.

When Ericka divulged that she had problems with some fare evasion cases, she conveyed the sentiment that sometimes, RHYC respondents have *not* done something wrong. They may have committed an offense and they may have gotten caught for the transgression, but they may not have *intended* to commit the offense and, even if they did, their intent may not have been malicious.

The kids, however, seemed unfazed by Ericka's confession. And they were getting restless. Ericka, too, seemed tired. "We're coming at this [youth court] from a perspective of restorative justice," she summed up. "We don't want anyone coming back to youth court [as a respondent]. But we'll try to hook you up, keep you connected."

"Connected to what?" I wondered as Ericka dismissed the kids. "To pro-social norms? To *the court system*?"

CHAPTER 8: WEEK II: OFFENSES, CONSEQUENCES, AND SANCTIONS[245]

On the way to the mock courtroom, I ran into Ericka, who was also the RHYC coordinator during this training cycle and who told me that it would be a small group for the day's training session because it was parent-teacher conference night at many of the high schools. "Why would this affect the number of kids in attendance?" I wondered. "After all, isn't it *parent-teacher* conference night, not *parent-teacher-kid* conference night? Maybe kids are included in the conferences?"

"Uh, ok," I said and entered the mock courtroom. The turnout, however, seemed pretty good. As I took my seat, I counted twenty-two kids. I also noticed two large sheets of paper taped to the wall. One read "Goal of Youth Court" and the other read "Restorative Justice."

> Goal of Youth Court:
> 1. Repairing harm done to individual/community.
> 2. Building skills of the respondent to prevent future offenses.
>
> Restorative Justice:
>
> An alternative way of addressing a crime, focuses on an offense as a violation of people and relationships rather than a violation of law.

Ericka came in a few minutes later and announced that the day's training session would be conducted by ADA Lynnette Lockhart, but that she was running late. As such, youth court training would start with a game, called "Two truths and a lie."

"Awww . . . ." some of the kids groaned, they had apparently thought that ADA Lockhart's delay would mean that they could continue to chat and text with each other.

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[245] As noted in Chapter 5, the first part of the description of the "Offenses, Consequences, and Sanctions" session is from a different cycle. It is followed by a description of the "Offenses, Consequences, and

"Stand up. Let's go," Ericka ordered. "Come on. In the center. Pair up."

More groans. "Not only do we have to play a game, but we have to *move*," the kids seemed to suggest. Slowly, sluggishly—I wondered what these teenagers were like in the morning—the kids got up from their seats, formed a mass in the center of the room and the paired off.

Ericka told the kids to share with their partners three things, two of which were true and one of which was a lie. The kids were instructed, however, not to tell their partners which statement was a lie.

The kids chatted with each other and seemed to enjoy the game. After a few minutes, Ericka stopped the game, and explained that each kid would need to introduce his/her respective partner, share the three statements that his/her partner had made, and then guess which one was a lie. Most of the "lies" were pretty prosaic—about age, favorite color, favorite food. I was a little disappointed. I had hoped that the kids would be a bit more revealing.

As the kids finished sharing their truths and lies, ADA Lockhart showed up. Ericka instructed the kids to take their seats, which they did without grumbling and rather quickly. Ericka then introduced ADA Lockhart in that familiar, "I-expect-you-to-be-on-your-best-behavior" voice that I imagined the kids had heard hundreds of times from teachers at school.

"Thank you, Ericka," ADA Lockhart said to Ericka, and then, softly clapping her hands and rubbing them together, to the kids, "I'm ADA Lockhart. Does anyone know what an 'ADA' is?"

Sanctions" session that I ran during the cycle where I followed the youth court trainees from the beginning of their training to their bar exam.

"Isn't that a symptom or something?" one kid asked.

"No, that's ADD—attention deficit," ADA Lockhart responded, concealing a smile.

"Do you work *for* a prosecutor?" another kid asked.

"I *am* a prosecutor," ADA Lockhart announced, rather proudly.

"Ohhhhh," responded a couple of kids.

"Do you do trials?" one girl blurted out, leaning forward in her seat. Then, seemingly embarrassed by her enthusiasm, slouched back in her chair.

"I do trials. On occasion, I do do trials," ADA Lockhart replied. "That's my favorite part," she added.

ADA Lockhart explained that she had been on the job only ten months and that she was actually in the midst of her first two trials. She then asked the kids if they knew how long law school was.

"Nine months?" a girl asked.

"It's not pregnancy," Ericka, who had given birth to her daughter at age nineteen, scoffed.

ADA Lockhart explained that after college, one could attend law school full-time for three years or part-time for four years. Then, as somewhat of a non-sequitur, shared with the kids that she owed $160,000 in student loans, made $50,000 a year, and, as a result, eats canned soup every day.

ADA Lockhart's confession surprised the kids, although it was not clear whether they were surprised by the debt, the salary (and, if so, whether they thought it was high or low), or ADA Lockhart's choice of cuisine.

"But I love my job," ADA Lockhart said.

"My mother was a single parent," ADA Lockhart continued. "You gotta love what you do."

ADA Lockhart explained that she was motivated to go to law school because of all the "misery and problems" around her. I wanted to ask her why she chose to be a *prosecutor* rather than a legal aid attorney if what prompted her to go to law school was "all the misery and problems" around her, but I did not.

"I will not go to trial on a case I do not believe in," ADA Lockhart carried on. "My job is to do what's best for society. My job is to seek truth and justice."

I rolled my eyes. I was starting to get that familiar feeling—a feeling that started in law school and that had continued ever since—that feeling that prosecutors were frequently full of shit when they claimed to want to do what was "best for society" or that their job was pure, honest search "truth" and "justice," as if those were objective discrete entities existing somewhere in space or buried in a mountainside.[246]

ADA Lockhart continued: "Most cases don't go to trial. Only about 2%. My job requires me to think of the victim . . . . Sometimes the defendant is not my priority."

"Sometimes?" I almost cried. "When do you *ever* think of the defendant? Are you really thinking of the defendant when offering a plea bargain that puts someone between a rock and a hard place?" I had heard this kind of crap before from prosecutors like ADA Lockhart. I sat back in my seat and hoped that by hunching over and scribbling in my notebook, I could hide my disgust.

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[246] See, e.g., Davis (2007:17). I do not mean to suggest that I felt or currently feel that all prosecutors engage in intentional, illegal practices (such as fabricating evidence, hiding exculpatory evidence, and coercing and threatening witnesses). While some have stooped to these lows, I would like to think that most prosecutors intend to enforce the law justly. But all too often the practices of even well-meaning

To my surprise, however, ADA Lockhart then acknowledged that there were a disproportionate number of minorities going to jail and prison. "And I'm Latina," she added. I could not tell whether she was saying this to suggest that not all prosecutors are white people who try to get people of color locked up or whether announcing her ethnicity somehow made her more aware of the fairly well-known fact in criminal justice circles that minorities are over-represented in carceral populations.[247]

"My job is to protect society and my victim as well," ADA Lockhart said matter-of-factly. It was as if she saw nothing potentially contradictory between this statement and her previous acknowledgement that a disproportionate number of African-Americans and Hispanics/Latinos are behind bars.

"Criminal justice is a societal problem," Lockhart continued.

"Huh?" I looked up. "Do you really mean that?" I thought to myself. "*I* think there is a problem with our criminal justice system. But don't you mean that *crime* is a societal problem?"

"I don't write the law, I just enforce them," Lockhart said.

The kids stared at her blankly. None of them seemed remotely disturbed that ADA Lockhart, a minority like almost all of them, had told them what many of them might have already felt—that the percentage of the near-2.5 million people currently incarcerated in United States that are Latino/Hispanic or African American stands in stark contrast to the percentages of Latinos/Hispanics and African Americans in the total United States population. Nor did any of them appear at all troubled that ADA Lockhart was working for an entity in the criminal justice system—the district attorney's office—

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prosecutors produce unfair results, including unfair disparities among similarly situated defendants and victims of crimes.

responsible for putting so many of people behind bars. "Maybe the kids don't really understand what a prosecutor is," I said to myself hopefully. "Maybe, when they hear the word, 'prosecutor,' they think of Angiew Harmon or Alana de la Garza or Sam Waterson or any of the other people to have played district attorney in *Law & Order*. After all, during training sessions, some kids have expressed trenchant criticisms of snitches and career goals of becoming prosecutors . . . ."

ADA Lockhart made a few more comments about being a prosecutor and then turned to Ericka. Standing, Ericka asked the kids to explain to ADA Lockhart what youth court is. The kids, trying very, very hard not to just read what was written on the sheet on the wall, answered. Seemingly satisfied, Ericka then asked the kids to list the types of cases that youth court hears.

"Graffiti!," shouted one kid.

"Hopping the turnstile" proclaimed another.

"Marijuana," a third stated.

"Armed robbery," a fourth kid yelled out.

Ericka laughed. "You mean, 'possession of a box cutter or knife,'" she clarified.

"Right, yeah, that," the kid responded.

"Any others?" Ericka asked.

"Um, resisting arrest?" one kid offered.

"Uh, uh," Ericka replied, nodding her head. "What else?" Seemingly not wanting to embarrass the kids in front of ADA Lockhart, Ericka then added, "Good. Hopping the turnstile, graffiti, possession of a small amount of marijuana, shoplifting, resisting arrest, assault, possession of a box cutter or knife . . . ." Her voice trailed off.

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[247] See Brisman (2012).

"Good, good," Ericka said. "Well, let's thank ADA Lockhart for coming today." The kids mumbled "thank you" and ADA Lockhart, in turn, thanked Ericka and the kids for having her and then left.

"What's a 'consequence'?" Ericka asked when ADA Lockhart had left the room.

"Do the crime, do the time," said the kid who had shouted out "armed robbery."

"A punishment?" one girl asked.

"A 'right' action to repay a 'wrong' action," one boy explained with a tone of confidence.

Ericka nodded in response to all of these answers and then hung a large sheet of paper on the wall next to the sheets, "Goal of Youth Court" and "Restorative Justice." The new sheet read as follows:

Consequence:

What happens, good or bad, as a result of a specific action.

"Not a bad definition," I thought, "although it is one that could be subject to debate."

"What's a 'sanction'?" Ericka asked.

"A *sunction*?" a girl asked—the same girl who had answered "a punishment" in response to "What is a 'consequence'?".

"A *saaanction*," Ericka replied, drawing out the "a." "A *saaaaaanction*. What is a 'sanction'?" Then, before anyone could answer, she said, "It's a penalty for committing an offense."

"We don't have sentencing," Ericka continued, "we have sanctions. Why do we use the word 'sanction' instead of 'sentence'?"

Ericka solicited answers, at times nodding before the kids had a chance to speak. Then she summed up: "To remind them that it's not an actual court. Our program is voluntary. The person [the respondent] needs to feel comfortable coming through the court—our court. OK?"

The kids nodded and then Ericka divided the kids into four groups. Each group was given a sheet of paper with the name of an offense at the top. Underneath the offense, Ericka had drawn a grid with the words "individual" on the left-hand side and "community" on the right-hand side. Ericka instructed the kids to list as many consequences as they could for each. "So, what's the consequence to the individual for graffiti?" Ericka asked. "You'd write those over here," she said, pointing to the space below the "individual" column. "What's the consequence of graffiti to the community?" Ericka asked. "You'd write those over there," Ericka continued, pointing to the space under the right-hand column entitled "community."

"Ya got it?" Ericka asked, before adding, "One representative for each group will present their lists."

As the kids were working, I walked around the room, trying to eavesdrop on their conversations. The kids were working rather quietly and diligently, thus it was hard to be discreet. I did, however, overhear one girl say, "What's truancy?" when her group received its sheet, while a boy in another group asked, "What's fare evasion again?"

Ericka let the kids work for awhile and then stepped out of the room for a few minutes. When she returned, I slowly saddled up to her and inquired whether youth court would last longer today.

"Oh, shit," Ericka said, and then covered her mouth. None of the kids, however, seemed to hear her.

"Um, sorry," I said. "I didn't mean it in that way. I was just curious . . . ." I had not wanted to make it seem as if I was anxious to leave or that my query was some sort of passive-aggressive criticism of her time management. I really did just want to know, especially after she had indicated before the start that she thought that attendance would be low due to parent-teacher conferences.

"No, no. Thanks!" Ericka replied quickly. "You're good, you're good."

"Ok, people," Ericka said. "We're running out of time." Then, looking at her watch, she continued, "We'll go over your consequences, next time. But now . . . ."

Ericka passed out a stack of paper indicating that the kids were to each take a copy. Each copy contained the following case studies:

CASE STUDY 1

Elizabeth is a 14 year old female. She lives at home with her mother and four brothers and sisters. Her mother says that she behaves well at home. She obeys her curfew and no other problems have been reported. She attends school and is in the eighth grade with below average grades. She was suspended recently for vandalism.

Elizabeth has no prior juvenile record. She has pled guilty to her charge and is now going before the Youth Court for sentencing. She and two other girls spray painted their names on the out side of the school building.

CASE STUDY 2

Lester is a 17 year old male. He lives at home with his grandmother. She reports no problems with Lester's behavior at home. He is in the 12th grade attends school regularly and plans to graduate in the spring. Lester has no prior juvenile record. He has pled guilty to shoplifting. The security guard stopped Lester and some friends carrying comic books out of a store in the mall.

CASE STUDY 3

Jamie is a 15 year old female. She lives with her mother and father. She attends school regularly and is getting grades in the 80s. Jamie and her friends were hanging out in the park. As they were saying goodbye and getting ready to leave the park, two police officers arrived. They asked the group to stop but no one did. One of the officers caught up to Jamie, put his hand on her shoulder, and told her to stop walking. She knew that she had been doing nothing wrong and felt unfairly targeted. She turned and cursed at him. Jamie was arrested for disorderly conduct and resisiting [sic] arrest.

Jamie did not know it at the time, but the officers were looking for 3 teens that had commited [sic] an assault earlier that day. Members of the group fit the descriptions of the suspects given to the police. Jamie feels she was unfairly arrested as she did not participate in the assault and she was not doing anything illegal before the cops stopped her.

Ericka then passed out a second stack of papers and instructed the kids to take two copies each. The second set of papers contained the following:

List three reasons why you think the respondent did what he did.
1_____
2_____
3_____

List three consequences for the respondent's actions.
1_____
2_____
3_____

What sanction(s) would you give the respondent why?
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

"This is HOMEWORK" Ericka said above the rising din in the room. "You need to do the first two case studies for next time. THE FIRST TWO." (She said "HOMEWORK" and "THE FIRST TWO" slowly, sounding out each syllable.) "Write your answers on these sheets," Ericka continued, waving the second bunch of sheets in the air.

A hand went up.

"Yes?" Ericka asked.

"Is this homework?" the girl who had raised her hand asked.

"What did I just say?" Ericka replied, seemingly exasperated. "THIS IS HOMEWORK. THE FIRST TWO [case studies]. IT'S DUE *NEXT* TIME."

"Aw, this is like homework," one of the kids complained, shoving the sheets into his backpack.

"You can go now," Ericka announced. And with that, the kids left the room.

To the best of my knowledge, the kids in this training cycle never turned in this homework assignment. Nor did they ever present the small-group work that they completed in which they listed the possible consequences of various offences to the individual (the offender) and the community. As noted in Chapter 5, Ericka was absent for the subsequent session, "Understanding the Youth Offender," and I helped the facilitator run that session. A bit overwhelmed by this responsibility, it did not occur to me until after the session that perhaps I could have collected the homework for Ericka and/or reviewed the "consequences" exercise. But I neglected to do so and never heard a word about either the homework or the "consequences" exercise. In other "Offenses, Consequences, and Sanctions" sessions that I attended, I facilitated that training and used

my "Ranking Crimes" problem, followed by the "case studies" involving Lester and Jamie, which I describe below.

I turn to the description of the "Offenses, Consequences, and Sanctions" that I led during the cycle where I followed the kids throughout the duration of their training. I continue the chronology of this cycle in Chapter 9 with my description of "Understanding the Youth Offender" session.

• • •

"Alright! Let's go!" I announced, imitating the way Jeremy Paul, my property law professor in law school, would begin each of our classes. I introduced myself as "Avi" and wrote it on the dry-erase board.

"You can call me 'Avi,'" I told the kids, "but I'll answer to just about anything. Except for maybe 'Jackass.' Well, maybe I would. It depends on the circumstances . . ."

The kids laughed.

I began by asking the kids what they remembered about "restorative justice" from the previous session.

"It's like preventing people from doing something bad again," one girl answered eagerly.

"Ok," I replied thoughtfully, trying to think of a way to add to her answer without making her feel as if she had entirely misunderstood the concept. "Restorative justice does try to make sure that someone does not reoffend. But what else?"

A few other kids offered their definitions, including Matthew, who talked about how restorative justice "restores justice to the community" and who added that it sometimes entails "performing community service." I jumped on Matthew's comment

about "community service" and noted that "community service" is often a part of "restorative justice" because "restorative justice" attempts to benefit the community as a whole (rather than just the victim).

To further flesh out the idea of "restorative justice," I asked whether any of the kids had siblings. Several raised their hands and I called on one of them—Kimberlee. Kimberlee said that she had two sisters, one older and one younger. I asked her what she would do if someone was picking on her younger sister.

"I'd tell my Dad," she replied.

"OK," I responded. "But if you saw the person on the street, you might want to beat that person up?"

Kimberlee frowned.

"Ok," I acknowledged. "So maybe Kimberlee exercises good self-control. But I'm sure that *some* of you in this room might want to get it on with whoever was harassing your brother or sister, no?"

A few kids nodded their heads. So I continued, "One reason why we—as a society—punish people is for *revenge*—or what we call 'retribution.' 'Retribution' is the idea that someone should be punished in proportion to the harm that he or she caused. Like an eye-for-an-eye, a tooth-for-a-tooth. You guys have heard of that, no?"

More nods.

From here, I spoke a little bit about "incapacitation." "If someone's in prison, what can't they do?" I asked the kids Someone said, "be free." Another answered, "walk down the street."

"Right," I replied and explained that in addition to not being able to do the things that we find normative, people who were in prison cannot commit crimes. Granted, those who are in jail or prison can commit crimes in jail or prison, but they cannot commit the same range of crimes that they did when they were "outside." Thus, I continued, "Prison *incapacitates* people—it prevents them from doing bad things to a large number of individuals—or to a *larger* number of individuals than if they weren't incarcerated—to the community, and to themselves."

"Do you guys remember the O.J. Simpson trial?" I asked.

Some of the trainees nodded their heads. But then, realizing that O.J.'s alleged crime occurred in 1992 and that he was acquitted in 1995—around the time when some of these kids *were born*—I asked them about Bernie Madoff. Some of the kids had heard of them—or, at least, more seemed to recognize the name, "Bernie Madoff," than "O.J. Simpson."

"Yeah, I remember him," one kid said in reference to Bernie Madoff. "But whadda he do again?"

"Basically, he stole a lot of money from a lot of people. And his punishment was a 300+ year sentence in prison," I explained. "Why? Why do you think he received such a lengthy prison term?"

A couple of kids wondered aloud why Madoff had not been given "life"—as in a *life sentence*.

"Life doesn't often mean 'life,'" I started to explain.

"So why didn't the judge give him 'life without the possibility of bail'?" someone asked.

"You mean, 'life without the possibility of parole'?" I responded. "Good question. I think the idea was to send a message. A 'life sentence' is one that puts someone in prison for the rest of that person's life. But in some jurisdictions, the prisoner may become eligible for release based on good behavior, rehabilitation, or the like."

"With Madoff," I continued, "I think the idea was to send a message. And that's exactly part of the calculus that goes into a punishment. The judge wants to send a message to indicate to others that certain behavior isn't condoned—that if you commit certain crimes, you're not going to get off with a slap on the wrist."

"This," I proceeded to explain to the kids, "is called *deterrence*." I made a couple of comments about the distinctions between *specific deterrence* and *general deterrence*, but omitted a discussion of Stafford and Warr's reconceptualization of deterrence theory.[248]

"Restorative justice' differs from retribution, incapacitation, and deterrence," I explained. "Rather than seeking revenge, or punishing someone in direct proportion to the harm that he or she caused, or preventing the individual from committing more crimes, or trying to discourage the offender from future offenses—or discouraging society as a whole from engaging in the same behavior as the defendant—'restorative justice' tries to *restore* the individual and *restore* the community."

Seeing some nods, I told that kids that we would now undertake an exercise. I then passed around copies of a handout that I had created for them:

"Ranking Crimes" Problem

> Imagine that you are in charge of rewriting the entire criminal code for the State of New York. (A "criminal code" is a compilation of government laws that outline a state or country's criminal offenses, and the maximum

[248] Stafford and Warr (1993).

and minimum punishments that courts can impose upon offenders when such crimes are committed.)

Below you will find a list of activities, behaviors, or events that are occurring in New York with some regularity.

Please rank these activities, behaviors, or events in order from most serious to least serious in YOUR mind (with #1 = most serious). Do not try to guess which of these are punished more severely in real life.

Activities, behaviors, and events that you rank higher will receive higher punishments.

If you think something should not be ranked because it is not wrong (or because you do not think the government should worry about this activity, behavior, or event), write "NR" (or "no rank") next to the activity, behavior, or event.

In ranking these activities, behaviors, or events, consider the following:

- What, if any, are the effects of the activity, behavior, or event on the person engaging in the activity or behavior?
- Is there a victim? If so, what is the impact on him/her?
- What, if any, is the impact on the community of each activity, behavior, or event?
- What will be achieved by imposing a harsher punishment for the activities, behaviors, or events that you rank higher on the list?

Possession of crack cocaine

Selling marijuana

Armed robbery

Environmental pollution

Owning and operating a dogfighting kennel

Not wearing a helmet while operating a motorcycle

Prostitution

Selling illegal performance-enhancing drugs to professional athletes

Stealing to support one's family

Odometer fraud

Drunk driving (DUI)

Speeding

Selling illegal performance-enhancing drugs to high school athletes

Cheating on one's state and federal income taxes

Once everyone had a copy of my handout, I read the instructions. Then I summarized them: "Pretend that you're God or King or Queen of the Castle or what have you. You're in charge. You need to determine what the laws of the land should be. The activities or behaviors are things that are occurring with some degree of regularity in your land. Rank these in terms of severity with the understanding that the highest ranked items will be punished most severely. If you think that something isn't a problem—that something shouldn't be criminalized—that something should not be illegal—you can write 'NR' or 'no rank' next to those things. Got it?"

"What's a 'criminal code'?" one girl asked.

I was tempted to direct the girl back to the top of the page where I had defined "criminal code" as "a compilation of government laws that outline a state or country's criminal offenses." Instead, I simply likened a "criminal code" to a school's list of rules and regulations. This seemed to make sense to the girl and when I inquired again as to whether the kids understood their task, they nodded and began the exercise.

As the kids completed their rankings, I wrote out the list of activities or behaviors on the dry-erase board. After a few minutes, I explained to the kids that I wanted them to share with everyone their "highest" or "most severe" activity or behavior. The results were as follows:

- Possession of crack cocaine (2)
- Selling marijuana (2)
- Armed robbery (4)
- Environmental pollution (3)
- Owning and operating a dogfighting kennel (1)
- Not wearing a helmet while operating a motorcycle (1)
- Prostitution (2)
- Selling illegal performance-enhancing drugs to professional athletes
- Stealing to support one's family
- Odometer fraud
- Drunk driving (4)
- Speeding
- Selling illegal performance-enhancing drugs to high school athletes (4)
- Cheating on one's state and federal income taxes (1)

I started at the top of the list and worked my way down. For each of activity or behavior, I asked those who had ranked it the "most severe" why they had chosen to do so. In the paragraphs that follow, I summarize their reasons and rationales.

Possession of crack cocaine (2)

A couple of kids thought that this should be ranked the highest because possession might lead to sale. These kids also stressed the fact that "one hit and you could be hooked." Thus, for them, the certainty of a negative impact was high—in other words, that possessing crack (and, by implication, smoking it) could and, indeed, *would* lead to that one person's life being "screwed up." Finally, these kids also suggested that crack brought with it violence and poverty—as had been the case with Red Hook—and that a community where crack is a problem can often receive negative publicity and earn a poor reputation. I commended the kids on their abstract thinking—on their attempts to link drug possession to other social ills—but added that they might want to consider whether an individual's possession of crack necessarily means that other people in the community are possessing and/or smoking crack or that a community has a "crack

problem" if multiple people are smoking crack in it. I also pointed out that poverty can be a cause of drug use, rather than the other way around.

Selling marijuana (2)

A couple of kids here thought that "selling marijuana" was worse than "possession of crack cocaine" because selling suggests that more people might affected than (mere) possession. In response, those who had voted "possession of crack cocaine" the highest (or higher than "selling marijuana") argued that marijuana was not addictive and thus was not that bad (or not nearly as bad).[249]

Armed robbery (4)

These kids stressed the potential for violence and the potential of injury and/or death to multiple people (the offender, the victim, and bystanders). Kimberlee, in describing her rationale for ranking "armed robbery" as the most serious, mentioned something about a gun. I replied that "armed robbery" did not necessarily have to include a firearm. Matthew, in his explanation, noted that armed robbery entails a lot of money and that even if the victim(s) is/are not hurt, he/she/they would sustain large financial losses. I pointed out that "armed robbery" does not necessarily mean a bank robbery—it could mean a bank robbery, but it could also refer to mugging one person with either an FBP 9 mm submachine gun or with a Hi-Liter marker that one pretends is a gun. Kimberlee's point about guns and Matthew's comment about large sums of money were not atypical. On other occasions when I have conducted this exercise, those ranking "armed robbery" near or at the top of their list always envision worst-case scenarios.

[249] Almost every time that I conduct this exercise, those who vote for "possession of crack cocaine" as the "most severe" tend to explain their answer in contrast to "selling marijuana" and vice versa. On this occasion, we also engaged in a comparison between selling marijuana and stealing to support one's family. One kid opined that stealing $100 from another person may leave one person happy and one person angry

This, however, was not surprising. As noted in Chapter 4, trainees participating in the "corner game," when asked how they feel about the statement, "If you see someone doing a crime, it is important to do something about it," almost always assume that "committing a crime" meant a *violent* crime or a crime involving a victim.

Environmental pollution (3)

The kids who listed "environmental pollution" as the most severe explained that they had done so because it could have widespread impact. One kid, in particular, stressed that it could "affect your home." When I asked him what he meant, he replied, "the place where you live." Thus, it still was not clear whether he meant just the physical structure in which he lived or the community, more generally. Not wishing to push him further, for he already seemed a bit uncomfortable that I had asked him to clarify what he meant by "affect your home," I elected instead to use his comment to explain how environmental pollution could adversely affect one's property, one's health, and a large number of people and their properties.

Whereas "armed robbery" is typically ranked high on the list of those participating in my exercise, "environmental pollution" usually is not. In fact, on a number of occasions, I have been asked to explain what "environmental pollution" means. I usually respond with an example (such as dumping toxic waste into the Hudson River), rather than a definition (which would probably cause more confusion).[250] On one

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or sad, whereas selling ten dime-bags of marijuana for $10/bag leaves eleven people happy—the ten purchasers and the seller.

[250] For example, the Federal Water Pollution Control Act (more commonly known as the "Clean Water Act") provides definitions for both the words "pollutant" and "pollution." "Pollutant," under Section 502(6), "means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discared equipment, rock, sand, cellar diret and industrial, municipal, and agricultural waste discharged into water. . . ." "Pollution, under Section 502(19), "means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." Despite these seemingly broad definitions, their interpretation has been the subject of litigation. See de Saillan (2008) for a discussion.

occasion, I offered an "oil spill" as an example of "environmental pollution." I was then asked, "Why would anyone want to spill oil? Don't we need oil?"[251]

Owning and operating a dogfighting kennel (1)

When I first conducted this exercise in 2005—before I had even heard of the RHCJC—"owning and operating a dogfighting kennel" was not on the list of actions and behaviors. I added to the "Ranking Crimes" problem-exercise in the spring of 2007 when Michael Vick, then the quarterback for the Atlanta Falcons of the National Football League, was implicated in an illegal interstate dogfighting ring. (Vick pled guilty in August 2007 and served twenty-one months in prison, followed by two months of home confinement. Released by the Falcons, Vick signed a contract with the Philadelphia Eagles in August 2009.) "Owning and operating a dogfighting kennel" tended to elicit strong reactions as media attention to Vick waxed and waned—with some individuals ranking it high on their list and others placing it low or at the bottom.[252]

During this training cycle, Brenda listed "owning and operating a dogfighting kennel" as the "worst of anything on the list." According to Brenda, "Dogs can't speak.

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[251] On one occasion—shortly after the Gowanus Canal (which extends about a mile and a half north from Gowanus Bay near the neighborhoods of Red Hook, Carroll Gardens, and Park Slope)—one trainee mentioned the "aesthetic" impact of pollution on the Gowanus Canal as a reason for ranking "environmental pollution" at the top of his list. This demonstrates—as do the examples of "owning and operating a dogfighting kennel" and "waterboarding," discussed below—the extent to which media attention to a "legal issue" can affect youth legal consciousness (and, presumably, the legal consciousness of adults). For more on the pollution of the Gowanus Canal, including proposals to add it to the Environmental Protection Agency's list of Superfund sites, see, e.g., Bowen (2/21/12); Calder (2011); Campbell (2010); Editorial (5/31/09, 3/4/10); Fahim (3/4/10); Goodman (2011); Gootman (2010); Gonzalez (2009); Gross (2010); Navarro (4/10/09, 4/24/09, 2010); Rice (2009); see generally Chan (2008); Raver (2009); Ryzik (7/5/09).

[252] On other occasions, I have also attempted to include acts, omissions, or behaviors receiving media attention. Thus, in late 2007 and continuing throughout 2008, when the U.S. government's use of the torture technique of "waterboarding" gained attention, I added "waterboarding" to the list. After a couple of times in which kids asked me what "waterboarding" was, I decided to omit it from the list. On occasions when it was included, I would explain the technique if asked. Some kids would respond, "That's messed up," or ask whether anyone had ever gotten arrested for it, but no one ever ranked it as "most severe."

They can't understand what's happening. And they can't tell you how they feel. All the others [victims] can."

To this, Shami, a self-proclaimed "big time" Michael Vick fan, stressed that "fighting is part of dog's nature" and argued that "individuals should have the right to decide if they want to fight their dogs." Brenda responded that "all being have value" and that there is a difference between "what dogs do naturally"—i.e., whether they would fight without human interference—and what they might suffer at the hands of human tormentors.

I permitted Brenda and Shami to continue their back and forth for a couple of minutes and then encouraged others to jump in. Most of the other kids' comments fell in either of two camps: the belief that non-human animals cannot consent to fighting, thereby making "owning and operating a dogfighting kennel" cruel, versus the assertion that dogs are not humans, human life takes precedence over non-human life, and thus other actions and behaviors on the list are "more severe." A few kids also voiced the libertarian argument that people should be permitted to do what they wish with their property without governmental interference.

Sharece inquired as to whether Vick had, indeed, engaged in dogfighting or whether he had simply owned and financed the operation. And she wondered why he had been subjected to what she perceived as a fairly harsh sentence—a query that afforded me the opportunity to refer back to the discussion at the outset of the session about deterrence.

Before moving on to the next item on the list, I took the opportunity to respond to the comments about the value of non-human animal life. "This example [owning and

operating a dogfighting kennel]," I said, "gives us the opportunity to think about how we value—the degree to which we value—non-human life. So you might want to think not just about dogfighting, but about whether you eat meat and why and if that's different, or whether you wear fur or leather. Another thing to consider is whether there's a relationship between animal cruelty—for regardless of whether you think owning and operating a dogfighting kennel should be a crime, it is cruel—and other types of anomic or deviant behavior."[253] I then offered the example of serial killer Jeffrey Dahmer's animal cruelty to suggest a possible linkage between harm to non-human animals and harm to humans, before moving on to "not wearing a helmet while operating a motorcycle."

Not wearing a helmet while operating a motorcycle (1)

This act—or, rather, this *omission*—is rarely ranked high on people's lists. And this time was no different. Only one kid (Jerray) had ranked "not wearing a helmet while operating a motorcycle" at the top of his list. When I inquired as to why he had done so, he explained that not wearing a helmet presented a pretty clear threat to at least one person (the motorcyclist) and that an accident involving others could result in multiple fatalities. Thus, for Jerray, the perceived high likelihood of injury to *one* person necessitated a high ranking—a probability of injury that, according to this kid, exceeded that of hazardous behaviors, such as drunk driving or speeding (or non-vehicular acts, such as drug possession or prostitution). Although Jerray did not persuade any of his fellow trainees with his argument, his willingness to describe his reasons and rationale for ranking "not wearing a helmet while operating a motorcycle" at the top of his list gave rise to a short discussion about *whether* "not wearing a helmet while operating a

[253] For a discussion of connections between animal cruelty and delinquency, see Lea (2007).

motorcycle" should even be proscribed behavior. "It shouldn't be a crime," one girl blurted out when I asked the trainees what they thought of Jerray's explanation. To this, another girl retorted, "Girl, it shouldn't even be a *law*." I used this occasion to make a comment about legal pluralism, noting that in some parts of our country (such as in Indiana), individuals are permitted to ride motorcycles without helmets.

Prostitution (2)

The two kids who ranked prostitution at the top of their lists both described it as "nasty" or "disgusting" and that it "could spread disease." Matthew, who had ranked it towards the top (but not as the "most severe") piped up that prostitution had the potential to adversely affect others because prostitutes often carried diseases, which they could transmit to others. In response, I explained that some people in the sex industry *because* they are involved with sex-related work, actually get tested more frequently than the general public. "Not all prostitutes have diseases," I added. "And what if I were to change it from 'prostitution' to 'condom-only prostitution'? Would your response be different?" Matthew replied that condoms break. Fair enough.

A couple of kids expressed the belief that the decision to pay for sex or to sell one's body should rest with the individual, not with the government—a similar argument to Shami's claims about dogfighting. This civil liberties argument prompted responses from a number of the girls, who distinguished between being forced into prostitution and choosing prostitution because one needs money—or "enjoys having sex for money?," a girl suggested.

Before moving on to the next item on the list, I noted that everyone had referred to the prostitutes as females. "Men can be prostitutes too," I pointed out—which prompted a number of kids to say, "Eeeeeewwwww" and "That's gross!" or "No way!"

Odometer fraud (0)

As usual, no one voted for this. But as is often the case, one kid—Brenda—asked what "odometer fraud" meant. I asked the kids whether anyone drove. None of the kids raised his or her hand, so I explained what an odometer was and what it would mean to "roll back mileage." "That's like *stealing*!" Brenda exclaimed when I finished my explanation. I concurred, but because no one ranked this as the "most severe" actions or behavior, we did not discuss it further.

Drunk driving (4)

"Drunk driving" is often a popular top choice for kids participating in my problem-exercise. This time was no different. A couple of kids mentioned that driving while under the influence increased the possibility of getting into an accident. Shami argued that a lot of drunk drivers speed and thus drunk driving was essentially "speeding without control." I disagreed and explained that in fact, drunk drivers often drive more slowly. But I accepted his point that driving while under the influence means that someone is driving with less control over his/her car.

Shami's comment about speeding led to a discussion about speeding laws and a few kids argued that they did not think that there should be speed limits—that people should be able to drive as fast as they needed to based on the circumstances and their surroundings. In response, I mentioned that in some states, such as Montana, speed limits are not posted and one can drive as fast as one likes, as long as it is safe to travel at that speed.

One girl opined that speeding laws should be relaxed when there is an emergency, such as if a woman's water broke. I acknowledged this point and then shared a brief anecdote about how, when my wife, Laura's, water broke when she was pregnant with

Zeia, I went for a run before taking her to the hospital—a story that produced some laughs, some exclamations by the kids that they were glad they were not married to me, and some expressions of surprise that I had gone to the hospital at all.

Brenda seemed to think that it would be acceptable for someone to speed if he/she was in a hurry and that, by the same logic, it should be permissible for someone to drive home drunk if he/she had no other options and did not want to leave his/her car at the bar. In making her argument, Brenda made reference to the comment that Ericka had made on a couple of occasions about not liking fare evasion cases if they involved someone who had forgotten his/her MetroCard.

I made a comment about how, in some locations, people have been encouraged to walk home from bars rather than to drive home under the influence, and that in the process of walking home, have been hit by passing cars—a kind of "law of unintended consequences." I also pointed out that there was a difference between driving under the influence on a deserted rural road in Kansas or Nebraska and drunk driving in and around Times Square in New York City—situations in which the same vehicle driven by the same person with the same blood-alcohol level might present very different sets of risks. This point about context and circumstances prompted the kids to reflect on what the threat of drunk driving was or might be, what the impact of drunk driving was or might be, and who the victims of drunk driving were or might be.

Selling illegal performance-enhancing drugs to high school athletes (4)

While the kids were ranking the actions or behaviors on the list, one asked me what "illegal performance-enhancing" drugs were. I replied with an example—steroids. "Why didn't you just say, 'steroids'?" he inquired. I responded that there were other

kinds of illegal performance-enhancing drugs and explained that professional cyclists had been suspended from cycling for receiving blood transfusions during long races.

The four kids who had ranked "selling illegal performance-enhancing drugs to high school athletes" all defended their choice in relationship to "selling illegal performance-enhancing drugs to professional athletes," explaining that "kids are younger and more likely to influence each other." I noted that professional athletes could influence kids—a point to which the trainees agreed—but commended the kids on distinguishing between peer-pressure/influence and adult role models.

Cheating on one's state and federal income taxes (1)

As is often the case, I was asked to explain what I meant by "cheating on one's state and federal income taxes." "You mean like the IRS?" a girl asked, when I was finished with my explanation. "Yes," I replied.

A second kid then inquired, "Don't you get taxes back at the end of the year?"

I responded that some people do receive some money back, depending on their withholdings, but that many people did not. As I attempted to articulate in the simplest terms how taxes work and what cheating on them might entail, a few kids muttered how they did not think the government should take money in taxes. Upon hearing these Tea Party-like statements, I shifted gears and explained that taxes pay for schools and hospitals and law enforcement and public transportation and the military among many, many other things that many of us probably take for granted. Some kids seemed to grasp the fact that taxes contribute to the larger public good, but most of the others did not understand why someone would commit tax evasion if they could receive money back from state and federal government anyway.

These questions and comments were not atypical of the one's raised during other instances of conducting this exercise. Indeed, quite often no one ranks "cheating on one's state and federal income taxes." Thus, I was pleasantly surprised when one kid had ranked this at the top of his list. Unfortunately, he did not really understand the exercise for when I asked him to explain his reasoning, he responded, "Because you could go to jail." I responded by explaining that the point of the exercise was not to rank items based on one's sense of severity of punishment in the real world, but based on what one thought the "worst" actions, behavior or omission was according to *one's own* internal calculus. "Imagine you're in charge," I said. "You determine what's a crime. You determine the sanction—the penalty. Which one of these [I pointed to the list] is the worst?" Alas, this explanation did not help matters and the kid simply reiterated that "tax evasion is bad because society thinks it's bad."

While this particular kid's reasons and rationale for selecting "cheating on one's state and federal income taxes" were not particularly insightful, he, like many of the other kids, did demonstrate a consideration for the societal impact of various acts, behaviors and omissions. That said, most of the kids defined "society" very narrowly and tended to treat those acts, behaviors, and omissions that presented the greatest risk and most direct link to "mind" and "body" as the most severe. Thus, drunk driving was "bad" because "others might see you swerving down the street and think that it's ok." Drunk driving was "bad" because "you could kill someone in an accident." "Not wearing a helmet while operating a motorcycle" could result in one's own death. While environmental pollution and tax evasion can both bring about harm and loss of life, for many of the kids,

the link between these acts, behaviors, and omissions and the harm or potential harm was too attenuated.

Sometimes when I conduct this exercise—and depending on how engaged the participants are and how much time I have—I ask the participants for their second "most severe" or "worst" or "highest" action or behavior. On other occasions, I ask for their "last" or "least severe" actions or behaviors. During this training cycle, the discussion was spirited and so, by the time we had explored everyone's "first" or "top" choice, I decided that we would end the exercise and move on to other material. Before doing so, I explained to the kids my reasons for conducting the problem-exercise.

First, I stated that the problem-exercise was intended to encourage the kids to: (a) think about the impact of certain acts, behaviors, and omissions on the individuals engaging (or not engaging) in them; (b) consider whether a victim exists and, if so, who it is (or who might they be); and (c) contemplate the impact of certain acts, behaviors, and omissions on "the community," however they might define it. Second, I told the kids that as RHYC members, they were not going to agree with each other every time on what activities, behaviors, or omissions are the most severe. Just as they did not agree on whether "armed robbery" was worse than "drunk driving," they might not agree on whether vandalism was worse than assault or possession of marijuana. Thus, the exercise was intended to encourage the kids to begin thinking about and practicing how they express their ideas and feelings about offenses and their relative severity and why, as well as what they think an appropriate sanction should be and why. I added that as jurors, they would not have a lot of time during deliberations, but that they might want to

recognize that different perspectives on an appropriate sanction could very well stem from different views on the criminality of the offense.

Having finished my "Ranking Crimes" problem-exercise, I handed out a document entitled "Red Hook Youth Court Sanctions/Workshops" along a document containing a couple of hypothetical fact patterns—the same document that Ericka had used when conducting the "Offenses, Consequences, and Sanctions" in a previous cycle, described above). (Sharece had made copies of both documents and had provided me with them before the session so that I would be familiar with them.) The "Red Hook Youth Court Sanctions/Workshops" listed and described the types of sanctions that an RHYC jury could select for a respondent in a given case:

> **Community Service** (appropriate for respondents of all ages)
> Community Service sanctions are typically 5- 20 hours of volunteer work that benefits the respondent's community. Specific assignment scheduled by Red Hook Youth Court staff. Examples of community service assignments include: graffiti removal, distributing food at a food pantry, working at a community garden etc….
>
> ***Community service Sites:*** *Groundswell Mural Project, CHIPS, New Baptist Temple*
>
> **TOOLS/Teen Choices Group (Youth ages 13-18)**
> **Teens Overcoming Obstacles, Learning Strengths**; This is a group for adolescent aged 13-18 years old and consist of 2 sessions. This workshop is for teens who have demonstrated poor decision making. The sessions are designed to help youth recognize the choices they have and empower them to make the best decisions possible. We will work on coping skills, peer pressure; stereotypes, society and role models; and communication skills and conflict resolution. goal setting; decision making; school; relationships with others; and drug alcohol and sex educations. The activities include reading, role playing, watching educational videos and discussion. Challenges for these youth may include: peer pressure, anger management, maintaining positive relationships, regular school attendance etc…
>
> **Letter of Apology** (appropriate for respondents of all ages)

Letter to the person affected by the respondent's offense. Explains why the respondent is sorry and/or that the respondent recognizes the effects of his actions. Letters of apology are typically one page long.

Essay (appropriate for respondents of all ages)
150-1000 words on a topic related to issues raised during the hearing. The jury chooses a specific topic(s) based on the testimony they have heard.

What to do When Stopped by the Police (ages 10-18)
A one session, interactive workshop that focuses on how to keep yourself safe if you are stopped by the police. Workshop puts teens in the roles of officers, and officers in the roles of teens. Workshop also includes information on what you can do if you feel that an officer acted inappropriately towards you or someone you know.

Conflict Resolution (all ages)
This workshop is designed for anyone who would benefit from learning conflict resolution skills. While not specifically an anger management group, this workshop focuses on addressing how youth cope with frustrating situations. The discussion centers on both physical and verbal conflict and alternate dispute resolutions.

Social Service Referral (ages 10-18)
A 45-minute meeting with a social worker to discuss specific programs that might be beneficial to the respondent. Jury must have a specific kind of programming/reason for referral; substance abuse treatment, counseling, getting into a GED program, returning to high school, etc.

Once the kids had received their handouts, I asked one of them to read the fact pattern involving Jamie:

Jamie is a 15 year old female. She lives with her mother and father. She attends school regularly and is getting grades in the 80s. Jamie and her friends were hanging out in the park. As they were saying goodbye and getting ready to leave the park, two police officers arrived. They asked the group to stop but no one did. One of the officers caught up to Jamie, put his hand on her shoulder, and told her to stop walking. She knew that she had been doing nothing wrong and felt unfairly targeted. She turned and cursed at him. Jamie was arrested for disorderly conduct and resisiting [sic] arrest.

Jamie did not know it at the time, but the officers were looking for 3 teens that had commited [sic] an assault earlier that day. Members of the group fit the descriptions of the suspects given to the police. Jamie feels she was

> unfairly arrested as she did not participate in the assault and she was not doing anything illegal before the cops stopped her.

As per the instructions on the handout, I then asked the kids to 1) "List three reasons why you think the respondent did what he did;" 2) "List three consequences for the respondent's actions;" and to answer the following question: "What sanction(s) would you give the respondent and why?"

Most of the kids (about a 2:1 ratio) did not think that Jamie had done something wrong. When pressed, they mentioned that Jamie felt angry, confused, and unfairly targeted. Turning to the potential consequences of Jamie's action, one girl started to explain why she had chosen a particular *sanction*. This provided me with the opportunity to remind the kids what a "consequence" was—something that I had been asked to do by Ericka. So I described "consequences" as "impact(s) on the individual, the victim (if any), and the community (if applicable)"—just as I had asked them to consider these things when ranking the crimes and arguing for certain ranking positions.

Once I clarified the meaning of "consequences," I asked the kids what some consequences might be. The kids mentioned "getting arrested," "looking stupid," embarrassing oneself, missing out on something (e.g., hanging out some more at the park, hanging out elsewhere, hanging out at home). Two of the kids thought that Jamie might have brought shame to the family or to the community.

From here we discussed what an appropriate sanction might be, based on the list of sanctions and workshops that I had distributed. Most of the kids recommended the wtdwsbtp workshop. A couple of kids thought that a letter of apology addressed to the police officer at whom Jamie had cursed would be a good sanction. And Shami thought that the conflict resolution workshop would be useful.

I used these suggestions—the wtdwsbtp workshop, the letter of apology, and the conflict resolution workshop—to review issues relating to *deterrence* and *intent*, which had been discussed earlier, as well as *proportionality*, which they had been learning about throughout the training cycle. Then I inquired why the kids had selected these sanctions. A majority of the kids had selected the wtdwsbtp workshop because, as they explained, it might help Jamie avoid getting arrested again (thereby confirming my sense that the wtdwsbtp workshop was more of a "how not to get arrested" workshop than a "know your rights" workshop intended to empower kids). The kids could not agree on whether Jamie should write a letter of apology and most dismissed Shami's suggestion that Jamie attend the conflict resolution workshop. In the end—and as a compromise—the kids voted on five hours of community service on the grounds that while an officer had touched Amy on the shoulder, he had not sexually harassed her and that she had cursed at an officer, she had not threatened him or touched him. I expressed doubts that community service would actually be a "fair and beneficial sanction,"[254] but explained that as RHYC members, they would need to agree when serving on the jury and thus they were demonstrating the ability to make compromises, get along, and reach consensus.

We had a few minutes left, so I asked someone to read the case study involving Lester:

> Lester is a 17 year old male. He lives at home with his grandmother. She reports no problems with Lester's behavior at home. He is in the 12th grade attends school regularly and plans to graduate in the spring. Lester has no prior juvenile record. He has pled guilty to shoplifting. The security guard stopped Lester and some friends carrying comic books out of a store in the mall.

[254] As will be discussed in Chapter 21, community service is often a "default" sanction or one used when jury members cannot agree on other sanctions.

"Ok," I said. "Let's pretend you're on the jury. Lester's case is the last one of the night and the court officers want to go home. Very quickly, give me some reasons why Lester might have committed the offense."

The kids shouted out answers, which included thrill-seeking, lack of money, peer pressure, lack of knowledge that his friends were stealing, and payback/revenge for something that the store owner or an employee might have done or said on a previous occasion.

"Good! Good!" I declared, looking at their suggestions.

"Now," I continued, "what kind of sanction, if any, would you give Lester?"

A few kids suggested that Lester should not receive any sanction. I explained that this was an option—that an RHYC jury might decide not to sanction a respondent—but that even if they gave Lester "nothing," he would have still spend the afternoon traveling to the RHCJC for a potentially embarrassing hearing in front of his peers and family members.

Ultimately, the kids voted on a letter of apology and community service. I quickly wrapped up the day's lesson—mentioning that the kids had (1) learned to consider the impact of offenses on the individual, the victim (if any), and the community (if applicable); (2) explored how to weigh crimes; and (3) begun to recognize that they might (as a result of (1) and (2)) disagree about the appropriate sanction(s)—and the kids left.

CHAPTER 9: WEEK II: UNDERSTANDING THE YOUTH OFFENDER

On the F train to Red Hook, I fell asleep. At some juncture, a group of kids got on and starting talking loudly—and talking a lot of smack at that. I woke up, but continued to drift in and out of sleep, sort of listening in on their conversation. As we got closer, I opened my eyes and realized that one of the kids was this long-haired boy in the RHYC training program. Right before we got off at the Smith & 9th Street stop, we made eye contact. He nodded to me—I guess recognizing me from the previous sessions—and said, "What's up?"

"'T'sup," I replied, nodding back. And then, to my surprise, he asked if he could show up early to training.

"Uh, sure," I stammered. "See ya there."

"Cool," he replied and darted out of the subway doors.

Go figure! Here was a kid who moments before had been loud, borderline obnoxious, talking about "bitches" and "hos," and the next minute is asking whether he can arrive *early* to an unpaid training session at the RHCJC—an institution of formal social control.

When I got to the RHCJC, I spoke to James Brodick for awhile and then headed down to the mock courtroom for RHYC training. I was a few minutes late. The kids were all seated and Sharece and Mouhamadou were there, but Ericka was not. I asked Sharece where Ericka was and she told me that Ericka had left early. I was about to inquire who would be leading the training when Shante appeared at the entrance of the mock courtroom and asked Mouhamadou if he would get Jess Kay, a social worker in the RHCJC's on-site social services clinic, whom, Shante said, would be leading the training

for the day. Mouhamadou, a bit shy, asked what Jess looked like. I told Mouhamadou that I knew who she was and that I would go get her. Mouhamadou looked relieved and I headed upstairs to the clinic, where I located Jess. "Hey, we're ready for you downstairs," I told Jess. The "we" had slipped into my sentence—perhaps leading the previous training session let me feel entitled to employ the first-person plural personal pronoun instead of the third-personal plural personal pronoun. Feeling self-conscious about my use of "we," I started to clarify that I meant the RHYC trainees, but Jess stopped me and replied that she would be right down.

I headed back downstairs. I told Shante that Jess would be there shortly and then asked her what the plan was for the day's training session. Shante handed me a copy of the curriculum for "Understanding the Youth Offender." She then told me that she would be right back, but that if Jess showed up first, she should get started.

Moments later, Jess appeared. I greeted her and indicated that she could begin whenever she wanted. She looked at my quizzically and so we conferred briefly. It quickly became apparent that something had gotten lost in the communication between Ericka and Jess or Shante and Jess (or whoever had arranged for Jess to come to training), and that Jess was under the impression that she would just be speaking for about five minutes, not leading the entire training session. I studied the curriculum, which provided for a review of "consequences" from the previous session. Shante reappeared and the three of us (Shante, Jess, and I) conferred quickly. I offered to conduct the review while Shante briefed Jess on the day's session and what she could do with the kids.

"Alright! Let's go!" I announced, again trying for my best Jeremy Paul imitation. I asked the trainees to tell me the types of cases that they might hear as RHYC members, some of the consequences of the various underlying offenses, and what types of sanctions they could give the respondent.

The kids seemed to have a difficult time remembering what the term, "consequences," meant—or, at least, what it meant in the context of youth court—for I received some blank stares when I asked, "What are some of the *consequences* of the offense of fare evasion?" So I reminded the kids. I did not actually use the definition that Ericka had previously given the kids (i.e., "What happens, good or bad, as a result of a specific action"), but I suggested that the kids think about the effect, outcome, or result of something occurring earlier, such as writing graffiti or smoking pot. This prompt seemed to help because a few kids raised their hands and spoke about the impact of various activities, behaviors, and events on the individual and the community.

Satisfied, I turned to Jess, who had finished conferring with Shante. Jess indicated that she was ready and so I introduced her to the RHYC trainees.

Jess asked the kids to sit in a circle. Once they had done so, she explained that she, along with other case managers in the clinic, works with defendants in the criminal court of the RHCJC to determine the underlying reason(s) for their criminal activity and to help develop strategies as part of their sentences or post-plea mandates to avoid recidivism. She then asked if the kids had any questions. None of the kids said a word.

"When do you meet with the offenders?" I asked Jess, hoping that by posing a question, it might encourage the kids to follow suit.

Jess replied that she typically met with the offenders twice. "The first time is downstairs [in the jail]." I was about to ask her when the second meeting occurred, but one of the kids raised his hand.

"Yes?" Jess replied, interrupting her train of thought.

"Do you ever give up?" the boy asked.

"I want to," Jess started to reply. "I mean, sometimes, I'm tempted to give up when the defendant doesn't want to talk. But then I explain to him that I'm here to help. Everyone in this building is here to help."

"Everyone in this building is also in the business of formal social control," I wanted to add.

"How do you get people to talk?" a second boy asked.

"Well," Jess replied. "I just try to tell them that I'm there to help and that the more they tell me, the more I can do for them."

Jess paused and then added, "And sometimes, I tell them that we're different than downtown and that it's good that they're here rather than there."

A couple of the kids nodded. Jess scanned the group and then looked at me. I looked at the curriculum sheet. Seeing that it suggested fifteen minutes for reviewing "consequences" and five minutes for the guest speaker to introduce herself—for a total of twenty minutes—and that we had not yet come close to twenty minutes, despite the delayed start, I asked Jess if she could speak to the kids about confidentiality.

The importance of confidentiality had been brought up in the group interviews (see Chapter 4) and had been echoed by the kids earlier in their training. I wanted the kids to hear a perspective on how a social worker might negotiate issues of

confidentiality with a criminal defendant. But I had an additional motive with my question.

One of the criticisms of problem-solving courts (specifically, those that deal with drug cases) and therapeutic jurisprudence is that the defense counsel becomes part of a "team" consisting of the district attorney, the judge, and a social worker (or social workers). This therapeutic jurisprudential philosophy—and this arena of a problem-solving court—transforms the defense attorney from a zealous advocate of her client's legal rights (her traditional role as defense counsel) to a member of a team oriented towards ensuring her client's recovery and the public's safety. This is no small change, for the defense attorney is now in a position in which she has to think about her client's interests (health), rather than her client's wishes.[255]

While Jess is a clinical social worker and case manager, not a defense attorney, I wondered whether criminal defendants—especially those with addiction and/or mental health issues—might confide in her under the assumption that their exchanges would receive the same level of protection as ensured by the attorney-client privilege. Thus, I wanted to gauge whether, in discussing the issue of confidentiality, Jess conceived of herself as serving the client, the court, the district attorney's office, the "team," the public, or some amorphous combination thereof.

Jess defined "confidentiality" as "something which is spoken, written, acted upon, etc. in strict privacy or secrecy." Jess stated that confidentiality was very important in her job, but that "confidentiality is a balance" and that she felt that she would "speak out" if she were worried that a criminal defendant was going to hurt himself/herself or another. I was tempted to ask Jess what she meant by "speak out" (i.e., to whom she

would speak—the district attorney for the case? the judge? the defendant's lawyer? the security guards in the building?). I was also tempted to ask Jess whether she thought she had an affirmative duty à la *Tarasoff* or simply felt a moral duty or personal imperative in such situations.[256] But I thought that I had already intervened enough in the day's session—or, at least, more so than I might have liked and perhaps more so than I should—and thus indicated to Jess that she could conduct the "Active Listening" exercise on the curriculum sheet. The exercise, as described in curriculum sheet, is as follows:

> Staff member divides group member into pairs. One person in each group is designated as person A, the other as person B. A will be the talker. B will be the listener. A talks for approximately 5 minutes. B must listen but cannot speak. At the end of the exercise B should be able to state 3 facts about A.
>
> After the 5 minutes, bring the groups together. Ask the Bs to share their three facts. End with a discussion of the difficulties encountered by both A and B. Who felt like their B was listening well? What made you feel this way? Were there times when you worried that B was bored or did not understand? What made you feel this way? The discussion should prepare participants to learn about active listening.

Jess half-explained/half-read the exercise and then asked the kids to pair up and decide which member of the pair would be "person A"—the talker.

"Ok. Go ahead!" Jess urged them.

The kids seemed a little awkward and, despite being given permission—indeed, *encouragement*—to speak about whatever the want, were quiet. So I suggested to Jess that we demonstrate for the kids.

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[255] See, e.g., Thompson (2002); see generally Haycock (1994).

[256] *Tarasoff v. Regents of the Univ. of California*, 551 P.2d 334 (Cal. 1976), was a case in which the Supreme Court of California concluded that a psychiatrist's relationship to a dangerous patient gave rise to a duty to warn the patient's intended victim that the patient intended to kill her. Because of the burden this duty imposes on those in charge of patients with mental health problems, some courts have refused to extend the duty beyond situations involving a threat to a *particular* victim. Thus, for example, the Iowa Supreme Court held in *Leonard v. State*, 491 N.W.2d 508 (Iowa 1992) that a psychiatrist did not owe a duty to members of the *general public* for discharging patients.

Jess agreed and I walked over and sat next to her. (I had been sitting off to the side on one of the tables.)

"Ready?" I asked.

"Yes," she replied, smiling. "Go ahead."

"Ok. Here we go. I'm speaker A," I announced. I then began a monologue about how I was excited to dress up for Halloween, but that I could not think of what to wear because everything that I could think of seemed either too *riskay* or too time-consuming—"I like to make my Halloween costumes, not buy them at Duane Reade or some costume shop," I explained.

Throughout my monologue, Jess maintained good eye contact with me, did not interrupt me, and nodded her head occasionally. Afterwards (I did not actually speak for a full five minutes), Jess repeated three things that I had said. Then she asked the kids how she behaved during our conversation while I was talking to her. The kids responded, mentioning her willingness to let me speak and her nonverbal cues of encouragement, such as maintaining eye contact and nodding her head.

"Good, good," Jess replied. "OK, so, ready now? You guys think you can do this?"

The kids nodded their assent and then turned to their partners. After about three minutes—less than what the exercise called for—Jess called for quiet and asked the kids who had been the As—the talkers—whether they felt that their Bs had been listening.

One boy said, "I felt like I was being heard."

"Good," replied Jess. "And what was that?"

"Because he was making eye contact," the boy replied, looking down.

A second boy mentioned that his partner was "actually nodding and giving me feedback"—presumably facial expressions, because the Bs weren't supposed to say anything. A girl then indicated that the exercise was hard because "I don't know her," and then explained that because she did not know her partner, she did not feel all that comfortable talking about her life.

"Good. Right." replied Jess. "So now you can imagine what an offender might feel like talking to me or to you for the first time?"

Then one girl complained that her B, a boy named Daryl, had not listened very well or had acted as if she was not interested in what she was saying. Daryl protested, "She snitches!" Some of the kids laughed and Jess inquired whether Daryl had, indeed, been bored.

"It's hard listening to her for five minutes," Daryl said.

"What???!!!" his partner replied. "I'm mad interesting."

"Oooooo," some of the kids cooed.

"Naw, naw," backtracked Daryl. "I didn't mean it like that. It's like, hard, to listen to someone—anyone—for that long."

"No wonder my students fall asleep in class," I whispered to Jess.

"It is hard," Jess said. "But you have to try. It's an important part of gaining someone's trust."

Jess then continued around the circle asking every "A" how he/she felt about his/her respective "B." A few times, she asked the "Bs" how they felt about listening to the "As."

It took awhile for Jess to make it around the circle. When everyone finished, she handed out copies of a piece of paper with the title, "Active Listening: *The Most Important Skill of a Good Teen Court Member*" at the top. Underneath the title, there was a bulleted list:

- Clear your mind of unnecessary thought and distractions so you can give the respondent your undivided attention.
- Make eye contact.
- Put aside preconceived ideas and refrain from passing judgment.
- Be aware of your body language. Sit up straight or lean in toward speaker.
- Acknowledge that you are listening by occasionally nodding your head.
- Ask open-ended questions. Don't ask, "Do you have any after-school activities?" Instead ask "What kinds of activities do you do after school?" Then ask appropriate, non-threatening follow up questions.
- Paraphrase – restate in your own words – what you think the respondent has said. When paraphrasing is accurate, the respondent will feel understood. If what you paraphrase is off the mark, it allows the respondent to clarify and also reminds you to listen more closely.
- Ask questions when you do not understand.
- Put yourself in the respondent's "shoes" and try to understand the situation from her or his perspective.
- Pay attention to the respondent's facial expressions, gestures and body language.
- Read between the lines for the respondents feelings. Ask about them, "How did that make you feel?" "Are you feeling nervous or uncomfortable right now?", etc.
- Give the respondent the same respect that you desire for yourself when you are talking to someone.

When everyone had a copy, Jess asked the kids to go around the circle, with each person reading one bullet. When someone read the third one—"Put aside preconceived ideas and refrain from passing judgment"—Jess encouraged the trainees to think about the goals of youth court. After the next one—the fourth one—"Be aware of your body language. Sit up straight or lean in toward the speaker"—I interjected that the kids

should not go to extremes. They should not be wooden soldiers, I told them, sitting up stiffly in my chair, nor should they be "close-talkers," I explained, leaning towards the girl sitting next to me, thereby invading her personal space (much like Judge Reinhold had done in *Seinfeld*[257]). In response, the girl leaned away from me, and the kids laughed.

When we reached the sixth bullet point—"'Ask open-ended questions'"—Jess inquired why this was important.

"You know, have an open mind. Don't be judgmental," one girl replied.

Jess nodded, while looking at her paper, but did not reply. I wondered whether she had heard the girl.

Fortunately, a boy jumped in and stated, "No, it means 'don't ask yes or no questions.'"

"Yes, that's it," said Jess, looking up, as if suddenly registering the exchange that had just transpired. "You want to ask open-ended questions—ones that require more information to answer. You don't just want him saying, 'yes' or 'no.'"

When we had finished going over the bulleted points, there was not much time left. Jess made a couple of closing remarks. She then looked at me. I was not sure what else to add. This session had been focused much more on "soft skills" and "life lessons" than the law or the operations of the RHYC. So I simply thanked Jess and reiterated that while "active listening" was important for youth court—especially if one is on the jury or serving as the Youth Advocate—it was a good skill for them to develop apart from and outside of youth court for it would prove useful to them on dates and in interviews. This

[257] In the sitcom, *Seinfeld*, a two-part episode, "The Raincoats" (the 18th and 19th episodes of the fifth season and the 82nd and 83rd episodes overall), Judge Reinhold plays "Aaron," a "close-talker"—someone

explanation seemed to make sense to the kids, as they nodded in response. I then looked at Sharece and Mouhamadou to see if they wanted to say anything. They had nothing to add other than the fact that Shante was not coming back, so I dismissed the kids.

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who stands unusually close to others when speaking.

CHAPTER 10: WEEK III: CRITICAL THINKING

I entered the mock courtroom a little bit late. James, who was running the training session for the day, was instructing the youth court trainees to arrange themselves at the front of the room in a line from oldest to youngest with the oldest to the left (my left, James' right) and the youngest to the right (my right, James' left). "No talking," James said. The kids shuffled around, some mouthing things to each other, others signing, and other writing things on their notepads. After a few minutes, James inquired from the kids at the respective ends if they were indeed the youngest and oldest. They were. Then he went down the line. To their credit, the kids had done a pretty good job. A 13-year-old (birthday in June), followed by a 14-year-old (birthday in November), followed by a 14-year-old (birthday in October), followed by a 14-year-old (birthday in May), followed by a 14-year-old (birthday in April), followed by a 14-year-old (birthday in February). Some 15-year-olds, a 16-year-old, and so on. There were a number of 14- and 15-year-olds with February birthdays who were out of order, but for the most part, the kids had done well.

"What was the instruction I had for you?" James asked.

"Not to talk," one kid answered.

"How did you find out where to go?" James asked.

Some kids responded that they had communicated by writing on paper. Others said that they had used sign language or mouthed words. Some kids confessed to actually talking.

James then explained that the point of the exercise was to encourage the kids to think critically about the instructions given to them to creatively come up with ways to solve problems. The kids then returned to their seats.

Next, James then distributed a handout with the following picture:

Depending on how one looks at the picture, it can appear as an old woman with a big nose or a young woman with a small nose. I had seen the picture before and so had some of the kids. James asked the kids who were not familiar with the picture whether they saw an old woman or a young woman. Some identified a young woman, others claimed to see an old woman. Expressions of surprise emanated from both groups of kids.

Talking above the din, James showed the kids how to see the young woman if all they saw was the old woman and vice versa.

Again, James asked what the purpose of the exercise was and solicited answers. One kid replied, "to think of things in a different way." Other kids offered similar comments. James nodded in response to each and then said, "There's an old saying, 'They say that there are three sides to every story. Your side, my side, and the truth.'"

"The reason I gave you the exercise," James continued, "is to get you to seek out as much information as you can. . . . The more information you can gather, the more equipped you are to make better decisions."

"What does it mean to be a critical thinker?" James asked.

"To think outside the box," one kid responded.

"I like that," James replied. "What does that mean?"

James solicited a few more answers and then pointed to a large sheet of paper that he had adhered to the wall on which the following had been written:

Critical Thinking:

> In-depth analysis used in an effort to make the best decision. One must look at every side of the situation and all options offered as a solution.

James asked for a volunteer to read what was written on the poster. One kid raised his hand and, when called on, read it. James asked for another volunteer to read the words on the poster. A couple more hands went up and James picked someone to re-read it.

It was not clear why James had done this for the first volunteer and read loudly and clearly. Perhaps to reinforce the message? Perhaps to involve more kids? James did

not explain. Instead, he inquired why some kids might appear before youth court, while others might come to family court.

The kids started to articulate some of the differences between youth court and family court, but James interrupted them: "There's a lot of discretion when someone is stopped by an officer. If an officer asks you for your ID and you say, 'FUCK YOU!!!,' you're going to get a very different result than if you say, 'Oh, I'm sorry officer, I don't have it with me . . . ."

James' voice trailed off. He had screamed, "FUCK YOU!!!," and the kids were taken aback. While the kids might often use the word, "Fuck," when talking with each other, they were clearly not expecting it from a guy in a suit at the RHCJC.

With the kids even more attentive than they had been, James asked them if they were familiar with the concept of "broken windows" (which I alluded to earlier in Chapter 4). Despite its impact on the NYPD, none of them had, so James asked the kids how they would feel if they saw graffiti on the walls of the buildings in their neighborhoods or broken beer bottles on the sidewalks.

"Don't all neighborhoods have graffiti? Aren't all neighborhoods like that?" replied Wilson, the lone eighteen-year-old.

James blanched and then started to respond. As someone critical of "broken windows,"[258] I was curious to see what James would say. But before he could reply, one kid yelled out: "Dangerous." And another suggested, "Like no one cares."

James looked relieved. These were the answers James was hoping he would receive and he quickly moved on to the next exercise.[259]

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[258] See, e.g., Brisman (2011b).

[259] In an interview shortly after this particular training session on "Critical Thinking," I asked James: "What would you [have said] to [Wilson] if he [had] asked [his questions about graffiti as a normative phenomenon] and everyone had sort of stopped and waited for your answer?" James replied:

> Well, I think there is a difference between having graffiti and a community allowing graffiti as an acceptable norm. And I think, to me, you know, for example where I live, there's one CVS that gets hit with graffiti, and it annoys me every time I walk by it. But at night, the store manager of CVS—whatever the store is, paints over it.
>
> And I think that's because what that community has said is that it's unacceptable that you can deface our property, but we're not gonna let sit there. And by allowing it to sit there, promotes, oh, that's a wall that I can paint on. So I think it's more about a community accepting their norms. And I would go back to Red Hook when I first came here. I would have to say excuse me to drug dealers who were walking through the lobby of the building.
>
> And now—at least most buildings, they are in their apartments, and they have to figure out what apartment to get to. It's what I would call kind of the arrogance of the people who are violating the community. And so it's about the norms of the neighborhood, and people don't feel like—so why, [some other neighborhood] doesn't—and I would probably throw it back with a question because most of the time —you mentioned most communities have this. Let's talk about some communities.
>
> Give a community that doesn't have it. And if he said Park Slope, I'd say, well, why don't you think Park Slope doesn't have it? Well, they night say, well, it's different type of people, it's this, this, and this. And I think we would go through an exercise of why is it—so white people don't like graffiti? So do black people like graffiti on their property? And so I don't know what all the answers are. Really what I like to do, as a facilitator is I would throw it back with more questions.
>
> But I would say that what we—the way that we've tried to handle graffiti, except who are on the mains street, which the owner doesn't let us clean over his graffiti, is you paint over it; you see graffiti, you paint over it again, and you have a little battle. Because most people, from what we've learned, is they don't like graffiti.
>
> And most people when they see graffiti based on community needs assessments, based on measuring spheres, people think graffiti symbolizes negative activity, whether it's gang activities because the tags mean something, or other activities. So that's, I guess, what I would talk about. But I would really like to have that conversation; I would have a dialogue and throw it back. "So you say most communities have it, so are there some that don't? And why don't they?" And I think that would be kind of back and forth with the kid.

Thus, while James' reaction to Wilson's questions during the training session suggested a degree of discomfort with reflecting on graffiti as an indication of disorder and an unwillingness to engage Wilson in an examination of the "broken windows" thesis, James' comments in our interview indicated less reluctance for such an exchange to take place. But in a subsequent interview a little while later—and as discussed below—James made clear that youth court was not really the appropriate arena for this type or level of analysis.

James requested that the kids count off 1,2,3,4, 1,2,3,4, 1,2,3,4, and so on. James explained that the exercise involved "consensus building" and pointed to another piece of paper taped to the wall. This one read:

> Consensus Building:
>
> A group decision, which each member will support and accept, even though it may not be exactly what each member wants.

Again, James asked for a volunteer to read the term and definition and for a second volunteer to repeat what the first volunteer had read. Satisfied, he gestured towards the dry-erase board, where he had written the following bullet-pointed items:

- identify the task
- figure out a plan
- examine the information
- use critical thinking skills
- reach an agreement

James explained, as he passed around a second handout, that the sheet of paper they were receiving contained a list of twelve people. Each group had to pick seven people on the list who would serve on a jury. Members of each group had to agree and, after a certain amount of time, he (James) would ask a representative from each group to share his or her group's list. The sheet that James distributed appeared as follows:

Consensus Activity

> The board of directors of the Red Hook Youth Court has to pick a jury for the courts first case. The case involves a 14yr old girl who was caught stealing. The board is meeting to select seven members for the jury from the jury from a jury roster of 12 Youth Court members. The board's bylaws require that the board reach a consensus on the jury.[260]

[260] One of the trainees, rather astutely, inquired whether the RHYC actually has a "board of directors." James then clarified, for everyone's benefit, that this was merely a hypothetical scenario, that the RHYC did not have a "board of directors," and that the youth court coordinator determines RHYC members' roles for each case.

- Anthoni Jackson a 15yr old who enjoys being a Youth Court member. Rob has been cutting classes in school. He likes to joke around with other members and have fun.
- Jaquana Reed is a 13yr old who lives with her foster mother. She hates thieves.
- John Wolinsky the only white member of the Youth Court. John's parents wanted him to participate in Youth Court after a racial incident in school. John wants to be a police officer.
- Lueng Fong a recent immigrant from China who lives in Red Hook houses. He speaks limited English.
- Takema Jackson is 12yr old and Anthoni's sister. Yesterday she was accused of stealing a cell phone from a staff person at the Youth Court office.
- Malik Rodriguez missed part of the Youth Court training due to an illness
- Lateisha Johns lost her right leg in a car accident 2 yrs ago. She doesn't talk much to other Youth Court members. She likes law.
- Thomas Plunket a 14yr old who use to deal drugs before joining the Youth Court.
- Cherene Johnson is a 16 and openly gay. She does not like Youth Court but comes because her mother and father make her. She participates a lot in the discussion.
- Jose Santana 15 yr. old member whose mother kicked him out of the house two months ago and sent him to Red Hook to live with his grandmother. He and John don't get along. Jose has leader ship potential.
- Rahema Lipton is a teen parent. She was recently released from juvenile detention for stealing. She is a good writer.
- Terrance Lawton wants to be a prosecutor when he grows up. He has had several arguments with other members during the training.

The kids eagerly began working on the consensus building activity. Because one of the groups had gathered to meet near the door where I had been seated—and not wanting my presence to somehow impede their open discussion—I decided to move to the front of the room and sat on one of the tables. James came over and we started to chat. I explained that the exercise reminded me of one that we had done in Mr. Landry's health class back in 1989 where we had been given a list of people who were eligible for

a heart transplant and told that we had to decide which one person would receive the heart. The point then had been to engage in a moral calculus to make a decision about life or death and to recognize that our internal (moral) compasses were all a bit different (i.e., that we had different values). After recounting the assignment to James, I half-jokingly suggested that the next time he conducted this consensus building exercise, he consider asking the kids, after they had selected their seven jurors, who should get a heart or kidney transplant.

James seemed to like my suggestion. We talked a bit more and then, when he sensed that the kids were no longer talking about the exercise, instructed them to reconvene to discuss their lists.

While James and I had been chatting, he had drawn a grid on the other side of the dry-erase board. He flipped the board around and then asked a representative from each group to place a check next to the names of the jurors their group had selected. When all four representatives had finished, the chart appeared as follows:

	Group 1	Group 2	Group 3	Group 4
AJ				
JR		✔		✔
JW	✔		✔	✔
LF				
TJ			✔	
MR		✔		✔
LJ	✔	✔	✔	✔
TP	✔	✔	✔	✔
CJ	✔	✔	✔	✔
JS	✔	✔	✔	
RL	✔	✔	✔	✔
TL	✔			

James, who had been standing near the board, took a step back and looked at the different lists. After mulling them over for about a minute, he turned to the kids and inquired how many boys and how many girls were on the list of twelve possible jurors. Some said six boys and six girls, others replied seven boys and five girls, which seemed to be the informal consensus.

"Does it matter if the jury has male or female representation?" James asked.

Many of the kids responded that it did not matter whether the jury was comprised entirely of boys or entirely of girls. Many of the kids also added that it did not matter whether the defendant was a woman or a man.

James nodded, acknowledging these perspectives, and then said, "That's OK if you feel that way," in reference to the gender distribution of the jury. "But it might be important," he continued, "to the *respondent* and that since part youth court is to make the *respondent* comfortable, the gender of the youth court juror might make a difference."

I was tempted to suggest that the degree to which the sex distribution of a jury would matter would probably depend on the nature of the crime. "If one is on trial for rape," I thought about saying, "one would not want an all-female jury." "But youth court doesn't hear rape cases," I reminded myself and, at the time, had not observed enough youth court proceedings to know whether certain RHYC cases were more likely to involve boys than girls.[261]

"How many white boys are there?" James asked next.

[261] Once I began observing RHYC hearings on a regular basis, I began to notice that respondents in shoplifting cases were more frequently girls than boys. To the best of my knowledge, RHYC members never detected—or, if they did, never indicated that they thought that—a certain type of offense would more likely involve one sex rather than the other.

His question elicited some snickers to which James replied, "C'mon. You know what I mean. How many boys *on the sheet* are white?"

One kid raised his hand and, when James called on him, answered "One."

James responded that John Wolinsky (referred to as "JW" on the chart) was white, but that other potential jurors might also be white and that the description of John was the only one that specifically stated the juror's race. "So some of the other could be white too?" James inquired.

"Yes," the kids mumbled. None of them, however, felt inclined to point out that James was wrong—that the sheet describes John Wolinsky as "the only white member of the Youth Court."

James continued to push the issue of race and ethnicity, asking the kids whether they thought they could identify the race or ethnicity of the other jurors. One kid suggested that "Jose Santana" sounded like a Latino name, while another stated that "Lateisha Johns" sounded like the name of someone who was African-American.

"It could be, could be," James said in response to both kids' guesses. "But remember, the only information any of you has about the jurors is what's listed on the page."

James explained that factors such as race or gender might be inferred from the list and might be important, but that the main point of the exercise had been to get the kids to work together, compromise, and build consensus. The secondary goal, James stated, was to encourage the kids to realize that they might wish to take into consideration factors like race and gender—factors other than or less pronounced than or less obvious than the

written descriptions about each of the potential jurors' respective relationships to youth court and issues of delinquency.

To my surprise and delight, James then recounted to the kids how he and I had had a conversation about the list and wondered which of the twelve people on the list the kids might pick to receive a new heart, assuming that everyone on the list was a potential transplant recipient. One of the girls said "Rahema Lipton" because she is a teen parent. Another said "Thomas Plunket" because he had "learned his lesson."

"OK," replied James. "So maybe the reason you pick someone for one thing is different for something else." In other words, James explained, a "good juror" might not be a good candidate for a heart transplant. A "good juror" for a case involving theft might not be a good one for a fare evasion.

Having made this last point, James then passed around a third handout:

Tip for dealing with conflict
When I am having a problem with someone, what can I do?

- "Seek first to understand, then to be understood." Try to understand the other person's point of view.
- Get the information right! Make sure you heard correctly. Repeat what you heard the other person say and ask them if you got it right. Be careful with second hand information (e.g., gossip).
- Say it right. Nobody likes to be yelled at or disrespected. Speak to others the way you would like to be spoken to.
- Confront problems not people. Stay away from insults or other put-downs.
- Stay calm. Maintain yourself control and discipline. You are in control of yourself.

- Avoid violence. Can you think of one war or fight that was truly led to more peace and less violence long term? Violence generally leads to more violence.

- Focus on what people really want (interest) not what people say they want (positions).

- Get help. Speak to a parent, teacher or friend. Many community programs can also help.

- If you are having a hard time with a conflict or things are escalating, agree to disagree and move on.

Conflict is a natural part of every relationship. There are opportunities in conflict to create better relationships.

Once everyone had received a copy, James called on volunteers to read each of the bulleted points. Occasionally, he added a couple of points fleshing out the bulleted idea, but for the most part, he let the handout stand on its own. After the third bulleted recommendation, James yelled, "READ IT AGAIN!!!" The girl jumped and the kids looked at James in much the same way as they had when he had yelled, "FUCK YOU!!!" earlier. James explained that tone makes a difference and that yelling "READ IT AGAIN!!!" conveys a very different message than softly and gently requesting, "Read it again."

"The words are the same, but the tone and message quite different," James reiterated. To further emphasize his point, James made eye contact with each of the kids and repeated over and over, "You did a great job today." This, James said, was very different than stating, "Yeah, you did a great job today," without looking at the kids.

"But honestly," James concluded, "you did a great job today. Let's finish up the list." The kids read the rest of the bulleted points, James inquired if there were any questions, and seeing none, dismissed them.

As with previous and subsequent RHYC training sessions, James' lesson on "Critical Thinking" stressed "soft skills" and "life lessons," rather than substantive or procedural law (or even substantive and procedural components of youth court). For example, in the course of discussing conflict, James (who is about a year or so older than I) mentioned that "the world's a lot different than when Avi and I were kids." "Back then," he continued, "if we got into a fight [at school], we'd get sent home. Today [if we were still in high school], we'd get arrested. People used to fight with fists, now they use guns. Now there are gangs."

While there certainly were gangs when I was in high school—just as there were gangs when my father attended high school—and while I recall incidents of kids bringing guns to my high school or neighboring high schools—James was not trying to offer a lesson in history. Rather, his comments were intended to try to teach the kids something about negotiating the realities of attending high school in New York City in the early twenty-first century. That said, James could have shared more in this regard. For example, he could have spoken about the "school-to-prison pipeline"[262]—also known as

[262] The "school-to-prison pipeline" refers to a widespread pattern in the United States whereby students—a disproportionate number of whom are low-income, minority students—are pushed out of school and into the criminal justice system (see, e.g., Hirschfield 2010:40; Monahan and Torres 2010:3-4; Simmons 2010:59; Welch and Payne 2010:26; see also Hirschfield 2008; Maimon et al. 2012; Skiba 2001). According to Monahan and Torres (2010:3), the presence of "school resource officers" (SROs) on school grounds "ensures that violators will be charged with crimes for infractions, such as school fights or thefts, that previously might have resulted in softer forms of punishment, such as detention, expulsion, or conferences between parents (or guardians), students, and school officials" (citations omitted). The combination of these SROs, who are trained police officers, and "zero-tolerance disciplinary policies," which impose severe discipline on students without regard to individual circumstances, puts children on a (often one-way) path to incarceration. As Herbert (6/9/07:A29) explains,

the "schoolhouse-to-jailhouse track"[263]—a phenomenon with which the kids were likely quite familiar even if the term might have new to them.[264] And while James did use the discussion about fighting and conflict as an opportunity to repeat to the kids that if they got into a fight at school, on the bus, on the way home, or at the RHCJC, they would be dismissed from the RHYC and, quite possibly arrested, this was less of a warning or an admonishment than a reminder about his earlier point regarding police discretion.

> [b]ehavior that was once considered a normal part of growing up is now resulting in arrest and incarceration. Kids who find themselves caught in this unnecessary tour of the criminal justice system very quickly develop malignant attitudes toward law enforcement. Many drop out—or are forced out—of school. In the worst cases, the experience serves as an introductory course in behavior that is, in fact, criminal. . . . Sending young people into the criminal justice system unnecessarily is a brutal form of abuse with consequences, for the child and for society as a whole, that can last a lifetime.

While I did not expect James to engage in a lengthy discussion of the "school-to-prison pipeline" or "zero-tolerance disciplinary policies," had he done so, he could have accomplished something that other RHYC training facilitators had not—offer an example of a serious problem in the criminal justice system. Whereas Sergeant Alicea suggested that police misconduct is rare and innocuous, James could have taken the opportunity to acknowledge the troubling "criminalization of the classroom"—a subset of the larger phenomenon of the "criminalization of youth." Such an admission would have stood in contrast to the image of the criminal justice system as only slightly (and harmlessly) flawed; such truth-telling might have served to instill greater confidence in the criminal justice system—one of the purported goals of the RHCJC.

To the best of my knowledge, the "school-to-prison pipeline" and/or "zero-tolerance disciplinary policies" have never been the subject of any RHYC training or workshop. A presentation on the "school-to-prison pipeline" was made to Youth E.C.H.O. kids in January 2009 by a representative of the New York Civil Liberties Union (NYCLU) as part of Youth E.C.H.O.'s "stay-in-school" campaign. For more on the NYCLU's opposition to the "school-to-prison pipeline," see www.nyclu.org/schooltoprison.

[263] Welch and Payne (2010); see also http://www.advancementproject.org/our-work/schoolhouse-to-jailhouse; http://www.stopschoolstojails.org/. For a recent—and perverted—example of "preparing" students for jail, see Pfeifer (2012).

[264] The responsibility for school safety was transferred to the N.Y.P.D. in 1998. For a discussion of the abusive treatment that students in New York City's public schools endure at the hands of overly aggressive SROs, see, e.g., Herbert (6/2/07; 6/9/07); Lieberman (2008). For a discussion of the growth in the numbers of police officers and school safety agents across the country, including New York City schools, see, e.g., Kupchik and Bracy (2010). According to Urbina (10/12/09:A16), "Education experts say that zero-tolerance policies initially allowed authorities more leeway in punishing students, but were applied in a discriminatory fashion. Many studies indicate that African-Americans were several times more likely to be suspended or expelled than other students for the same offenses." For a report on the disproportionate number of minority students arrested during public summer school in New York in 2011, see Bowen (11/29/11). More recently, the New York Civil Liberties Union (NYCLU) reported that the NYPD ticketed or arrested an average of fourteen students each day in New York City public schools between October and December 2011 (NYCLU News 2012a).

While Sergeant Alicea's message to the kids during the wtdwsbtp workshop was very much one about the importance of respecting police officers because they have a difficult job, James was very clear that he wanted the kids to understand that police officers have a lot of discretion—that there is an element of chance in whether one gets arrested and thus whether a case winds up in youth court or family court. Thus, whereas one could envision a law-related youth program in an institution of formal social control presenting the distorted image that cops enforce the law uniformly—one could imagine a program like youth court stressing acceptance of legal authority—James' message was more muted and less extreme. His goal was less one of ensuring mindless obedience than one that sought to provide the kids with tools to navigate the types of encounters and obstacles endemic in the lives of poor, urban minority youth.

This is not to suggest that James did not embrace the opportunity to promote pro-social behavior. He was in this session, as well as throughout my fieldwork experience, very clear that he did not want "his kids"—and by this, he meant those involved in RHCJC programs—to break the law. Thus, in as much as he saw youth court as an opportunity to train kids to help other kids, he also viewed RHYC trainees and members as subjects of social engineering—as much kids *to be helped* as kids *who could help*. And thus, his comments with respect to critical thinking and conflict management were as much intended to prepare the kids to serve on youth court as they were to better equip the kids for steering through their everyday experiences.

Essentially, James was in this session—as he was in other sessions that he led and in our private interviews—more pragmatic, than doctrinaire. More willing to accept the implications of stating, "Yes, the criminal justice system contains a lot of players who

possess an incredible amount of discretionary power," if he thought that doing so might keep kids out of trouble, than in attempting to indoctrinate them into believing that the criminal justice system perfectly represents the principles of legal liberalism and the rule of law.[265]

That said, while James might not have tacked as far as Sergeant Alicea—while James might not have encouraged blind obedience to authorities or total submission to the law—he also steered clear of encouraging the kids to question the status quo. For example, in an interview after this particular training session on "Critical Thinking," James explained

> [What] I think we really have to focus in on [is that] we are representing what is a law and what's not the law, right. . . . [T]he first [thing] that we're trying to train them is that here in the city that you live in, here are what the laws [are]. We try to make it as black and white as possible. Here are the laws; here's what's the violation, and here's why you can wind up here in youth court or in family court.

When I probed further and inquired whether James thought that RHYC trainings could involve more of an examination of why certain laws might exist, what purposes they are intended to achieve, whether they achieve those ends or have some other unintended consequences and effects, and whether options besides legal proscription might better ensure certain results, James replied:

> [M]aybe as the kids get more comfortable and we have more in-service trainings, I think there should be—and, again, depending on who the coordinator is, there probably could be more back and forth dialogue, why

[265] "Legal liberalism" (or "liberal legalism") is the legal or political theory that politics should be constrained by legal constitutional boundaries. The foundations of legal liberalism in modern, pluralistic societies, Silbey (2005:325) explains, are "due process, treating like cases the same, and equality before the law." According to Klare (1982:143), to offer another example, it "characteristically serves as the philosophical foundation of the legitimacy of the legal order in capitalist societies. Its essential features are the commitment to general, democratically promulgated rules, the equal treatment of all citizens before the law, and the radical separation of morals, politics, and personality from judicial action" (internal footnote omitted). While James might not have preached faith in the rule of law, the kids, as I argue in Chapter 22, come to believe in the rule of law over the course of RHYC training.

> do you think what you think? How would you handle a case like that? If you want to change it, what would you do? I mean I think these are all the question that we could talk about, but at the end of the day, then you could spend every training of every day talking about every one of our laws. . . .
>
> But I do feel like at the end of the day what we try to teach . . . is that here's what the law is, and that's what we're here to tell you, whether you agree [that something should be] illegal or not or should be, is not really the question. Does the police have the right to [arrest you]? The answer is yes, and you should know that.
>
> You know, is smoking a blunt in New York City legal? The answer is no. If you choose to, well, you understand now what could happen. That's really what it's about, but you remember our youth court is not about particular incidents; it's really about the young person in general. And that's what we hope that—we tend to find out more of the story.

James' comments demonstrate the RHYC's commitment to instructing its trainees in "the *what*" of the law (i.e., what the law is) and "the *how*" of the law (i.e., how the law responds to violations thereof and how the kids can play a role in this process), rather than teaching prospective members to think and raise questions about *why*, *to what end*, *what else might exist*, and *whether changes in/to the law could/should transpire*; James' final remarks here demonstrate that the RHYC tries to look beyond the incident that precipitated the youth court appearance in order to identify the potential root causes of respondent's delinquent behavior—much the way that Judge Calabrese attempts to do with adult criminal defendants. Taken together—this privileging of "the *what*" with the eschewal of "the *why*" and the search for individual root causes—conveys a message to the trainees that the law is (or should be considered) immutable and that the source of a delinquent act or criminal offense *can only* be found in the individual respondent or defendant; examining and potentially finding fault in a law, set of laws, or larger system

or structure becomes verboten—a point explored in greater detail in subsequent chapters.[266]

[266] This eschewal of "the *why*" stands in contrast to Hirsch's (2002:25) notion that "raising legal consciousness should be primarily about empowering individuals—especially those not trained in the law—to take an active role in learning about and questioning law."

CHAPTER 11: WEEK III: OBJECTIVITY

Lt. Daniel Kaffee: Red?" (Tom Cruise)	"Colonel Jessep, did you order the Code
Judge Julius Alexander Randolph: (J.A. Preston)	"You don't have to answer that question!"
Col. Nathan R. Jessup [to Kaffee]: (Jack Nicholson)	"I'll answer the question!"
Col. Jessep:	"You want answers?"
Kaffee:	"I think I'm entitled to."
Col. Jessep:	"You want answers?"
Kaffee:	"I want the truth!"
Col. Jessep:	"You can't handle the truth!"[267]

According to Papke, "the pop cultural trial does not have to be 'accurate' in order to teach us something about law."[268] That "something" might be procedural or substantive. It could be aspirational or admonitory. What we learn might be about the possibility or impossibility of justice under the law.

For RHCJC staff members, the above exchange between Col. Nathan R. Jessup and Lt. Daniel Kaffee in *A Few Good Men*, while unlikely to occur in a trial or court martial proceeding, represents something *to be avoided*. RHCJC staff members, including, but not limited to RHYC coordinators, often stated that they employed a "hot jury" model (whereby the jury asks the respondent questions rather than passively listening to direct and cross examination) so as to avert interactions between the Community Advocate and the respondent like the one between Jessup and Kaffee. As

[267] *A Few Good Men* (Castle Rock Entertainment & Columbia Pictures, 1992).
[268] Papke (1999:931).

James Brodick explained to me at one juncture, "We . . . created a system that was non-adversarial . . . because we didn't want 'you can't handle the truth!' scenes."[269]

While RHYC trainees were never shown this clip from *A Few Good Men* as a paradigm of what *not to do* or as a demonstration of what youth court *is not*, they were exposed to portions of *12 Angry Men*—the 1957 courtroom drama starring Henry Fond and Jack Klugman. Elsewhere, I describe how for many RHYC trainees, *12 Angry Men* arouses confidence in the rule of law (or, at least, in criminal justice processes) and inspires them to believe that they can play a part in the system and in achieving justice.[270] Here, I recount how the beginning of the film was used to introduce the RHYC training session on "Objectivity."

On the day of the RHYC training session on "Objectivity," I arrived at the RHCJC at about 4:15 p.m. Some kids had already started to gather in the mock courtroom and Ericka was there setting up a video. The kids seemed excited about watching a film. At 4:30 p.m., Ericka pressed play and the opening credits appeared on the screen.

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[269] It bears mention that just because the RHYC has diminished the role of the Youth Advocate and Community Advocate so as to decrease the chances of Jessup-Kaffee-like exchanges does not mean that a "hot jury" cannot uncover (or feel that it has discovered) the truth. In fact, an argument could be made that a "hot jury," at least in some instances, is actually *more* capable of ascertaining the truth (or, at least, believing that it has). Rosen (2006) describes an attempt in Morocco to introduce a jury system. The experiment, Rosen explains, turned out to be a failure:

> According to those who participated in some of these trials, the fact that jurors could not engage the parties to the case in direct conversation was tremendously frustrating. These jurors told me that it was not possible, without having such interpersonal contact, for them to determine if the person was telling the truth. And if one watches the ways in which Moroccans assess others, this is perfectly comprehensible: They simply must engage the other in direct discussion if they are to feel they have the information they need for appraising him. In the absence of such a relational mechanism jurors found themselves at a loss to decide many cases, and the whole experiment was abandoned (2006:151-52).

Essentially, those who participated in these Moroccan jury trial experiments, wanted a "hot jury" model like that of the RHYC and, in the absence of being able to ask questions, felt that it was impossible to determine if someone was telling the truth.

[270] See Brisman (2010/2011:1057-64).

Initially, the trainees were not too interested in the film. Some groaned that the film was in black and white. Others wanted to know why Ericka could not show the recently-released film, *Takers*, starring Chris Brown and T.I. Ericka had to pause the film and, with hands on her hips, order the kids to be quiet. When the film resumed, the kids continued to whisper to each other and Ericka had to shush them. It was easy to see why the kids were indifferent. After all, "it was like an old-time movie—it was black and white," said Kalia in an interview at a later juncture, involving "a bunch of white dudes sitting around a table talking," said Clayton—also in a subsequent interview. But soon, the whispers ceased and a few minutes later, it was clear that the trainees were enthralled. When Ericka stopped the film after about ten or fifteen minutes, the kids groaned: "Can't we watch the whole thing?"

"No," Ericka replied, finding it hard to conceal an "I-told-you-so" smile. "That would take a couple of hours."

"Do they really pass notes like that?" Prince asked.

Ericka did not answer. Instead, she asked the kids what they saw in the film and what kinds of "techniques" the jurors used to help reach their decision. A number of hands went up and kids responded that the jurors passed notes, voted, asked questions, and reasoned.

"Why did the jury keep changing the technique?" Ericka inquired.

"Some wanted to go home," one kid offered.

"Two went along with what was going on [rather than voting their conscience]," another replied.

Ericka nodded. Switching gears, Ericka asked: "What was the point of watching this clip? What's today's training about?"

"Objectivity," the kids answered in unison.

"What does 'objectivity' mean?" Ericka inquired.

"To think critically," one kid stated.

"To disagree," another replied.

Ericka then instructed the kids to look at the wall, where a poster-size piece of paper revealed the following: "Objectivity: Not being affected by personal feelings or prejudice."

Ericka and the kids talked a bit about the importance of objectivity and the kids seemed pretty engaged and eager to participate. The discussion was pretty informal with a lot of side-chatter. Ericka did not seem to mind until she overheard one of the girls using the term, "foreman."

"Fore*person*!" Ericka declared. "There could be women on the jury."

With that, Ericka motioned to Mouhamadou and Sharece to distribute a handout, and started to explain that the kids would need to pair up to work on it. I raised my hand.

Ericka called on me and the kids turned around. (I had been sitting in the back.) Standing, I told the kids a story about an experience I had while clerking for the Honorable Alan S. Gold, United States District Court for the Southern District of Florida. I recounted how during the lunch break in a criminal case, a lawyer whom we had never seen before knocked on the door to the judge's chambers. The secretary and I opened the door and the lawyer, panting, announced that he had to speak to Judge Gold. We were about to send the lawyer on his way—one of my jobs was to shield the judge from public

queries—when Judge Gold appeared and indicated that he would speak with the lawyer. Grateful, the lawyer explained that he had been riding down in the elevator of the court building when the elevator stopped at our floor and a juror got on. The lawyer recounted how he and the juror had made small talk before the juror mentioned to the lawyer that jury duty "was all about putting the guy away." The lawyer thought that this statement might reveal bias on the part of the juror and wanted Judge Gold to be aware of what had transpired. Judge Gold thanked the lawyer, but did not indicate to him—or to us, for that matter—what he would do with the information. Later, however, he dismissed the juror.

When I finished my story, a couple of kids expressed surprise that the lawyer had "ratted" on the juror. A few others seemed surprised that Judge Gold had dismissed the juror. Looking at Ericka for approval, I explained that the job of the jury in such cases is not to "put someone away"—or even to determine an appropriate punishment—but to do ascertain whether the individual has committed the crimes for which he has been charged. I underscored the point Ericka had made throughout the training session that while the RHYC does determine guilt or innocence, the kids still need to be objective. "This means treating each case differently and treating each individual differently," I said. "Not all fare evasion cases are the same. Not all truancy cases are the same."

"You may feel a certain way about certain offenses—and that's fine," I continued. "But you shouldn't enter the courtroom with preconceived notions of what the proper sanction is for those offenses. You can't think of the crimes in the abstract . . . ."

My voice trailed off and, somewhat awkwardly, I smiled and quickly sat down. "Had I said too much?" I worried. "Had I stepped on Ericka's toes?"

Ericka thanked me for my comments and then turned to the handout, entitled "Objective or not? Worksheet." Ericak repeated her instruction for the kids to pair up and then told them that they would have to decide whether each of the questions on the page were "biased"—a word that she did not define. If so—if a question was biased—she explained, the kids would need to rewrite it.

Ericka then asked the kids if they understood their assignment. They nodded and Ericka indicated that they could begin.

I stood and made a B line for Ericka. Nervously, I inquired whether it was ok that I had spoken. She assured me that it had been fine and thanked me again for my comments. I sighed in relief and we chit-chatted a bit. After awhile, Ericka reconvened the group to review the questions.

Below, I have written the questions, along with some of the answers offered by the kids. Proposed replacement questions offered by the kids that Ericka rejected as biased have been crossed out, whereas words that the kids identified as problematic appear in boldface.

- Is your neighborhood **grimy**?
  - What type of neighborhood do you live in?
  - ~~Is your neighborhood safe or unsafe?~~
  - Do you feel safe in your neighborhood?
  - Is your neighborhood safe?
  - *Describe your neighborhood.
    - [Some kids pointed out that this was not a question, but a command. Ericka responded that it was still ok because it was essentially asking, "How would you describe your neighborhood?"]

- Is something **wrong** with your family?
  - How would you describe your family?
  - Describe your family's behavior.
  - ~~Is your family functional?~~
  - What is your family like?

- Explain your family's behavior.

- Don't you think that you were wrong?
  - How do you feel about the situation?
  - How do you feel about your actions?
  - Did you make a bad choice?
  - Do you think you could have made a different decision?

- What do you do when you are with your friends?
  - The kids mostly agreed that this was not a biased question.

- **Don't** you want to do **anything** with your life?
  - What's your goal for the future?
  - ~~Would you like to have a career in life?~~
  - What do you want to achieve in life?
  - What do you want to do?
  - What do you want to do with your life?

- How did you get involved in this situation?
  - Not biased.

- Do you have an attitude **problem**?
  - Are you angered easily?
  - How do you present yourself?
  - ~~Can you control yourself?~~
  - How do you interact with others around you?

- Are you a bad influence on your younger siblings?
  - What is your relationship like with your younger siblings?
  - What kind of influence do you have on your younger siblings?

- What did you do when the police arrived?
  - The kids mostly agreed that this was not a biased question.

- Why do you have such a low average?
  - How do you feel about your grades?
  - How do you do in school?
  - Are you satisfied with your average?
  - ~~Why are you doing poorly in school?~~
  - What are your grades like?

- Describe your relationship with other kids at school?
  - The kids mostly agreed that this was not a biased question.

After the worksheet on objectivity, Ericka dismissed the trainees. I was surprised. It was not yet 6:00 p.m. But the kids had been pretty engaged—or, at least, more so than they had been at the start of training that day—and perhaps Ericka wanted to end on a good note.

All in all, the session did not teach the kids too much about substantive law or legal procedures in adult criminal court, family court, or the RHYC, for that matter. But this was not at all unexpected for increasing the kids' knowledge of substantive and procedural law was not the point of the day's lesson. Rather, the session was intended to teach the kids something about how youth court cases *should* be approached. In this regard, I thought it successful—a sentiment that was confirmed by their relatively accurate use of the words "bias" or "biased" and "objective" or "objectivity" in subsequent training sessions and in hearings (described in the following chapter).[271]

What surprised me, however, was that Ericka did not stress the importance of objectivity for a judge or lawyer (or Community Advocate or Youth Advocate in the RHYC setting). Sure, jurors need to be objective, but so does a judge as the presiding officer of the court. And so do lawyers, Community Advocates, and Youth Advocates. Many times, attorneys have to defend clients whom they think are guilty or prosecute defendants whom they think are innocent. This is hard, but it requires objectivity. At the time, I thought Ericka could have stressed this. But as I came to understand the extent to which RHYC *jurors* "run the show," so to speak, in terms of asking the respondent

[271] It bears mention, however, that over time, some kids seemed to expand the definition of "bias" or "biased" to mean pretty much *anything* that could come across or be interpreted as negative. For example, in an interview with Clayton, I asked him to define "biased." He responded: "I think biased means like something like you don't want somebody to feel about what kind of question you're asking them. Yeah, something like that. So it's just trying to keep something like not biased from the people." Similarly, although less capaciously, Cornelia explained: "I feel like bias is not appropriate questions as in a way of

questions and eliciting information about the facts of a case, its surrounding circumstances, and the personal life of the respondent—a dynamic that I describe in Chapter 21—I realized why Ericka had kept the discussion focused on jurors.

Finally, I was surprised that Ericka had not made more of an effort to talk about "bias" and "objectivity" in other aspects of the kids' lives—a contrast to the approach taken by James in the previous session on "Critical Thinking." Early in my fieldwork, Melissa Gelber had explained that while her role at the RHCJC was not be a surrogate parent to kids involved in RHCJC youth programs, she loved the kids and treated them like her own. Over the course of my fieldwork, other RHCJC staff members—especially RHYC coordinators—would express similar sentiments. And on numerous occasions, RHYC coordinators and RHCJC staff, more generally, would comment on the goals of the RHYC for *its members*—objectives that included improving the kids' critical thinking and persuasive writing, building their self-esteem, teaching them about civic engagement, exposing them to different career possibilities, and offering them various educational opportunities (such as events on or around May 1 in honor of "Law Day," visits to college campuses, assistance with college essays, and tutoring). Given that the RHCJC views the RHYC as serving a broad purpose for its members, rather than merely viewing RHYC members as "employees" or as allies in the goal of helping wayward youth (i.e., respondents), I wondered why Ericka had not used the day's lesson as an opportunity to talk about the benefits of objectivity and the dangers of bias in the kids' daily social interactions. Kids can be incredibly judgmental and, as a result, incredibly mean. Given the degree to which Ericka had been troubled by some of the kids' virulent anti-snitching

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rudeness or disrespectful or a way of jumping to conclusions about how somebody can be if you never asked the question or if they are, or if they not."

ethos during the group interviews (see Chapter 4), I wondered why she had not seized the opportunity to discuss “bias” and “objectivity.”

CHAPTER 12: WEEK IV: PRECISION QUESTIONING/COURTROOM DEMEANOR

Sharece and Mouhamadou wanted to become better acquainted with the kids and thus had requested and received permission to conduct a warm-up exercise ("20 Questions") with them.

Nervous, Mouhamadou asked the kids if they had ever played the game. Some responded yes, others replied no, but most just muttered something unintelligible or said nothing at all. Mohammed explained that he could pick a person, place, or thing and that the kids would need to ask him yes/no questions in order to figure out what it was. "I'm thinking of something and it's a *thing*," he said. "Ok. Go ahead. First question."

No one moved. No one said a word—well, no one said a word to *Mouhamadou*. Some of the kids continued to whisper to each other.

"Who's got a question?" he repeated.

"C'mon guys," Sharece exhorted them.

Finally, a girl, exasperated and without turning around to face Mouhamadou asked, "Is it valuable?"

"Yes."

"Does it have to do with the law?" another asked.

"Yes!" answered Mouhamadou enthusiastically.

"Is it in the courtroom?"

"Yes."

"Is it big?"

"Yes."

"It is the table?"

"No."

"It is the jury stand?"

I was not sure to what the kid who asked this was referring, but Mouhamadou replied, "No."

"Is it the flag?"

"Yes!!!" shouted Mouhamadou, smiling broadly.

Shante, who was filling in for Ericka, approached the dry-erase board after Mouhamadou had finished the game of "20 Questions" and announced to the kids that the day's session would be run by Brett Taylor, a former Legal Aid attorney at the RHCJC who now worked for the Center for Court Innovation. "He provides technical support," Shante explained, and then wrote Brett's title, "Director of Technical Assistance," on the board.

Brett, who had just entered the mock courtroom, began by asking the kids if they knew why he was there and what he would be talking about during the training session. The kids frowned, looked at the dry-erase board, and then looked back at Brett. Finally, one of them raised his hand.

"Um, because you're the Director of Technical Assistance?" he ventured.

Brett smiled and nodded and asked the kid if he knew what that meant.

"You do like things with computers, right?" someone else offered.

Brett, still smiling, replied that he did not fix computers. His position, he explained, entailed coordinating visits to the RHCJC. Earlier that day, he continued, he

had received an email from a woman in Japan expressing a desire to visit the RHYC in a few weeks.

"So I'm facilitating her visit," Brett stated. "I facilitate visits to the Justice Center." (I was not sure of Brett's point. Was her trying to give the kids a heads-up that they would be having visitors in the not-too-distant future? Was he trying to inform the kids that they are at a world-famous institution?)

Brett then asked the kids (again) if they knew what he was going to talk about that day. The kids replied in the negative, so Brett inquired whether they had received a training schedule. A couple mumbled that they had, but had left it at home. Brett said that the day's session was entitled, "Precise Questioning and Courtroom Demeanor," but that he would begin by showing them a trick.

Brett produced a paper bag and opened it. He reached in and pulled out a block of wood with a nail hammered into it. Only a small part of the bottom was hammered in so that most of the nail was sticking out (see Image 12 as a reenacted example).

Image 12: Nail Trick (Reenacted). Photograph by Avi Brisman.

Brett produced fourteen nails and asked the kids if they could figure out how to balance fourteen nails on top of the one nail. Several kids raised their hands indicating that they thought they could do it. One by one, the kids went up and tried. One succeeded in standing one nail on top of the nail that was hammered into the block (see Image 13 as a reenacted example).

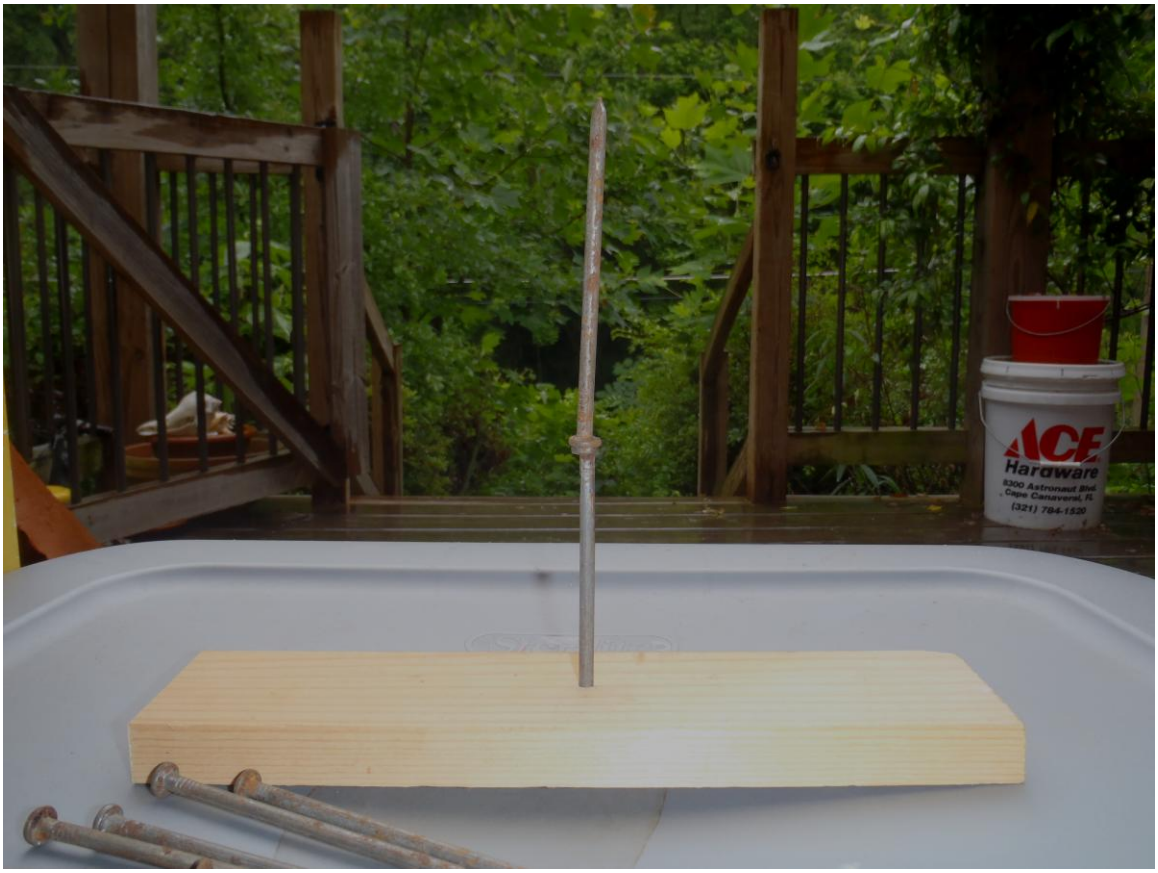

Image 13: Nail Trick (Reenacted). Photograph by Avi Brisman.

But none of the kids got past one. Finally, Brett showed them how to do it. He placed one of the fourteen nails on its side on the table next to the block. Then he placed six nails on one side of the vertical nail and six on the other side so that there was essentially one nail lying vertically with twelve nails placed perpendicularly on top of it. Brett placed each of these horizontal nails over the edge of the vertical nail so that it looked something like this:

Image 14: Nail Trick (Reenacted). Photograph by Avi Brisman.

Brett then placed the final nail—the fourteenth nail—on top of and parallel to the vertical nail (but in the opposite direction). Holding the two ends of the vertical nails in his fingertips, he lifted all fourteen nails and balanced the bottom vertical nail on the head of the nail that was hammered into the block (see Image 14 and 15 as reenacted examples).[272]

[272] Descriptions and video demonstrations of this puzzle are abundant on the Internet. For the former, see, e.g., http://www.stevespanglerscience.com/experiment/balancing-nails-trick; http://www.sciencemuseum.org.uk/~/media/D16461E80E984CBE8406313737D70FF6.ashx; for the latter, see, e.g., http://www.metacafe.com/watch/304614/trick_of_a_dozen_nails/.

Image 15: Nail Trick (Reenacted). Photograph by Avi Brisman.

Image 16: Nail Trick (Reenacted). Photograph by Avi Brisman.

The kids seemed underwhelmed. Some muttered that Brett had asked whether anyone could balance *all* the nails on the head of the nail in the block and that what he had done was balance eleven nails on one nail and that one nail on the head of the nail in the block. If unimpressed, the kids were at least engaged.

Brett explained that he performed the trick for two reasons. First, he said, he wanted to show them that "you're not as smart as you think you are." "And second," he continued, "I wanted to show you how to ask questions."

The trick had, indeed, succeeded in drawing the kids in—in getting them interested in the day's session. But I had never sensed that the kids were cocky or thought of themselves as smart. They rarely, if ever, presented "know-it-all" attitudes. Moreover, I was not sure if the trick had any connection to the art of questioning.

Admittedly, the trick did require one to exercise one's problem-solving skills. But the kids had not *asked* Brett questions about how to figure out his challenge. They were not quizzing him on how to balance nails. They were simply trying (and failing) to balance nails. Mouhamadou's game of "20 Questions" had involved more questions.

Shifting gears, Brett described how he had served as a public defender for ten years—six of which had been at the RHCJC. "Have any of you ever conducted a cross-examination before?" Brett asked. His question seemed like a non sequitur.

The kids looked nonplussed. Finally, one of them asked, "You mean like a test?"

I, too, was confused. And for the kids' sake (and because Ericka was out and Shante, who was covering for her, had stepped out of the room), I was tempted to walk over to Brett and tell him that the kids' had not yet covered cross-examinations in their training. "Maybe Brett was trying to find out whether any of the kids participated in his/her debate team or mock trial team?" I wondered. But then it dawned upon me that maybe Brett's question was akin to the question I have asked my students when we cover qualitative research methods in my Introduction to Anthropology and Introduction to Sociology classes: "Have any of you ever conducted an interview?" Most of my students reply no. When they reply in the negative, I them explain that, at some level, they are *always* interviewing—or, at least, they are asking questions in ways that interviewers pose questions. Maybe this was Brett's point too—that there is something normative about cross-examination?

I was correct. Brett explained that *all* of the kids had previously conducted cross-examinations. "For example," Brett said, "Suppose a friend comes back from a date. What are you going to ask him?"

The kids' hands shot up.

"Why did you go out with that person?"

"Where does he/she live?"

"What does he/she look like?"

"When did you go out with him/her?"

Brett nodded in response to all of these and then stated that one of the goals of the day's session was to take some of the skills that the kids already had and to develop them further. Had I wanted to argue with Brett, I would have reminded him that *cross-examination* is the formal questioning of a witness by the party *opposed* to the party who called the witness to testify, and thus, while a kid may *grill* his friend about a date or a fight, he probably would not seek out his friend's date or enemy and ask him/her questions. But Brett's mission—like the point I try to make with my students about interviewing—was to try to break down the perceived differences and gaps between what the kids do in their day-to-day lives and what they would do as youth court members (even if cross-examination does not take place at the RHYC because there are no witnesses and the respondent has admitted guilt).

Next, Brett asked the kids if they were familiar with the difference between "open-ended" and "close-ended" questions. The kids shook their heads, so Brett told the kids that we would demonstrate how they could remember the difference. Brett walked over to the dry-erase board and drew the following:

Q ◄ A

Q ►A

Brett explained that with the first triangle (◄), a "small" question (or a "pointed" question) leads to a "big" answer. That is an "open-ended" question. With the second triangle (►), a "big" question (or a "broad" question) leads to a "small" answer (or a "pointed" or "specific" answer). That is a "close-ended" question.

"Make sense?" Brett inquired.

The kids, who were furiously jotting down what Brett had written and said, nodded their heads without looking up from their papers.

"How many of you want to be lawyers?" Brett asked. Of the twenty-one kids in attendance, about five or six kids raised their hands.

"You guys are part of a big movement here in criminal justice," Brett replied. "It's called problem-solving justice. It let's us get to the underlying issue that gets to the matter." As an example, Brett described a hypothetical drug user who steals. Brett reasoned that if the user gets caught stealing and is sent to jail, he is going to steal again when he is released. "The only way to stop this is to get the guy some treatment," Brett explained. "Problem-solving justice asks, 'What is the problem that brought you into court so that you don't come back to court?'"

The kids nodded, although it was not clear whether they were indicating that they understood Brett's statement about problem-solving justice, agreed with it, or were simply acknowledging that they had previously heard the term, "problem-solving justice," and a description thereof. Brett informed the kids that the questions that they will need to ask during youth court proceedings will help reveal the underlying reasons for the respondent's offense. "Your questions get to the *real* cause of what gets them here," Brett said with conviction.

"You want mostly open-ended questions," Brett continued, "because you want to hear their stories."

Switching gears, Brett asked the kids if they knew what a "CD" was. Most of the kids responded that it stood for "compact disc." Brett replied that yes, "CD" could stand for compact disc, but that if he were talking to an accountant or banker, it might refer to a "certificate of deposit." If he were talking to a public defender or a prosecutor, it might refer to a "conditional discharge." Brett explained that there was a "time and place for everything" and that slang was not appropriate in the courtroom because it could create confusion.

Brett then offered another example. He asked the kids what they would think if they heard the phrase, "popped 'em." Most of the kids responded that they thought it would mean that someone had been shot—that "popped 'em" equaled "shot 'em." Brett, looking at me, for I was the only one in the room close to his age, explained that when he was younger, "popped 'em" meant "hit 'em." I nodded, distinctly recalling how my high school classmates would use the expression "popped 'em," as in, "Ed and Paul got it on right before 8th period. Ed popped 'em in the face and then Paul had him in a headlock until the teachers came."

The kids seemed surprised to learn this alternative meaning to "popped 'em" and so Brett asked them what they would think if they heard the phrase "snuff 'em." Most of the kids responded that they thought it would mean that someone had been hit in the mouth—that "snuffed 'em" equaled "hit 'em in the mouth." Again, Brett looked at me, and said that when he was younger, "snuffed 'em" meant "kill 'em." Again, the kids

looked surprised to hear this definition and I wondered whether they had ever seen any movies that could be labeled a "snuff film."

Although Brett had made his point, he clearly seemed to be enjoying the exercise and thus offered the kids one more example. "What about drilling 'em?" Brett asked. "What would you think if you heard 'drillin' 'em'?"

Most of the kids responded that they thought it would mean that someone was "looking bad" at someone. "Like staring at someone," one girl stated.

"Yeah, like you're wanna fight 'em," said another.

Brett acknowledged his familiarity with the kids' definitions, but then revealed that when he was younger, "drilling 'em" meant "to ask someone hard questions." I smiled, but did not nod. "*Grill* means to ask hard questions," I thought to myself. "*Drill* means to impart or communicate by repetition. As my mother used to say, all too often when I was a child, 'Avi, we're not going anywhere until I've drilled these vocabulary words into your head."

Brett summed up that slang could cause confusion because one does not always know how something is going to be interpreted or understood by someone else. Brett looked at his watch and sensing the need to speeds things up, started listing key principles of and practices to employ in public speaking, such as the importance of speaking clearly ("Don't ask questions too quickly," Brett advised. "Slow down!"), the significance of using tone and inflection so as to avoid speaking in a monotone, and the need to be "honest" in the sense of not trying to be someone else or adopt new personality traits (e.g., excitability) if one did not possess such characteristics.

Brett then explained how it was important not to write everything down because if the kids were to do that, they would end up reading what they had written which, if they lost their place, could induce panic. "You want to just write down some key words and to hold the paper like so" Brett held a piece of 8.5 x 11 inch paper vertically in front of him with each hand grassing a side lengthwise. "You want your thumb on each key word so that you can look up when speaking, return to the paper, know exactly where you are, and continue."

"Red shirts," Brett continued. "When you put that shirt on and sit in this court, it's the same as when I put this shirt on, this suit on . . . ." Brett paused to adjust his tie smoothen out his slacks. "It helps parents think that this serious. You don't want them to lose faith in the court."

Brett looked at his watch again and then at the papers he was holding, which I quickly realized included the curriculum for the "Precision Questioning/Courtroom Demeanor" training. Brett noted that while he differentiates between "open-ended questions" and "close-ended questions," youth court further distinguishes between "closed limiting questions," which produce short answers (e.g., "yes," "no," "good," "bad") and "closed specific questions," which request specific information, such as "The convenient store," "An average of 60." Then he offered a number of examples and asked the kids to indicate what kind of questions they were, which they were able to do correctly:

- Tell me exactly what happened that day.
  - Open.
- Where were you going when you got picked up?
  - Closed specific.
- Is the communication in your family good?
  - Closed limiting.

- Do you have any after-school activities?
    - Closed limiting.
- How old are the people who are living with you?
    - Closed specific.
- How did the police approach you?
    - Open.
- Describe a few good things about yourself.
    - Open.

The kids had demonstrated an understanding of the differences between "open-ended questions" and "close-ended questions" (including "closed limiting" and "closed specific"), so Brett concluded by asking the kids whether they had any questions for him about anything he said or anything about being a lawyer. They did not, which was not surprising given that Brett had devoted relatively little time to discussing the role of the lawyer—and much less than he would in contrast to Weeks #6 and 7 (Chapters 17 and 18)—so he dismissed them.

CHAPTER 13: WEEK IV: ROLES OF THE COURT

Ericka had asked me to lead this training session and I agreed. I had been a bit apprehensive about conducting a training session oriented around "soft skills"—such as critical thinking, in which the lesson is intended to teach trainees both tools relevant to youth court and to their lives outside the RHYC. I had feared that with my relative lack of experience teaching or working with high school-age kids, I might inadequately convey any material not directly related to RHYC operations. With "Roles of the Court," however, I felt that the curricular objectives (e.g., to teach trainees each youth court role and the major responsibilities of each role) were sufficiently simple and straightforward and more obviously linked to the RHYC that I could lead the session without feeling as if I had missed key components of the training and thus done the kids a disservice.

Shortly before the training session, Sharece indicated that she had a handout for me to distribute:

Court Roles

Jury:

- Driving force of the hearing
- Twelve are used in a criminal case, 3-8 in a Youth Court Hearing
- Work together as a team to reach a consensus

Bailiff:

- Introduces (announces) the case
- Instructs the audience, jury , and respondents
- Serves as clerk and can serve as tiebreaker for the jury if necessary

Foreperson:

- Address the court (i.e. Bailiff, Judge) on behalf of the jury
- Reads the verdict or sanction

- Facilitates discussion in the deliberation

Judge:

- Governs the courtroom and proceeding
- Instructs *all* courtroom personnel and guests
- Works closely with bailiff

Youth Advocate:

- Represents individual's concerns, similar to a defense attorney
- Emphasizes positive attributes of respondent
- Prepares closing statement that focuses on respondent's personal strengths and favorable information learned throughout hearing

Community Advocate:

- Represents community concerns, similar to the Assistant District Attorney or the prosecutor
- Emphasizes negative impact of offense on the community and the individual
- Prepares closing statement that focuses on the negative affects [sic] of an offense on the particular neighborhood and pertinent information learned throughout the hearing.

Sharece told me that I could give the handout to the kids at any juncture, but that I should make sure that I covered all of the material on it. I looked over the handout and then had an idea.

"Would you, Ericka, or Mouhamadou mind if I did an exercise with the kids before distributing the handout?" I asked Sharece eagerly.

"Sure," Sharece replied. "Most of the kids have already attended at least one youth court hearing, so they should have some familiarity with the roles. We've also been discussing them [the various roles in the RHYC] since the start. And like I said, you can do anything you want [during the session], just make sure that you cover the roles here," and she pointed to the handout she had given me.

"You got it," I said and quickly ran upstairs (Sharece and I had been in the RHYC offices in the basement) and created a document entitled virtually identical to the one that Sharece had given me. But I removed the definitions and for each of the roles, inserted the words "traditional court" and "youth court," so that my handout appeared as follows:

Jury:
- Traditional court:
- Youth court:

Foreperson:
- Traditional court:
- Youth court:

Bailiff:
- Traditional court:
- Youth court

Judge:
- Traditional court:
- Youth court:

Youth Advocate:

Public Defender/Defense Attorney:

Community Advocate:

Prosecutor/Defense Attorney:

When the session started, I distributed my handout and instructed the kids to fill out the sheet.

A hand immediately shot up.

"Yes?" I asked.

"What if we don't what some of these are?" Nikki asked.

"Which ones don't you know?," Brendan retorted, and then sneered, under his breath, "Dummy!"

"Yeah, like this is hard," Dyasia added sarcastically.

"Just do the best you can," I told Nicole and everyone else. "We're going to go over it."

I gave the kids some time to work on the exercise and then we reviewed their answers.

For the role of the jury in traditional court, some of the answers that the kids offered included:

"Decide guilty or not"
"try to judge"
"prove if a person is innocent or guilty"
"decide and gives verdicts"
"listen to facts"
"To decide whether a person is guilty or not"
"Give verdict of Guilty/Not Guilty"
"Decide Guilty/innocent, listen to facts, vote, 12 people"
"Decide guilty or not"

The most popular answers pertained to the numerical composition of the jury (12), and the jury's duty to decide guilt or innocence. Some of the kids thought that the jury's job was "to judge," but it was not clear from these statements—and I did not have the opportunity to probe more deeply—whether these kids thought that "to judge" encompassed something other than or more than deciding guilt or innocence. Nor did I have the chance to question the kid who stated that the jury must "prove if a person is innocent or guilty." Thus, I could not discern from this statement whether the kid had simply misused the word "prove" or had ascribed to the jury the role of a lawyer. Some of the kids also referred to the jury's job as one that entails "listening to facts" rather than one that involves hearing testimony and reviewing evidence to make a ruling about a

factual issue (e.g., whether certain events took place). Thus, for these kids, "facts" existed independent of the jury and jurors were not "fact-finders," but "fact-listeners."

In contrast, for the role of the jury in youth court, the kids stressed "helping" or "trying to help" the respondent, "questioning the respondent," and "giving sanctions that will benefit the respondent," although one kid claimed that the jury in youth court "decides and gives verdicts," some kids used the word "sentence" instead of "sanction" when referring to one of the duties of juries in youth courts, and there were varying degrees to which the kids thought that the youth court jury could "make" (as in *create* or *generate*) a sanction, rather than select from an existing list.[273] As with their answers to the jury in traditional court, the kids noted the numerical composition of a youth court jury (8).[274] Perhaps more interesting was the fact that a number of kids mentioned "consensus" and "agreement" as features of juries in youth court, but not juries in traditional court. While I could not ascertain whether the kids thought that juries in traditional court do not have to reach a consensus, I wondered if part of the reason for not stating "consensus" and "agreement" when discussion juries in traditional court was that the kids had recently watched portions of *12 Angry Men* where consensus is lacking.

The most interesting comments describing the jury in traditional court and youth court came from a youth named Isaac. Like his peers who mentioned numerical

[273] While some sanctions were pretty standard and existed throughout my fieldwork (e.g., community service, writing a letter of apology or an essay), others were eliminated or morphed (e.g., the decision-making workshop and goal-setting workshop were combined into one two-session workshop called Teens Overcoming Obstacles, Learning Strengths (or TOOLS)) over the time I was there based on perceived need and available resources (e.g., staff availability). The kids, while deliberating, could not come up with a new sanction, but they could recommend to staff members that a new type of sanction be created for future respondents.

[274] Kids who identified the numerical composition of a jury in a traditional court and a jury in youth court never indicated figures other than twelve (12) in the former and eight (8) in the latter. This suggested a belief that juries in traditional courts are *always* composed of twelve (12) people and that juries in youth court *must* consist of eight (8) people. As discussed in the session on "Judge and Bailiff," there is much more variety in the numerical composition of both.

composition, Isaac's comments pertained to *characteristics* of juries, rather than duties and responsibilities. With respect to juries in youth court, Isaac asserted: "It has all sorts of race[s]." Isaac had not said anything when we were discussing juries in traditional courts, so I inquired about his feelings with respect to juries in traditional courts. He replied, "I think it doesn't have enough different race[s]"—one of the few comments during the day reflecting issues of race and ethnicity in the law. I asked Isaac why he thought that juries in traditional courts lacked racial diversity—perhaps hoping that he had witnessed a jury trial at some juncture or could recount a story involving a friend or relative who had served on a jury or testified in a jury trial (or had some other role in a jury trial). But Isaac simply made reference to the racial composition of *12 Angry Men* as different from "everyone here" (pointing around the room). Unfortunately, the imperative of getting through all of the court roles precluded my further exploration of perceptions of racial diversity on juries.

After discussing the differences between juries in traditional courts and juries in youth court, we turned to the role of the foreperson. For this role, the kids were in general agreement about the nature of the foreperson's duties and responsibilities in both traditional court juries and youth court juries. With respect to the former, the kids offered answers such as "head juror," "speaks on behalf of the jury" (or "speaks for the jury"), and "runs the show." The kids thought that the duties of the foreperson in youth court juries were more or less identical to those of the foreperson serving on a jury in traditional court, with many simply responding "same thing" when I asked them about the responsibilities of the foreperson on a youth court jury. (Other kids simply repeated what they had said earlier, "head juror," "leader of jury," and "runs the show.") Some

kids, however, recognized that the youth court foreperson is charged with asking the first question during RHYC hearings, and a few others noted that the youth court foreperson reads the sanction. (Only one kid responded to my earlier question about the duties of the traditional court foreperson by stating that he/she "says the verdict to the court.")

As with the role of the foreperson, the kids demonstrated a fairly good understanding of the role of the bailiff in both the traditional court and youth court settings. In the context of traditional court, the kids described the bailiff's duties as "announcing the case" and "escorting the defendant" (although quite a few kids used the youth court term, "respondent," instead of "defendant").[275] In the context of youth court, some kids responded "same thing"—expressing their belief that the role of the bailiff in youth court was indistinguishable from that of the bailiff in traditional court—while others simply restated the answers they had given for the role of the bailiff in traditional court, e.g., "announces the case," "escorts the respondent." A few kids noted that the bailiff in youth court proceedings can "ask questions" (whereas a bailiff in traditional court cannot). These same kids also seemed to be the ones to remember that the bailiff at the RHYC can serve as a tie-breaker during deliberations if the jury cannot decide on a sanction.

While juries in both traditional courts and the RHYC hold a tremendous amount of power, the words "power" and "control" did not come up in the discussion of juries (although the kids did refer to the foreperson in both court settings as a "leader" or "head juror"). When discussing the bailiff, however, a few kids referred to the bailiff as an

[275] It was apparent that some kids were unfamiliar with the word "escort," pronouncing it as "excurt" or confusing it with "exhort."

"officer."[276] These same kids seemed to think that although the bailiff in youth court settings can ask questions (whereas the bailiff in traditional court cannot), the bailiff in traditional court has "more control" and "more power." When I inquired as to why these kids thought that the bailiff in the traditional court had more power, they responded with comments making reference to his (not *her*) uniform and gun. These kids also seemed to suggest that while both bailiffs "escort" the defendant or respondent, the bailiff in traditional court is exercising more force (i.e., holding the defendant's arm, rather than accompanying or walking by the side of the respondent). Only one kid indicated that she thought that it is the job of the bailiff in youth court to "make sure nothing gets out of hand."

When I asked the kids about the role of the judge in traditional court, they answered that the judge in a traditional court "decides the sentence," "dismisses the case," "listens to arguments," "keeps order," and "regulates the court." Although some kids referred to the judge in a traditional court as the "leader of the court" and as someone who "helps the jury," most of their answers pertained to duties involving sentencing decisions and case dismissal. In contrast, when describing the role of the judge in youth court, the kids emphasized the fact that the judge could "ask questions," but could not sentence or sanction. While it was unclear to me why the kids fixated on sentencing and case dismissal when offering answers with respect to the role of the judge in a traditional court or whether the kids thought that judges in traditional courts do not pose questions, the kids did seem to grasp that the judge in youth court does not possess a

[276] Use of the term "officer" did not appear to be a reference to "officer of the court." Rather, "officer" as a descriptive word for the bailiff in traditional court seems to stem from the fact that some of the "court officers" at the RHCJC—uniformed individuals who screen those individuals (and their belongings) coming into the RHCJC—also serve as bailiffs in Judge Calabrese's court (e.g., announcing the case).

lot of power. In fact, no one mentioned "power" at all when describing the judge (although there was some reference to the judge's role in maintaining order). If anything, the kids seemed to think that the judge at the RHYC was part of "the youth court team"—and that there was only *one* team (rather than different sides and an umpire)—a team charged with "helping the respondent."

Just as the kids demonstrated an understanding of the duties and responsibilities of the judge in youth court, the kids seemed to understand the role of the Youth Advocate and the Community Advocate—and, perhaps most importantly, the fact that the differences between the two were hardly as pronounced as the differences between a public defender/defense attorney and a prosecutor/district attorney. With respect to the Youth Advocate, some of the kids focused on the responsibility of the Youth Advocate to meet with the respondent prior to his/her hearing (e.g., "a person that talks to the person before they go to youth court," "talks to youth before court," "listens to the respondent and helps them to tell their side of the story"), while others emphasized the need for the Youth Advocate to illuminate the "positive qualities" of the respondent (in contrast to the Community Advocate's duty to highlight the "negative effects" of the respondent's actions on the community). Other kids seemed to envision the Youth Advocate as "speaking for" the respondent. This was an interesting conceptualization of the role of the Youth Advocate given that RHYC hearings center around the exchange between the jury and the respondent. But this choice of phrasing—"speaking for the respondent"—may simply reflect the flip-side of their understanding of the role of the Community Advocate—as someone who "speaks for the community" (or "speaks on behalf of the

community").[277] Indeed, those who used the phrase "speak for" tended to do so for both the role of the Youth Advocate and the Community Advocate.

While the kids presented relatively uniform answers in response to my queries about the roles of the Youth Advocate and Community Advocate, their answers regarding the duties and responsibilities of a public defender/defense attorney and prosecutor/district attorney reflected a wide range of ideas and understandings about these different kinds of lawyers. Some kids chose to describe the public defender/defense attorney as someone who "defends" or "represents," while others saw the public defender/defense attorney as "protecting the rights of someone who gets accused" (or "protecting individual rights") or as "serving the interest of the defendant." (The kid who defined the role of the public defender/defense attorney as "serving the interests of the defendant" also spoke of the Youth Advocate as "looking out of the interests of the respondent.")

With respect to the prosecutor/district attorney, some kids conceptualized his or her duties as similar to that of the Community Advocate (e.g., "speaking on behalf of the state," "speaking for the state or government," "the lawyer for the state"). Others, however, ascribed great power to the prosecutor/district attorney. For example, Dyasia asserted that the prosecutor/district attorney "helps the jury to decide if the person is guilty," while Kimberlee expressed the conviction that the prosecutor/district attorney

[277] Although the Community Advocate does "speak for" or "speak on behalf of" the community, one kid claimed that the Community Advocate "listens to the voice of the community and lets their [sic] voice be heard." While Community Advocates do not consult with community stakeholders about the impact of a specific offense (or even category of offenses) on the community—a point that I make at various junctures in this chapter about the amorphousness of the word "community" at the RHYC—the RHCJC as an institution likes to claim that it responds to community needs. Thus, while this kid's description of the Community Advocate was inaccurate, it did reflect how the RHCJC, as a whole, likes to view itself. While the RHCJC did seek out and secure community input and support prior to opening its doors (see Chapter 3),

"decides who is right and who is wrong." A couple of other kids even suggested that the prosecutor/district attorney "gives out the sentence" or "gives out the verdict."[278] Thus, while none of the kids repeated ADA Lockhart's stock phrase, "My job is to seek truth and justice," quite a few kids conveyed a perspective in which the prosecutor/defense lawyer has much greater power than what is afforded him/her.

After we had reviewed the roles, I distributed the handout the Sharece had given me. I then informed the kids that we would endeavor to further understand some of the differences between "legal players" in traditional court and those in youth court by watching some clips from a film.

"How many of you have seen the movie *Legally Blonde*?" I asked.[279]

Four or five kids raised their hands.

"Didn't we just watch that?" Nikki asked.

"Geesh," said Brendan. "That was *12 Angry Men*!" (He did not add "Dummy," this time, but it was implied in his voice.)

"It's 12 Angry *White* Dudes," said Daryl, eliciting laughs from everyone and a fist bump from Brandon.

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it is a matter of debate as to whether the RHCJC, by accident or by design, continues to solicit and respond to community concerns and wishes.

[278] While discussing the role of the prosecutor/public defender, one of the kids asked a question that required me to explain the difference between a civil and criminal case. Rather than simply saying that a "civil action" is noncriminal litigation—an action brought to enforce, redressI, or protect a private or civil right—and a "criminal action" is one instituted by the government to punish offenses against the public—I offered an example: if I sell my car to Mouhamadou for $5000 and the car falls apart when he comes to a red light, Mouhamadou could sue me. This would be a civil case. If I punched Mohamadou in the face because I was offended that he wore a blue shirt with black pants, I could be arrested and charged with assault and batter, which could result in a criminal case. I explained that in the latter situation, Mohammed's feelings about the case were irrelevant. He might care if I got jail or a fine, but it would not be his choice. He would not be a "player" in the case (although he might be asked to testify in court). If my punch were to result in Mouhamadou's loss of life, a prosecutor could charge me with murder; Mouhamadou's family could bring a wrongful death lawsuit.

"Yeah, it is *12 Angry Old White Dudes*," I said chuckling. "But no," I continued, turning to Nicole. "You haven't watched *Legally Blonde* here."

"Oh, is that with the Wayans [brothers]?" Trayvon asked.

"No," I replied, still chuckling. "This is with Reece Witherspoon. You're thinking of *White Chicks*."

"Oh, yeah, right," Trayvon replied. "That was a good movie."

"I guess," I said. "Ok. So here we go. We're going to watch some clips from *Legally Blonde*. But before we do—for those of you who haven't seen it—or for those of you who have seen it but have forgotten—I'm going to write the main characters on the board."

First, I showed the trainees a few clips in which Elle, who is serving as an intern for her professor (Victor Garber), interacts with Brooke Taylor Windham (Ali Larter), a famous fitness instructor—and former Delta Nu—accused of murdering her billionaire husband, Hayworth Windham. Next, I showed Elle's cross-examination of Chutney (Linda Cardellini), Brooke's stepdaughter, who has testified that she saw Brooke standing over Windham's dead body, covered in his blood. (Brooke has fired her attorney—Elle's professor—and has hired Elle to represent her, even though she is still a law student.)

After showing the clips—as with *12 Angry Men*, the kids asked to watch the entirety of *Legally Blonde* and groaned when I replied in the negative—the kids and I spoke a little bit about the different roles we had seen: Elle's relationship with Brooke (attorney-client), the judge's role (which I used to illustrate "issues of law" versus "issues of fact"), the jury's role (minimal), and the bailiff's role (virtually non-existent). We then

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[279] In this 2001 Robert Luketic comedy, Reese Witherspoon stars as "Elle Woods," a stereotypically rich, blonde, materialistic Delta Nu sorority sister who enrolls in Harvard Law School in an attempt to win back

discussed the ways in which the roles we had seen in the film differed from those in youth court. The kids responded by noting that the bailiff figures more prominently in youth court proceedings in that he can ask questions, and that the jury plays a much more important part in youth court proceedings because they ask the bulk of the questions. In contrast, the kids pointed out, the advocates in the youth court hearings serve less significant roles (or "monopolize less 'air time'," I suggested to the kids) than did Elle or the prosecutors. And Brooke, the defendant in the movie, did not take the stand, whereas the respondent in youth court cases is *the only one* taking the stand.[280]

Just as cop films and television shows do not accurately portray day-to-day police work (a point made by Sergeant Alicea in the wtdwsbtp workshop), Hollywood legal films are a poor representation of the actual practice of law—especially trials and courtroom procedure. Although I did take the opportunity to offer a few comments about differences between fictionalized (or dramatized) criminal law and real-world criminal law,[281] my main purpose in showing the clips from *Legally Blonde* had not been to distinguish between the "silver screen" and "real world" adult criminal court trials.[282] Rather, I used the film as a tool for helping to identify ways in which criminal court (both

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her preppy boyfriend, Warner Huntington III (played by Matthew Davis).

[280] See Brisman (2010/2011:1056).

[281] See Brisman (2010/2011:1055-56).

[282] As such, I did not discuss with the kids the fact that "surprise witnesses" are not part of real trials. (Usually, parties have deposed each other's witnesses prior to trial, thus greatly diminishing the chances of even unexpected statements and new information coming to light when a witness is on the stand.) Nor did I inform the kids that murder trials normally occur years after the death (meaning that there is no way that Chutney would have had the same perm on the stand as she had when she had accidentally shot her father). I also made only passing reference to inaccuracies in the scope and timing of cross-examination in *Legally Blonde*. (Because Chutney had already taken the stand, Elle would not have been able to cross-examine her again. While attorneys can recall witnesses, it is usually for the purposes of clarifying something that has already been asked and answered, rather than to pose new questions and seek new testimony. Elle's line of questioning would have exceeded the scope of Chutney's initial testimony). And finally, I did not use the occasion of showing clips from *Legally Blonde* to disabuse the kids of the belief—assuming they were even under such an impression—that in a real trial, prosecutors and defense lawyers are not permitted in the

fictionalized and real-world) differs from the RHYC, and for fleshing out youth court roles.

Legally Blonde also provided me with a means for highlighting, what RHCJC staff considered to be, among the core features of youth court—the relationship between the Youth Advocate and the respondent, and the nature of the interactions between the jury and the respondent. With respect to the first, I explained that while Elle's courtroom behavior was implausible and left much to be desired—except for the acquittal that she secured, that is—her interaction with Brooke, her client and the defendant, was laudatory. During preparations for trial, Brooke refused to provide an alibi. Elle visited Brooke in prison, won Brooke's trust, and elicited the alibi from her: Brooke was having liposuction on the day of the murder. But because public knowledge of this procedure would have ruined Brooke's reputation as a fitness guru—and because Brooke emphatically declared that she would rather go to prison for life than be exposed as a fraud—Elle promised to keep Brooke's secret safe and to find another way to convince the jury of her innocence. Making the respondent feel at ease and securing his or her trust is paramount, I reminded the trainees, and Elle's integrity—demonstrated by her unwillingness to reveal the alibi to other members of the defense counsel, despite severe pressure to do so—was worthy of emulation.[283]

With respect to the second, I clarified that in real-world adult criminal trials, cross-examination is often used to impeach the credibility of the testifying witness in order to lessen the weight of unfavorable testimony. While Elle succeeded in getting Chutney to admit a lie on the stand, I acknowledged, this was not the role of the youth

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course of direct or cross-examination to conduct lengthy monologues as Elle had (or as Andy Griffith playing Ben Matlock famously did in the late 1980s and early 1990s).

court jury—or any other youth court player. Understandably, the temptation to do so may arise—I cautioned the kids—especially in instances where they might hear separate cases involving respondents who committed an offense together (such as shoplifting or truancy) and whose versions of the facts differ. "But recall the goal of questioning in youth court," I urged the trainees. "You've been taught that the purpose of a youth court hearing is to understand the underlying reasons for the respondent's behavior in order to prevent future offenses (of this nature) by determining a "fair and beneficial" sanction—one that helps, rather than harms, the respondent and that offers reparation to the community." Juxtaposing Elle's cross-examination with proper youth court questioning protocol, I encouraged the kids to contemplate the individual roles of youth court personnel and the overall mission of the RHYC.[284]

After discussing the film, we had a little bit of time left, so I informed the kids that we work our way through a couple of exercises involving sample fact patterns that Sharece and Mouhamadou had created and distributed. I took a couple of minutes to review Brett's lessons from the previous session about open and closed questions and then asked for a volunteer. Matthew was the first to raise his hand and, following my instruction, read the first hypothetical scenario:

> Kwaniesha is 12 years old was referred to the Youth Court by the police for theft of service. She and her friend doubled up in the turnstile when entering the subway. Her academic average is in the 80s. She enjoys singing in the choir at her church but is not involved in any other after school programs. She would like to be a professional musician when she grows up. She lives with her grandmother, parents and two younger sisters.

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[283] See Brisman (2010/2011:1056-57).
[284] See Brisman (2010/2011:1057).

I instructed the kids to pretend that they were jury members. "What would you want to know?" I inquired. "What kinds of questions would you like?"

I jotted down the kids' responses, occasionally pointing out questions that, if rephrased, might elicit more information (or more specific information). In a couple of instances, I noted questions that seemed to repeat a question that had already been asked. We then turned to a second fact pattern:

> Jessica was referred to the Youth Court by a probation officer for an incident of assault. She got in a fight with another student in the stairway at school. Jessica reports that she regularly argues with this student and the student's friends. She feels that they start with her by speaking to her rudely. Jessica is failing several of her classes and often misses school. When asked by the jury, she tells the court that she skips school to smoke marijuana with her friends. She knows that going to school more would improve her grades but lately she has missed a large number of days to hang out and smoke. Jessica is not involved in any after school programs. She lives with her parents and an older brother. She is 16 years old.

Again I asked the kids to generate questions as if they were jury members. This time, however, I instructed them to think about the relationship of their questions to each other so that a question about the incident, for example, would be followed by another question about the incident, rather than a question about school and then one about the respondent's family or friends. "This is hard," I acknowledged, "because you have to listen to what your peers are saying while formulating your question. But you'll find out a lot more information if your questions flow—if one questions builds on another—rather than if you jump around asking about the incident and then school and then the incident and the family life and then back to school and so on."

This was, indeed, a bit more challenging for the kids and on a number of occasions, the kids started to ask questions only to realize that they were repeating something that had been asked or were taking the questioning in a new or very direction.

As with the first scenario involving Kwaniesha, I jotted down the kids' proposed questions. When they were done, I made a couple of observations about some questions could have come earlier or later, or about how they might have rephrased certain questions that they had asked. I then divided the room in half and asked the kids on one side to pretend they were Youth Advocates and the other side to envision themselves as Community Advocates.

"What kinds of things would you want to ask Jessica [the respondent in the second fact pattern] if you were her Youth Advocate? What kinds of things would you want the jury to know?" I asked.

"Same for you," I said to the other half of the trainees—the ones I had designated to be Community Advocates—after the first half had finished. "What kinds of questions would you pose to Jessica if you were the Community Advocate? What, as the Community Advocate, would you want to ask a respondent who had been involved in an assault?"

Because the jurors ask questions first and because the Youth Advocate is not exactly *representing* the respondent in the same way that a defense attorney represents a defendant (a difference that I will discuss in greater detail below)—indeed, because everyone with a role in a given hearing can ask questions—the distinctions between the roles are not nearly as pronounced as in a traditional court. Thus, it was tricky trying to elucidate for the kids what types of questions a Youth Advocate and Community Advocate might want to ask or not ask. I would like to think that I conveyed the fact that the Community Advocate might ask questions that focused on or clarified the impact or effect of the respondent's action or behavior—the *consequences* of the event or

incident—whereas the Youth Advocate might focus on or otherwise try to illuminate through questioning some positive characteristics of the respondent. But I may have been overly ambitious. And I knew that the kids would stand a better chance of grasping these nuances once they had been more formerly introduced to the roles of the Community Advocate and Youth Advocate in a couple of weeks.

After the two hypothetical examples, we were out of time, and so I dismissed the kids. On my way home, I reflected on the session.

When scientists want to study a possible cause-and-effect relationship, they often conduct *experiments*—artificially created situations that allow them to manipulate variables. If RHYC training were an experiment, then my involvement in this particular training session would have skewed the results (to say nothing of the potential Hawthorne effect that might have been brought about by my simply sitting in the sessions and observing the trainees). In the hour-and-a-half that I had spent with the kids, I had essentially taught them what I was trying to measure.

But I was not conducting an experiment. One way or another, the kids were going to be taught "roles of the court" that day. Had I influenced what they knew? Sure. But so would (have) *anyone*. That was the whole point—to teach the kids about the duties and responsibilities of the jury, bailiff, foreperson, judge, youth advocate, and community advocate. Had I provided them with more information than someone without a law degree? Probably not. Had I taught them more than someone conducting legal anthropological research? Probably not. Admittedly, I had shown clips from *Legally Blonde* so that the kids could engage in a comparison between legal players/personnel in Hollywood court (or, at least, the court in *Legally Blonde*), adult criminal

court/traditional court, and the RHYC. But with the exception of a few comments about ways in which criminal law, criminal procedure, and trial practice differed from the depictions in *Legally Blonde*, I had focused on the key terms and ideas in the curriculum. Unless Ericka, Sharece, Mouhamadou, and I had had administered a quiz on the distinctions were between various roles in traditional court and youth court, and then divided the trainees into two groups with one group learning "Roles of the Court" from me and the second group from someone else, and then retested the kids at the end and compared the results, there would be no way to know whether, how much, and in what ways my instruction might have affected the kids' legal consciousness. While, as facilitator, it was important that I cover the key terms and ideas given to me, the more important issue, as far as I was concerned, was whether I had, in describing various goals of the RHYC, somehow revealed something about my budding and emerging thinking about the RHYC. In other words, the question I should be asking myself, I reasoned on my walk home, was not *whether I had influenced what the kids knew*—that I had done and probably not too differently than anyone else—but *whether I had revealed any of my personal thoughts or feelings about the RHYC as a program or institution*.

I concluded that I had not. I had exercised great caution in stressing what I thought RHCJC staff considered to be among the core features of youth court—the relationship between the Youth Advocate and the respondent, and the nature of the interactions between the jury and the respondent—and had, in fact, sought confirmation from Ericka, Sharece, and Mouhamadou when I had made those points. The greatest risk, it seemed in hindsight, had not been whether I had affected what the kids *knew about the law*, but what they might *think or feel about their experience, their training, the*

RHYC, and the RHCJC. I had, to the best of my knowledge, avoided this pitfall. But I realized that as my impressions and opinions about the training, the RHYC, and the RHCJC would continue to develop, and as I would continue to get to know the kids and the staff better, I would need to be particularly careful about what I revealed—from facial expression and body language to what I said, what I did not say, when I participated, and when I did not participate.

CHAPTER 14: WEEK V: JUDGE AND BAILIFF

Ericka had already started by the time I entered the mock courtroom (which, I am guessing, was just a touch past 4:30 p.m.). I took my usual seat in the back of the mock courtroom and Mouhamadou, who was standing near the door, handed me a copy of sheet with the words, "The Bailiff," at the top.

Ericka asked for someone to read from the handout. Jeromy volunteered and read (most of) page 1:

The Bailiff

Throughout the hearing, bailiff should be aware of everything that is occurring gin the court room [sic] **and alert judge to any needs/situations that should be addressed.**

- At the start of the hearing, bailiff ensures that all members of the court are ready. Bailiff goes to courtroom door and escorts the youth advocate, the respondent, and his or her family to their seats.
- Bailiff distributes oaths of confidentiality and pencils.
- Bailiff calls court to order:

  "All rise, honorable Judge (first name) presiding."

- Bailiff collects oaths and pencils.

- Bailiff announces cases:

  Read number, respondent's first name, offense and date from bailiff form.

- Bailiff swears in youth offender:

  Bailiff stands in front of respondent.

"Raise your right hand. (Bailiff and respondent raise their right hands.) *Do you swear to tell the truth?"*
Respondent replies. Bailiff returns to his/her seat.

- The bailiff escorts the jury to the deliberation room, serves as a tie breaker in deliberation, and escorts the jury back to the courtroom.

If at any time during the hear [sic] **the judge grants a recess, the bailiff should escort the respondent and the Youth Advocate out of the court room** [sic].

Ericka thanked Jeromy for reading and then informed the kids that she had meant to tell them last week that they should attend RHYC hearings tomorrow or the following day so that could observe the different roles of the court. Ericka then asked for a second volunteer. Aimee raised her hand and Ericka indicated that she should start reading at the top of the second page of the handout.

ROLE OF THE JUDGE

Administer Oath of Confidentiality:

"Please raise your right hand and repeat after me:
I solemnly swear or affirm… (PAUSE)
To keep everything I hear…(PAUSE)
during this Youth Court session…(PAUSE)
completely confidential…(PAUSE)
YOU MAY BE SEATED

I would like to ask anyone with a beeper or a cell phone to please turn it off.
If you have any gum or candy, please dispose of it at this time. (*PAUSE*)
As the bailiff collects the Oath of Confidentiality, I will read it.

****** (Bailiff Announces Case)******

↓

Ask Community Advocate to introduce him/herself:
"Will the Community Advocate please stand up and introduce him/herself."

↓

As the Youth Advocate to introduce him/herself:
"Will the Youth Advocate please introduce him/herself."

↓

Request Opening Statement from Community Advocate:
"Does the Community Advocate have an opening statement?"

↓

Request Opening Statement from Youth Advocate:
"Does the Youth Advocate have an opening statement?"

↓

Call Youth Offender forward:
"(Name of Youth), please come forward and stand."

↓

Ask if Youth Offender would like to address the court:
"Do you have anything you would like to say on your own behalf at this point?"

↓

Ask Jury to question the Youth Offender:
"Does the jury have any questions for *(Name of youth)*?"

↓

Ask Community Advocate to question the Youth Offender:
"Does the Community Advocate have any questions for (*Name of youth*)?"

↓

Ask Youth Advocate to question the Youth Offender:
"Does the Youth Advocate have any questions for (*Name of youth*)?"

↓

Ask Youth Offender for closing remarks:
"Is there anything else you would like to say on your own behalf?"

↓

Ask Youth Offender to step down:
"Thank you. You may step down now."

↓

Ask Community Advocate for closing statement:
"Does the Community Advocate have a closing statement?"

↓

Ask Youth Advocate for closing statement:
"Does the Youth Advocate have a closing statement?"

↓

Ask Bailiff to escort jury to deliberation room:
"Will the bailiff please escort the jury to the deliberation room?"

Request sanction from the jury:
"Has the jury determined a sanction?"

↓

Ask Youth Offender if s/he understands sanction:
"Do you understand the sanction you have just been given?"

If no sanction has been issued, instruct the respondent to meet with a Teen Court Staff member to discuss the outcome of the case.

↓

Instruct Youth Offender to meet with a Teen Court Staff member at end of session:
"You will need to meet with a teen court staff member immediately after this Teen Court session to discuss the details of your sanction."

↓

Adjourn court:
"I would like to thank (*name of youth)* and the members of the Red Hook Youth Court for their participation in this evening's hearing. Court is adjourned."

When Aimee was finished, Ericka thanked her and then asked the kids: "What's the difference between our judge [Judge Calabrese] and a youth court judge?"

The kids looked at each other and then one girl shyly raised her hand and offered: "The youth court judge talks more?"

Ericka paused and replied, "No, not really. Good guess."

I was relieved. While the two-and-a-half-pages that Aimee had read made it seem as if the youth court judge speaks a lot, the kids would soon realize that the most of the exchanges in a RHYC hearing are between members of the jury and the respondent.

Jeromy then raised his hand. After looking to see if anyone else wanted to speak, for Jeromy had just read the first page of the handout, Ericka acknowledged Jeromy.

"The jury decides in youth court?" he suggested.

"Well, Judge Calabrese does decide here at the Justice Center," Ericka replied, "but there are some courts where the jury decides."

Ericka looked around the room and, seeing no other volunteers, explained that the RHYC does not send people to jail. I waited. I was expecting Ericka to say more—maybe not that a trial court judge determines issues of law, while the jury (or a judge sitting without a jury) determines findings of fact, but perhaps that the judge imposes a sentence if a jury determines that a defendant is guilty. Instead, she instructed the kids to look at the last page of the handout:

Judge's Reference Page

Objections:

If the community or youth advocate makes an objection:

- Ask for reason: **"On what grounds?"**

    - If you agree with the objection: **"Sustained. Jury, please rephrase the question."**

    - If you disagree with the objection: **"Overruled. (Name of youth), please answer the question."**

If the objection is that the question has already been asked, use your judgment and instruct the youth offender:

- **"Sustained. (Name of youth), you don't have to answer the question."**

- **"Overruled. (Name of youth), please answer the question."**

Emergency Situations:

1. If the bailiff or one of the jurors is being disruptive, you may ask them to leave the courtroom (using their role name):
    - **"Juror #____, please excuse yourself from the courtroom."**

Once they have left, resume the hearing.

2. If the Youth Advocate or Community Advocate are being disruptive, call for a 2-minute recess:
    - **"The court will now take a two minute recess. Youth Advocate, please escort your client from the courtroom."**

3. If a situation arises and you don't know what to do (and you have already tried all your options), you may ask an adult staff member to approach the bench:
    - **"Will a staff member please approach the bench?"**

Ericka did not call for a volunteer, but instead explained that the final page of the handout outlined what youth court judges should do in response to objections which, she added, happened very rarely. I looked down at the piece of paper. While Ericka was correct that the Community Advocate and Youth Advocate made objections—after all,

RHYC proceedings are fairly formulaic, consist only of testimony by the respondent, and do not follow the Federal Rules of Evidence (or any other evidentiary rules)—jury members often repeated questions, prompting the youth court judge *sua sponte* to instruct the respondent that he/she did not have to answer the repeated question.

Ericka split the kids into two groups—eight on each side. She then explained that they were going to play a game sort of like Family Feud. She would read a statement and pose a question and the kids would need to raise their hands and answer. Whoever raised his/her hand first would get to answer first. If he/she answered correctly, his/her team would receive a point.

"Got it?" asked Ericka.

The kids nodded and Ericka began. Below, I have listed the questions, followed by the kids' responses. Many of the first answers were correct and the kids were beginning to demonstrate familiarity with some of the youth court jargon.

1. The judge asks the Community Advocate if he/she has a closing statement and the Community Advocate asks for a two-minute recess. What should happen?
    a. One kid replied (incorrectly) that the Youth Advocate should say "objection."
    b. A second kid responded (incorrectly) that the Community Advocate should escort the respondent out.
    c. A third kid answered (correctly) that the bailiff should escort the respondent out.

2. An audience member is making fun of the respondent, but the judge doesn't notice. What should happen?
    a. One kid replied (partially correctly) that the bailiff should direct the judge to call a recess.
    b. A teammate added (partially correctly) that the judge should ask a staff member to tell the audience person to leave.
    c. Ericka added that if the audience member does not leave, a court officer should be summoned.

3. The respondent has been acting nervous throughout most of the hearing and suddenly breaks down. What should happen?

   a. One girl answered (correctly) that a two-minute recess should be called and the respondent should be escorted out.

4. The respondent enters the courtroom with a hat. What should happen?
   a. Initially, no one responded. Then Jeromy raised his hand and offered, "he should take it off." Ericka nodded, but clarified that the bailiff or judge should instruct the respondent to remove it.

5. The respondent removes the hat and his/her hair is a mess. Two jurors start laughing. What should happen?
   a. "Kick 'em out," Daryl declared. But he had not raised his hand so Ericka called on a girl on the other team, who stated: "The judge should dismiss the jurors who laugh."

6. The window is open and there are loud noises on the street. What should happen?
   a. One kid answered that the judge should close the window.
   b. Ericka allocated a point to the kid's team, but added that the bailiff should close the window.

7. While the jury is deliberating, (two?) members of the audience begin loudly discussing what they think the outcome should be. What should happen?
   a. None of the kids answered, so Ericka explained that the judge should order a two-minute recess.

8. There is a conversation going on in the audience during the hearing. What should happen?
   a. "The judge should call a two-minute recess?" Lynette asked.
   b. Ericka shook her head and the kids looked confused. No one else ventured an answer, so Ericka explained, "The judge should *call order*."
   c. "Aww . . . ." remarked Lynette as a couple of other kids on the opposing team replied, "Duh!!!!"

9. A juror asks a biased question. What should happen?
   a. Matthew raised his hand and declared, "The advocate—the *youth* advocate—should object."
   b. "Well," replied Ericka. "The judge should tell the juror that the question was biased and instruct him or her to rephrase it." Ericka then gave Matthew's team a point, but her statement suggested that the judge could, in the absence of an objection, direct the juror to rephrase the question. I was tempted to comment that in an adult criminal trial, the judge would not say anything about an inappropriate question *unless* there was an objection. But I decided against interrupting the game.

10. A juror asks a question that has already been asked. What should happen?

a. No one answered this question so Ericka explained that the judge should indicate to the juror that the question has already been asked and that he/she needs to rephrase it.

11. The respondent is speaking too softly. What should happen?
    a. "Speak up, son!" Sean said after raising his hand, and before adding, "The judge should tell him to speak up."

12. A juror is speaking too softly. What should happen?
    a. "Same thing," replied one boy. But he had not raised his hand so Ericka called on someone on Daryl's team—the team that had been penalized before for Daryl's answering before being called on. A girl on Daryl's team, upon being acknowledged, stated matter-of-factly, "The judge should tell her to speak up."

This marked the end of the game of Family Feud and Ericka told the kids that they would end early because she wanted them to try to come to RHYC hearings on either of the next two days. Before dismissing the kids, however, Ericka asked the kids how many jurors usually sat on a jury.

"Ten," shouted out one kid.

"Twelve," said another, "ya' know, *12 Angry Men*—the movie we saw."

"No," said one girl, "it's got to be odd. Otherwise, if there's a tie . . . ."

"No, they gotta vote the same," said a boy in response.

"Six."

"Five."

"Three."

"Four."

"Yes," replied Ericka. "Well, no. I mean, it could be," she continued. "If there are only enough for four jurors, then we hold a 'tribunal courtroom,' with a Youth Advocate, Community Advocate, Judge, and a Bailiff."

The kids must have looked confused, for Ericka then added, "But this hasn't actually happened. But we did prepare for it once."

"Ok, you can go," Ericka announced.

The kids got up and left without Ericka having told them the correct answer. Or, should I say, without Ericka having told them the answer for which she was looking. After all, the "correct" answer to the question, "How many people serve on a jury?" depends on the type of jury. A *grand jury* often consists of twenty-three people who, in *ex parte* proceedings, decide whether indictments should be issued. A *petit jury* usually consists of twelve people (although there is some variation and there may be as few as six) who are summoned, empaneled, and participate in the trial of a specific case. The composition of RHYC juries depends, in large part, on how many RHYC members show up to the RHCJC on the day of a hearing and how many cases the RHYC is scheduled to hear on that particular day. In Chapter 21, I describe cases with as few as four jurors (although the "tribunal courtroom" format was not used) and as many as eight jurors, with a typical jury consisting of seven-to-eight members. The reason that the composition of an RHYC can vacillate (without undermining the process of giving the respondent a chance to be heard, or impeding youth court's goal of repairing the harm done to the respondent, another individual, or the community, and developing the respondent's skills to prevent future offenses) is that the RHYC does not, as noted earlier, determine guilt/innocence. Jurors do, however, decide on sanctions, which require a simple majority vote. And the bailiff, as this particular training session taught the kids, serves as a tie-breaker.

CHAPTER 15: WEEK V: COMMUNITY ADVOCATE OPENING STATEMENTS

I walked into the moot courtroom and plopped myself on one of the tables.[285] Then, realizing that there were handouts, I got up and went over to another table across the room where there were three stacks of paper. As I was about to grab a copy from each pile, Sharece told me that I could have hers, which had all been stapled together and which contained the curriculum for the day. I took hers, returned to my table, and waited for the training session to begin.

And waited. I knew it was close to 4:30 p.m. A few minutes later, Sharece came over and told me that they were still waiting for someone from the DA's office to show up to lead the training. When I asked her whether Ericka was in, she shook her head. When I asked her whether Shante was in, Sharece shrugged. I quickly weighed my options: "If I continue to take charge of training sessions—or if I continue to demonstrate to the kids that I have decision-making authority—then they may be less likely to agree to be interviewed because they may think that I work for the RHCJC, despite Ericka's having already explained to them that I'm an outside observer conducting fieldwork at the RHCJC. But if I just sit here and see what unfolds, then I may find myself waiting and watching the kids wait for the start of the session. And this might not provide much in the way of insights into their legal consciousness."

I opted for the former and suggested to Sharece and Mouhamadou that they run the "Paired Share" warm-up exercise listed on the curriculum and that I would try to find

[285] Initially, I sat in the back of the mock courtroom to observe the training sessions so as to be as inconspicuous as possible. Only when Ericka or the training facilitator for the day convened the kids in a circle in the middle of the room (or asked them to engage in an activity in the middle of the room) would I sit off to the side of the mock courtroom on one of the tables. As the kids became more familiar with me

out who was supposed to facilitate the training.[286] I headed downstairs to the RHYC officers, where I found Shante. I told Shante that Ericka was not in and that the kids were waiting for someone from the DA's office to arrive.

"What should we do?" I asked, and then added, "Sharece and Mouhamadou are up there doing the 'Paired Share' exercise with the kids."

Shante replied that she had just arrived at the RHCJC (after having done a site visit all day long) and that she had just received Ericka's message that she would need to leave early to pick up her sick daughter from school. Shante then picked up the phone and called upstairs to the DA's office, but there was no answer.

Shante and I decided to head upstairs to wait until someone from the DA's office showed up, but on our way up, we stopped by the mock courtroom and noticed that two ADAs had, indeed, finally showed up. So I thanked Shante for her help and reentered the courtroom.

Because Ericka was not there and because I did not know the ADAs, I decided I would sit in the back, rather than sit on the table as I had initially. As the kids continued speaking with each other as part of the "Paired Share" exercise, Sharece came over to me and asked whether I had found Shante. I told her that I had and that we had been on our way up to the DA's office, but that when we saw that the two ADAs were in the courtroom, Shante went back down to the RHYC offices. Sharece commented that she

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and grew accustomed to my presence, I started sitting off to the side more regularly, which enabled me to better observe the exchanges between the facilitator/presenter for the day and the kids.

[286] The description of the "Paired Share" warm-up exercise in the curriculum read as follows: "Participants pair with someone they do not know well or have not worked with before in the training. Once paired, participants share two things they are excited about and two things that scare or intimidate them about serving on the teen court. Partners should discuss how members can share their strengths and what they can do to prepare for challenges. Selected pairs share back with the group."

and Mouhamadou had been "thrown to the sharks." "I mean 'wolves,'" she corrected herself. "We'd been thrown to the wolves."

It had not occurred to me when I was calculating whether to take charge of the training session or simply wait that my decision could impact *Sharece and Mouhamadou*. They are adults and, while not RHCJC staff, are, as AmeriCorps members, closer to being staff than I am. "Was Sharece trying to tell me that I should have sent her to find Shante or someone from the ADA's office rather than suggesting that she run a warm-up exercise? Had I run the exercise, that really would have conveyed the impression that I was RHCJC staff . . . ."

"I'm sure you did fine," I reassured her.

"On the job training," she replied.

Sharece then walked over to help one of the trainees, who had raised her hand. Then, after a few minutes, Sharece reconvened the kids and asked them to share their findings with the group. Mathew volunteered. "I don't want to look stupid and, um, I don't want to not make it," he said. "But I'm excited about being around the law and, um, I'm excited about being here. Yeah. That's it."

I did not get to hear the others because the two ADAs came over, introduced themselves as "Lawrence" and "Paul," and asked me what to do. "Why is everyone fucking looking to me?" I wondered.

I quickly glanced at the curriculum sheets that Sharece had given me earlier and then suggested to Lawrence and Paul that they introduce themselves, explain who they are and what they do, and perhaps offer a model opening statement. I then told them that after the model opening statement, they might highlight the types of points that they, as

ADAs, try to convey when addressing the court or a jury (although the RHCJC does not hold jury trials).[287]

Paul asked me whether they kids were all in high school. I replied in the affirmative—that they were mostly fourteen-, fifteen-, or sixteen-year-old—and that they had had some exposure to the roles in the court. I also explained to Lawrence and Paul that the kids had observed some RHYC hearings and seen part of *Legally Blonde* and thus were starting to understand some of the differences between fictionalized criminal law and criminal procedure and "real world" criminal law and procedure. (I made the "scare quote" motion with my fingers when I said "real world" and lowered my voice so that the kids would not hear me—after all, the youth court is *real*, it just follows different procedures than what the ADAs are used to in adult criminal court.)

[287] Although I had not read the curriculum for the day's session, my suggestions to Lawrence and Paul did not deviate significantly from the recommendations for what the guest presenter should do after the "Paired Share" exercise:

> The guest presenter shares a brief education and professional history. The presenter then engages participants in a brief discussion regarding the effects of an offender's actions on the community. Some topics to include are:
>
> - What does "represents the community" mean? Explain that prosecuting attorney makes an argument representing interest of victim and community.
> - The necessary skills of a successful prosecuting attorney and of a community advocate: writing, presenting oneself professionally in court, making a compelling argument, using questioning to further your argument, etc.
> - How the role of the community advocate differs from that of the district attorney. Discussion should include: a prosecuting attorney proves guilt while a community advocate is reminding the respondent and the jury of the consequences of the offence, a prosecuting attorney typically calls witnesses while a teen court community advocate may share a written statement from the victim, may call witnesses or may reflect the perceived view of the victim and community depending on the practices of the teen court.

When the warm-up came to an end, Lawrence and Paul introduced themselves. Paul began by stating that he had enrolled in law school directly following his undergraduate studies, that he had graduated from St. John's University School of Law this past spring, and that working for the DA's office was his first post-law school position. Echoing Paul, Lawrence described himself as Brooklyn "born and bred" and a recent graduate of Brooklyn Law School, and that this was his first year out of law school.

Taking the lead, Paul explained the purposes of an opening statement: 1) to state the facts; 2) to explicate how the illegal activity/behavior/event affects the community. Paul then told the kids that he would give them an example of an opening statement—an example based on a real case that he had recently prosecuted against someone accused of stealing cupcakes from a local convenient store. (Paul used the word "larceny" when describing the case and then asked the kids if they knew what "larceny" meant. But before they could answer, he told them that "larceny" meant "theft.")

I had expected Paul to first give his opening statement in full and to then go back through it, breaking it down and analyzing it for the kids. Instead, Paul started his opening statement and then paused to explain what he was doing and why before continuing on with his statement. As a result, the kids were taught "the *what*" and "the *why*" at the same time—which I think made things a bit more confusing for them. To his credit, Paul did ask the kids why the theft of cupcakes was "bad," but then, once again, treated his query as a rhetorical question and offered the following reasons: a) "if the theft went unpunished, it could be done at another store"; b) "the theft affects the store's security"; c) "the store owner loses money that might be needed for his family"; and d)

"the store owner has to raise price for 'honest people.'" While it might have been more instructive for Paul to encourage the kids to think through the possible effects of the cupcake theft, rather than just telling them, Paul did highlight ways in which a simple theft of an inexpensive food item affects a larger community.

After Paul had given his hypothetical opening statement involving the theft of cupcakes, the two ADAs asked the kids if they had any questions.

One girl raised her hand and asked: "What happens if there's too much information?"

I was confused by the question. But Lawrence, interpreting the question to mean, "How should one avoid giving too much information?," replied that he tries not to bog down the jury with too many facts.

Roy, a current RHYC member, who had been observing the training session for the day, then piped up and explained that in youth court, the Community Advocate does not know many of the facts when he/she makes his/her opening statement[288]—he/she is simply told the name of the respondent and the nature of the offense (e.g., truancy, fare evasion), and must generate an opening statement that broadly outlines the potential harm that offense caused or could have caused "the community."[289] Similarly, the Youth

[288] RHYC members who "miss work" (as they often refer to it)—who miss a day's hearings—can "make up" their absence (i.e., not lose a prorated portion of their monthly stipend) by attending a training session and helping out the youth court coordinator and/or facilitator for the day.

[289] I put "the community" in quotation marks because, as I note in Chapter 20 and as will become clear in Chapter 21, what constitutes "the community" is never specifically discussed between RHYC coordinators and RHYC members and trainees. Community Advocates thus speak of consequences and potential harms of various offenses on "the community" without distinguishing between the community in which the respondent resides, the community in which the respondent's offense occurred (which may be different), the community in which the respondent attends school (which may be different from either the community in which the respondent lives or the community in which the offense occurred), and the community of Red Hook where the RHYC hearing occurs (which may be different from all three). In addition (and as will also be further demonstrated in Chapter 21), that the Community Advocate knows little of the facts before making his/her opening statement occasionally means that he/she will make a claim or suggest a possible impact of the offense on "the community" that is completely irrelevant to the actual facts of the case

Advocate, Roy continued, also does not focus on the facts in his/her opening statement. Instead, Roy clarified, the Youth Advocate stresses the positive characteristics and attributes of the respondent.

"Ok. So it's a bit different," Paul acknowledged.

Lawrence and Paul then distributed one of the handouts, entitled "Role of the Community Advocate":

ROLE OF THE COMMUNITY ADVOCATE

DURING THE YOUTH COURT HEARING

The main responsibilities of the community advocate are to:

- ❖ Deliver an opening statement explaining to the court how the community and the individual can be affected by this offense.
- ❖ Ask the youth respondent questions to find out additional information.
- ❖ Make a closing statement reminding the jury of the effects on the community and individual.

1. Community advocate stands and introduces him/herself:

Good evening. My name is _ _ _ _ _ I will be representing the community in this hearing.

2. Community advocate stands and makes an opening statement:

{THE FOLLOWING IS FOR EXAMPLE ONLY}

COMMUNITY ADVOCATE:

Good evening judge jury guest and members of the Red Hook Youth court. On May 5th at 12:55pm Eddie was apprehended for truancy. As the representative of the community in this hearing, I feel it is important for you to understand the negative affects this offense can have on our neighborhood and its residents. In committing truancy, Eddie set a poor example for other youth who may have observed him or noticed the offense. If another youth saw Eddie getting away with this offense he or she might even think it's alright to do…….but it is not. It's disrespectful and it destructive to the community we all share. Truancy affects the quality of life in the community by making it a less safe place. It also hurts the

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(despite the Community Advocate's good faith efforts to describe the potential effects of the offense in the broadest terms).

truant student's education as they are missing classes. It can hurt other students' education when class time is spent catching students up on lessons they have missed. When offenses such as this go unaccounted for, it paves the way for more serious crimes. Thank you.

An opening statement should include:

- A greeting to the court,
- Three (or more) negative affects of the offense {on the individual and/or the community}
- A supporting statement for each negative effect.
- A Thank you
  It should present a compelling argument that is not judgmental or biased.

3. The community advocate asks any remaining questions:

This is an opportunity for the community advocate to uncover information about the respondent's understanding of the effect of his/her crime on the community and what he/she learned from the experience if the jury has not already done so. For example:

- "How do you think your offense has affected the community?"
- "Please describe what, if anything you would do differently in the future."
- "Do you think committing this crime had an effect on other teens?"
- "What have you learned from this experience so far?"

4. Community advocate makes a closing statement:

The community advocate's closing statement should include:

1. a thank you to the court members and the respondent
2. facts from the testimony that support the community advocate's argument
3. a closing (thank you, request for a fair sanction)

{THE FOLLOWING IS AN EXAMPLE ONLY}

COMMUNITY ADVOCATE:

Judge and members of the jury, I would like to thank you for the attention you have paid to this evening's youth court hearing. I would also like to thank Eddie for taking part in this process. As peer role models, it is very important we set clear and high standards for other youth to live up to. I have no doubt that Eddie is capable of living up to these standards. As you heard during the hearing, Eddie has 2 younger brothers who look up to him. Seeing Eddie cutting school could make his brothers think that it is ok to also cut school. In addition, we heard that Eddie regularly leaves school early. Cutting his afternoon classes negatively effects Eddie's learning and sends a negative message to the kids around him. Now it is your job as a jury to provide Eddie with a fair sanction that gives him the chance to show the community that he accepts responsibility for this mistake

and wants to make up for it. I hope your sanction is one that allows Eddie to display his leadership potential in a positive, constructive way. Thank You.

Lawrence asked one of the trainees to read the portion of the handout beginning "Good evening judge jury guest [sic] and members of the Red Hook Youth court. On May 5th at 12:55 pm Eddie was apprehended for truancy. . . ." Lawrence thanked the volunteer and then proceeded to distribute a second handout containing eleven (11) cases:

Case Number: 98342
Respondent's First Name: Douglas
Issue Before the Court: Truancy
Date: 11/1/04
Time: 10 AM
Referral Source: Police

Case Number: 12345
Respondent's First Name: Maria
Issue Before the Court: Harassment
Date: 11/1/04
Time: 4 pm
Referral Source: school

Case Number: 2345
Respondent's First Name: Marian
Issue Before the Court: Possession of Marijuana
Date: 11/1/04
Time: 7pm
Referral Source: Police

Case Number: 4567
Respondent's First Name: Jorge
Issue Before the Court: Fare Evasion
Date: 11/1/04
Time: 8 AM
Referral Source: Police

Case Number: 7654
Respondent's First Name: Danielle
Issue Before the Court: Disorderly Conduct
Date: 11/1/04
Time: 4 pm
Referral Source: Police

Case Number: 8484
Respondent's First Name: Nando
Issue Before the Court: Vandalism
Date: 11/1/04
Time: 11:30 AM
Referral Source: Community Program

Case Number: 74452
Respondent's First Name: Nita
Issue before the Court: Assault
Date: 11/1/04
Time: 3:30 PM
Referral Source: Police

Case Number: 54667
Respondent's First Name: Peter
Issue Before the Court: Possession of a Weapon (box cutter)
Date: 11/1/04
Time: 12:15 PM
Referral Source: Police

Case Number: 87653
Respondent's First Name: Roberta
Issue Before the Court: Theft (money stolen from classmate's bag)
Date: 11/1/04
Time: 4pm
Referral Source: Police

Case Number: 94566
Respondent's First Name: Jesse
Issue Before the Court: Theft (Shoplifting
Date: 11/1/04
Time: 7 PM
Referral Source: Police

Case Number: 848930
Respondent's First Name: Mohammed
Issue before the Court: Trespassing
Date: 11/1/04
Time:2PM
Referral Source: Police

Lawrence explained that their assignment would be to pick one of the cases and write an opening statement modeled on the example involving Eddie's truancy and reflecting Paul's earlier comments about the purpose of an opening statement. While the kids were working, Paul wrote the following on the dry erase board:

Requirements for Opening Statement:

1. Greeting
2. Brief Facts/Summary
3. Negative Effects of Offense on the Community
4. Supporting Statement for Effects
5. Thank you

When Paul was finished, he and Lawrence walked over to where I was sitting and asked me how they were doing.

"Good. Fine." I replied, trying to be as noncommittal as possible, and then, perhaps, feeling as if I might have come across as unappreciative, added, "Thank you for coming today."

"Is there anything else you'd like us to cover?" Lawrence asked hesitantly.

I had not intended to influence the contours or substance of their presentation and thus had deliberately not made any suggestions when they first approached me. But when they inquired—and given that Ericka was not there (and that Sharece and Mouhamadou would probably have deferred the question back to me had I suggested to Paul and Lawrence that they speak with them)—I suggested that the two ADAs might want to devote a little time at the end to explaining what they do, how it differs from what's on TV (e.g., *Law & Order*), and why they chose to be prosecutors.

Paul and Lawrence nodded, indicating that my suggestion seemed reasonable. We chatted a bit longer and then Paul and Lawrence reconvened the kids. They then asked for a volunteer. Matthew raised his hand and stated that he had picked case

number 54667 involving Peter, who had been arrested for "possession of a weapon—a box cutter." "Good evening judge and members of the jury," Matthew began. He continued:

> Peter is here today for possession of a box cutter. This offense can be very serious because it can put his life and the lives of others in danger. Peter or another individual could have been cut with the weapon. Also people may view Peter as dangerous or a trouble maker and may not want their kids around Peter. Younger kids may think it is okay to be carrying a weapon around after seeing Peter with one. They may see Peter as a role model and choose to carry one to be like him or they may feel they need one to protect themselves after seeing Peter with his. Please keep these facts in mind as you listen to what Peter has to say on his own behalf. Thank you.

When Matthew was finished, Paul and Lawrence looked at each other, nodded, and then commended Matthew on his statement. A few other kids presented their statements and each time, Lawrence and Paul offered praise, along with an occasional suggestion for a trainee to speak more slowly or more loudly.

It was getting close to the end of the session, so Lawrence opened the floor for questions. (Paul had stepped out to answer a phone call.) "Do you have any questions about what we do?"

Kimberlee raised her hand and asked, "What *do* you do?"

It was not clear to me whether Kimberlee did not remember that they were prosecutors or did not really understand what a prosecutor's position entails. Lawrence started to reply that he was an assistant district attorney, which meant that he represented the government in criminal actions. He did not get very far in his explanation when a hand shot up and someone asked Lawrence whether he liked his job.

Lawrence, seemingly relieved not to have to explain his prosecutorial duties, replied, "I love my job. It's exciting. Every day is different."

"Do you get repeat offenders?" asked Sera, a current RHYC member who had been sitting next to Roy.

"Yes," said Lawrence thoughtfully. "Well, sometimes. Not as many as we would if treatment weren't an option."

"What do you do when you're not in court?" Aimee inquired. Amy explained that they (the trainees) had recently learned (in the wtdwsbtp workshop) that police officers spend a lot of time filling out and completing paperwork, rather than just patrolling the streets. This had come as a surprise to her, especially given the way television depicts cops, and thus, she wanted to know, "Is it the same for you?" Lawrence acknowledge that television did portray the prosecutor's job as one seemingly exclusively confined to the courtroom, but that he spent "a lot of time talking to the police, lining up witnesses, and so on."

Paul returned and Lawrence quickly explained that he had opened the floor to questions. Paul looked eagerly at the group and inquired whether there was anything else they wanted to know. The kids were silent and Paul looked a bit disappointed. So I raised my hand and inquired, "Why did you guys choose to be prosecutors rather than public defenders or anything else?"

Paul and Lawrence both mentioned that they liked the "excitement" and "action" "here." (It was not clear whether "here" meant the RHCJC or the DA's office in the RHCJC.) I was about to interject that unless they had interned at the RHCJC or at a DA's office while in law school, they would not have known that being a prosecutor could be exciting and action-packed and that I was curious "why they *decided to become* prosecutors," not "what did they *like about being* prosecutors." But before I could do so,

Paul added that working as a prosecutor would provide him with litigation experience—implying that he might have pursued this line of legal practice in order to receive a certain type of training, rather than because of a specific interest in prosecution. Lawrence then added that being a prosecutor was not "boring" like being a real estate lawyer, but neither he nor Paul addressed why they had elected to become a prosecutor instead of a public defender.

I decided not to push matters. I simply thanked them for their responses and indicated that I had a second question—one that they had already touched on briefly:

"What are the major differences between your experiences and the depictions of criminal law and criminal procedure on television?"

"Our cases aren't as easy as they appear on television," Paul answered. "We don't always have the key data or evidence that the prosecutors always seem to have on television."

"Cops don't always showed up," Lawrence added, causing Paul to nod his head vigorously.

"Yeah," Paul continued, "Sometimes they're out on the street. And some cases aren't as exciting as the ones on *Law & Order*.

"In the 'real world,'" Lawrence explained, "far fewer cases go to trial. Maybe three in a hundred, rather than what seems to be like *every* case on television."

"We also work on agreements between us and defense counsel," Paul interjected.

"Yeah," said Lawrence. "We *want* to help. We want them [defendants] to go to treatment. We don't want to send them to jail."

While I was somewhat skeptical of their professed desire to help offenders—much the way I had been doubtful of ADA Lynette Lockhart's stated commitment to the search for "truth and justice"—I had to acknowledge that Lawrence and Paul had made an excellent point about the differences between televised criminal law and "real world" criminal law and criminal procedure. "The criminal justice system is *not* a trial system," Lawrence had said at one juncture, to which Paul had added, "There's a lot more going on." I wondered whether they were referring to their day-to-day activities or to their power, as part of what Levine calls "the new prosecution," to "control case outcomes through filing and plea bargain practices" (among other things).[290] Moreover, how had the kids interpreted Paul's "there's a lot more going on" statement? According to Davis, "[p]rosecutors are the most powerful officials in the criminal justice system. Their routine, everyday decisions control the discretion and outcome of criminal cases and have greater impact and more serious consequences than those of any other criminal justice official."[291] Had the kids interpreted Paul's "there's a lot more going on" statement to mean that prosecutors possess great discretion and wide latitude in their decisions and power to punish? Did the kids' view "there's a lot more going on" as an indication that prosecutors are frequently more motivated by the search for convictions than the quest for justice?[292] As a sign of prosecutorial access to revenue and resources permitting a never-before-seen level of "social engineering"?[293]

[290] Levine (2005:1126).
[291] Davis (2007:5).
[292] Davis (2007).
[293] Levine (2005).

CHAPTER 16: WEEK VI: COMMUNITY ADVOCATE CLOSING STATEMENTS

During some RHYC training cycles, ADAs would lead the session, "Community Advocate Opening Statements" (as Lawrence and Paul had done) and the session, "Community Advocate Closing Statements." (Sometimes it would be the same ADA or pair of ADAs for the two sessions, other times it would be a different ADA or pair of ADAs.) The availability of the ADAs depended on whether they were required to be in court on the day and time of the training session—something that could change at the last minute. During the cycle where I followed trainees from the first week through the bar exam, no one from the DA's office was available to lead the training session entitled "Community Advocate Closing Statements," and Ericka was out, so Shante ran this session.

Shante began by stating that the Community Advocate's opening and closing statements are similar in that both statements are intended to articulate to the jury the effects of the respondent's offense on himself/herself and the community. She then asked one of the kids to read "**4. Community advocate makes a closing statement"** from the document "ROLE OF THE COMMUNITY ADVOCATE," which the kids had been given at the beginning of the previous session. Dutifully, the kid recited the following:

> The community advocate's closing statement should include:
> 1. a thank you to the court members and the respondent
> 2. facts from the testimony that support the community advocate's argument
> 3. a closing (thank you, request for a fair sanction)

Shante stressed the importance of beginning and ending with a "thank you," as well as the need to augment one's opening statement with facts from the respondent's testimony.

Then she told the trainees that they would spend some time preparing Community Advocate closing statements based on the following information, which she wrote on the dry erase board:

- Respondent name: Kendall
- Offense: Assault
- Date: 5/4/09
- Time: 3:10 pm
- Referral: Police

Shante was writing the information about Kendall on the board, a girl asked Shante when they would get a chance to practice Community Advocate opening statements.

"You mean you didn't do that last time?" Shante asked, incredulous.

A few kids mumbled answers in the negative, but were quickly shushed by their peers. "Can someone please tell me what you did last time?" Shante asked, seemingly exasperated. "Didn't [someone from] the DA's office come down?"

"Yeah," one boy responded, "but they didn't like make *us* do the opening statements."

"No, Matthew did one," retorted a girl.

"Yeah, I did one," piped up Matthew."I did too," replied another trainee. "Remember?"

After a bit more probing, Shante was able to ascertain that while two ADAs (Lawrence and Paul) had, indeed, lead training, and that a few of the kids had presented opening statements, most had not. So Shante informed the trainees that those who had prepared and presented opening statements in the previous training session would need to work on closing statements involving a case of theft and possession of stolen property. The trainees who had not prepared and presented opening statements during the previous

session would need to do "double work"—an opening statement based on the information regarding Kendall and then a closing statement for the case of theft and possession of stolen property. This news was greeted with complaints ("Awwww, c'mon!!!") and protestations ("No fair!!!") by the trainees assigned "double work," and taunts ("Ha, haaaaa!!!") by those charged with preparing only a closing statement. Reminding the kids that this was the only way that they would learn, Shante passed out a sheet containing the following information regarding the case of theft and possession of stolen property:

> Case #: 584210
> Name: Daniel
> Date of Offense: 4/28/04
> Time of Offense: 12:00pm
> Offense: Theft and Possession of Stolen Property
> Referral Type: Police Referral
>
> At approximately 10am, Daniel and 2 friends went to his girlfriends Marisol's house. While there, all four of them were smoking marijuana. Shortly after they left her house, his friends opened their backpacks and showed Daniel that they had stolen Marisol's parents' jewelry. Even though he doesn't think that he committed any crime, he does understand that he set the situation up and he takes responsibility for his role. This is Daniel's first offense.
>
> Daniel was a great student in junior high school. He lived in East New York with his mom, dad and grandmother. He received grades in the 80's. However, that winter break, they lost their apartment and moved to Sunset Park. Daniel began to attend John Jay High School. He didn't really like the school and his grades fell from the 80's to the low 60's. At John Jay, he started hanging with a crew of kids. They started skipping school, shooting hoops, and smoking marijuana pretty much every day. Two of these friends were with Daniel on the day of the offense. Daniel's parents are frustrated with the change in his behavior. He has a good relationship with them, but when it comes to school, he doesn't want to hear it. Daniel has two older brothers that he looks up to. He also has a younger sister who is 6 years old. Daniel takes care of her three afternoons a week.
>
> Daniel wants to graduate high school. He likes to write and wants to be a rapper or a music producer in the future.

The grumbling eventually died down as the trainees received the handouts and began to work. Shante came over and we chatted for a bit. She asked me how I thought the training was going. I reminded her that this was the first training that I had been following from beginning to end and thus it was hard for me to compare the group to previous groups and that it would be unfair for me to compare this group of trainees to current RHYC members. Nevertheless, I said, I thought the kids were good—that they were very vocal (i.e., they spoke up a lot, asked questions, volunteered for facilitators). Shante then inquired whether I thought the kids were "getting it." I was not exactly sure what she meant by "it," but I responded that I thought the kids were showing greater familiarity with RHYC protocol. This seemed to be what she wanted to know for she then changed the topic and asked me about my daughter, Zeia. I then asked her about her son, Aidan, who was approaching seven months. We spoke a bit more about infants, toddlers, and parenthood, and then Shante informed me that she had to leave to pick up Aidan and that Sharece would be taking over leading the training session for the day. And off she went.

After Shante had left, Sharece gave the kids a few more minutes to work on their statements and then instructed those trainees who had not presented opening statements last time to present theirs. Darryl went first, followed by Jeromy, and then Imperia. After each opening statement, Sharece asked the trainees, as well as Roy and Sera, the current RHYC members who had attended the previous training session with Lawrence and Paul and who were again in attendance, whether they had any comments or suggestions. Most of the time, the trainees who had presented their opening statements were told that their statements were "good" or that they had "done good."

After the third presentation (by Imperia), however, Roy told the trainees to use the word "offense," rather than "crime," when describing Kendall's actions. When Roy said this, Sera nodded her head in agreement and Sharece acknowledged that this was a good point. But because neither Roy nor Sharece offered a rationale for using "offense" instead of "crime," and because the trainees did not inquire why, I was left to speculate. Respondents can appear before the RHYC pursuant to a referral from their school—for example, one of the eleven cases on the handout distributed by Lawrence involved a girl, Maria, involved in an incident of harassment at her school. And parents, on their own initiative, can bring their recalcitrant children to youth court if they are having trouble controlling them, although I never witnessed a case like this. Thus, it is possible that a respondent can appear in youth court for something that is not a crime or for something that is a crime but simply has been detected or thwarted by a non-law enforcement authority (such as a parent or school).[294] But most of the time, referrals come from the NYPD (as was the case in the hypothetical involving Kendall) or the Department of Probation (or, to a much lesser extent, from Judge Calabrese), meaning that the respondent has technically (and legally) committed a "crime." While Roy's suggestion to utilize the word, "offense," instead of "crime" could have been intended as a reminder of the full scope of cases that the RHYC can hear, the greater likelihood is that Roy was encouraging the trainees to recall the RHYC's goal of making the respondent feel more at ease so that he/she will reveal more about himself/herself and the circumstances surrounding the event(s) that precipitated a youth court appearance. Thus, for the same reason that the RHYC employs a non-adversarial system to prevent "'you can't handle

[294] See, e.g., Robertson (2005), who explains that youth courts can receive cases involving offenses in which formal charges have not been brought.

the truth!' scenes," it attempts to avoid the potential humiliation that the respondent might feel if his/her actions or behaviors are described as "crimes" (even if the respondent as already admitted "guilt").[295]

Following Imperia's opening statement, a couple more trainees presented their statements and received generally supportive comments. Then Dyasia, who had walked in late to the day's training session, raised her hand and inquired if she could present the opening statement that she had drafted last class based on the list of eleven cases that Lawrence had distributed. Sharece agreed and Dyasia offered her opening statement about "Marian," who had been referred to youth court from the police department for possession of marijuana.

At one point during her statement, Dyasia argued that "by law, she's too young to be smoking weed." When she had finished, Roy raised his hand and commented that marijuana is against the law everywhere and thus her age did not matter. Dyasia, however, responded, that because smoking marijuana was against the law, then "*by law*, she was too young to be smoking weed." To this, Roy replied, "Just say, 'she's too young to be smoking weed.' She wouldn't be here if it wasn't the law." Dyasia muttered something inaudible under her breath and sat down, clearly annoyed by Roy's remark. I contemplated suggesting that there are some jurisdictions where one can smoke marijuana for medical reasons (and that presumably these jurisdictions have some sort of

[295] According to Brett Taylor, the former Legal Aid attorney who conducted the Precision Question/Courtroom Demeanor session, part of the power of youth court lies in its ability to force the respondent to reflect. "We're trying to get this kid to reflect on what he's done," Brett explained in an interview. Thus, while the RHYC does not intend to stigmatize and scar the respondent—the process is not supposed to be dehumanizing—some element of embarrassment or shaming is desirable, which is consistent with the literature on restorative justice (see, e.g., Braithwaite 1989, 2002; Hughes 2005), and youth court coordinators frequently stressed that there was something potent and effectual (as well as *effective*) about kids adjudicating the cases of other kids—of kids being reprimanded by their peers in a public forum, rather than by their parents or other adults.

age-related component), but I decided against it—not so much because I feared that such a statement would be interpreted as *my position on marijuana use*, but because Sharece had finally seemed comfortable leading the training session and I wanted to remain more of an observer than a participant in this session.

After Dyasia presented her opening statement, Sharece indicated that we would hear the trainees' closing statements based on the fact pattern involving Daniel—Case # 584210. Sharece seemed committed to making sure that everyone had had a chance to present. The kids seemed to be lagging and thus, despite the fact that many of them read right from their papers, mumbled, or speed through their statements, offered little in the way of comments or suggestions for each other. Occasionally, Roy or Sera would tell the one of the trainees that he or she had not stated, three (or more) negative effects that the offense had or could have had on the respondent and/or the community, as per the instructions guidelines that had been distributed during the session with Lawrence and Paul. But most of the presentations evoked little in the way of response and certainly nothing comparable to the exchange between Roy and Dyasia. After the tenth presentation, Sharece told the kids they could leave. And that was it.

While the lack of comments following each closing statement meant that one kid presented closely on the heels of another, making it harder for me, as an observer, to record notes about individual statements, the reality is that the fast pace was not what made the statements indistinguishable. Rather, the trainees all used similar language to describe the impact of Daniel's various offenses on the community (e.g., "other kids may think it's ok [to cut school, to smoke marijuana, etc.];" "Daniel may influence others to

do the same . . . ."; "people may see the community in a certain light . . . ."; "the respondent's actions may give the community a bad name . . . .").

One should not interpret this lack of variety as a reflection of the kids' creativity. As noted above, the trainees were given, during the previous session, a handout instructing them that the following must appear in their opening statements:

1. Greeting
2. 3 negative effects of the offense on the community
3. Supporting statement(s) for each effect
4. Thank You

In addition, the trainees had been given sample opening and closing statements in the previous session, and had been told that a good opening statement identifies three ways in which the respondent's actions/behavior adversely affects the community. A third handout that the trainees had received provided the following blueprint for opening statements:

> Good evening Judge, guests, and members of the court. On (date, time, location), (name of respondent) was caught by the police for (offense committed). As the representative of the community, I feel it is important for you to understand the negative effects this offense can have on the neighborhood, its' residents and on (youth's name) himself/herself.
>
> In committing this offense, (youth's name) could have….. [describe 3 specific possible consequences of this offense, write at least one supporting sentence for each]. (Name of the offense) is dangerous and disrespectful to the community we share.
>
> I ask that you, members of the Youth Court jury, carefully consider these consequences as you listen to (youth's name)'s testimony. Thank you.

Because the Community Advocate is unaware of most of the facts when preparing his/her opening statement—unlike the Youth Advocate, the Community Advocate does not meet with the respondent prior to the hearing and is simply told the name of the respondent and the nature of his/her offense—Community Advocate opening statements tend to be pretty

general and tend to focus on *perception* (e.g., how peers will perceive the respondent, how outsiders will perceive the respondent's community). Occasionally, a Community Advocate will note the impact of the action/behavior on the individual respondent (e.g., the human health impact of smoking weed). But most of the time and irrespective of the actual offense, Community Advocates' opening statements convey the need to give the respondent an appropriate sanction because the respondent's action/behavior could be mimicked by others and/or "give the community a bad name." Trainees are taught that the respondents' action/behavior can *teach* others delinquent/deviant behavior *and* can send the impression that the community is *socially disorganized*.[296]

For Community Advocate closing statements, trainees are essentially told to take their opening statements and add to them, as Shante had instructed the kids at the beginning of this particular day's session. The format of the Community Advocate closing statement, then, is virtually identical to that of the Community Advocate opening statement:

- A greeting to the court and expression of thanks to the court members and respondent.
- Three (or more) negative effects of the offense on the respondent and/or the community based on the testimony of the respondent (which, in theory, includes supporting statements for each negative effect, although this was not also done).

[296] "Socially disorganized communities" are "those characterized by economic deprivation, high population turnover, low rates of home ownership, family disruption, and the like" (Chriss 2007:111). Shaw and McKay (1942), early contributors to the development of this theoretical orientation, claimed that *socially disorganized* areas perpetuate a phenomenon whereby criminal conventions and delinquent behavior patterns are culturally transmitted—that is, these traditions are passed down through successive generations of boys in much the same way that language is transmitted. In contrast, *socially organized* communities are those where "conventional values" are deeply ingrained and where residents can control youths or prevent competing forms of criminal organization, such as gangs, from emerging. Although Shaw and McKay's work was subsequently criticized for suggesting that individual action can be explained solely by the larger environment in which he/she resides—and while some have expressed reservations about basing empirical research about juvenile delinquency on official statistics—Shaw and McKay's research examining linkages between environmental factors and crime has had considerable bearing on the development of criminological theory. See Brisman (In Press); see also Cullen and Agnew (2011); Hayward (2001); Musolf (2003).

- A closing request for a "fair and beneficial" sanction.

There are practical reasons for encouraging cookie-cutter Community Advocate opening and closing statements. First, by teaching kids to employ what is, effectively, the same opening and closing statements—and recall that the opening statement is constructed with nearly no knowledge of the respondents—the RHYC reduces the chances that a Community Advocate might craft a scathing closing statement in a case involving an odious, obstreperous, truculent respondent. Second, by reining in some of the kids' freedom to construct imaginative closing statements, Community Advocates can write their statements during the hearing, thereby obviating the need for a recess following the respondent's testimony. (As has been alluded to throughout this chapter, the bulk of the questioning comes from the jurors.) This enables the RHYC to hear as many as four cases in a two-and-a-half-hour block of time (RHYC proceedings run from 4:30 p.m. until 7:00 p.m.).

While training kids to use boilerplate opening and closing statements in the role of the Community Advocate may facilitate the smooth operation of the RHYC, it is debatable what the impact of this method is on the trainees—especially those who become RHYC members. Early in a training cycle, trainees are taught that the term, "consequence," means "[w]hat happens, good or bad, as a result of a specific action." In the context of the Community Advocate opening and closing statements, "consequence" comes to be defined as "the bad result of a specific action." Essentially, trainees are taught that all "offenses" have "consequences"—that all "offenses" have negative effects on the individual/respondent and the community (although, as noted above, what constitutes "the community" is never specifically discussed between RHYC coordinators

and RHYC members and trainees). As such, there are no "victimless crimes" in youth court and because RHYC trainees and members are not encourage to distinguish between *the community in which the respondent resides*, *the community in which the respondent's offense occurred* (which may be different), *the community in which the respondent attends school* (which may be different from either the community in which the respondent lives or the community in which the offense occurred), and *the community of Red Hook where the RHYC hearing occurs* (which may be different from all three),[297] "the community" can take on a larger-than-life meaning (potentially encapsulating all of these in the minds of the kids). The end result, as will become more apparent in Chapter 21 when I examine RHYC members' Community Advocate opening and closing statements, is that a seemingly minor infraction, which could—and arguably *should*—be addressed by one's family or school[298] (assuming it should be an infraction at all![299]) enters into the judicial arena of the RHYC and its potential harm augmented. While this

[297] These distinctions are important. According to Welch and Payne (2010:34 n.10), "[c]haracteristics of communities in which schools are located have more impact on school crime and disorder than characteristics in which the schools' students live" (citing Welsh et al. 2000).

[298] See Rosenberg (10/13/11; 10/18/11). In a related vein, Merry and Silbey's (1984:153) research reveals that "most disputants prefer to handle interpersonal problems by themselves, through talk or avoidance," while Silbey (2005:339) notes that "Americans prefer to handle problems by themselves, by talking with the other party, or by avoiding the problematic sitatuion or the person altogether." Similarly, Nielsen (2000:1071) confirms that "most people generally resist the intrusion of law into their lives. They prefer to handle problems—even problems they regard as fairly serious—on their own." And Genovese (1982:291), describing the "extralegal settlement of personal disputes," writes: "'It's spirit might be illustrated by the advice given to Andrew Jackson by his mother: 'Never tell a lie, nor take what is not your own, nor sue anybody for slander or assault and battery. *Always settle them case yourself!*'" (footnote omitted; emphasis in original).

[299] According to Derrida (1990:1007, 1011), "today, the police are no longer content to enforce the law, and thus to conserve it; they invent it, they publish ordinances, they intervene whenever the legal situation isn't clear to guarantee security. Which these days is to say nearly all the time. . . . It is the *modern* police, in politico-technical *modern* situations that have been led to produce the law that they are only supposed to enforce." I do not mean to suggest that the NYPD has "published ordinances" or that it has "invented law," thereby generating cases for the RHYC. But, as I will highlight in Chapter 21, the existence of the RHYC as a venue for hearing school-based or school-related offenses combined with NYPD's enforcement of laws whose violations thereof were previously ignored or largely disregarded has resulted in the *creation* of large classes of cases, such as truancy (see, e.g., Otterman 2011; Seifman 5/11/12a)—and respondents. Thus, the NYPD has not "invented law" from scratch, but it has (increasingly over last fifteen years) highlighted or illuminated law that heretofore went harmlessly unnoticed.

may undercut the RHYC's goal of "helping" the respondent and *avoiding* stigmatizing him/her,[300] it also has the effect of deterring RHYC trainees and members from thinking critically about *why* certain laws exist, *whether* such laws *should exist*, what else might be possible under or with the law,[301] whether the application and enforcement of certain laws is consistent and fair, whether the potential reasons for or benefits of a particular transgression to the respondent could outweigh the harm or potential harm to "the community" (however defined).[302] In addition—and, again, something that will be further explored in Chapter 21—by elevating and exalting "the community" in this way, the RHYC discourages its trainees and members from considering possible macro-level reasons for various actions/behaviors defined as "offenses"; "personal responsibility" and "accountability"—guiding principles at the RHCJC—become *the only* considerations—at the expense of potentially salient etiological explanations for criminal behavior.[303]

[300] See Becker (1963); Collier (1975); see also Beirne and Quinney (1982:9).
[301] See Nielsen (2000:1080) who writes that "[t]he law not only defines what *is* but also constructs what [people] think *is possible*."
[302] See Agnew (2011:15, 25), who acknowledges that street crimes "often disrupt[] ties between community members and consum[e] resources that might otherwise be invested in such things as education and health care," but who argues that "in defining crime, we must consider both the harm caused by the act *and* the circumstances surrounding the act."
[303] See Agnew (2011:69), who asserts that "the criminal justice system is based on the assumption that crime is generally the result of free choice."

CHAPTER 17: WEEK VI: PRE-HEARING INTERVIEW/YOUTH ADVOCATE OPENING AND CLOSING STATEMENTS

Brett Taylor, the former Legal Aid attorney who had conducted the training session in Week IV entitled "Precision Questioning/Courtroom Demeanor," returned to teach the trainees about the responsibilities of the Youth Advocate—namely, to conduct a pre-hearing interview with the respondent, and to present opening and closings statement that highlight the positive aspects of the respondent. As he had done back in Week IV, Brett began by asking the kids if they knew what he would be covering in the day's session.

"Um, Youth Advocate opening and closing statements," someone said. He didn't say, "Duh!!!" but it was implicit in his tone and in the expressions of some of the kids.

Brett, ignoring the boy's rudeness, responded, "Yes, but what happens first?"

"*First*???" a few kids asked to themselves or to teach other. They looked confused.

Brett waited patiently with an amused smile on his face. Finally, he replied, "Well, first," and he paused for effect, "you have to *meet the respondent*."

The "Duh!"s turned to "D'oh!!!"s.

"I usually start with, '"Hi ya doing? My name is Brett,'" Brett said.

Brett then stated that after introducing himself, he usually asked his clients/defendants why they were there (e.g., in lock-up, in court): "Do you know why you're here today? Do you know what they're saying you did?"

Brett stressed that he used the third person when speaking with defendants and suggested that the kids do so as when we speaking with respondents in the pre-hearing

interview. Sensing that the kids might be unfamiliar with the grammatical term, "third person," Brett explained: "You should say, 'Do you know what *they're* saying you did?,' rather than 'Do you know what *you* did?' or 'What did *you* do?'"

"The point," Brett continued, "is to get the defendant to feel that I'm on his or her side. You [as Youth Advocates] should try to the same thing with your respondents."

One girl started to raise her hand. Anticipating her question, Brett said (to everyone), "Do you see the difference between saying 'this is what *they're saying* happened' and 'this is *what happened*'?" The kids nodded as the girl lowered her hand.

"The point," Brett said, "is to determine how much the defendant knows or understands and then to fill in the blanks so that he [the defendant] understands what's going to happen throughout the proceeding."

"You want to go frame-by-frame all the way to the end," Brett continued. He continued the analogy by explaining that what he had in mind was one of the "boring" films that start at the beginning and proceeds linearly to the end, rather than a complicated Tarantino-esque narrative with flashbacks, flashforwards, and a "flash-sideways."[304]

Brett was actually making a number of points here. The first was that the kids, as Youth Advocates, should endeavor to make the respondent feel as comfortable as possible. Court proceedings, whether one is a defendant in adult criminal court or family court or a respondent in youth court, are stressful and unpleasant. The degree to which they are stressful and unpleasant, however, depends, in large part, on the nature of the relationship between the defense attorney and defendant or the Youth Advocate and the respondent. Simply introducing oneself in a friendly manner, inquiring how the

defendant or respondent is feeling, and using the third person when inquiring about what the defendant or respondent knows (or thinks he/she knows) about the circumstances leading to his/her appearance in court can go a long way towards making the defendant or respondent feel more at ease.

Second, by asking "Do you know why you're here today? Do you know what they're saying you did?," the defense attorney or Youth Advocate can begin the process of piecing together a story to represent the defendant's perspective on what transpired or, in the youth court arena, a description of the positive characteristics of the respondent. In as much as such questions help the defense attorney or Youth Advocate piece together parts of the puzzle, they also provide clues as to how much the defendant or respondent understands about the legal processes that he/she is facing and may potentially undergo or encounter, thereby allowing the defense attorney or Youth Advocate to fill in the missing parts and fulfill the pedagogical aspects of client representation. This, in turn, can further contribute to the defendant/respondent's comfort level, which can subsequently lead to or otherwise affect the scope of extent to which he/she is forthcoming with his/her lawyer or Youth Advocate and consequently the nature and quality of representation—a cyclical process.

Though Brett was making a number of different points here, the kids seemed to comprehend the nuances of his comments and suggestions. At the very least, they were engaged and the earlier expressions of confusion were gone from their faces.

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[304] *Funny Farm* (Warner Bros. 1988). See http://lauramaylenewalter.com/?p=2763.

One of the kids then raised his hand and inquired what they should do if they know the respondent. "Don't represent your friends and family," Brett cautioned. "You should *recuse* yourself. Which is a fancy word for meaning 'excuse yourself.'"

"You don't want to have someone represent you who is going to be emotionally involved," Brett continued. "You want someone who is going to be able to make the best arguments on your behalf and who is not clouded by his or her relationship to you."

The kids nodded, but I wondered whether they had picked up on a subtle difference in the way Brett had employed the word "you." When instructing the kids to recuse themselves, Brett had treated the kids as potential RHYC *members*. But in the following statement, "*You* don't want to have someone represent *you* who is emotionally involved," the trainees had become the *respondents*—as much *kids who could get in trouble and need help* as *kids capable of helping their peers who had run into trouble*. While it was possible that Brett had used "you" to stand in for "one"—as in "*One* doesn't want to have someone represent *himself* or *herself* who is emotionally involved"—it seemed less of a general remark than a specific piece of advice if they were to run afoul of the law.

Switching gears, Brett posed the following question to the kids: "When we're talking about the incident, what are some of the things that are important to know?"

It was a rhetorical question for Brett immediately launched into an explanation of the concept of *mens rea*. Then, to illustrate what he meant, he asked, "What's the difference between a kid throwing a rock through a window because he was angry or felt like it and someone doing it because he was pushed into it?"

No one immediately provided Brett with an answer. Finally, someone cautiously suggested, "Peer pressure?"

This was the answer that Brett wanted. But it was not apparent why Brett had decided to introduce the concept of *mens rea* to the kids, nor was it evident why he had wanted to call attention to peer pressure as a motivating factor for an offense. While it will become clear in Chapter 6 that concerns about peer pressure play a significant role in RHYC jury questioning, Brett neither discussed how the kids might weigh the importance of peer pressure nor did he explain how Youth Advocates might elicit information from respondents that could reveal whether peer pressure played a role in a respondent's decision to commit a given offense. Perhaps something reminded Brett that motivation plays a different role in RHYC than in adult court. [305] Whatever the reason—whether it was to teach the kids something about asking about intent during the pre-interview hearing, whether it was to instruct the kids as to how to integrate the issue of intent into a Youth Advocate opening or closing statement, or whether it was to offer the kids a more general lesson about peer pressure—it seemed as if Brett had lost his train of thought. Thus, he seemed almost relieved when someone made a comment about interactions between cops and kids, for it allowed him to change the subject.

[305] In adult criminal court, the prosecution must prove that the defendant possessed a certain state of mind or element of intent (e.g., the unlawful act or omission was committed "purposely," "knowingly," "recklessly," or "negligently"). *Mens rea*—the defendant's state of mind at the time of the offense—is almost always a necessary factor in determining guilt or innocence. "Motive"—the reason the act was committed—is not the same as *mens rea* and is irrelevant in the guilt/innocence phase of a defendant's trial. It does, however, play a role in sentencing. At the RHYC, because the respondent has already pled guilty, the issue of intent—the question of the respondent's *mens rea*—is irrelevant. The whole RHYC case/proceeding thus centers around "motive" and the respondent's motive becomes the salient question, affecting whether the respondent receives a sanction and, if so, the nature of that sanction—e.g., a letter of apology, anger management class, workshop on coping with peer pressure. In other words, because the RHYC skips the guilt/innocence phase that is present in adult criminal court, the whole RHYC case/proceeding *is* or could be considered the equivalent of the sentencing phase in adult criminal court.

"We want to see how young people are interacting with authority figures," Brett said, "You have to respect his badge and his gun."

"Yeah, but what if the cop is, like, totally buggin'?" someone asked.

In the context of altercations or fights between cops and kids, Brett stated, "the cop wins every time."

"Naw, man," someone else said, "if, like, me and my friends see a cop, like, going off on [someone we know] . . . ." the boy's voice trailed off.

"The cop has backup that's much, much more accessible and able to come to his aid than any of you kids," Brett explained. "If you're ever in that situation [where a cop is acting inappropriately], you should shut up."

"Don't engage the officer either verbally or physically," Brett added.

Brett then mentioned an incident a couple of weeks before where a kid had pulled a gun on a cop and the cop shot him eleven times, as well as an incident in the late 1990s where a cop shot a kid on the roof of Gowanus Houses (a NYCHA Housing Development). The kid had been in possession of a fake gun and the cop, thinking the gun was real, opened fire.

"I mention these examples," Brett explained, "because the point is, 'Don't do stupid stuff!' Don't try to be macho."

"And all of you should go to the [wtdwsbtp] workshop," Brett added.

The kids nodded and a few mumbled that they had already attended it as part of their training.

I did not disagree (nor do I now) with Brett's lecture about respecting NYPD officers or his advice, "Don't do stupid stuff!" While he had, very clearly, switched from

talking about how the kids should act as *RHYC members* to how they should behave *on the streets*—the kind of "real world" lesson that he had made with respect to "recusal" a few minutes earlier and the type of message that James attempted to impart in his session on critical thinking—Brett was correct. Irrespective of whether one feels that cops deserve respect because of the nature of their office, the kids *should* obey "the badge and the gun"—because if they do not, they could get arrested, or worse, shot. And while the kids heard a similar message from Sergeant Alicea in the wtdwsbtp workshop earlier in the training session,[306] it probably did not hurt to remind them about how to behave—or *not* behave—when interacting with police officers. But what troubled me about Brett's comments here was the lack of critique. While I disappointed, although not entirely surprised, that Sergeant Alicea painted a picture in which one or two "bad apples" occasionally abuse their authority by yelling or swearing at kids, rather than acknowledging that police officers can and occasionally do exert (deadly) force that goes well beyond verbal harassment, I expected Brett, a former *public defender*, to be a bit more condemnatory in his remarks regarding police wrongdoing. While Brett had taken the step that Sergeant Alicea had not to inform the kids that police officers, whether justified or not, can and do engage in corporeal violence, I had hoped that someone who had likely encountered *some* instances of police misconduct in his professional career might express some element of reproach—or, at the very least, tell the kids about the CCRB.[307] By noting just one type of police misconduct—and by doing so uncritically—

[306] Because the wtdwsbtp workshop was initially held later in RHYC training cycles and subsequently moved to the beginning of RHYC training cycles—a change mentioned earlier in this chapter—it is possible that Brett was unaware of the switch and thus saw the discussion of interactions between cops and kids during his training session as an opportunity to stress the importance of attending (what he may have thought would be an upcoming) wtdwsbtp workshop.

[307] The New York City Civilian Complaint Review Board (CCRB), noted above in the context of the wtdwsbtp workshop, is an independent, non-police mayoral agency empowered to receive, investigate,

Brett conveyed the same kind of message that Sergeant Alicea (as well as those involved with PTTP) had—that *the kids* bear the responsibility of making sure that they do not act in any way that might precipitate a police officer's abuse of discretion and that the onus is *on them* to make sure that they do not get arrested or shot.

Having finished his comments about cop-kid interactions, Brett returned to his lesson on how to conduct a pre-hearing interview with the respondent. "Every kid has got three things going for him," Brett declared. "School, family, and friends and after-school activities, such as having a job at McDonald's or being on the football team."

"When interviewing the respondent," Brett continued, "you want to think in these terms."

"Give me an offense," Brett requested.

"Shoplifting," one trainee responded.

Brett wrote "shoplifting" on the dry-erase board and then asked the kids to generate questions that they would want to ask the respondent. As the kids shouted out answers/questions, Brett wrote them on the board:

"Why did you steal it?"

"When did you steal it?"

"What is your home life like?"

"Have you learned anything from this experience?"

"Were you with anybody?"

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hear, make findings and recommend action on complaints against NYPD officers which allege (1) the use of excessive or unnecessary force; (2) abuse of authority; (3) discourtesy; or (4) the use of offensive language. See http://www.nyc.gov/html/ccrb/. (The CCRB refers to the four categories of complaints that it can investigate and mediate by the acronym, FADO.) During my fieldwork at the RHCJC, representatives of the CCRB made one visit and presentation to the RHYC. Unlike the wtdwsbtp workshop, which was part of RHYC *training*, the CCRB presentation was made to RHYC *members* on a

"Is this your first time?"

"How did you feel about getting caught?"

"Do you have future goals?"

"What time did this happen?"

"3 positive things about yourself?"

"How did you get caught?"

"Do you regret doing this?"

"Do you have any role models?"

"Does anyone look up to you?"

As the kids offered examples of questions they would want to ask the respondent and as Brett jotted them down, he occasionally offered responses or other commentary. For example, when someone suggested, "Were you with anybody?," Brett indicated that the kids could follow-up with "Who were you with?" In response to "Do you have future goals?," Brett offered "What do you want to do with your life?" as softer way of eliciting an answer. When someone stated, "What time did this happen?," Brett acknowledged the question, but took the opportunity to remind the kids to try not to repeat questions and that "What time did this happen?" was akin to "When did you steal it?"

"OK," said Brett, and then, noticing a hand, "Oh, yes?"

"Um, like, how do you get around being nervous?" the kid asked Brett.

"Good question," Brett acknowledged. "There are two ways to get around being nervous. Be prepared and know what you're going to talk about."

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day when no cases had been scheduled. None of the members had ever heard of the CCRB and while they had heard of the Fourth Amendment, they had no idea as to what it meant or what their rights were under it.

Brett then recounted a story about his own experiences with public speaking. Brett said that when he was in high school, his class was given an assignment that entailed writing a paper and giving an oral report. "I got an A on the paper, but a C on the oral presentation," Brett admitted.

The kids seemed surprised.

"I read my report, very, very quickly, not looking up once," Brett explained. "At that moment, I decided I was never going to do public speaking again. But then I went off to law school and became a trial lawyer."

"It's ok to be nervous," Brett added.

"So, what do you do with your hands during public speaking?" Brett asked. "Do you ever think about your hand movements when you're talking with your friends?"

The kids replied no.

"If you're worried about your hands while public speaking, you should adopt a means of dealing with them," Brett advised and then demonstrated how the kids could hold them together or clasp them together behind their backs.

"So here's what we're going to do," Brett said, attempting to return to the shoplifting example.

A girl raised her hand and Brett called on her. The girl prefaced by saying that she had an unrelated question and then asked what it meant for someone to be "on probation."

"*Probation* in 'regular court' or 'juvenile court'?" Brett asked in response.

"I don't know, you know, just 'on probation.' What does it mean?" the girl asked.

"Probation is usually for first-time offenders," Brett responded. "It usually entails oversight—drug testing, looking for a job, etc. If you screw up, you go to jail."

Despite the fact that Brett had asked the girl to clarify whether she meant "regular court" or "juvenile court," Brett did not actually discuss these differences. Maybe he had intended to, but another girl raised her hand and Brett interrupted his response to call on her.

"What happens if the respondent doesn't want a certain Youth Advocate to be his or her Youth Advocate?" the second girl asked.

Brett responded by saying that he had never heard of this happening in youth court and Ericka, who was observing the training session, but playing a minor key, indicated that she had never encountered an instance in which a respondent did not want a certain youth court member to serve as his/her Youth Advocate. I found this a little surprising for I felt that surely there must have been at least one instance in which a boy did not want to be represented by a girl (or vice versa) or an African-American kid did not want a Caucasian RHYC member to represent him.

Despite the fact that neither Brett nor Ericka had experienced an instance where a respondent had asked for a different Youth Advocate, Brett explained that he had encountered instances in which defendants wanted someone else as a lawyer "usually because they didn't like what I was telling them." "You should do the same," Brett instructed the kids. "Tell them to talk to Ericka."

"Ok. We're going to do an exercise here," Brett stated. It was more an expression of hope than a declaration. "You have the kid who, say, stole the bag of

potato chips. You've asked all these questions." Brett pointed to the dry-erase board. "Now you're going to give me the answers."

The kids started providing answers and Brett jotted them down on the dry-erase board, while advising the kids to try to keep the information they received in categories so as to better enable them to create outlines for presenting their statements. After a few minutes, Brett looked at the answers that the kids had given him and told them to identify "the stuff that's good"—e.g., the respondent's grade point average in the 80s, the fact that the respondent serves as a role model—as well as any excuses or explanations, such as the fact that the respondent was peer-pressured into stealing the chips. Brett used the occasion to introduce to the kids the concept of a *justification defense***,** which he described with examples: "I stole the chips because I was hungry" or "I'm justified in pulling a knife because he was going to hit me." I was tempted to interject that "I stole the chips because I was hungry" would probably not be accepted as a "necessity defense" and that "I'm justified in pulling a knife because he was going to hit me" would be likely deemed too excessive to qualify as "self-defense" (although defending with deadly force when attacked by someone with a knife might well be justified), but Brett added that "most justification defenses don't work," so I stayed mum.

Again evoking a cinematic analogy, Brett explained that in the context of opening statements, "[i]f you're the jury, you have no idea what's going on."

"You don't want being on a jury to be like watching a movie that's really confusing, because whaddya going to do?"

"Tune out," someone stated.

"Yeah, you're going to turn it off. You don't want the jury to tune out," Brett responded.

Brett stressed the importance of "primacy" and "recency." "The first thing that you talk about and the last thing you talk about are the things that people will remember," Brett said and then illustrated what he meant with a model Youth Advocate opening statement for the respondent caught shoplifting a bag of potato chips.

When he finished, Brett looked at his watch. It was 6:00 p.m. And that was the end of the session.

Brett had not covered all of the material—in large part because the kids kept interrupting him with questions, some of which were pertinent to the role of Youth Advocate, others which were about youth court or the law, more generally. Feeling little, if any, compunction about deviating from the syllabus, Brett offered answers and responses to the queries he received, making this session, in many respects, unique with respect to the number of legal concepts that the kids were taught.

While the kids may have been introduced to terms such as *justification defense*, *mens rea*, *probation*, and *recusal*, what made the session significant was not the lessons in legal vocabulary—for after all, many of Brett's attempts to explain fully certain ideas were thwarted by other questions and comments by the kids. Rather, it was the way in which Brett likened the role of the Youth Advocate to that of the defense attorney and vice versa. Whereas the similarities between the role of the Community Advocate and the prosecutor were implicit in the tips and suggestions and Lawrence and Paul made regarding opening statements, the two ADAs were unfamiliar with RHYC practices and procedures, never explicitly likened the two roles, and at times, openly pointed out

differences. Brett, on the other hand, sprinkled his instructions with personal anecdotes, at times switching back and forth between a discussion of the Youth Advocate and commentary on defense attorneys—or between what the kids should do and we he tries to do—in the same sentence. As someone with knowledge of both the workings of adult criminal court and the RHYC, I found these unannounced transitions—this conflation of the roles of the Youth Advocate and defense attorney—a bit confusing, if not misleading. For example, whereas a criminal defense attorney should engage in zealous advocacy of his or her client,[308] the Youth Advocate, according to the materials given to the trainees, is supposed to "Present a closing statement that summarizes the good qualities of the respondent using information from the testimony WITHOUT taking away from the respondent's responsibility/participation in the offense." And thus, during the course of Brett's session, there were quite a few instances where I thought, "It doesn't really work that way in youth court," only to realize that Brett was talking about adult criminal court, and "That's not entirely relevant to youth court," only to realize that Brett was making a point about adult criminal court.

I cannot ascertain the extent to which this tactic of equating the Youth Advocate with the defense attorney was calculated on Brett's part, although there is no question in my mind that Brett takes youth court seriously and intends trainees and members to do so as well. (Over the course of the day's session, Brett described about how the "public airing" of an RHYC could be "very emotional" and spoke about how and when to comfort a respondent or parent, and the need to request a recess if a respondent or parent appears upset.) But for the kids, this toggling back and forth—this frequent collapsing of distinctions and occasional treatment of the "Youth Advocate/defense lawyer" as a single

[308] See, e.g., Brisman (2011a).

entity—lent an air of seriousness to the day's session. This is not to suggest that the kids had goofed off in other sessions or treated facilitators and the RHYC, as an institution, with impertinence. But whereas in previous sessions, the kids may have thought—or at times seemed to convey the sentiment—that they were involved in a mock activity, Brett's session seemed to inspire a feeling that youth court was more consequential, more *real*.

CHAPTER 18: WEEK VII: YOUTH ADVOCATE CLOSING STATEMENTS (CONTINUED)

Because Brett had not covered all of the material regarding the role of the Youth Advocate, he returned the following session. And because Brett had devoted so much of the previous session to talking about other aspects of the law, I was interested to see what he had thought he had covered and where he might begin.

Brett started by telling the kids the session would be devoted to Youth Advocate closing statements and that in order to compose a closing statement, they would need to "synthesize" (or "bring together," as he defined it) what they had learned in the case.

"The most important aspects of the closing statement are the opening sentence and the closing sentence," Brett explained. "That's what they remember," Brett said, referring to the jury. "Say something good about your client and then sum up really strong."

"Now, does this mean we ignore the negative?" Brett asked the kids.

"If I ignore the negative," Brett continued, answering his own question, "what are you [the jury] going to think? They're going to think that you're covering something up."

"Minimize what's happened," Brett advised the kids. "The fact that they're coming here voluntarily says something about your client." "[But] you don't want to accentuate the bad," Brett added.

Brett then asked the kids for a hypothetical charge and some facts about respondent, and wrote them on the dry-erase board as the kids shouted them out:

- Possession of weed
- Male
- In school

- With friends
- Gives in to peer pressure (not a ringleader)
- In the 11th grade
- 70% average
- Caught be a teacher
- Comes from a rough home
- Has a little brother
- Has an older brother
- Plays football
- Role model for little brother; Older brother is his role model
- First time arrested
- Misses a lot of school—truant

Brett took a step back, looked at the list, and then, reminding the kids to think in terms of the three categories he had spoken about in the previous session (school, friends, and family), illustrated how he would outline his closing argument:

I. School
   A. Grades
      1. Does good when he's in school
      2. Pays attention
   B. Plays Football

II. Friends
   A. Bad influence
      1. Easily peer-pressured

III. Family
   A. Has a role model
   B. Is a role model

"Tell the jury what you want them to do," Brett reminded the kids, and then offered a sample closing statement.

Brett then instructed the kids to draft closing statements based on the same fact pattern. After giving the kids time to work on their statements, Brett reconvened the trainees, asked them to present their closing statements, and then offered feedback.

Brett devoted a significant amount of time to talking about how the kids should *outline* their closing statements rather than write complete sentences and paragraphs. Doing so would not only prove useful for Youth Advocate closing statements, Brett explained, but could prove helpful in school. Brett described making outlines while study for the bar exam and when preparing his essay answers during the bar exam, and then suggested some specific techniques. He stressed the value of using bullet points and the significance of double- or triple-spacing their statements so as to reduce the likelihood of losing one's place—at one juncture illustrating his point by holding up the sloppily written, single-spaced statement of a trainee who had stumbled badly in his presentation. Then, to underscore the importance of not writing out everything, Brett inquired whether the kids were familiar with two Greek letters—Δ and π—which he wrote on the dry-erase board. Brett explained that Δ (delta) stood for "defendant" and that he used π (pi) to denote "people" or "prosecution." Whether the trainees actually used Δ and π was not important, Brett acknowledged, but that they should employ some sort of shorthand.

As in the previous session, Brett treated the role of the Youth Advocate as similar, if not indistinguishable, from that of the defense lawyer, recounting personal experiences to illustrate his points and flesh out his ideas. And again, Brett shifted back and forth between the world of the defense attorney and that of the Youth Advocate, and between the realm of youth court and the kids' everyday lives outside the RHCJC. Thus, just as Brett had used the issues of "recusal" and cop-kid interactions in the previous session to teach the kids something about how to negotiate their everyday lives should they find themselves in trouble (rather than simply treating the kids as *RHYC trainees* learning how

to help their peers who had gotten into trouble), he had used the Youth Advocate closing statement as a means with which to teach "soft skills" about outlining in the hopes of positively affecting their lives as students.

Of course, not all of Brett's remarks or answers to trainees' queries were intended as or had the effect of being life lessons. While some were certainly intended as advice or warnings for outside the doors of the RHCJC and others were more paternalistic morals veiled in a cloak of comments about the RHYC and the role of the Youth Advocate, still others were, quite simply, direct responses to the question at hand.

For example, at one juncture, Wilson asked Brett, "What's the worst case you ever had?" Almost immediately, Brett described a double homicide in which an uncle and his niece, who had been smoking crack, hung and killed two boys—the uncle's nephews and the niece's brothers. "People who commit murders are generally not violent. The people who do stick ups with guns and knives—those are the really crazy people," Brett had explained. And though Brett subsequently held forth on how "all neighborhoods have some bad people," he did not advise, "Don't talk to strangers!" or lecture the kids about steering clear of specific people and places in Red Hook (which they probably knew anyway). When Wilson followed up his question by asking how Brett had felt about defending anyone and everyone, Brett answered that he viewed representing an abhorrent defendant as "paying the bill" and that in those situations, he considered his job to be one of "defending the Constitution," rather than "defending the person"—a much more tepid response to a question that could have evoked a passionate eulogy on the mission of the defense lawyer to protect cherished civil liberties and ensure due process for all persons accused of a crime.

To offer a second example, at the end of this session—the continuation of Pre-Hearing Interview/Youth Advocate Opening and Closing Statements and Brett's third and final appearance during the RHYC training cycle—one of the girls asked, "What's wrong with marijuana?" The kids, as noted above, had presented Youth Advocate closing statements for a case involving someone who had been arrested for possession of marijuana. The girl, who had not been among those to present their closing statements, wanted to know "what the big deal is" because marijuana was "no different than smoking a cigarette."

In response, Brett could have talked about marijuana's effects on the brain or the body. Brett could have spoken about impaired judgment. Instead, Brett said, "Society as a whole has decided to make certain rules and at this time someone has decided . . . ."—an answer that exemplifies Moore's description of the "consensus theory" of law, i.e.. the theory that suggests that "law resides essentially in the minds and practices of people in a society, rather than in the compulsion imposed by statutes and 'commands of the sovereign.'"[309] Brett got drowned out by other kids thoughts on marijuana—or, rather, their opinions on whether smoking marijuana was different from smoking a cigarette. Had he been able to finish his thought, it is possible that Brett might have used the opportunity to lecture on the "evils" of marijuana or to promote an anti-drug platform. It is also possible that Brett might have used the girl's question to prompt the kids to think about why there might be a law in New York proscribing marijuana use. But Brett, like James, took, what I consider to be, a very middle-ground approach—one that neither didactically pushed a pro-social, pro-normative, substance-free position nor one that encouraged the kids to question authority and or develop the skills to analyze and assess

the underlying rationale for specific laws. Brett's "consensus-oriented" answer was thus consistent with what seemed to be the overall goal of the RHYC training—to teach the kids what the law is, what some of the consequences for violating the law might be, and how to serve as an effective member of the RHYC, as well as develop some of the kids' "soft skills" and impart some life lessons—all without encouraging too much creativity and free thought, while avoiding turning-off the kids with too much preaching.

[309] Moore (1969:282).

CHAPTER 19: WEEK VII: CUSTOMER SERVICE

During some training cycles, the training on Youth Advocate Closing Statements constituted the final session in which the trainees were introduced to new material. In other cycles, the trainees attended a session entitled "Customer Service" after the session on Youth Advocate Closing Statements. The material on Customer Service was not particularly extensive (which usually meant that the latter half of the day's session was devoted to reviewing from previous sessions or practicing various roles), but it is nonetheless important for demonstrating how the RHYC as an entity and institution was presented to the kids.

Ericka had written "customer service" a large piece of paper that she had tacked to the wall. Under the words "customer service," the following definition was provided: "An organizations [sic] ability to meet their [sic] customer's want [sic] and needs."

Admittedly, I was a bit confused when I first saw the sheet of paper. "If this is going to be a lesson about all the services offered at the RHCJC, then wouldn't it be more appropriate for the *first* training session—or one of the first training sessions—rather than one of the last?" I thought to myself. "But maybe Ericka's going to use this as an opportunity to remind the kids about the different resources at the RHCJC and the types of workshops the kids can sentence respondents to as sanctions."

I was wrong. The lesson had nothing at all to do with the RHCJC as a whole, but focused instead on the RHYC.

"What 'customers' does youth court serve?" Ericka asked after introducing the kids to the term "customer service" and its definition.

"What an odd question," I thought to myself. The kids, too, looked perplexed.

"The *respondent*?" Imperia asked.

"No, silly," Daryl replied. "Customers *buy things*. The respondent doesn't *buy* anything."

"No, she's right," Ericka interjected. "You can think of the respondent as a customer."

"I suppose," I thought to myself, "in the sense that their tax dollars go to supporting the criminal justice system."

"Who else are 'customers'?" Ericka asked.

She waited a few moments and then stated, "The respondent's family and the community are like customers too.

"Now, what about 'services'?" she asked. "What kinds of 'services' does youth court offer—or provide?"

"We listen?" offered Aimee after a few minutes of silence.

"Good. Yeah. Right." Ericka replied and then wrote "active listening" on the board. "We listen. We offer a forum where the respondent can tell his or her story and we listen."

"What else?" she asked. "What else do we do?"

After a few more moments of silence, Matthew added, "Well, like Amy said, we listen to the kid and give him or her a comforting environment."

"Right, right. Good," said Ericka in response, nodding her head. "We offer a 'comforting environment' for the respondent."

Ericka then looked at the board trying to figure out where to write "comforting environment." "I guess we create a 'comforting environment' *by* 'active listening'—or

by ‘actively listening’,” she said as she wrote “comforting environment” under “active listening” and then drew an arrow from the bottom term to the top term.

“What else? What else do we do?” Ericka asked.

There was no response. The kids looked at each other and shrugged.

“C’mon people,” Ericka said. “You’ve got the bar exam coming up.”

Still no response and more nervous shrugs.

“Well, what does the jury do?” Ericka asked.

“Um, it comes up with a decision?” Jeromy answered.

“And . . . .?” Ericka asked.

“And, and—” Jeromy started to answer.

“And a *sanction*?” Matthew offered.

“Yes!!!” declared Ericka, breathing a sigh of relief. “We offer the respondent a sanction. Remember, it’s not a *punishment*. It’s a ‘fair and beneficial’ *sanction*. You can think of the sanction as a ‘service’—especially if we—”

“Like *community service*?” someone asked.

“Well, yes,” replied Ericka. “Community service is a sanction that we can give a respondent. And thus we—or they—the respondent is providing a service back to the community.”

“But we also offer workshops,” Ericka continued. “And the workshops are a kind of service for the respondent. A chance for the respondent to learn something new—learn some new skills.”

“Anything else?” Ericka asked looking at the list of “services,” under which she had written “active listening,” “comforting environment,” and “sanction.”

"Well," someone suggested timidly, "we . . . ."

"Yes?" said Ericka, looking at the boy who had started to speak.

"Well, like, anything that really shows the family that we—youth court—is here to help [the respondent]."

"Yeah, ok," said Ericka.

I expected Ericka to say something more—to further flesh out the idea of "customer service" and the notion that the RHYC had "customers" and provided "services." But she did not. Instead, she switched gears and began talking to the kids about what would transpire in the coming weeks of youth court, as well as the content and structure of the bar exam.

I found this conceptualization of "customers" and "services" disquieting. I was not at all perturbed by the linkages between the criminal justice system and our capitalist economic system, as implied by the term "customer." Although this was not the point of the lesson, I hoped that maybe by suggesting that respondents and their families were "customers," the kids might begin to recognize something of the interconnectedness of the law and economic interests. But *begin* is the operative word here. While I share Kennedy's reservations about interpreting "*every* judicial action as the expression of class interest,"[310] the law is *frequently* a tool of established interests and the criminal justice system, in particular, as a defender of the existing social order and protector of the status quo, ultimately serves those in power.[311] Ericka's presentation suggested an *analogy* to a buyer-seller transactional system, but the reality is that *we are all* "customers" and those

[310] Kennedy (1982:599) (emphasis added).

[311] See Quinney (1969, 1970, 1974); Reiman and Leighton (2010); see also Agnew (2011:16, 119, 126, 128, 139, 141); Beirne and Quinney (1982:20); Collier (1975:125, 137); Ewick and Silbey (1998:234-35, 239). According to Rosen (2006:195), "one does not have to favor a Marxist view of the law to suspect

with greater material resources have much more "buying power" and can be much more active "customers" in the legal system[312]—or, as Conley and O'Barr state, "it is hard to escape the feeling that the law's power is more accessible to some people than to others."[313] Moreover, by suggesting that the respondents and their families were "customers" without painting a broader picture of the ways in which law and economics were intertwined and inequality entrenched in the criminal justice system,[314] Ericka was potentially (although most likely unintentionally) misleading the kids into thinking that the RHYC *might be the only* arena in which to think about the role and influence of money in creating law and perpetuating a system that protect certain social arrangements.

Referring to the sanction as a "service" was no less unsettling for me. While I could see how a respondent might benefit from a particular workshop if he/she were to be sentenced to one, I could also envision instances in which the sanctions were providing the respondent with a *disservice* (or where the respondent thought that the sanction was a disservice). By the same token, while sanctioning a respondent to "community service" might provide a "service" to the community, if the community in which a respondent committed his/her offense was not the community in which he/she completed his/her community service (and those affected by the offense were not informed of the respondent's reparations in the form of community service)—which seemed quite possible given that the RHYC never defined/defines "community" and never invites the

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that the superstructure of legal propositions and institutions is deeply entwined with those whose access to resources places them in an advantageous competitive position."

[312] Cf. Greenhouse (1988:702), who, based on the cases she observed at court in "Hopewell," concludes that "court users are people who lack essential social and personal resources."

[313] Conley and O'Barr (2005:3).

[314] Collier (1975:132) quotes Eisenstein (1973:323) for the proposition that "disadvantaged groups in society 'receive a disproportionately large share of the sanctions and a correspondingly small share of the benefits allocated by the legal process' in both civil and criminal proceedings."

victims to its hearings (in contrast to many systems of restorative justice[315])—could sanctions properly be considered "services" to "the community"?

Troubled by the identification of the respondent, respondent's family, and community as "customers" and by the sanction as a "service," I asked Ericka afterwards about the day's session. Not wanting to reveal my discomfort, I simply asked her what she could tell me about the session. Ericka responded that the goal was to remind the kids, right before they started studying for the bar exam, that youth court is *voluntary* and thus, just like "customers" have a choice, so, too, do youth offenders—they can choose to come to youth court and be respondents. As for "services," Ericka replied, "Well, we try to provide respondents with 'a fair and beneficial sanction'—something that benefits them. So, the sanction is, like, something they're getting. Just like a customer gets a service. And the community benefits too!"

I left it at that. I wanted to say, "Well, customers are usually looking for something *they want* . . . ." I wanted to ask: "What if the respondent really needs a job and you've given him community service for shoplifting?" or "By whose standards is *fair* and *beneficial* determined?" or "What if what's *fair* is *beneficial* to the respondent, but not the community?" or "What if what's *fair* is *beneficial* to the community, but not the respondent?" or "What if what's *beneficial* to either the community or the respondent or both is not *fair*?" But I did not. Ericka's answers to the open-ended question I did ask were entirely consistent with the image of the criminal justice system that the kids had been presented with throughout their training—not an inaccurate one, but a distorted one,

[315] See, e.g., Agnew (2011:41).

kind of like a funhouse mirror at a carnival, with some portions grossly enlarged, others greatly narrowed/shrunken,[316] and some "truths" partially concealed.[317]

[316] My use of the "funhouse mirror" analogy differs from that of Ewick and Silbey's (1998). Ewick and Silbey (1998:49), in their mapping of varieties of legal consciousness as both individual and collective participation in the process of constructing legality, assert that "[t]he particular interpretive schemas and resources that constitute legality and are expressed in these stories [from everyday life about the place of law in American culture] are not, for the most part, exclusively legal." They continue: "To the degree that a particular interpretive schema finds expression and legitimation, in multiple overlapping structures it derives a power and depth from these multiple expressions. Much like a *fun-house* hall of mirrors, each reflecting one another, it becomes increasingly difficult to perceive or imagine a way out. The intersection between legality and other social structures thus provides legality with supplemental meanings and resources that do not derive from legal practices alone" (1998:50 (emphasis added)). Thus, whereas Ewick and Silbey speak of a "fun-house hall of mirrors" in order to depict a space that is confusing, potentially vertiginous, and difficult to negotiate, I employ the notion of a (singular) funhouse mirror (rather than a *hall* of mirrors) to describe an image (of the law) that is reflected, but distorted.

[317] Nugent (2010:698), in his discussion of state formation, explains that the state is "not an illusion but, rather, a production. It is a violent production, filled with mixed messages, partially concealed truths, and hidden transcripts of domination. But it is a production nonetheless" (internal citations omitted). While Nugent favors the metaphor of "production" to that of "illusion" when describing the workings of the state, I prefer to think of the RHCJC as presenting a (distorted) image or illusion of the law, rather than a "production" of the law. Despite this difference, we share a belief about the state's creating "partially concealed truths." As such, I hope I do not do his work a disservice by employing the "partially concealed truths" trope in the context of an image/illusion metaphor, rather than a "production" metaphor.

CHAPTER 20: SITTING FOR THE BAR, (BE)COMING "*BEFORE* THE LAW

As noted in the "Recruitment" section of Chapter 4, most training cycles experienced significant attrition so that by the time of the bar exam, only a fraction of the initial trainees remained. This cycle was no different and while I was unable to query those who dropped out as to why they had chosen to discontinue, I occasionally learned from Ericka, Shante, Sharece, and Mouhamadou the reasons for a particular kid's decision to withdraw. The reasons proffered were typical: a trainee was needed by a relative to babysit another (younger) relative, someone from outside Red Hook could no longer afford the subway or bus fare, a kid needed to devote more attention to schoolwork. Ericka, the only RHYC staff member from Red Hook, and thus someone who occasionally came in contact with kids who had dropped out, added that some kids simply decided after awhile that youth court was "dorky" or "corny" and that the training sessions were "boring." Left unsaid was that it was those kids who had exhibited the greatest tension between negative attitudes, beliefs, and experiences with the law and/or police officers and pro-social/pro-normative aspirations who had dropped out.

Those who sat for the bar exam were asked questions about the goals of the RHCJC and the RHYC, as well as the tools available to Judge Calabrese and the RHYC to achieve these goals. Trainees were asked to define key terms (such as "consensus," "confidentiality," "customer service," "objectivity," "proportionality," and "restorative justice"); identify referral sources; list the types of cases the RHYC might hear (e.g., fare evasion, possession of marijuana, truancy); list and describe the roles of the RHYC (i.e., bailiff, judge, juror, foreperson, community advocate, youth advocate); and list and describe the sanctions available to jurors. In addition, trainees were required to identify

open-ended and closed questions, explain why it is important to ask unbiased questions (as well as change various questions from "biased" to "unbiased"), note the consequences to the community and respondent for various offenses, and prepare sample community advocate and youth advocate opening statements.

The trainees had, of course, learned much more than what appeared on the bar exam. They had learned legal concepts or terms, such as *criminal code*, *deterrence*, *fare evasion*, *justification defense*, *mens rea*, *probation*, *recusal*, and *truancy*, as well as "soft skills" regarding "active listening," "consensus building," "critical thinking," and the importance of using outlines when studying for tests. The trainees had been taught the similarities and differences between bailiffs, forepersons, jurors, and judges in youth court and traditional court, as well as the parallels and distinctions between community advocates and district attorneys/prosecutors and youth advocates and defense attorneys/public defenders, respectively. They had been presented with certain perspectives on "broken windows," problem-solving justice, and the duties and responsibilities of district attorneys/prosecutors and attorneys/public defenders, and they had been trained to "respect the badge"—to accept the power and authority of law enforcement, to appreciate the difficult nature of police work, and to recognize the limited circumstances in which police officers might act in rude and disrespectful (although never violent or illegal!) ways.

But the trainees had also been taught that there are no "victimless crimes"—that all crimes have negative effects on the respondent and "the community" (whatever or wherever that may be)—and that the etiology of all criminal or delinquent behavior lies in the individual offender or his immediate environment (e.g., family, friends, school)—

that there are no macro-level root causes for behavior that society defines as "deviant."[318] Perhaps most importantly, the kids had been introduced to what the law is (and its seemingly immutable character) and what some of the consequences of violating it might be, and they had been instructed in how to serve as an effective member of the RHYC and as a productive member of society. All the while, they had been subtly and discreetly discouraged from questioning the status quo—from asking why certain laws exist, whether such laws should exist, whether the application and enforcement of certain laws is consistent and fair, whether the potential reasons or benefits for a particular transgression might outweigh the harm or potential harm to "the community," and what else the law (broadly defined) might be or do (or *not* be and *not* do)—in preparation for becoming RHYC members and hearing cases, to which I turn next in Chapter 21.

[318] See generally Collier (1975); Merry (1998). Agnew (2011:16) notes that "[t]he criminal law is said to at least partly reflect the interests and values of dominant groups, since these groups are able to exert more influence on the legislative process. In particular, those behaviors that threaten the interests and values of dominant groups tend to be criminalized, while other harmful behaviors are less likely to be criminalized, particularly if they are committed by members of powerful groups." Likewise, Collier (1975:12) describes how "group[s] in power define[] as deviant a behavior required by the rules of the subordinate culture" (citations omitted). In a similar vein, Merry explores the way in which law sometimes defines culturally accepted behavior as "trouble" in colonial contexts. Merry is particularly concerned to show how law possesses the power to take "taken-for-granted" behavior and to redescribe (or circumscribe) it as "deviant." These situations, Merry argues, reveal both *law's power* and *the power(s) that law serves*.

CHAPTER 21: RHYC HEARINGS

The RHYC held hearings in the afternoons and evenings during the weeks when it was not holding training for future RHYC members. (Often training was held on Mondays and Thursdays with hearings on Tuesdays and Wednesdays.) On the afternoon of a hearing, RHYC members, upon arriving at the RHCJC, would head downstairs, change into their RHYC t-shirts (which Brett Taylor alluded to in Chapter 12, "Week IV: Precision Questioning/Courtroom Demeanor"), and consult the list of cases and role assignments for the evening. The RHYC could hear up to four cases in an afternoon and evening, and an RHYC member might serve in different roles for each of the hearings. An RHYC member without a role for a case was expected to sit in the audience and contribute as another set of eyes and ears for the court.

Over the course of my fieldwork, I sat in on numerous cases involving a number of different youth court cycles. As I have previously mentioned, the RHYC had a number of different coordinators while I was conducting my fieldwork. If the schedule and curriculum for the training sessions remained mostly the same, the protocol for hearings was even more consistent from cycle to cycle and coordinator to coordinator. And because the RHYC is entirely youth led—I described it in Chapter 3 as combining elements of the youth judge model and the peer jury model—one cannot really claim that the RHYC possessed a different "flavor" or "spirit" as a result of different coordinators the way one might refer to the Warren Court or the Rehnquist Court or the Roberts Court. Granted, some RHYC coordinators were more strict than others—and this was often reflected in the attitudes of the kids to their work—but the RHYC members took their

position on youth court seriously, regardless of the coordinator, and differences in the courts were more a reflection of the kids and the composition of RHYC membership for that cycle than anything else.[319] Even these differences could be subtle as youth court members frequently served for more than one cycle, meaning that in any given cycle, there would be a combination of "senior members," returning members, and "rookies" or "newbies."

When I first began my fieldwork, I observed hearings, but did not join the jury in deliberations or stay for "debriefing"—the period after the cases were finished for the evening in which the kids and RHYC staff would discuss what had gone well and what could be improved, and could express any concerns or air any grievances that they might have. As I became more entrenched in my fieldwork, I started to accompany the jury to their deliberation room and to remain for debriefing. While I rarely spoke during deliberations unless a question was posed directly to me, I was frequently asked for my feedback during deliberations.

As I got to know RHYC members better, I began conducting interviews with them outside the hours designated for youth court. (This usually entailed asking a member to arrive early for youth court and then speaking with him or her for an hour or so before the hearings began.) At no point did I attempt to witness "intake" (when a potential respondent and his/her family would meet with RHYC staff)[320] or sit in on the

[319] This, of course, could be slightly variable from day-to-day and week-to-week. If there were tensions between RHYC members (for any number of reasons—work-related or otherwise), the RHYC's atmosphere as a whole could seem edgy. If the kids were getting along well with each other and enjoying spending afternoons and evenings with each other in this capacity, then the RHYC's atmosphere as a whole could seem more carefree and relaxed (although still professional). In sum, differences between RHYC courts—differences between the RHYC court in one cycle and that in another—had more to do with the *kids* and the nature of their camaraderie than the RHYC coordinator and her staff.

[320] After a receiving a referral from court, police precinct, probation or other source, an RHYC staff member would contact the youth offender and his/her family to explain the RHYC and its goals, and to

private one-to-one interview conducted by the youth advocate with his/her respondent. While I might have been able to gain access to the meetings between the prospective respondent, his/her family, and the RHYC staff member (because these "intake" interviews were conducted by adults), I chose not to because I did not want my presence to contribute to any additional stress that the youth and his/her family might have been experiencing. In addition, because I was trying to understand the RHYC process from the eyes of the RHYC members, it seemed inconsistent with this goal and disingenuous for me to sit in on those "intake" interviews when I might have learned something about the future respondent and case that the RHYC would never learn.

I chose not to even try to sit in on the private one-on-one exchanges between the youth advocate and his/her respondent because *no* adult participated in those meetings—the RHYC member serving as a respondent's youth advocate would meet alone with him/her—without a parent or RHYC staff person. Such meetings were intended to provide the respondent with an opportunity to share matters with a peer that he/she might have been unwilling to disclose to a family member or other adult, and were designed to make the respondent feel more at ease with the whole RHYC process.[321]

I also chose not to interview respondents, whose cases are presented in this chapter, or the respondents' families. I share many of the same reasons that Peletz, in his

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schedule an interview and hearing. On the interview and hearing date, the youth and his/her family would meet with an RHYC staff member for an "intake" interview. There were three possible outcomes of an "intake" interview: (1) if the youth did not accept responsibility for the incident, the case would be closed and returned to the referral source from which it came; (2) if the case was deemed inappropriate for the RHYC (e.g., the youth offender was too young/old, the offense too serious), the case would be closed and returned to the referral source from which it came; or (3) if the youth was of the appropriate age, the incident fell within the range of cases that the RHYC could hear, and the youth admitted responsibility, the youth would become a "respondent" and meet with his/her youth advocate for an interview in preparation for a hearing.

[321] While it is unlikely that I would have been allowed to sit in on the youth advocate interviews, the fact that I never did means that I cannot claim to completely understand the perspective of an RHYC member on the role of the youth advocate.

chapter on the roles, jurisdictions, and operations of Malaysia's Islamic courts, offers for not interviewing the litigants in the Islamic court of Rembau. Peletz explains:

> since many of the litigants were palpably distressed by having to narrate and in some instances relive extremely negative experiences in court . . . it would be inhumane and otherwise inappropriate to add to that distress by traipsing after them as they left the court or tracking them down later to try to arrange 'follow-up' interviews. This decision had both disadvantages and advantages. One obvious disadvantage is that it precluded gathering firsthand data on these particular litigants' understandings of the hearings and their emotion reactions to them; one advantage is that it allowed for immediate discussion with staff of the *kadi*'s office concerning how they viewed and attempted to negotiate the most salient dynamics of each case.[322]

Because my focus was on RHYC *members*, rather than *respondents*, trying to gauge how respondents and their families understood their experiences at the RHYC was less tempting. Like Peletz, by refraining from traipsing after respondents, I was able to discuss with RHYC members and staff immediately after cases "how they viewed and attempted to negotiate the most salient dynamics of each case" (although on days with a full schedule of cases, there was little time between cases or after the evening's hearings were over).

Following Peletz, I employ two different styles in presenting RHYC hearings. In the first, I present a step-by-step account of one hearing in order to provide a sense of the rhythm, pattern, space, and salient issues in a typical RHYC proceeding. This step-by-step account is followed by a brief commentary about the case. For the remainder of the hearings, I list the court roles and RHYC members serving in those capacities, and then provide, where possible, verbatim accounts of community advocate and youth advocate opening and closing statements, a summary overview of jury questioning and deliberations, and, as with the first style, a brief commentary about the case. While there

are advantages and disadvantages to both of these styles, my hope is that they provide the reader with a sense of how different types of cases and the issues therein further reflect and contribute to the development of RHYC members' legal consciousness.

A Typical RHYC Hearing

Roy, the judge, was seated behind the bench of the mock courtroom, facing a long row of chairs, where I was seated, along with RHYC members not involved in the case, a couple of RHCJC staff members, and some people I did not recognize (visitors? family members of the respondent?). Courtney, the bailiff in the case, was seated directly to the right of Roy. The chair directly to the left of Roy, which was for the respondent, was unoccupied. I looked across the room at Roy, who was glancing at the papers in front of him. To my left, eight jurors were sitting in two rows of four chairs, which were perpendicular to the long rows of chairs for the audience. To my right, Matthew, the community advocate for the case, was seated at a table facing the jurors and was finishing his opening statement. No one was seated at the table to his right, which was reserved for Josiah, the youth advocate, who was finishing up his meeting with the respondent in the room across from the mock courtroom.

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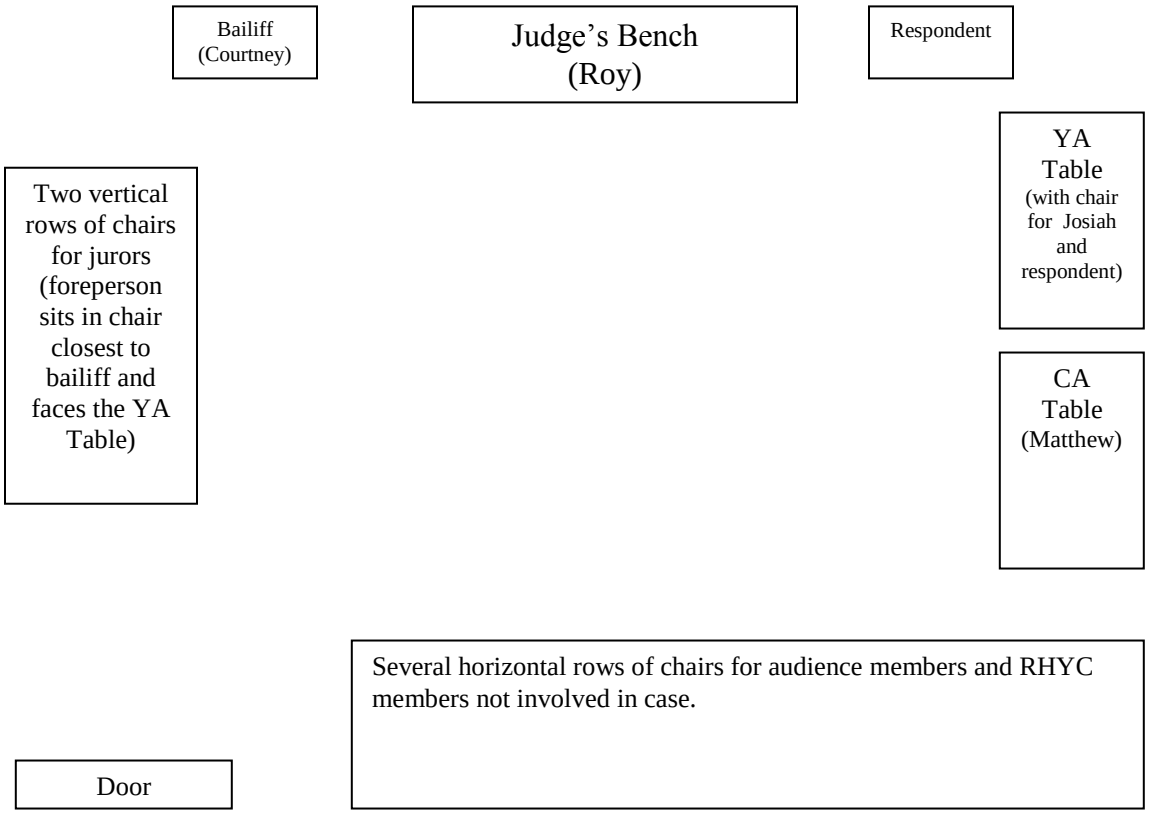
[322] Peletz (2002:65).



Courtney rose from her chair and passed around slips of paper and pencils. I looked down at the piece of paper. At the top of the slip were the words, "Oath of Confidentiality." Underneath them, the following appeared:

> I promise to uphold the confidentiality of all the matters relating to Youth Court proceedings. This means that I will not reveal or discuss anything that occurs during this Youth Court hearing with anyone. I also understand that my failure to uphold this oath of confidentiality will result in immediate termination of membership in the Red Hook Youth Court and/or loss of eligibility to observe future Youth Court hearings. I hereby agree to uphold this oath of confidentiality.

There was a line for my signature and the date. Although I had been granted permission by James Brodick and RHYC staff to sit in on the hearing and subsequently write about it, I still signed and dated the oath.

After distributing the oath, Courtney left the mock courtroom, but stood right outside so that one could see her through the door. I waited. So did everyone else. Matthew finished his statement and the jurors stopped chatting with each other. Roy looked around the room and, seeing that everyone was ready, gestured to Courtney. Courtney opened the door and entered the mock courtroom, followed by Josiah, the respondent, and what appeared to be the respondent's mother and brother.

Josiah sat down at the table for the youth advocate and the respondent sat down next to him. The respondent's family sat in the audience in the row in front of me. Courtney walked over to her chair and faced the rest of the room. "All rise," she announced, "the Honorable Roy presiding."

Roy, who was now the only one in the room seated, addressed everyone: "Please raise your right hand and repeat after me." Everyone did as Roy instructed.

"I solemnly swear or affirm," Roy said and then paused for us to repeat those words.

"I solemnly swear or affirm," we repeated.

"To keep everything I hear," Roy continued and then paused again.

"To keep everything I hear," we repeated.

"During this Youth Court session," Roy stated.

"During this Youth Court session," we repeated.

"Completely confidential," Roy finished.

"Completely confidential," we repeated.

"You may be seated," Roy instructed.

We sat down and Roy continued: "I would like to ask anyone with a beeper or a cell phone to please turn it off. If you have gum or candy, please dispose of it at this time. As the bailiff collects the Oath of Confidentiality, I will repeat it."[323] Courtney walked around the room and collected our Oaths of Confidentiality, and Roy read:

> I promise to uphold the confidentiality of all the matters relating to Youth Court proceedings. This means that I will not reveal or discuss anything that occurs during this Youth Court hearing with anyone. I also understand that my failure to uphold this oath of confidentiality will result in immediate termination of membership in the Red Hook Youth Court and/or loss of eligibility to observe future Youth Court hearings. I hereby agree to uphold this oath of confidentiality.

Courtney, who had now collected all of the Oaths of Confidentiality and who had returned to her spot next to Roy announced the case: "Case #9751, respondent's name: Keisha; offense: petty larceny; date: December 23, 2009; time: unknown; referral source: probation."

Courtney sat down and Roy turned towards Matthew. "Will the Community Advocate please stand up and introduce himself," Roy said. (It was more of a statement than a question.)

Matthew stood and said, "My name is Matthew and I will be representing the community in tonight's hearing." He then sat back down.

Roy then turned towards Josiah and said, "Will the Youth Advocate please introduce himself."

Josiah rose from his seat next to Keisha and said, "My name is Josiah and I will be representing Keisha in tonight's hearing." He then sat back down next to Keisha.

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[323] The reference to a "beeper" was eventually changed because, as RHYC members pointed out one day while waiting for a respondent to arrive, few people (other than physicians) carry beepers anymore. The current instruction is as follows: "I would like to ask anyone with an iPod or a cell phone to please turn it off."

"Does the Community Advocate have an opening statement?" Roy asked Matthew.

Matthew rose and replied that he did have an opening statement. He then walked around his table and stood in the center of the room facing the jury. "Good evening Judge, Jury, guests and members of the court," Matthew began. Occasionally glancing down at the piece of paper he was holding, Matthew explained that petty larceny was a "very serious offense" and that Keisha's actions could have "influenced others to do the same thing." According to Matthew, theft causes a store to lose money, which results in the store having to raise the prices of its goods—something that affects everyone. Matthew concluded by stating that the theft could "give her [Keisha's] community a bad name." He then thanked the court and returned to his seat.

"Does the Youth Advocate have an opening statement?" Roy asked.

Josiah indicated that he did and then shuffled to the middle of the room where Matthew had stood. "Good evening Judge, Jury, guests and members of the court," Josiah began. Josiah admitted that Keisha had committed petty larceny, but directed the jury to hear her side of the story and that they should not "judge her based on this one action." According to Josiah, Keisha had a grade point average in the 70s, aspired to become a lawyer, and, most interestingly, "didn't contribute to the stealing of items and thus felt she was unjustly charged."

"So she's admitted guilt for the purposes of being here," I thought to myself, "but she didn't actually commit the offense. Ok. Let's see where this leads."

Josiah finished his opening statement, thanked the court, and returned to his seat. Turning to Keisha, Roy stated: "Keisha, please come forward and stand."

Keisha rose from her chair and walked a couple of paces over to the respondent's chair, directly to the right of Roy. Courtney then rose from her chair, walked in front of the bench, and stood in front of Keisha. "Please raise your right hand," Courtney instructed as she raised her own hand. Keisha did as she was told.

"Do you swear to tell the truth?" Courtney asked Keisha.

"Yeah," replied Keisha.

"Please say 'yes,'" Courtney requested.

"Yes," Keisha complied.

Roy indicated to Keisha that she could be seated as Courtney returned to her chair to the right of Roy. "Do you have anything you would like to say on your own behalf at this point?" Roy asked Keisha. Keisha replied in the negative, so Roy turned to the jury. "Does the jury have any questions for Keisha?" he asked.

Shauna, the foreperson, led off the questioning: "Can you tell us what happened on the day of the offense?"

In a quiet voice, Keisha offered a brief explanation of the events that led to her coming to youth court. When she had finished, she was asked follow-up questions regarding the incident, school, her extracurricular activities and interests, and her family. Through this give-and-take, we learned the following: Keisha had been caught at Juicy Couture holding stolen property. Two girls "who had actually stolen the items," Keisha proclaimed, had gotten away. Keisha explained that her parents were "devastated" when they found out what had transpired and Keisha admitted her error: "It was a mistake. I was there at the wrong time." Keisha revealed that she had been punished by her parents and had apologized to her parents for her transgression. Keisha also stated that she was

no longer friends with the two girls who had stolen the items, but that she was still friends with two other girls who had been apprehended with her.

With respect to school, Keisha disclosed an average in range of 65-70. Not satisfied with her performance, Keisha stated that she was "taking extra classes to try to get her average up." She was not participating in any after-school activities.

When asked whether she has ever skipped school before, Keisha stated that she had cut school about five times. When asked to clarify, Keisha explained that she has cut whole days of school about five times, but that she has cut individual classes more frequently and that the classes that she normally cut were math and science.

Rather unconvincingly, Keisha claimed that she was not easily peer-pressured. When asked what she would have done differently (or could have done differently), Keisha said that she "would've hung out with different people." Keisha explained that while she has no role model, she thinks she's "a little bit" of a role model to her younger sibling.

After the jury had completed its questioning, Roy asked Matthew if he had any questions for Keisha. Matthew asked Keisha to clarify that the two girls who got away were, indeed, her friends. Roy then inquired if Josiah had any questions for Keisha. Josiah replied that he did and asked Keisha whether she had actually stolen anything. Keisha restated that she had not—that she was not the actual thief, but simply someone who had gotten caught with stolen property.

Turning to Keisha, Roy inquired: "Is there anything else you would like to say on your own behalf?" Keisha responded in the negative and so Roy stated: "Thank you. You may step down."

"Does the Community Advocate have a closing statement?" Roy asked.

Matthew requested a two-minute recess and Roy granted it. Courtney then escorted Keisha and Josiah from the room. Matthew took a couple of minutes to complete his closing statement as others in the room talked quietly to each other. Roy then indicated to Courtney, who had been standing outside the mock courtroom, that they were ready to resume. Courtney reentered the mock courtroom, followed by Josiah and Keisha, and took her seat by Roy. Josiah and Keisha returned to their chairs at the youth advocate table.

Matthew then rose from his chair, walked to the center of the room, and again addressed the jury. He reminded the jury that Keisha had committed the offense of petty larceny and asserted that "Keisha could have influenced others by her actions." Matthew noted that Keisha's actions "could have made others think of her as a bad person," and concluded by asking the jury to take into account everything that it had heard when contemplating a "fair and beneficial sanction."

When Matthew had finished, Roy turned to Josiah: "Does the Youth Advocate have a closing statement?"

Josiah took Matthew's place in the center of the room and argued that Keisha had been "framed" by her friends. He then asserted that because Keisha had not stolen anything, she had not committed petty larceny.

Roy then instructed Courtney to escort the jury to the deliberation room—essentially to an empty office across the hall from the mock courtroom. A short while later, they returned.

"Has the jury determined a sanction?" Roy asked.

Shauna, the foreperson, rose and announced: "We, the jury, give you, Keisha, ten hours of community service."

"Do you understand the sanction you have just been given?" Roy inquired.

Keisha did not respond, so Roy continued: "You will need to meet with a youth court staff member immediately after this youth court session to discuss the details of your sanction."

He then added: "I would like to thank Keisha and the members of the Red Hook Youth Court for their participation in this evening's hearing. Court is adjourned."

***Comment*:**

During the two-minute recess, I turned to Ericka, the RHYC coordinator at the time, and commented that I was having a difficult time understanding how many people were involved—that at times, it seemed as if Keisha had been with two other girls (who got away), and that at other times, it seemed as if Keisha had gone to Juicy Couture with five girls and that the two girls who committed the theft had gotten away, leaving Keisha and the remaining two friends with the stolen property. Ericka, who had conducted the intake interview with Keisha, replied that she did not know—that it was hard to discern what, exactly, had transpired.

Relieved that I had not simply misunderstood Keisha's story, I commented that it was never really clear how exactly Keisha knew the other girls (or how well she knew them), nor did I really comprehend how she had gotten caught with stolen property if she was apprehended *inside* the store, unless she had been caught in the act, which, according to Keisha, had not been the case. To my surprise, Ericka said that Keisha was "dumb"

and was "lying" and that she was surprised that the jury had not probed more deeply with their questions.

"[During intake], I asked her about her qualities," Ericka whispered to me, "and she said she was 'pretty.' Pretty *stupid*, if you ask me."

Whether Keisha was "pretty" or "stupid" or "pretty stupid" is a matter of some conjecture. But two things were apparent from the hearing. First, that the jurors viewed petty larceny as rather serious offense in the range of cases within the RHYC's jurisdiction. Second, while it was impossible to discern what had transpired on December 23, 2009 at Juicy Couture, Keisha's inconsistent story, lack of believability about the extent of her involvement in the theft, lack of personal accountability, and lack of remorse for her involvement (whatever it may have been), did not sit well with the jury.

Over time—through both observation and interviews—I found that RHYC members tended to agree on which offenses were most severe (assault, petty larceny, possession of marijuana, and possession of a weapon typically received harsher, more elaborate sanctions and were the ones most consistently mentioned in response to my queries in interviews) and almost uniformly concurred on which offenses were the least serious (truancy and fare evasion).[324] But RHYC members did not approach hearings and mete out sanctions according to some subconscious sentencing guideline grid with some offenses consistently meriting more hours of community service, for example, than others. Instead, RHYC members seemed to engage in a calculus whereby subjective perceptions of the relative severity of an offense were weighed against the attitude,

behavior, and comportment of the respondent. Thus, the sanction that Keisha received—ten hours of community service—was as much a reflection of the offense (petty larceny) as it was of her demeanor in the courtroom.

Although RHYC members never explicitly delineated different groups of cases, it became possible over the course of my fieldwork to categorize a case in one of the following four ways:

5. Severe offense; apologetic and forthcoming respondent
6. Severe offense; impenitent and aloof respondent
7. Not severe offense; apologetic and forthcoming respondent
8. Not severe offense; impenitent and aloof respondent

In the pages that follow, I present one example of each.

Four Categories of RHYC Hearings

1. Severe offense; apologetic and forthcoming respondent

Case #8342: Respondent: Sasha; Offense: assault; Date: November 13, 2009; Time: unknown; Referral source: police.

Bailiff:	Cory
Judge:	Roy
Youth Advocate:	Jedd
Community Advocate:	Sera

Without knowing anything about the case other than the name of the respondent (Sasha) and the nature of her offense (assault), Sera, the community advocate, opened by stating that "assault can affect the community." As Sera had been trained, she then stated three negative effects of the offense of assault on the respondent and/or "the community." According to Sera, "assault can make people think that this is bad neighborhood" and can

[324] While it might have been instructive for me to do so, I did not ask the RHYC members whom I had

give Sasha's community a "bad name." Assault can also give Sasha a "bad name," Sera concluded.

Jedd, the youth advocate, followed, describing Sasha as a fourteen-year-old ninth-grader at Sunset Park High School. According to Jedd, Sasha had a grade point average of 85.76 and wanted "her grades to be better." She believed that the incident (the assault) had occurred in response to an act of harassment by the victim to a third-party—another student.

Roy inquired as to whether Sasha had anything to say on her own behalf before the jury questioning began. Sasha did. Sasha confessed: "I was defending my friend. . . . I know what I did was wrong." Sasha proceeded to explain that the victim (Andrew) was bothering Sasha's friend(s) and her (Sasha). "At first," Sasha recounted, "we was playing around, but then he took it seriously." Without describing what she had actually done to Andrew, Sasha said that after the incident, Andrew left school and told his mother, who was waiting outside for him. His mother then went into school and told the principal, who immediately set up a "mediation" between the principal, Andrew, Sasha, and Andrew's mother.

Jury questioning elicited more information about the incident. According to Sasha, Andrew had a crush on Sasha's friend; he had been texting Sasha's friend a lot—to the point that she had to block his phone number. On behalf of her friend, and prior to the incident, Sasha had told Andrew that he had to "let it drop." It was not clear whether Andrew had, indeed, stopped texting Sasha's friend. But on the afternoon of the incident, Andrew, Sasha, Sasha's friend, and one other person were hanging out and laughing.

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interviewed to "rank" RHYC offenses (although many had participated in my Ranking Crimes problem-exercise during training (see Chapter 5, 8).

Sasha claimed that "then it turned serious" and that she pushed Andrew. After that, Andrew left the building and told his mother.

Sasha explained that she had never been in trouble before ("I have no record at the police department") and that she had "no school record—no record with the principal" prior to this incident. (Later, however, Sasha admitted that she had been suspended once before.) When asked about her relationship with her teachers, Sasha replied, "I respect my teachers as I should." When asked about extra-curricular activities, Sasha stated that she participates in student government and plays basketball.

Sasha said that her father (who was sitting in the row in front of me at the hearing) was her role model because he "works hard to do stuff for me [Sasha] and [my] brother." Sasha thought she could be a role model and indicated that she wanted to be a lawyer or a basketball player when she got older. When asked how the incident might affect her ability to achieve these goals and have bearing on her future, Sasha replied "they look at it as an offender." (It was not clear to whom "they" referred.) She expressed a short-term goal of wanting to "move up in student government," which I interpreted to mean that she wanted to run for or otherwise obtain a more prominent position in her school's student government organization.

Sasha repeated that she "regrets the offense" and that she had "learned a lesson." When asked what the lesson was, she replied, "never put your hands on someone." Sasha indicated that she understood how her offense affected her community—a somewhat surprising admission given that most respondents reply "no" when asked this question. When the jury inquired why she believed that her offense affected her community, Sasha

reiterated her answer to the previous question—that she "shouldn't have touched anyone."

Despite the incident, Sasha claimed that she "doesn't get angry easily." She also stated that she had had no subsequent interactions with Andrew, but it was not clear whether she had simply not seen him again since the incident or had actively avoided him.

Sera, the community advocate, did not pose any questions to Sasha. Jedd, Sasha's youth advocate, inquired whether on any previous occasions Sasha had retaliated when Andrew had harassed her or her friend. Sasha replied in the negative.

Sera's closing argument restated that Sasha's offense could "give the school a bad name" and could "give her [Sasha] a bad name." Jedd's closing argument emphasized that the incident was previously mediated (at school), that Sasha regretted the offense, and that she had not interacted with Andrew since the offense.

During jury deliberations, Jazmyn, the foreperson, summed up Sasha's actions and qualities, noting in particular her good grades, her after-school activities, and her lack of subsequent interactions with Andrew. The jury then discussed different possible sanctions, deciding on five hours of community service and the conflict resolution workshop.

***Comment*:**

It was never clear from Sasha's testimony how hard she had pushed Andrew. And was it really a push or was it a punch? One would have to assume that it was sufficiently significant for Andrew to tell his mother and for his mother to subsequently tell the principal and for the principal to convene an "immediate mediation" and for the incident to become an RHYC case. It was also not clear from Sasha's testimony just

what had precipitated the assault other than the fact that Andrew had been "harassing" Sasha and her friend, and that whatever playful exchanges had occurred prior to the "push" had subsequently "turned serious." These issues, however, were not important to the jury. Rather, they seemed to think that despite the assault, Sasha was a good student and a good person, who had openly and candidly spoken about the incident and who had expressed regret for her serious transgression. I did not speak to Sasha about the hearing, but apparently, she deemed it a positive experience for she subsequently trained to become an RHYC member (receiving the highest grade in her group on the bar exam), and began her membership just as I was completing my fieldwork.[325]

2. Severe offense; impenitent and aloof respondent

Case #05891: Respondent: McCoy; Offense: possession of marijuana; Date: 9/24/10; Time: 2:15 pm; Referral source: police

Judge:	Shatoya
Bailiff:	Sean
Youth Advocate:	Courtney
Community Advocate:	Justin

Jury:	Jeromy	Nikki	Kimberlee	Clayton	(second row)
		Brendan	Roy	Lynette (foreperson)	(first row)

[325] As such, I did not have the opportunity to interview her. The few times that I did see Sasha at RHYC hearings, she almost never spoke about being a respondent and no one ever asked her about it. On one occasion, visitors to the RHCJC asked the RHYC members before the evening's hearings about the various sanctions that they could give a respondent and whether they had attended any of the workshops. Sasha indicated that she had attended the conflict resolution workshop, but did not reveal that this was as a *respondent* who had been *sent* to the workshop. When asked what she thought of the workshop, Sashsa said that she believed that *the fact that she had been sent there was useful*, rather than *the workshop itself*. In other words, she conveyed the sentiment that *a* workshop—*a* sanction at the RHCJC—was useful because it forced one to think about one's actions, but that the workshop itself did not provide her with tools to better resolve conflicts in the future.

Justin, the community advocate, described the adverse impacts of marijuana possession: it could make McCoy's community "look bad;" "a younger person could witness the offense and think it was ok;" and McCoy could "cause harm to himself."

Courtney, the youth advocate, explained that McCoy, a fifteen-year-old tenth-grader, had a grade point average of 75, but "thought he could do better." Courtney claimed that McCoy had learned a lesson, that he had apologized to his parents for what transpired, and that he felt that they had deserved the apology. Courtney also stated that McCoy would describe himself as "funny, smart, and handsome," and she concluded by indicating that McCoy's goal was to become a professional basketball player.

McCoy declined the offer to address the court prior to jury questioning. During jury questioning, McCoy indicated that right after dismissal from school, he and three friends "lit up" in the school parking lot. McCoy said that they were caught almost immediately. When asked where he had procured the marijuana, McCoy responded that he "got it from someone else." When asked whether he and his friends had planned to get high, McCoy tersely replied that "it just happened." For some reason, the jury asked McCoy to clarify what he meant by "it just happened." McCoy responded that he had his friends had been planning on smoking marijuana that day after school.

McCoy indicated this was the first time had had been stopped by the police and that he had cooperated with them when they searched him and found (additional) marijuana (i.e., marijuana other than what he had just put to his lips). According to McCoy, this was the first time he had smoked marijuana *outside*, but that he had smoked marijuana *inside* on previous occasions.

One of the jurors asked McCoy whether he had intended to smoke the marijuana. (It was not clear from the question whether the juror meant, "Were you peer-pressured into smoking marijuana?" or "Did you think you were smoking tobacco and it turned out to be marijuana?" Either way, it seemed as if McCoy had intended to smoke marijuana because he admitted to possessing additional amounts of marijuana on his person.)

McCoy was asked whether his parents knew that he smoked. McCoy responded that his father caught him one time and that he told him to stop, but that he did not listen. As such, McCoy said he felt that "he let him [his father] down" because he told him he would stop smoking but that he continued to do so nonetheless. Surprisingly, McCoy stated that he did not feel his father deserved an apology because he (McCoy) was "trying to be his own self"—a statement that undercut his expression of guilt for letting down his father, as well as one that contradicted what Courtney, his youth advocate, had said in her opening statement. McCoy added that he did not feel as if he deserved a punishment.

On a couple of occasions, McCoy made reference to how he had learned his lesson about "smoking in public"—how he had learned not to "smoke in public" or how he would not "smoke in public" again. On more than one occasion, Roy asked McCoy to clarify whether he did, indeed, mean "smoking in public" or whether he meant "smoking *at all*." Both times, McCoy replied "smoking, period," although his body language and tone of voice suggested otherwise. Mccoy also professed to not having smoked marijuana since the offense, although his dilated pupils and red eyes suggested otherwise.

McCoy revealed that he had started smoking because he "just wanted to try it" and had been smoking about twice a week for the last couple of months. When asked whether he regretted the offense, McCoy claimed that he did, but could not offer an

explanation as to why. Pressed on this issue, McCoy admitted that he regretted the offense because "I've had to go through all this trouble"—meaning coming to youth court. McCoy stated that he did not associate with the same friends with whom he had been smoking. When asked why this was the case, McCoy explained that of the kids in the group, he (McCoy) had been the only person locked up and thus he had "dropped" them.

"Would you still be hanging out with those friends had you all gotten caught?" Shatoya asked McCoy. McCoy shrugged, but his smile indicated that he probably would.

McCoy was asked about previous troubles he might have had. McCoy responded that he never cut classes, but indicated that he did get in trouble last year for fighting and received a two-day suspension—a fight that either stemmed from a basketball game or started during a basketball game.

McCoy stated that his goal was to finish high school and to go to college and to become a professional basketball player. When asked whether he played interscholastically, McCoy replied that he "just plays, not for school." "The fight," he said in response to whether he was easily angered, "was just a heat of the moment type of thing." McCoy did not know how the offense could affect his career, so the jury explained that smoking marijuana could affect McCoy's stamina and result in decreased athletic ability. Jeromy added that smoking marijuana is a violation of the National Basketball Association's (N.B.A.) substance abuse policy.[326] McCoy did, however, seem to understand that his offense could have an adverse effect on his community—or, at least, he had paid attention when Justin gave his opening statement—for when asked

about the impact of smoking marijuana on people besides himself, McCoy stated that "other kids might see it and want to do it."

McCoy said he had an average of 75 in school and was "trying" to improve by doing his homework and paying attention in class. While McCoy did not believe that smoking marijuana or attending class while high had any affect on his academic performance, he thought he made good decisions on a daily basis. When asked why he believed he made good decisions, McCoy slouched even farther in his chair, shrugged his shoulders, and replied, "I don't know."

In his closing statement, Justin, the community advocate, described how someone saw McCoy smoking marijuana and called the cops, who arrived shortly thereafter and apprehended McCoy. Justin then restated the points that he had made in his opening statement—that smoking marijuana "could have made the community look bad," that it "could have influenced others," and that it "could have caused himself bodily harm."

In her closing statement, Courtney stressed that McCoy had apologized for what he had done (although his testimony indicated otherwise). She also emphasized that McCoy had not peer-pressured others into smoking marijuana, nor did he peer-pressure others as a matter of course. Courtney concluded that McCoy wished he could "take the day back" and that he had not smoked marijuana since the offense.

Jury deliberations centered on two issues: where McCoy had previously smoked and his lack of contrition. Roy thought it was important that the rest of the jury realize that just because McCoy had stated that he had never smoked "outside" before did not mean that he had not smoked "in public"—that he could have smoked in the hallways or

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[326] In February 2012, the N.B.A. indicated that it would no longer test players for marijuana use during the off-season. See http://www.marijuana.net/news-and-articles/nba-makes-major-change-to-marijuana-

stairwells or foyers of his apartment building. Thus, for Roy, there was a chance that McCoy had previously smoked marijuana in full view of others, which could have sent a message to others that this behavior was admirable, acceptable, or tolerable. Other jurors acknowledged Roy's point, but were less troubled by the issue of where McCoy had smoked than the fact that he contradicted Courtney's claims of having made an apology and seemed taciturn at the hearing—his reticence more a sign of smugness than nervousness. Based on what they perceived to be a serious offense with the potential of influencing others—and combined with McCoy's detached demeanor—the jury voted for fifteen hours of community service and a 250-word essay on the effects of marijuana on "you as a person."

***Comment*:**

I would like to make two observations based on McCoy's case. The first pertains to sanctions and what was not given to McCoy. The second pertains to Justin's opening statement.

1. Although the jury ultimately decided on a sanction of fifteen hours of community service and a 250-word essay, they seriously debated whether to sentence McCoy to a workshop entitled "Teen Choices," which, at the time, was a three-part workshop consisting of the wtdwsbtp workshop, a workshop on marijuana, and a workshop designed for adolescents who had demonstrated poor decision-making skills with respect to peer pressure, anger management, maintaining positive relationships, and attending school of a regular basis.[327] Roy argued against giving McCoy "Teen Choices"

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policy-for-players/.

[327] In Chapters 8 and 13, I note that "TOOLS/Teen Choices Group" was a two-session workshop separate from the wtdwsbtp workshop and the conflict resolution workshop.

because he did not think he would benefit from sitting through the wtdwsbtp workshop and the non-marijuana-related workshop. Roy's fellow jurors agreed.

During the course of my fieldwork, the menu of sanctions shrunk as the RHCJC, due to lack of funding and staff shortages, consolidated some workshops and eliminated others. While such changes were motivated by pragmatic reasons (finances and staff availability), RHCJC staff justified the changes on the grounds that respondents would benefit from exposure to a wider range of skill-building sessions. In the RHCJC staff's mind, a respondent caught smoking marijuana, for example, would benefit not only from a workshop on marijuana, but also the wtdwsbtp workshop and one regarding decision-making and peer pressure.

RHYC members, however, saw things differently. Although the importance of "proportionality" and a "fair and beneficial sanction" were stressed repeatedly during RHYC training sessions, neither concept was really defined or fully fleshed-out for the kids. As a result, "proportional," which many of the kids defined as "equal," became synonymous with "fair." And because the kids were not instructed in how they might balance "fairness" with "beneficialness" (for what is fair may not be beneficial and what is beneficial may not be fair), they tended to equate the two: a "fair" sanction was one that would "benefit" a respondent; a "beneficial" sanction was a "fair" one.[328]

To understand how this would play out, Roy argued in the case of McCoy that "Teen Choices" would not be a "fair and beneficial" sanction because McCoy had cooperated with the police when he was arrested and had indicated that he was neither

[328] For a related point, see Aubert (1989:67), who argues that "[t]o achieve formal rationality in written law is one thing, to achieve rationality in real social life is another. It is even difficult to find criteria of rationality in social action, one reason being the possible discrepancy between what is good for the actor and what is good for the community."

susceptible to peer pressure nor one inclined to peer pressure others. Thus, according to Roy, because only one out of the three workshops within "Teen Choices" would directly address McCoy's needs, the others would not be beneficial to him. Giving a respondent sanctions that were not beneficial was not fair, Roy argued, and therefore not proportional. The only solution, then, would be an essay specifically geared towards marijuana use and community service—for everyone, both the respondent and the community, benefited from a respondent performing community service.

Essentially, in the eyes of RHYC members, community service, which might entail work unrelated to the nature of the offense at a location other than the site of the offense (e.g., the neighborhood or community where it occurred), was fairer and more beneficial to a respondent than a workshop whose subject matter was not precisely related to the respondent's offense. A workshop not exactly related to a respondent's offense was (and could not be) either fair or beneficial; community service, although much more general, was (or, at least, could be) fair and beneficial.

In sum, while there was something inspiring about the kids' attempt to deliver sanctions that exactly and unerringly matched the needs of the respondents—especially given current penal philosophy and practices in the United States—RHYC members' lack of sanctioning options frequently meant they could not exercise "the creativity that lives within discretion"[329] and thus would pick the "default" choice: community service. One could argue, then, that rather than reflecting the goals of the RHCJC (and its emphasis on problem-solving and therapeutic jurisprudence), the RHYC (because of their limited menu from which to select sanctions) wound up reproducing the very system the RHCJC

[329] Barrett (In Press [Introduction]).

was claiming to try to reform: a criminal justice system with few alternatives and few resources to tailor sentences to meet individual defendant needs.

2. As noted above, Justin's opening statement listed three potential negative effects of McCoy's offense on the community: it could make the community "look bad;" "a younger person could witness the offense and think it was ok;" and McCoy could "cause harm to himself." The case that directly preceded McCoy's case on the docket that day—one that I have not described in depth—involved a respondent, Dominick, who had been picked up by the police for truancy. Kimberlee, the community advocate in Dominick's case, had stated that the respondent's actions might have sent the message to others who might have witnessed it that skipping school is permissible and that the community is a "bad place." Thus, the only expressed difference between the two openings statements—and the only expressed difference between possession of marijuana and truancy—was that the former could cause harm to the respondent, while the latter could have caused the respondent's school to lose funding.

The point here is not to criticize Justin or Kimberlee for a lack of creativity. (In fact, at one juncture, Kimberlee observed, "[If] you're the community advocate, how much originality can you have?") As explained in Chapter 5, community advocates are told very little about the case prior to the hearing. This lack of information, combined with the sample statements given to RHYC members during training, more or less ensures little variety from opening statement to opening statement, irrespective of the actual offense. But the lack of substantive distinctions between Justin's opening statement for a possession of marijuana and Kimberlee's truancy case did not result in RHYC members conflating the two offenses or collapsing the distinctions between them.

Although Dominick was charming, referring to all male jury members as "sir" and all female members as "ma'am," and McCoy was virtually the opposite, Dominick's politeness and contrition were not the only reasons why he received "no sanction"; his offense was deemed far less serious than that of McCoy or Sasha, for that matter, who, like Dominick, had been cordial and regretful.

The short-term impact of neglecting to more fully appreciate and flesh out the different effects of different offenses on "the community" might have been minimal—during deliberations, and despite boilerplate opening statements by community advocates, jurors tended to balance perceived seriousness of an offense with respondent's attitude and behavior (as reflected in a harsher sanction for McCoy than for Sasha and a more onerous sanction for Sasha than Dominick, who received none at all). While the long-term impact remains to be seen, there are reasons to suggest that it might be different from the seemingly inconsequential short-term impact. During interviews, I asked RHYC members what "the community" meant and whether there were any offenses that did not affect the community. Their answers revealed a notion of a most capacious conception of community—of a community without bounds, if you will—but a fragile one—one vulnerable to any and all offenses.

For example, in response to my question, "are there any offenses that do not affect the community, however you conceive of 'community'?," Aimee replied: "I think they all affect them. I mean, the community is the people, right? I don't define the buildings and the floor or the grass to be the community. I think the community is the people that live together in an area. So if it has—if there's a case that has to with people, I think it was automatically affects the community. That's how I think of it. I mean, yeah, I mean, it's

like your actions are based on others or your actions affect others. Whoever sees it, hears it, thinks about it . . . ."

Jeromy expressed a similar position in an interview. I had asked him about a graffiti case where he had served as the community advocate. The respondent, Omar, had been stopped by the police for doing graffiti in the train station in Canal Street in Manhattan. In his opening statement, Jeromy had stated the following: "By committing this offense, Omar could have destroyed the trust between him and his elders & or peers. Also if a younger youth witnessed Omar partaking in such events, they too might also want to participate in similar actions. Lastly by committing this offense, he could have caused the community & himself to be looked upon negatively which I'm sure isn't the case at all."

"Which community, Jeromy?" I asked. "Is it the community where it happened, Canal Street? Is it the community where [Omar's] from, which is in Brooklyn? Which community?"

Jeromy replied:

> I'd say both. I mean, if you wanna think outside the box and say, "Well, this kid might have done it on Canal Street, but a woman from Manhattan who had a little boy—who had a little son or whatever, and they both saw him do it, can end up in Manhattan." Or the same kid who did the graffiti goes back home tells his little cousin about it. And his cousin lives in Brooklyn, but in a different part. It's gonna end up over there.
>
> I think it grows. I mean, in a sense, anyone that sees it can be encouraged by it, or misled, and that moves around. I mean, if he was in Canal, which is a very packed placed where anyone could have seen him, it can affect wherever those people are from. 'Cause it might go to where they're from. Like they might do the same thing 'cause it's like, "Well, this guy did it on Canal, let me go do it in Park Slope."
>
> So I don't think it ever really affects one place specifically. It's depends on the people around and whoever sees—or the person himself because

> that person might just do it in Canal Street, but then he encourages hi friends to do it everywhere else.

For Jeromy, then, just as for Aimee, "community" meant everybody and anybody, and the persuasive power of delinquency was so great, that whoever witnessed a transgression might be tempted to follow suit. As such, a seemingly minor deviant act could spur a movement of likeminded offenders.

The RHCJC's emphasis on the impact of low-level offenses on "the community" bloats the RHYC members' social-spatial conception of "community" and transforms their notion of the potential influence of one kid's criminality on others into a near certainty—indeed, almost to the point of suggesting an ineluctable causality.[330] I believe

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[330] While I maintain that the RHCJC does little to disabuse RHYC trainees and members of such an exaggerated conception of "community," it bears mention that other forces may contribute to such inflated perspectives on the size, population, and dynamics of "community"—and the relationship between communities and crime. According to Pease (2008:598), "[t]he effects of a crime event are not limited to those directly suffering it. They extend to those distressed by . . . it" (quoted in Hayward (In Press:13)). Thus, to some extent, the radius of impact of a "criminal event" has always extended beyond the proverbial "blast zone." But, as Schiraldi and Ziedenberg (2001:120) contend, this potential area has grown within the last twenty years:

> most media have grown by leaps and bounds throughout the 1990s, especially cable television and the new Internet media. As a result of new technologies, the time with which breaking news can be reported to the nation has cut to minutes, *and the space between communities seems smaller*. So, where a crime story was once something reported on locally, with the daily newspaper giving one side of the local scale to measure how often tragic news events happened in one's community, *the new media have created a crime context in which Americans are now part of a national community*. Suddenly, viewers are concerned about crimes that happen both down the street and 5,000 miles away. As a result, viewers, who watch more minutes of the evening news report being more fearful than those who watch less frequently. People consistently report more fear of crime than generally exists in their own communities, where they are personally able to test the chance of crime (emphasis added, internal footnote omitted).

Technology is even more advanced today (2012) than at the time of Schiraldi and Ziedenberg's writing more than ten years ago—meaning that breaking news can be reported to the nation *as it is occurring*, rather than just in a matter of minutes. Thus, for all intents and purposes, the space between communities should seem *even smaller* today than in 2001. I would suggest that immediate news updates available from new media technologies has, indeed, served to collapse the sense of space between communities for RHYC kids, thereby contributing to the creation of a "national community"—or, at least, an "NYC community—that the RHCJC did little to discourage. Jeromy and Aimee and other RHYC trainees and/or members did not seem exceptionally fearful of crime, which suggests that the immediacy provided by new media technologies did not have the same effect on them that Schiraldi and Ziedenberg claim affected Americans in the early twenty-first century. While the RHCJC's complicity in the spatial *shrinkage between*

that this phenomenon is exacerbated by what I refer to as "case creation"—a process in which the RHCJC through the RHYC serves to create cases to perpetuate the existence of these two institutions. I demonstrate how this occurs after the second of the next two categories of cases.

3. Not severe offense; apologetic and forthcoming respondent

Case #15152: Respondent: Charles; Date: 6/14/10; Time: 12:50 pm; Offense: truancy; Referral source: police

Judge:	Teleaha
Bailiff:	Brendan
Youth Advocate:	Kimberlee
Community Advocate:	Allyson

Jury:	Shatoya	Cory	Justin	Josiah	(second row)
	Nikki	Jeromy	Roy	Sera (foreperson)	(first row)

Allyson, the community advocate, delivered the following opening statement:

> Good evening judge, jury, guest [sic] and members of the red hook youth court. As the bailiff stated Charles is here for the offense of truancy. As the representative of the community, I feel it is important to inform you the negative effects truancy has. By cutting school Charles could influence other students to cut school as well and think it's okay to do it. Also it decreases school funding. But most importantly it prevents Charles from learning and it gives him a bad reputation. I ask that you keep these consequences in mind as you hear what Charles has to say on his own behalf. Thank you.[331]

Kimberlee, the youth advocate, then delivered her opening statement:

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communities or spatial *elongation of* communities did not inspire a greater fear of crime in RHYC kids, it did seem to instill a magnified sense of differential association/social learning processes on others—of the potential impact of an offense on those who might witness it and might then develop definitions favorable to crime (see, e.g., Akers 1985, 1998; Akers and Jensen 2003; Sutherland 1939, 1947; Sutherland and Cressey 1966, 1974; see also Cullen and Agnew 2011:118-54; Hollin 2001a, 2001b).

[331] After attending a number of RHYC hearings, I began to notice that most community advocates and youth advocates would discard their statements at the end of each hearing. As such, I began asking members serving in the capacities of community advocate and youth advocate if they would mind giving me their statements, rather than placing them in the trash. They agreed, which made taking notes on the proceedings much easier.

> Good evening Judge, Jury, Guests, and members of the Red Hook Youth Court. Charles is here today for the offense of truancy. But I ask that you not judge him based on this offense but on the positive qualities that I have recently learned about him. Charles is 14 years old and attends Brooklyn Latin School in which he maintains a 89 average. He has a good relationship with his teachers and his peers. He regrets this offense and feels that he learned a lesson which was not to listen to his friends to be more open and honest with his mom. He has a future goal of taking up either law or forensic science. He describes himself as sarcastic, funny, and smart. Lastly, he understsands [sic] how this offense effects him as well as his community. I ask that you keep in mind what I have said as you listen to what Charles has to say on his own behalf. Thank you.

Teleaha, the judge, asked Charles whether he had anything to say for himself. Charles, quite eloquently, spoke about how he had learned his lesson and how he "didn't get anything out of cutting." After making his statement, Teleaha turned matters over to the jury. Here is what we learned about Charles' truancy from jury questioning.

On the day of the offense, Charles was upset that he was not going to be given an award at an award ceremony that evening at his high school. (At the end his hearing, Charles clarified that he was not even invited to the award ceremony; only those kids receiving awards had been invited.) Charles stated that on the morning of the day of the offense, he had had a disagreement with a friend and that his day got worse as the day progressed. (In addition to learning that he had not received an award and thus would not be invited to the evening's ceremony, Charles explained that in a couple of classes, teachers called on other kids—their favorites—instead of Charles when Charles had raised his hand.)

Charles told another one of his friends that he was having a bad day and his friend and a third person encouraged Charles to leave school during lunch. At first, Charles said no. But then, he decided it would be a good idea for it might make him feel better if he

left the environment of the school. (Students at Brooklyn Latin School are permitted to leave the school grounds during lunch, provided that they stay within a designated perimeter.) Charles was stopped by the police shortly after he crossed the perimeter.[332] According to Charles, the police asked him about his parents, then called them, and then took Charles back to school. Charles said that he cooperated with the police and that at the school, he and his mother, who had arrived, met with the principal.

Charles stated that in general, he made good decisions and that this was the first time that something bad had happened to him. Charles indicated that he was punished by the school—that his school trip was taken away and that the principal was going to give him detention but that when he asked her about it at a later juncture, she told him not to worry about it, because the school year was almost finished. (The offense, as noted above, took place in mid-June; Charles' hearing at the RHYC took place on September 1, two-and-a-half months after the fact.)

Charles also stated that he was punished by his parents—that he had his "privileges" taken away, which included video games and "pretty much all the other things that [he] enjoy[ed]." Charles revealed, "I had to earn my parents' trust back," and that it took most of the summer—at least until the mid-to-end of July for this to happen.

Charles was asked about peer pressure and explained that while his friends had suggested that they cut, "I chose on my behalf to go out. . . . He didn't really influence me." Charles was then asked about whether he had apologized to his mother. Charles,

[332] Charles indicated that his lunch period ran from 12:00p.m.-12:35p.m. The time of the offense was 12:50p.m., but it was not clear whether Charles was stopped during the lunch period and that the officer who stopped him simply wrote 12:50p.m. on his report because that was the time at which he had finally written-up the report or whether Charles and his friend(s) were actually caught *after* lunch was over. Regardless, Charles indicated that had he not been caught, he would have missed three periods and two homerooms, which amounted to 3-½ classes.

very contritely, responded that he had. When asked why, he replied "she doesn't deserve this."

At this point in time, Charles' mother began to cry. I did not actually notice her tears, for I was sitting behind her, but Charles said, "Mom, don't cry." Everyone then looked at his mother. It was either the fact that his mother was crying or some expression she made or the combination of the two, but then Charles, himself, started to get choked up. He sort of waved his hands, as if trying to clear the air, and said something about needing to compose himself. Teleaha then asked whether he needed a minute. Charles responded yes and Teleaha announced that there would be a two-minute recess. Charles hustled out of the mock courtroom along with his mother and before Brendan, the bailiff, could accompany him.

A couple of minutes later, Charles and his mother returned and the hearing resumed. Charles described how the incident "made me look bad" and "made my school look bad." Charles was asked again about whether he received a punishment and stated, "I did. I probably deserved more."

The questions then shifted back to the event itself and Charles explained that two of his friends had decided to leave school early and invited Charles to come along. Charles explained that he initially said no, but then decided it was a good idea for it might make him feel better.

Charles was asked more about the disagreement he had had with his friend the morning of the offense. Charles responded that it was "kind of personal," but then confessed, "I had a love interest, you could say." After more probing by the jury, Charles revealed that he and his friend liked the same girl and that his friend had said something

bad about Charles to the girl. An argument ensued. The jury inquired whether Charles was still friends with this person and Charles stated that they had talked matters over, but that they were no longer as close as before.

Charles was asked about his grades and replied that he was usually scored in the 90s or high 80s. His worst grade of late had been an 84.

Charles was asked about his relationship with his parents and he explained that they "have traits that I want to emulate. . . . [They are] loving, smart, wonderful people." When asked to list three words to describe himself, Charles replied, "smart, funny, kind-hearted."

Both Allyson, the community advocate, and Kimberlee, the youth advocate, asked questioned after the jury had completed its questioning. Allyson inquired whether this was, indeed, Charles' first offense; it was. Kimberlee then asked Charles whether he had learned a lesson; he had: "don't pay attention to what your friends say and be open and honest with your mom."

Allyson then delivered a closing statement on behalf of the community:

> Good evening once against Judge, Jury, guests and members of the court. Although this is Charles first offense, I would like to remind you the negative effects being truant leads to. Charles could have influence [sic] his peers to cut school. Also missing school can affect his education and his future goal. In addition people may look at Charles as a bad person which i m sure he's not. Please keep these effects in mind as you determine a proper sanction that will help Charles never to come across this situation again. Thank you.

Kimberlee followed with her statement on Charles' behalf:

> Good evening once again Judge, Jury, guests and members of the Red Hook Youth Court. First I would like to thank Charles for participating in tonight's hearing because it is nott [sic] easy speaking out amongst your peers. As you heard during the hearing Charles was having a bad day because he wasn't going to receive an award. As the day went on, he got

> more aggrivated [sic] and his friend suggested that they go to 7th Avenue. At first he hesitated but then he chose to go with them. They were stopped on 6th Avenue and taken back to school. When there, they all got their senior trip taken away. He was not awre [sic] of the consequences but he did know that he was not allowed to leave school perimeters. Charles regres [sic] this offense and has learned his lesson. He also had all of his privileges taken away and he feels that he deserved this punishment. I ask that you keep in mind what was said as you deliberate a fair and beneficial sanction for Charles. Thank you.

Jury deliberations: Sera summed up the facts of the case and noted some of Charles' qualities and characteristics. Shatoya added some more and few other jurors jumped in with details they remembered. Sera then raised the issue of community service as a possible sanction. No one seemed to be in favor of this except for Josiah, who argued that five hours was appropriate given that Charles had been caught outside school grounds (and the perimeter) in the middle of the day. Roy, however, argued that he did not think that Charles' actions affected the community and both Sera and Shatoya emphasized that Charles got caught only a block away from the perimeter more or less during the time when kids were allowed to leave school grounds for lunch. Ultimately, the kids decided not to give Charles a sanction and that they would encourage him to apply for Youth Court.

***Comment*:**

During the hearing, the jurors were surprisingly aggressive with their questioning—an odd, but occasional byproduct of a forthcoming respondent. Charles, however, did not appear bothered by the questioning and answered everything that had been posed to him with aplomb. Indeed, and as noted above, Charles was clear, articulate, contrite, remorseful. He spoke very, very, very well for a fourteen-year-old who was appearing before a court (albeit a youth court). And given what he had done—

skipped out on school for academic-related disappointed (ones to which I and other readers, I am sure, can relate)—it was impressive that he was willing to endure the insult (the police encounter and subsequent RHYC hearing) that had been added to his injury (not receiving an award he felt he deserved). He not only told his story, but repeated his answers when re-asked.

As noted above, Josiah raised the issue of whether a sanction was appropriate given that Charles had been caught on the street in the middle of the day and thus might have been seen. Sera and Shatoya, however, successfully argued that students at the Brooklyn Latin School are permitted to be outside the school building during their lunch period and that Charles and his friend(s) were only slightly outside the designated perimeter. As such, they argued that Charles' actions were unlikely to have influenced a peer to commit truancy.

The argument that Charles' actions might have influenced his peers is an interesting one. While I could understand the concern if Charles had been the ring-leader—the one who had suggested and instigated the truant act—Charles was the one who had to be convinced. Whether Charles' actions, by themselves and without peer pressure, could have influenced another individual to cut school is a separate matter. Allyson's comments in her community advocate opening and closing statements suggested that that simply observing someone commit truancy could lead others to follow suit—a point that Josiah found persuasive. But unless Charles' schoolmates had observed Charles actually cross the perimeter, it is unlikely that his actions (without any verbal accompaniment) would have influenced fellow students at the Brooklyn Latin School. If students from another school had witnessed Charles cut school, it is likely that

they, too, had been cutting for how else would they have seen Charles outside the perimeter in the middle of the day?

To her credit, Allyson did not assert that Charles' truancy could have led "people to conclude that the community is a bad place." But community advocates (such as Kimberlee in the case of Dominick, noted above) frequently do make arguments of this nature in truancy cases. It is possible that if a group of kids decided to leave school early en masse, the community surrounding the school might be concerned—especially if the kids were disruptive while on the streets or in the shops. In other words, the community might think ill of a kid if he/she did *something else* while truant. But I would hazard that most people who live and work around a school in Brooklyn do not spend too much time thinking about kids on the street in the middle of the day, assuming they even notice them. Having lived and worked in both Brooklyn and Manhattan, I can attest to how, when I would see a kid on the street in the middle of the week, I *might* have checked my watch or wondered if there was a special teacher-in-service day or holiday that I did not know about. But rarely did I suspect that the kid was truant. And if the kid were truant, I would doubt that I would have assumed that he was, by nature or by this action alone, a "bad" kid or that the community I was in was a "bad" community. I would guess that with the exception of some restaurant-owners or storeowners in the vicinity of Brooklyn Latin School, few members of that community had any idea as to when and where students were permitted to go during school hours. Thus, just as the RHCJC trains RHYC kids to conceive of "the community" as a seemingly infinite socio-spatial entity, it encourages the kids to assume that adults are watching their every move, and that even the most minor of infractions can and will negatively affect adult perceptions of kids.

4. Not severe offense; impenitent and aloof respondent

Case #082510: Respondent: Kayla; Offense: truancy; Referral source: police; Date/Time: unknown

Judge:	Jeromy
Bailiff:	Nikki
Youth Advocate:	Kimberlee
Community Advocate	Sera

Jury:	Shatoya	Sean	Clayton	Bradley	Allyson (second row)
		Justin	Brendan	Lynettee	Corey (first row) (foreperson)

Sera, the community advocate, delivered the following opening statement:

> Good evening judge, jury, and guests. As the bailiff previously stated Kayla is here 2day for the offense of truancy. In many eyes truancy may be seen as a petit offense. But truancy is a major issue wid [sic] many negative affects. One affect is if kids in the neighborhood had seen Kayla they would be influenced to also cut school. Also Kayla can give her community a bad name. Lastly Kayla's school would lose funding for supplies that they need. At this point in time I would like to ask you the jury to listen to what Kayla has to say on her own behalf as you keep what I said in mind. Thank you.

Kimberlee, the youth advocate for Kayla, then presented her opening statement:

> Good evening Judge, Jury, Guests and members of the Red Hook Youth Court. Kayla is here today for the offense of truancy. But I ask that you not judge her based on this offense because I have learned of some positive qualities she posesses [sic]. Kayla is 14 years old and attends Sunset Park High School. She maintains a 65 average but is not satisfied. She has learned a lesson which was not to be late to school. Kayla describes herself as calm and nice and feels that she can be a role model with these qualities. She also has a future goal of opening a bakery. I ask that you keep in mind what I have said as you listen to what Kayla has to say on her own behalf. Thank you.

Jury questioning revealed the following information about Kayla and the incident resulting in her RHYC appearance: On the day of the offense, Kayla had stopped to get breakfast on her way to school. She was late and the police stopped her right in front of school.

Kayla said that she did not apologize to her mother for her actions, but that she felt that her mother deserved an apology. When asked what she could have done differently, Kayla shrugged her shoulders and suggested that she could have gotten out of bed earlier on the morning when she was truant. Kayla stated that she had learned her lesson, but then admitted that she had been late to school after the offense. She had not, however, been stopped by the police on those subsequent occasions. Kayla indicated that on average, she skipped school entirely about three times per month and that she cut math class "a lot because it's kind of boring" and often she has not completed her assignments. In response to the jury's question about her overall academic performance, Kayla stated that her grades were "kind of bad." When asked for her average, she responded that it was 65-70, but that she knew she could perform at a higher level.

Kayla did not express much confidence in her ability to make good decisions and admitted that she was easily peer-pressured in a negative way. When asked what she meant, Kayla responded that if a friend had urged her to cut school, she, Kayla, would probably follow her friend's advice and encouragement even though she knew "it was wrong."

The jury asked Kayla about her future goals and Kayla responded that he hoped to open a bakery one day. She stated that she understood how her offense could affect her community, herself, and her career, although she did not explain how and no one asked her to state her rationale (such as the need for bakers to rise early in the morning). Before concluding its questions, the jury inquired whether Kayla could name three qualities to describe herself. "Nice" and "calm," Kayla stated, but could not generate a third adjective.

Sera, the community advocate, asked Kayla to clarify whether she thought she made good decisions on a regular basis and whether she thought she was prone to being peer-pressured. Sera also asked Kayla to clarify the number of times per month she cut full-days of school. Kimberlee, the youth advocate, asked Kayla if she felt she had learned a lesson and, if so, what the lesson was. Kayla replied, "Not to be late to school."

Sera, the community advocate, presented the following closing statement:

> Good evening once again judge, jury guest and my fellow YC members. I would like to thank you for your cooperation in tonite [sic] hearing. Also Kayla because has [sic] we all know its not easy speaking your faults in front of your peeres [sic]. As Kayla stated in her case she was already late to school when she stopped for breakfast. Kayla is late to school 4 days out of 5. This is not Kayla first encounter with the police in being late. She was late after this offense. In school she is not satisfied with her grades. She does not know how this offense can affect her future goal. Kayla has cut class 2 times in a week for the subject math. She has also cut school in the past. Kayla is easily peer pressured. Kayla feels that she doesnt [sic] make good decision.
>
> At this time I would like to ask you the jury to take all I have said tonite [sic]during the hearing to determine a fair and beneficial sanction for Kayla. Thank you.

Kimberlee then followed with her closing statement on behalf of the respondent, Kayla:

> Good evening once again Judge, Jury, Guests, and members of the Red Hook Youth Court. First, I would like to thank Kayla b/c it is not easy speaking out amongst your peers. As you heard during the hearing, Kayla was on her way to school and she was late because she went to get breakfast. When she arrived at school she was stopped and asked why she was late. Then she was sent to her classes. Kayla did not apologize to her mom but she feels that she deserves one. She regrets this offense and has learned a lesson. She understands how this offense can affect her future goal of opening a bakery as well as herself and her community. Kayla has tried to limit her lateness. I ask that you keep in mind all that was said as you deliberate a fair and beneficial sanction for Kayla. Thank you.

Jury deliberations began with Cory, the foreperson, who quickly summed up the case and then inquired whether her fellow jurors were interested in sanctioning Kayla to a sentence of community service. The jurors raised their hands and Cory inquired first about five hours and then about ten. Most of the jurors voted in favor of ten. Cory asked why they thought ten was an appropriate number and Brendan replied that he did not think that Kayla had learned her lesson, despite her claims to the contrary. Brendan reasoned that Kayla had said she had learned her lesson, but that she had been late after the offense that brought about her RHYC appearance. (Brendan did not consider and his fellow RHYC members did not suggest that it was possible Kayla could have learned her lesson now—after learning that she needed to come to the RHYC for a hearing and after having been tardy on subsequent occasions.)

Brendan regarded Kayla's subsequent tardiness as an indication of her recalcitrance, thereby meriting a sentence of ten hours of community service. Shatoya, however, argued that ten hours was excessive and that what Kayla really needed was a workshop on peer-pressure. Shatoya's fellow jurors agreed, but then Brendan inquired as to whether they, the jury, really wanted to compel Kayla to come to the RHCJC on three separate occasions to attend the other workshops packaged with the peer-pressure workshop. (As noted above in the case with the respondent, McCoy, Roy expressed his reluctance to sanction McCoy to Teen Choices—the three-part workshop consisting of the wtdwsbtp workshop, a workshop on marijuana, and a workshop on decision-making (which included coping skills, anger management techniques, skills for dealing with peer pressure, communication skills, and methods for conflict resolution), when all Roy thought he needed was the marijuana group.) In response to Brendan's query, the other

jurors who had initially back Shatoya's suggestion withdrew their support. None of the jurors argued that someone who is easily peer-pressured might benefit from the workshop on marijuana, thereby making the totality of Teen Choices more useful for Kayla. As with McCoy's case, the fact that the available workshops did not exactly meet Kayla's particular circumstances—nothing more, nothing less—meant that they were, in the jury's eyes, inappropriate: unfair, not beneficial, disproportional.

The jurors also discussed the matter of whether it would be a good idea to require Kayla to write a research paper. The jurors seemed to think this was a good suggestion, but had a difficult time deciding on a topic. Finally, they agreed to a 250-word research paper on the effects of peer pressure—a "research paper" only a few words shorter than this paragraph and the previous one. Cory was a strong supporter of the research paper sanction, arguing that it would force Kayla to think about peer pressure and would thus be a good substitute for the peer pressure workshop. No one seemed to think that this might be too difficult a sanction for a fourteen-year-old girl with a sixty-five average who did not like school.

Finally, the jurors discussed whether a letter of apology or a "reminder" statement, such as "choose your friends wisely," might be appropriate. They opted against both, returned to the mock courtroom, and announced their sanction: ten hours of community service and a 250-word research paper on peer pressure.

Comment:

Two women—visitors to the RHCJC—sat in on the hearing involving Kayla. Prior to the start of the hearing, Jessica Colon, who succeeded Kate Doniger as Deputy Director at the RHCJC, fielded questions about the RHYC from the two guests. The

women wanted to know more about youth court and Jessica responded by describing it as a "quick and early intervention." (Presumably, she meant "quick and early" in the life of the respondent, not "quick" as an "immediately following the arrest"—for, as we saw with Charles and as was often the case, RHYC hearings might be held months after an incident of truancy, fare evasion, etc. As a result, some respondents were viewed by RHYC members are unforthcoming, when in actually, they simply could not remember the events of a day months in the past.)

After articulating that the RHYC was "less focused on individual victims" than on the respondent and "the community," Jessica explained how cases came to the RHYC. According to Jessica, many cases arrived as police referrals. "In the past, police officers would simply write up 'YD cards' [youth delinquency cards] that would get put in a pile in the precinct and nothing would happen," Jessica explained. "There were no real repercussions. Maybe their parents would get a letter months later [with the onus on the parents to mete out justice]. Now, kids can get sent here," she stated proudly. [333]

Jessica explained that truancy cases—such as the ones involving Charles and Kayla—were the most common cases to appear before the RHYC. "[T]ruancy lies at the bottom of many problems . . . kids not going to school," Jessica stated. "[Youth Court] is a moment when you're at a fork in the road. . . . You have an option." For Jessica, a young person who had committed a low-level offense essentially had two choices: 1) travel down a path which would likely result in increased deviance, delinquency, and criminality; or 2) take the road offering the therapeutic benevolence of the RHYC. Jessica's perspective—one that had been impressed upon RHYC trainees and members—

[333] For a description of YD cards as a means of "ticketing 'bad' children," see Strickland (2004); see also Butler (2004).

did not suggest that a hearing before the RHYC and subsequent sanction might be stigmatizing and detrimental, rather than "fair and beneficial," nor did it reflect the possibility that some of these low-level offenses might not (or *should not*) be "cases" at all[334]—that parents might be able to mete out justice more quickly or effectively than youth court could or would. The message that was conveyed to the visitors here and to the RHYC trainees and members throughout their involvement with the RHYC was that while some problems are bigger than they might seem, fortunately, there is now the "child-saving"[335] RHCJC and RHYC to address such problems before they lead to greater delinquency and criminality—what Jock Young refers to as the "nemesis effect"[336]—whereby "deviance is seen to lead to various types of misery unless humanitarian interventions are pursued (marijuana use escalates to heroin addiction, premarital sexual intercourse to VD, teenage pregnancy to poverty, etc.)."[337]

Jessica's message that the RHCJC and RHYC nip crime and deviance in the bud was troubling, but not at all surprising, for two reasons. First, the RHCJC promotes itself as a substitute for harsh criminal justice practices[338]—many of which were enacted in response to public fear of teen "super-predators," noted in Chapter 2. In an era of "growing criminalisation of thousands of American children as young as six for in-school offences such as misbehaving on the school bus"[339]—at a time when New York City

[334] See Rosenberg (10/13/11; 10/18/11). As Merry (1998:15) points out, "[a]t particular historical moments, previously accepted or at least tolerated behavior is subject to penalties, often in response to reformist policies. The criminalization of everyday life includes redefining as crimes actions already illegal but widely tolerated as well as actions routinely accepted" (citing Black 1983).
[335] Barrett (In Press [Introduction]).
[336] Young (1971).
[337] Young (2009:11); see generally Nash (1989:100), who states that "[y]outh are less likely to make claims for themselves, but many groups rise in their defense, either out of concern for delinquent behavior of the untrained and unemployed or out of a commitment to salvaging a human resource."
[338] See, e.g., Berman (2004); Berman and Fox (2005); Brisman (2010/2011); Doniger (2008); Eligon (2/25/11); Fisler (2005); Kaye (2004, 2007); Malkin (2003); Meekins (2006); Sammon (2008).
[339] Hayward (In Press:2 (citing McGreal 2012)).

four-year-olds are being sued for bumping into an elderly couple with their bikes (equipped with training wheels!),[340] first-graders in Delaware are suspended for bringing Cub Scout utensils containing forks, knives, and spoons to school,[341] middle-school students in Chicago are being arrested for participating in lunchroom food fights,[342] police in Georgia handcuff kindergartners for throwing tantrums,[343] and toddlers and young children are pulled off of airplanes for appearing on federal "no-fly" lists intended for terrorist suspects[344]—the RHYC does, indeed, appear to be an alternative to the "zero-tolerance disciplinary policies," which, as noted in Chapter 10, frequently entail charging students with *crimes* for school-based infractions that in years past would have been dealt with internally by teachers and school administrators. As Welch and Payne explain, "there is a range of possible responses to student misbehavior used by teachers and school administrators"[345]and when severe punishments are frequently imposed on students without regard to individual circumstances, the RHYC's attempt to craft an individualized, personalized "fair and beneficial" sanction based only on the testimony of the respondent does come across as a kindler, gentler approach. But the perspective that Jessica conveyed—the one that she and other RHCJC employees hoped to communicate to visitors and RHYC trainees and members—was that the RHYC was the *only*

[340] Schapiro (2010). Hayward (In Press:9) acknowledges that this case was a civil, rather than criminal matter, but asserts that it illustrates "the profound socio-cultural confusion about the nature of 'traditional' (generational) life stages within Anglo-American society." Hayward (In Press:9) continues: "Indeed, with thousands of US teens awaiting trial held for months and even years in adult jails . . . it is not difficult to recognise that legal confusion about what constitutes acceptable childhood and adult beahviour is . . . much in evidence within the criminal realm" (internal citation and footnote omitted).
[341] Urbina (10/12/09; 10/14/09); see also Editorial (10/13/09).
[342] Saulny (2009).
[343] Associated Press (4/17/12). The child, who was charged with assault and damage to property, was taken from her elementary school to the police station, where her parents picked her up.
[344] Alvarez (2010); DeFalco (2012).
[345] Welch and Payne (2010:25). For a recent example of "three-strikes" system for dealing with minor offenses in schools, whereby a student receives a warning after the first offense, is required to attend a

alternative to draconian, zero-tolerance policies. I suppose for Christina, a respondent who appeared before the RHYC for vandalism—absent-mindedly doodling on a desk in her seventh-grade classroom—the hearing and ten hours of community service to which she was sentenced was a welcome alternative to what might have transpired to her.[346] But when I recalled how I had not been punished, much less *reprimanded*, for defacing the poster of the (hated) Boston Celtic basketball player, Kevin McHale, that Mr. Smith-Rappaport had put outside my eighth-grade classroom (as a fan of the New York Knicks, I thought McHale might benefit from a mustache and goatee), or writing "I ♥ Jen Ford" hundreds of times on my desk in Mr. Cull's ninth-grade history class, or using the table of my tenth-grade chemistry class for mole-to-gram conversions, I could not help but wonder that the message that was being sent to Christina and many other RHYC respondents and to RHYC trainees and members was one that magnified the severity of the respondent's offense, overstated the offense's impact on the social learning of others, and had hyperbolically enlarged the role of the RHYC and RHCJC in maintaining order and curbing future criminality, delinquency, and deviancy. At no juncture here or anywhere else did Jessica or any other RHCJC staff member suggest the "purest" or most extreme alternative[347]—not creating or filing a case *at all*.

Second, while I never imagined that the RHCJC would work to eliminate all reasons for its existence—it would, after all, need *some* cases in order for it to run its youth court—I was disappointed that Jessica, as Deputy Director of the RHCJC, would

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mediation session or school conflict with his/her parents after the second offense, and receives a court complaint only upon the third offense, see Editorial (11/11/09).

[346] By way of comparison, Silbey (2005:343) recounts how in eighteenth-century Britain, "the regular and consistent pardoning of convicted felons sustained the image of an independent and just legal system. 'Discretion allowed a prosecutor to terrorize the petty thief and then command his gratitude, or at leas the approval of his neighbors as a man of compassion. It allowed the class that passed one of the bloodiest penal codes in Europe to congratulate itself on its humanity'" (quoting Hay 1975:120).

convert a range of alternatives (where "no case at all" was an option) to a binary (either harsh punishment or the RHYC) and then promote the lesser option as "child-saving"—a message reifies the state by suggesting that courts are the best (indeed, the only) loci for solving problems.[348] In fact, as state theorists suggest, it is a *necessary* feature or component of state formation and perpetuation. As Nugent explains, "the state is not a thing but, rather, a claim to authority, to legitimacy. . . . [T]he state seeks to establish itself as the sole, legitimate authority and ultimate arbiter regarding what may be considered true, proper, acceptable, and desirable."[349] In this light, the RHCJC's process of "case creation"—of establishing an arena (the RHYC) with which to adjudicate previously neglected or under-enforced laws and then justifying its existence on the grounds that it (the RHCJC/RHYC) is essential for addressing the "problematic" behavior (violations of those laws)—reflects a lack of faith in parents' ability to mete out justice more quickly or effectively than youth court.[350] This distrust of parental responsibility and attempt to "safeguard" children reflect the state's wish for "the trained professional to stand in the stead of the parent."[351] More generally, we can view this "case creation" and "safeguarding" as part of the many "iterative practices" of the state[352]—yet another means by which the state reminds us of its presence, another instance of how the state "'never stops talking.'"[353]

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[347] Levine (2005:1169).
[348] See generally Brisman (2009a (citing Nugent n.d.)).
[349] Nugent (2010:682, 683). See also Merry (1985:59), who states that "[l]egal ideology maintains the social order by creating a belief in the legitimacy of state power and the justice of the system by which that power is maintained" (citations omitted).
[350] Cf. Nugent (2010:682), who asserts that "[o]nly by systematically undermining and delegitimating alternative constructions of morality and society can states aspire to make their own assertions collectively shared (or at least tolerated)."
[351] Hayward (In Press:11 (citing Reece 2009; Parton 2006)).
[352] Nugent (2010:683).
[353] Nugent (2010:683 (quoting Corrigan and Sayer 1985:3)).

RHYC Hearings and Members' Legal Consciousness

As I have suggested in this chapter, RHYC members shared similar perspectives on the severity of the offenses for which respondents might appear in youth court. Sanctions, however, were not meted out solely on the basis of the severity of the offense. RHYC members engaged in calculus which balanced the gravity of the offense with attitude, behavior, and degree of remorse exhibited by the respondent. As such, it was possible to categorize the cases that I observed into the following categories:

1. Severe offense; apologetic and forthcoming respondent
2. Severe offense; impenitent and aloof respondent
3. Not severe offense; apologetic and forthcoming respondent
4. Not severe offense; impenitent and aloof respondent

It was not surprising that the RHYC members issued the harshest sanctions for category #2 respondents—impenitent and aloof respondents who had committed severe offenses (e.g., McCoy: fifteen hours of community service and an essay)—and moderate, if any, sanctions to category #3 respondents—apologetic and forthcoming respondents who had committed slight offenses (e.g., Charles and Dominick, both of whom received no sanctions). More telling, however, is that RHYC members responded more favorably and meted out more lenient sanctions to category #1 respondents—apologetic and forthcoming respondents who had committed severe offenses (e.g., Sasha: five hours of community service and one workshop)—than category #4 respondents—impenitent and aloof respondents who had committed slight offenses (e.g., Kayla: ten hours of community service and an essay). This suggests that RHYC members did not sanction respondents purely on the basis of the severity of the offense; rather, they individualized the cases, rewarding those respondents who respected the hearing process by bearing their souls and demonstrating contrition.

While RHYC members considered the individual circumstances of each respondent and endeavored to sanction respondents according to their specific needs, rather than based on abstract notions of offense severity, their efforts were undermined by their conflation of the concepts, "proportional" and "fair and beneficial sanction," and the limited menu of sanctions/workshops. Although it was encouraging that the kids demonstrated a preference for and commitment to individualized sanctioning/punishment, their inability to carry it out at an institution (the RHCJC) purporting to practice criminal justice differently was not. The RHCJC's inability to provide RHYC members with a wide array of sanctioning tools (despite its promise of "problem-solving") combined with its process of "case creation" (and the concomitant notion that low-level offenses can lead to more/greater deviance) and its belief that all offenses have community-level impacts (and that communities are large, far-ranging entities) meant that the kids wound up participating in and contributing to an increasingly coercive, surveillant, self-perpetuating system—one that serves to further the state's claims "as the sole, legitimate authority and ultimate arbiter regarding what may be considered true, proper, acceptable, and desirable."

CHAPTER 22: CONCLUSION

Tax Day 2010. I was on my way to the RHCJC for interviews for the next cycle of youth court. Feeling a bit tired, I stopped at a bodega near the Smith & 9th Street subway station in Brooklyn for a cup of coffee. As I stepped up to the register to pay, Clayton and Isaac, current RHYC members, entered the bodega. "Hey, there's Avi," Isaac said.

"What's up guys?" I inquired.

"We're bringing in two recruits," Clayton said, pointing to two oversized teenagers standing behind him and Isaac. I had not even noticed the boys with them. Seemingly twice the height of Clayton and Isaac—and each weighing more than Clayton and Isaac combined—the "recruits" appeared more like men than boys. Bouncers at a club, perhaps, but friends or classmates of Clayton and Isaac? No way.

"What's good?" I said to the recruits. They nodded, but neither smiled nor spoke.

"We're spreading the good word," Clayton said with a toothy grin.

"Cool," I replied. "See you in a bit."

"'Spreading the good word'?" I thought to myself as I exited the bodega and continued down West 9th Street. Clayton had made it seem as if he and Isaac had been proselytizing and that the two behemoths with them were potential *converts*, not *recruits*. While some have likened law to a religion[354]—Schlag, for example, asserts that "the belief in law has, in the absence of a widely-held public religion, served to comfort people in the thought that the social world is organized in a rational and normatively

[354] See, e.g., Fletcher (1997); Minda (1993); Schlag (1997); see also Winter (1988).

appealing manner"[355]—I had hardly thought of the RHCJC as a religious institution or edifice (despite the fact that it operates out of a refurbished parochial school down the street from a Roman Catholic church). True, the RHCJC staff members hoped to impart certain lessons to RHYC trainees. And, to some extend, believing in the RHYC's means and goals—its methods and purpose—did seem to require a leap of faith on the part of RHYC trainees and members. But a *religion*? I suppose that there might be some salience to a "youth court as religion" argument if one were to take a functionalist approach to religion à la Durkheim.[356] Regardless of the appropriateness or applicability of the analogy to religion, Clayton's comment in this context (bringing two recruits to the RHCJC) revealed a deep level of commitment to the RHYC's mission, purpose, and process—a degree of devotion that had developed over the months since he had been a somewhat indifferent recruit himself. And it raised the question of how to conceptualize how Clayton's and Isaac's and the other kids' attitudes and feelings towards youth court as a component of the judicial system (and towards the law, more generally) had shifted over the course of their involvement with the RHYC—the issue to which I now turn.

As noted in Chapter 2, Ewick and Silbey, in *The Common Place of Law*, refer to "legal consciousness" as "participation in the process of constructing legality."[357] According to them, "[e]very time a person interprets some event in terms of legal concepts or terminology—whether to applaud or to criticize, whether to appropriate or to resist—legality is produced. The production may include innovations as well as faithful replication."[358] In other words, Ewick and Silbey argue that whenever a person

[355] Schlag (1997:912).
[356] Durkheim (1972 [1887]).
[357] Ewick and Silbey (1998:45).
[358] Ewick and Silbey (1998:45).

encounters the law, he/she enacts and produces legality. But not everyone encounters the law in the same way—and, indeed, the same person can encounter the law in different ways and, thus, enact and produce legality in different ways.[359] To help describe the different ways in which people can participate in the process of constructing legality, Ewick and Silbey identify three different forms of legal consciousness that people can display—"conformity *before* the law, engagement *with* the law, and resistance *against* the law."[360]

In Chapter 4, "Recruitment and Group Interviews," the kids offered a number of different reasons for wanting to join youth court. Although some expressed an interest in law (as a potential vocation), others viewed youth court as a job where they could earn money, while helping them to avoid the potential "evils" of the streets. Regardless of the reason for their initial interest, many of the kids interviewing for a spot in the RHYC training program possessed a dislike—and sometimes a strong dislike—for law enforcement, a disdain for "snitches," and a wariness—and even unwillingness—to "do something" when witnessing the commission of a crime. For many of the kids, then, their legal consciousness could be described as "*against* the law," thereby lending support to Ewick and Silbey's contention that members of disenfranchised or subordinated groups are more likely to be *against the law* and to demonstrate resistance to the law.[361] Those kids exhibiting a tension between their negative attitudes, beliefs, and experiences with the law and their pro-social/pro-normative aspirations (especially those voicing contempt for police officers and a desire to work in the legal system) could be depicted as hovering between the "*against* the law" schema and the "*with* the law"

[359] Ewick and Silbey (1998:228, 245).
[360] Ewick and Silbey (1998:45).

schema—willing to utilize law instrumental when it favors them (i.e., as a means of providing material comfort).

In Chapter 19**,** I likened the image of the criminal justice system presented to the kids as that of a "funhouse mirror"—not inaccurate, but grossly distorted with some parts enlarged and others shrunken. The kids were taught that there is no such thing as a "victimless crime"—that all crimes have a negative impact on "the community," a seemingly infinite entity in terms of space and population. The kids were advised that there are no macro-level root causes for behavior defined as "criminal"—that the etiology of deviance and delinquency lies in the individual person (or his immediate environment, e.g., family, friends, school). Through a process of learning what the law is, what some of the consequences of its violation might be, and how to serve as an effective RHYC member—and through a process that *discouraged* asking why certain laws exist, whether such laws should exist, whether the application and enforcement of some laws is consistent and fair, whether the benefits of transgression might outweigh its harm, and what else the law might be or do (or not be or not do)—the kids began to come "*before* the law." Those with too great an "*against* the law" consciousness either dropped out or were discouraged from continuing, while those floating between "*against* the law" and "*with* the law" schemas were nudged in the direction of "*with* the law." Towards the end of their training, those who had persisted revealed a "*before* the law" consciousness—one "awed by its majesty and convinced of its legitimacy."[362]

In Chapter 21, "RHYC Hearings," I described step-by-step a typical RHYC hearing and presented four categories of RHYC cases: 1) severe offense; apologetic and

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[361] Ewick and Silbey (1998:245).
[362] Nielsen (2000:1060).

forthcoming respondent; 2) severe offense; impenitent and aloof respondent; 3) not severe offense; apologetic and forthcoming respondent; and 4) not severe offense; impenitent and aloof respondent. In so doing, I argued that RHYC members very much wanted to deliver individualized justice (rather than justice based on subconscious notions of what society deems most offensive), but that the conflation of "fair," "beneficial," and "proportional," along with a lack of sanctioning options, meant that the RHYC members frequently sentenced respondents to the "default" option, thereby reproducing a system with few alternatives and resources to craft individualized justice. I maintained that this combination (the conflation of "fair," "beneficial," and "proportional," along with a lack of sanctioning options) when mixed with the "case creation" phenomena (or "criminal court net-widening," to use Barrett's term[363]) resulted in a process whereby RHYC became participants in a coercive, surveillant, self-perpetuating system—one that serves to further the state's claims to authority and legitimacy. The kids had become more "*before* the law" than before—more "*before* the law" than when they were trainees. Although engaged "*with* the law," their engagement was not one that treated law as a game. While some might have seen youth court as a means to a paycheck (and, indeed, many of the kids did refer to it as a *job* rather than an afterschool activity), for the most part, the kids did not use the law to serve their own self-interests. Rather, the kids had *become* the law—they had become legal players—agents of the RHCJC serving *the RHCJC's* interests and charged with the task of "spreading the good word."

Nowhere was it more evident that the RHYC members had become "*before* the law" (rather than engaging "*with* the law" for their own self-interests) than in the context

(In Press [Introduction]).

of interviews with the kids. For example, Aimee, one of the few respondents-turned-RHYC members, described how her experience at the RHYC had enhanced her appreciation of the law and law enforcement: "I mean, I know how I obviously have more respect it. I know not to do certain things." Similarly, ***Sera*** explained:

> It's [the RHYC] changed my perspective on law, like, period. Not only cops and judges but on law like to me I didn't know how cops were suppose to react and all that and how the justice like how court was, until I came here and then it just changed my whole idea and the whole thinking. So, that's how it had like impact. . . . Me, before I came to Youth Court, I thought cops just picked on like what they saw in the street. But, now as I see it, it's like they have to react in a way that they're trying to protect somebody, not that they're only assuming what's going on, but they're only protecting. To me before, it was just like they were picking on, but now they're - now my eyes see as protecting. So, that's how it changed.

Likewise, Jeremiah declared:

> I–before I used to put like a thing on their [cops]'] job, like, "Oh, you know, they don't do what they're supposed to." Or like they're mean and stuff like that. But then like really coming here and understanding like, it's their job. You know, like when they pick you up for truancy and stuff like that, you know, you can't get mad at them. Maybe some of them, you know, are a little overaggressive and so, but you can't say, "Oh they're not doing their job," 'cause it is their job to come here to like catch people that's doing truancy or catch persons that has marijuana and stuff like that. You know, we—in a way—we try to make cops jobs sound like they're doing more than they're supposed to when it is their job to do what they're doing.

For Clayton, not only had his experience affected his attitude towards and beliefs about the law and its players, but it had affected his ability to engage in low-level crime: "[Before I came here] I used to jump the turnstile. I didn't even know that was a crime until one day a police guy stopped me. . . . [Youth court] fill[s] up my days just so like I stay out of the street." Jeromy also recognized the pro-social impact the RHYC had had on him:

> It's like, you know, like I mean I'm not saying like I'm a kid who ran around just doing stuff, but you know, sometimes, you know with your friends, you like, you're loud and stuff like that. You could get like disorderly conduct, you know, you're being loud in the street and stuff like that. Also, you know, if you don't have your Metro Card and you hop the turnstile, you're not supposed to do that. That's fare evasion—that's a serious case. You get picked up for that. Also going to school late. I mean although you may wake up late and stuff like that, the cops don't care [and they'll arrest you]. . . . So like it [Youth Court] sorta changed my conduct outside, basically. And if, like further my knowledge on certain crimes and stuff like that and like the punishments they have. . . . But sometimes my friends be like, 'Oh, take the train,' I be like, 'I don't have a Metro Card,' they like, 'Oh hop the thing,' and like, 'No, I have a job, like how I look hopping the turnstile and I'm here trying to give a sanction to somebody that—hop a turnstile. Yeah.

While serving as an RHYC member might have affected the way in which Aimee, Sera, and Jeremiah viewed the law and their degree of respect for agents of formal social control (especially the police)—and while Clayton and Jeromy's RHYC membership experience might have diminished their readiness or propensity for low-level criminal offenses—the RHYC seemed to have had the greatest impact on Brendan and Roy. According to Brendan

> It changed me a lot because around here I used to have friends that would do bad stuff and peer pressure me into doing it. So coming in here I listened on cases just like that. Now whenever my friends try to tell me let's go into this house that says private property, I'm like, 'Nah, I'm not gonna do that. That's not me.' You get in trouble for that. . . . I also kinda' changed their minds now. Peer pressured them in a good way 'cause I'm telling them come on, some childish stuff. Being here at Red Hook Youth Court has shaped me up a little; taught me what's good; taught me what's bad and what's wrong and what's right.

For Brendan, then, not only had serving on the RHYC influenced how he responded to the temptations of transgression, but it had instilled in him a desire to change the attitudes and behaviors of his friends who might be prone to committing public order offenses—a sentiment shared by Roy:

> Yeah; I think it has changed me because since [coming to Youth Court] it's like I'm able to see the wrong that the youths do. Any little thing that they do like shouting on a train or getting wild, that's actually illegal. You can't be doing this and I'm able to understand why now. I'm able to see okay, it's wrong because what about the other people. Think about them. Think about how it looks on you. What about what they think about your parents and all that stuff. I'm able to see why you shouldn't be doing this and all that stuff. So I think it has changed me 'cause for one, I don't even like littering anymore. So yeah; it's changed me. . . . I feel like this is why I really wanna stay in Youth Court to prevent stuff like that from happening.

According to Ewick and Silbey, "[legal] consciousness is not an exclusively ideational, abstract, or decontextualized set of attitudes toward and about the law. Consciousness is not merely a state of mind. Legal consciousness is produced and revealed in what people *do* as well as what they say."[364] For Brendan and Roy, even more so than for Clayton and Jeromy, their legal consciousness of "*before* the law"—one might even refer to it as "*prostration before* the law"—was produced and revealed in what they did and said in the context of RHYC hearings, as well as outside the walls of the RHCJC—in the streets of Red Hook, in the subways of Brooklyn.

Very early in my fieldwork, I asked Melissa Gelber, then Coordinator of Operations at the RHCJC, about the goals of RHYC for its members and her sense of the impact that the RHYC (and the RHCJC, more generally) might have on the community of Red Hook. These were separate questions, but Melissa's answer applied to both. Melissa explained that kids who participate in youth court "go and tell others. [The] hardest thing to change is people's preconceived notions and I think the Red Hook Community Justice Center does this. Lots of people in the community have had negative experiences with the police or with courts. Kids [who participate in Youth Court] change this by reporting to others about the [RHCJC]." According to Melissa, staff at the

RHCJC viewed RHYC kids as "agents of change." Melissa meant that the kids were "agents" of the RHCJC capable of changing the attitudes of those with negative perceptions of the police and courts—and affecting the behavior of those inclined towards deviance. But it would have been just as accurate for her to refer to them as "agents of stasis"—representatives of law's "awesome grandeur"[365]—justifying and legitimizing the existing social order, playing a crucial role in the RHCJC's exercise of "soft power" (its ability to shape the preferences of others—in this case, encouraging young people to encourage other young people to reject criminal and deviant behavior),[366] perhaps even and "inducing [their peers] to perceive the power of ruling groups as fair and acceptable."[367]

What is particularly noteworthy about the impact of the RHYC on the legal consciousness of its trainees and members is how it operates in contrast to the way the RHCJC is presented to the general public. The RHCJC is considered a "demonstration project"—essentially, an experiment "to test new approaches to public safety problems."[368] Indeed, as Greg Berman, current Director of the Center of Court Innovation and one of the leading planners of the RHCJC said to me early in my fieldwork, the RHCJC is "an experiment to be studied." As such, the RHCJC opens its doors to researchers, such as myself, and to visitors, such as the women who attended Kayla's RHYC hearing, described in Chapter 21. At the same time—or, perhaps, in the course of welcoming researchers, planners, policymakers, politicians, and various legal players from around the world—the RHCJC has served as a model for community courts

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[364] Ewick and Silbey (1998:46).
[365] Ewick and Silbey (1998:47).
[366] See Nye (2004:5).
[367] Merry (1986:254); see generally Rosen (2006:166).

in Australia, Canada, the United Kingdom, among other countries. If, following Silbey, we can understand ideology and hegemony as "ends" or "poles" of a continuum of the "seen and the unseen,"[369] then the RHCJC, overtly, unabashedly, and enthusiastically promotes its ideology of problem-solving justice. With its kids, however, and especially RHYC trainees and members, the RHCJC operates much more hegemonically, whereby the processes of securing belief in formal justice[370] and the rule of law, ensuring consent to be governed, and reproducing existing social structures occur with far, far less discussion, questioning, and recognition.[371] Whether—and the extent to which—the kids' legal consciousness continues to reflect the image of the law created for them by the RHCJC remains to be seen.

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[368] See, e.g., Sammon (2008:929); http://www.courtinnovation.org/projects.
[369] Silbey (2005:333).
[370] See Carr (1981).
[371] See Agnew (2011:153 (citing Reiman and Leighton 2010).

APPENDIX

Starting the Study

In Appendix A of *Street Corner Society: The Social Structure of an Italian Slum*—one of the most thorough descriptions of qualitative research methods in an ethnography (and an abundantly useful account for explaining fieldwork to undergraduates the process by which research becomes a dissertation and a book)—William Foote Whyte comments that "the study of a community or an organization has no logical end point."[372] Whyte explains that he probably could have continued studying Cornerville, but that his funding situation dictated the length of his research.

In all likelihood, I would still be hanging out with kids at the Red Hook Community Justice Center (RHCJC) in Brooklyn, NY, instead of writing about them, were it not for a similar, external force: in Spring 2011, I was required to return to Atlanta, GA, to teach a post-fieldwork course (Urban Anthropology—in which I assigned Whyte's *Street Corner Society*) as part of the requirements for earning my Ph.D. While I very much enjoyed the opportunity to teach this course, the move back to Atlanta (I actually commuted between New York and Atlanta that term) effectively ended my study of the RHCJC, where I had been conducting fieldwork since June 2007.

Just as the study of a community or an organization has no logical end point, it also has no logical *starting* point. Whyte claims that his study began on the evening of February 4, 1937, when he met Doc, who would become his key informant. The starting point for my study is a little harder to identify, but three dates are viable options: Tuesday, August 22, 2006; Thursday, January 11, 2007; and Tuesday, June 26, 2007.

I could point to Tuesday, August 22, 2006, when I came across an article in *The New York Times*—"Under One Roof in Brooklyn, Trial, Penalty and Civics Lesson" (Wilson 2006)—where I first learned about the RHCJC and thought, "That might be an interesting place to conduct my fieldwork." Although I was familiar with the concept of "problem-solving courts" and "community courts," I had never come across an institution that combined an element of formal social control (the court) with quite as large an assortment of non-punitive programming under the same roof. As RHCJC staff would later explain to me, the reason the RHCJC is called the Red Hook Community *Justice Center*, rather than the Red Hook Community *Court*, is to emphasize its non-carceral, non-legal services and opportunities for residents of Red Hook. Yet because the RHCJC is a locus for the resolution of criminal cases and civil disputes, as well as a site for "an array of unconventional programs that engage local residents in 'doing justice'" (Center for Court Innovation n.d.), those who enter the building for reasons unrelated or peripherally related to legal matters still encounter signs and symbols of law, such as walking through metal detectors and passing by the courtroom. Law, then, permeates the experience of the youth involved in programs at the RHCJC, but does not drag them through the doors of the RHCJC. I thought this might render it a convenient, intriguing, and timely place to study legal consciousness, especially as institutions modeled on the RHCJC continue to take hold—a point to which I alluded in Chapter 3.

Perhaps I could claim late-afternoon on Thursday, January 11, 2007—a cold, gray, dreary day in New York—when my then-fiancée and now wife, Laura Fanucchi, and I drove from the Bronx (where we were staying), down the Henry Hudson Parkway (continuing south on the West Side Highway), through the Brooklyn-Battery Tunnel, and

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Whyte (1993: 324-25).

into the Red Hook section of Brooklyn. My "plan"—if one could even call it that—was to drive around the neighborhood and find the RHCJC. I was not even certain if we would get out of the car. This had nothing to do with fear. Although I had lived in the Fort Greene neighborhood of Brooklyn in the late 1990s (and although my father had grown up in the Brighton Beach/Manhattan Beach/Sheepshead Bay area of Brooklyn), I knew little about Red Hook—and certainly nothing of its nadir. Rather, Laura and I had early dinner plans that evening with friends in Brooklyn Heights and not knowing how long it would take to get to Red Hook from the Bronx, I thought we might have time only for a quick drive-around before heading up to meet our friends. But the drive took less time than I expected, Mapquest's directions proved pretty accurate, a parking space beckoned to me, and before I knew it, we were standing in front of the RHCJC. I had not contacted anyone from the RHCJC and had not even dressed "appropriately" for coming to what I then considered a "courthouse": I had not shaved in a few days and I was wearing bluejeans, hiking sneakers, and a ratty old sweater—a far cry from the suits and ties that I wore during my first couple of years following law school. (I served as a law clerk for the Honorable Ruth V. McGregor, then Vice Chief Justice, Arizona Supreme Court,[373] during my first year after law school (2003-04), and then as a law clerk to the Honorable Alan S. Gold, United States District Court for the Southern District of Florida, the following year (2004-05).) I did not even know what we would do once we got inside. But Laura and I ventured in—albeit somewhat cautiously.

[373] Arizona Superior Courts are state trial courts and courts of general jurisdiction. The Arizona Court of Appeals is the intermediate appellate court in the state of Arizona. The Arizona Supreme Court, where I clerked, is the "court of last resort" in Arizona—the highest court in its state court system. In New York, the hierarchy is a little different. The Supreme Court of the State of New York is the trial-level court of general jurisdiction in the New York state court system. The New York Supreme Court, Appellate Division, which is New York's intermediate appellate court, hears appeals of Supreme Court decisions. New York's highest appellate court is the Court of Appeals.

The first thing one encounters when walking through the doors of the RHCJC is a second set of doors, followed by a security desk and a metal detector. Before I could open my mouth—which was a good thing, because I had not yet figured out what I would say—one of the security guards announced, "There's no one here." A second security guard then asked what we wanted. Rather sheepishly, I explained that we were from Georgia (although I had grown up in upstate New York and lacked any semblance of a southern drawl), had read about the RHCJC in *The New York Times*, and wanted to "check it out" and "see what y'all were up to"—I had thrown in the y'all to make the claim of being from Georgia sound more believable. I did not think that the guards would believe me. In fact, I somewhat suspected that my scruffy attire and vague interest in "checking out the place" might raise suspicions. (Once, when I was an MFA student at Pratt Institute in the late 1990s, I went to visit my father in New Haven, CT, and nearly got myself arrested for telling a cop that I was "looking at the colors" of an abandoned industrial warehouse—he had been certain that I was "casing the joint" and only when I turned over a small sketchbook did he believe that I was an art student. Thus, despite my years working in and for courts, I was wary of telling abstract truths to uniformed officers carrying firearms and clubs.)

Much to my surprise, a second security guard, who had been sitting, stood up, introduced himself as Leroy, shook our hands, and motioned us through the metal detector. "Tom's right," Leroy said, "there's no one here. But you can have a look around." Leroy then bounded up the stairs. It was not clear to us whether we were to follow him, but given that going up a set of stairs is the only option after passing through the metal detector, Laura and I looked at each other, shrugged, mumbled a "thank you" to

Tom and a third security guard who had said nothing during the entire encounter, and proceeded up the stairs. When we got to the top, Leroy was gone. The hall in front of us was empty, as was the hallway to the right and the one to the left. But before we could decide which hallway to explore first, Leroy emerged from a door and indicated that "the judge" would be able to meet with us. "So much for my paranoia," I thought to myself. "Clearly, the security guards do *not* think I am a threat to the judge or to the building."

As promised by Leroy, Judge Alex M. Calabrese—whom I recognized from his picture in the August 22, 2006 article in *The New York Times*—appeared within minutes and introduced himself. Again, I explained that we were from Georgia, that I had read about the RHCJC in *The New York Times*, and that I wanted to learn a little more about the place—although I said as much with a bit more confidence than I had when speaking with the security guards. Judge Calabrese proceeded to give us a tour of the RHCJC and then brought us to the mock courtroom, where we sat and chatted for awhile. By this time, I had told Judge Calabrese that I was a doctoral student in anthropology at Emory University, but because everything was going so well, I did not want to push my luck by asking whether I might be able to conduct fieldwork at the RHCJC. Laura, however, was encouraging me to inquire, and so towards the end of our conversation, I asked Judge Calabrese whether he would be amenable to my spending some time that summer conducting research on/at the RHCJC. Without pausing, Judge Calabrese said that I could, produced a business card, and indicated that I should contact him, which I did the next day. Judge Calabrese put me in touch with James Brodick, then the Project Director at the RHCJC, and over the next 5½-months, James and I spoke on the phone and communicated via email to set up some of the parameters of my study.

The third possible starting point for my study is Tuesday, June 26, 2007—a sweltering hot New York City summer day in which the gods of traffic seemed to be conspiring against me in my efforts to reach Red Hook for my first meeting with James Brodick. I eventually made it to the RHCJC for the meeting, which, in many ways, turned out to be my "Doc moment." James had bought pizza and had gathered some staff members in the conference room. Over lunch, the staff members asked me a little bit about what I hoped to accomplish during my summer study (at this point in time, I was referring to it as a pilot project). Some of them had read the scientific protocol that I had submitted to Emory University's Institutional Review Board and had subsequently sent to James, and asked me questions about my hypotheses and proposed methods, as well as the literature I would be leaning on to support my study. After lunch, James took me on a tour of the building, introducing me to various staff members, explaining to them who I was, and telling them that I might want to speak with them. At the end of the tour, James showed me to a space I could use for the summer (containing a desk, a computer, and a phone), and told me that if I needed help arranging any interviews, I should let me him—an offer not unlike Doc's offer to Whyte: "You just tell me what you want to see, and we'll arrange it."[374]

All three dates—Tuesday, August 22, 2006, Thursday, January 11, 2007, and Tuesday, June 26, 2007—represent key junctures in the process of identifying and establishing the RHCJC as the locus of my fieldwork. But the desire to study what young people know about the law and how they understand the law can be traced back to my year clerking for the Arizona Supreme Court and to two young people: Abraham and Andre.

Whyte (1993: 291).

Abraham and Andre

As a law clerk to the Honorable Ruth V. McGregor (from August 2003-August 2004), I had two main duties: (1) to review cases scheduled for oral argument before the Arizona Supreme Court, summarize their facts and legal issues, analyze the parties' different positions, and recommend a course of action for the court; and (2) to assist Justice McGregor in authoring opinions of the court. In the fall of 2003, a case came before the Arizona Supreme Court involving a fourteen-year-old defendant, who had been convicted of two counts of aggravated assault for shooting a fourteen-year-old girl in the stomach during the course of an argument and fight. The trial court held that the crimes for which the defendant was convicted were "dangerous crimes against a child," and consequently sentenced the defendant under special sentencing provisions of the Arizona Revised States (A.R.S.) §13-604.01.[375] The Arizona Court of Appeals vacated those sentences, holding that the defendant had not committed a "dangerous crime against a child" because there was no evidence that he was "peculiarly dangerous to children" or that he "pose[s] a direct and continuing threat to the children of Arizona" (alteration in the original). The Arizona Supreme Court granted review to determine the quantum of proof needed to establish that a crime is a "dangerous crime against children" under A.R.S. §13-604.01.

The fourteen-year-old defendant in the case was Abraham David Sepahi. Abraham was tried as an adult and convicted of aggravated assault causing serious physical injury and aggravated assault involving the use of a deadly weapon or dangerous instrument. The trial judge held that because the offenses were among fifteen

[375] A.R.S. §13-604.01 was renumbered as § 13-705 and amended by Laws 2008, Ch. 301, §§17, 29, eff. Jan. 1, 2009.

enumerated offenses and that because the victim was a minor under the age of fifteen, the "dangerous crimes against children" statute applied to Abraham's case. Pursuant to the statute, the trial judge sentenced Abraham to two consecutive ten-year terms of imprisonment. The Arizona Court of Appeals, as noted above, vacated the sentences on the grounds that the "dangerous crimes against children statute" did not pertain to this case. Although the Arizona Court of Appeals agreed that Abraham's conduct was directed at victim under the age of fifteen, the court read the statute to require a showing that the defendant was "peculiarly dangerous to children" or otherwise "pose[s] a direct and continuing threat to the children of Arizona." Because the trial court had noted at sentencing that the record in the case would not support such findings, the Arizona Court of Appeals vacated the consecutive sentences imposed under the dangerous crimes against children statute.

Previously, in a case involving a drunk driver who had injured a fourteen-year-old boy in a car accident, the Arizona Supreme Court had held that although the crime (aggravated assault involving physical injury and use of a dangerous instrument) was among the list of enumerated offenses and although the victim was under the age of fifteen, "something more" was needed to trigger the special sentencing provisions of the "dangerous crime against children" statute. The legislative history of the statute revealed that the statute was intended "to reach criminals who specifically prey on children" and "predators who pose a direct and continuing threat to the children of Arizona." Because the purpose of the statute was to punish and deter such individuals—and because the Arizona State Legislature did not intend to apply the statute to individuals who "fortuitously injure children by their unfocused conduct"—the Arizona Supreme Court

rejected the argument that the statute could be activated simply by proof of the age of the victim. Instead, the Arizona Supreme Court held that in order for the statute to apply, "the defendant's conduct must be focused on, directed against, aimed at, or target a victim under the age of fifteen." Because the drunk driver's criminal behavior was not "directed at or focused upon" a victim under the age of fifteen, the enhanced sentencing provisions of the "dangerous crimes against a child" statute did not apply.

In my memorandum to Justice McGregor, I argued that the "dangerous crimes against children" statute did not apply in Abraham's case and recommended that the Arizona Supreme Court affirm the decision of the Arizona Court of Appeals. I stressed that the Arizona State Legislature had enacted the "dangerous crime against children" statute "to respond effectively to those predators who pose a direct and continuing threat to the children of Arizona." Although the legislative history did not reveal that the Arizona Legislature intended to limit the statute only to predators—I spent a day combing through the dusty files of the state Law and Research Library—I asserted that Abraham's case was not that dissimilar from the drunk driver's case. Just like the drunk driver, Abraham was not someone who preyed on helpless children—for he himself was a child at the time! I acknowledged that the drunk driver had fortuitously injured a child with his unfocused conduct, whereas Abraham's actions were directed at, aimed at, targeted at a victim under the age of fifteen. But neither the drunk driver nor Abraham had targeted a victim under the age of fifteen *because* the victim was under the age of fifteen. In other words, I argued that the Arizona State Legislature intended the "dangerous crimes against a child" statute to apply to crimes against a child *qua* child.

Even if the statute could not be read to apply only in those circumstances where the victim has been selected because of his or her status as a minor under the age of fifteen, I maintained that the statute did not apply to Abraham because he was neither "peculiarly dangerous to children," nor did he "pose a direct and continuing threat to children." Although I admitted that Abraham might be more willing to use lethal violence than most other fourteen-year-olds and that *anyone* carrying a gun is more dangerous (to anyone else) than someone not carrying a gun, Abraham was not abnormally or unusually dangerous to children. Nor did Abraham pose a direct and continuing threat to children. While he might continue to pose a threat to children and adults alike if he continued to carry a gun on his person, the shooting was an isolated incident—quite different from predators who possess an ongoing threat to children.

Unfortunately, I could not persuade Justice McGregor or any of the other judges of the Arizona Supreme Court. In a unanimous opinion—a classic example of how "the significance of legislation is always greater than the meaning intended for it"[376]—the court vacated the opinion of the court of appeals. Much to my disappointment—and I am sure to Abraham's!—the court held that Abraham was subject to the special sentencing provisions of the "dangerous crimes against children" statute because (1) he committed one of the statutorily enumerated crimes; (2) his victim was under the age of fifteen; and (3) his conduct was focused on or aimed at the victim. The "dangerous crimes against children" statute did not, the court held, require a finding that the defendant was "peculiarly dangerous" to children or "pose[s] a direct and continuing threat to children."

I was heartbroken. And my inability to persuade Justice McGregor—or anyone else on the court (although I had far less access to the other justices)—plagued me the

rest of my clerkship and for years afterwards.[377] While a ten-year prison sentence for a fourteen-year-old boy, in and of itself, seemed unjust to me, *two consecutive ten-year prison sentences* was unconscionable. There is a big difference between serving ten years in prison and emerging in one's mid-twenties and serving twenty years and being released in one's mid-thirties. While the life opportunities for someone in his twenties who has spent ten years in prison are slim, those available to someone in his thirties who has spent twenty years in prison are close to nil. I had just written on recidivism rates and the collateral consequences of conviction and imprisonment,[378] and thus the effects of prison on an individual—especially a young person—were fresh in my mind. I strongly felt that the Arizona Supreme Court had effectively (although not literally) ended Abraham's life.

Although my anguish would continue, I also started wondering what Abraham knew or might have known at the time of his crimes. While he probably knew that shooting someone in the stomach was illegal, I wondered whether he knew what the punishment for such an assault was or might be. Many people have little idea of the true certainty and severity of punishment[379] and I highly doubted that Abraham knew that by pulling the trigger of his gun he would also trigger the special provisions of the "dangerous crimes against children" statute. I also was not naïve enough to think that had Abraham known that he might face twenty years in prison, he might not have shot his victim. But the circumstances and result of Abraham's case did make me wonder what young people knew about the law and whether knowledge about the law would or could

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[376] Collier (1989: 220-21).
[377] See Brisman (2010).
[378] Brisman (2004).
[379] See, e.g., Kleck et al. (2005).

affect one's choices and decisions with respect to illegal behavior. The seed for this dissertation had been planted.

I received a modicum of relief from the pains of Abraham's case in the spring of 2004 when the Arizona Supreme Court considered the standard for determining the voluntariness of a juvenile's confession when a parent is denied access to his or her child's interrogation by the police. The appeal and subsequent decision attracted a fair bit of local media attention.[380] The underlying facts of the case were as follows.

On February 2, 2002, a sixteen-year-old boy, Andre M., was sent to his principal's office after a reported fist fight which he had allegedly been involved in that morning. Shortly thereafter, police officers arrived at Andre's school and briefly interviewed Andre about the fight. The school contacted Andre's mother, who arrived at the school after this interview and sat with the assistant principal and Andre while Andre awaited further questioning from the police. During this time, the police discovered a sawed-off shotgun in the trunk of another student's car. The shotgun was apparently connected to Andre, but Andre's mother was unaware of this discovery and did not know that the police intended to question Andre about any subject other than the fight.

By the afternoon, Andre had still not been re-interviewed by the police. At approximately 2:10 p.m., Andre's mother told the assistant principal that she needed to leave in order to pick up her young daughter from another school, but that she would return post-haste. The assistant principal assured Andre's mother that if she did not return in time to be present for further interviewing and questioning by the police, either the assistant principal or another administrator would sit in on the interview and

[380] See, e.g., The Arizona Republic (1/8/04; 1/27/04); Burnette (2004); Davenport (2004); Kossan (1/8/04; 4/24/04).

questioning. Upon receiving this assurance, Andre's mother left to pick up her daughter. The assistant principal, however, neglected to tell the police officers of Andre's mother's wish that either she or an administrator sit in on any interview and questioning involving Andre and the police.

When Andre's mother returned to Andre's high school twenty minutes later, she found Andre in a closed room. She attempted to enter the room in which Andre was being questioned by three officers, but a fourth officer seated outside the room prevented her from doing so. The police officers continued interrogating Andre for another five to ten minutes.

During this second interview, Andre admitted to possessing a deadly weapon on school grounds and to possessing a firearm as a minor. He was charged with a felony and three misdemeanors. At juvenile court proceedings, Andre moved to suppress the statements he made during the second interview. Andre argued that his statements had been made in violation of the U.S. Supreme Court case of *Miranda v. Arizona* (which held that the Fifth Amendment prohibition against compulsory self-incrimination applies in all custodial interrogations and binds the states) because 1) he had not knowingly, intelligently, and voluntarily waived his rights; 2) he had been questioned in an atmosphere of fear and intimidation; and 3) he had been questioned without his mother being present. The juvenile court denied the motion, adjudicated Andre delinquent, and placed him on probation for one year. The Arizona Court of Appeals affirmed and the Arizona Supreme Court granted review to consider the impact of a parent's exclusion upon the voluntariness of a juvenile's confession.

This time the Arizona Supreme Court got it right, vacating the decision of the Arizona Court of Appeals and reversing the judgment of the juvenile. In an opinion by Justice McGregor that I helped her author, the court ruled that having a parent present during police questioning can both help ensure that a juvenile is not "intimidated, coerced or deceived" and make it more likely that the juvenile understands what it means to waive his/her rights.

To reach this decision, we began by explaining that a defendant may waive his *Miranda* rights, provided that the waiver is made voluntarily (i.e., free from coercion), knowingly, and intelligently. In order to determine whether a defendant has voluntarily, knowingly, and intelligently waived his or her rights, a court must find that the state has successfully established two factors: (1) that the relinquishment of the right was voluntary, in the sense that it was the product of a free and deliberate choice, rather than the result of coercion, deception, or intimidation; and (2) that the waiver was made with a full awareness of both the nature of the right being abandoned (i.e., what the right "means" or enables someone to do or not do) and the consequences of the decision to abandon it. When a defendant alleges that he did not voluntarily, knowingly, and intelligently waive his *Miranda* rights, the state must prove that the confession had, indeed, been freely and voluntarily made. Because of the increased susceptibility and vulnerability of juveniles, the state's task of establishing the voluntariness of a statement becomes more difficult when a juvenile is involved.

To determine whether a juvenile's confession was voluntary, we explained that Arizona courts must consider the "totality of the circumstances surrounding the confession," including the juvenile's age, education, and intelligence; any advice that

may or may not have been given to him regarding his constitutional rights; the length of the detention and questioning; and whether physical force was involved. We also noted that, under prior Arizona case law, while the presence of a child's parents or their consent to a waiver of rights is only one of the elements to be considered by a trial court in determining that the child intelligently comprehended his or her rights and that the statement was voluntary, the state can more easily establish the voluntariness of a waiver if a parent attends a child's interrogation. A parent, we explained, can help ensure that a juvenile will not be coerced, deceived, or intimidated during an interrogation, and that any confession is the product of a free and deliberate choice. The presence of a parent also makes it more likely, we continued, that the child will be aware of the nature of the right being abandoned and will understand the consequences of a decision to abandon that right. In the absence of a parent, the state faces a more daunting task of demonstrating that the confession was neither coerced nor the result of "ignorance of rights or of adolescent fantasy, fright or despair."

Applying the law to the facts of Andre's case, we pointed out that not only was a parent absent during the juvenile's (Andre's) interrogation, but that the parent (Andre's mother) had attempted to attend the interrogation and had been prevented from doing so by the police officers. We concluded that in evaluating the voluntariness of a juvenile's confession under the "totality of the circumstances" standard, a court should consider conduct by law enforcement personnel that frustrates a parent's attempts to confer with his or her child, prior to or during questioning, to be a *particularly significant factor* in determining whether the confession was given voluntarily, knowingly, and intelligently.

In setting forth this factor under the "totality of the circumstances" standard, we made clear that circumstances might justify, or even require, the exclusion of a parent. For example, a juvenile may request or insist that his parent not be present. In other situations, we offered, a parent who is disruptive or who threatens the officers or the child at the time of the interrogation will probably not improve the child's comprehension of his or her rights or the consequences of waiving them. Similarly, we recognized that a parent's absence will be justified if the incident to which the police respond involves allegations against the parent. And finally, if time is of the essence and a speedy interrogation of a juvenile is necessary to help ensure the safety or security of others, law enforcement personnel may be justified in conducting an interrogation in the absence of a parent. But, we declared, if the state cannot establish a good cause for barring a parent from a juvenile's interrogation, a strong inference arises that the state excluded the parent in order to maintain a coercive atmosphere or to discourage the juvenile from fully understanding and exercising his or her constitutional rights.

In Andre's case, the record revealed no justification for excluding Andre's mother. Andre did not ask the police to prevent his mother from accompanying him during questioning, and Andre's mother was neither abusive nor disruptive. In fact, the only reason that the state proffered for excluding Andre's mother was that it would have been inconvenient for the police to interrupt the interrogation and advise Andre of his *Miranda* rights in the presence of his mother. Such limited inconvenience, we asserted, cannot justify the exclusion of Andre's mother when her presence was so important to assuring that he comprehended the rights guaranteed to him.

The fact that Andre's mother was excluded did not, in and of itself, require a finding that Andre's confession was involuntary. But based on the "totality of the circumstances," we determined that the state had not met its burden. Although Andre was sixteen years old at the time of questioning, appeared to be of normal intelligence, was interviewed at his school (rather than at a police station, which could have created a more coercive or frightening environment), was interrogated for a relatively short period of time, and was not subjected to physical force by the police, there was no evidence that Andre had received age-appropriate warnings or any signed acknowledgment to indicate that Andre received and understood his *Miranda* rights. This limited evidence, we held, coupled with the negative inference that arises from the police officers' unjustified exclusion of Andre's mother from the questioning, meant that the juvenile judge had clearly erred in admitting Andre's statements. Because the error contributed to the verdict—because Andre's statements comprised almost the entirety of the evidence presented by the state in support of the charges against Andre, making it virtually impossible for the juvenile court to have found Andre delinquent in the absence of his statements—the Arizona Supreme Court vacated the decision of the Arizona Court of Appeals and reversed the judgment of the juvenile court.

I was pleased. More than pleased, in fact. Some might suggest that the court could have gone farther—for example, Andre had urged the court to adopt a *per se* rule of exclusion that if the police deliberately exclude a parent from his or her child's interrogation, without good cause to do so, any resulting statement must be suppressed. Others pointed out that the case did not settle the question as to whether school administrators must notify parents when police want to question their children at

school.[381] But I was thrilled with the decision on a number of grounds. First, I was happy for Andre. Although Andre was above the age of eighteen by the time the Arizona Supreme Court issued its opinion, meaning that Andre was no longer a juvenile and no longer on probation, I was fairly certain that the decision would clear his record and improve his life chances. Second, while Andre's case was different from Abraham's, given how Abraham's case had unfolded, there was no guarantee that the Arizona Supreme Court would not once again reach a decision harmful to juveniles. In fact, because police question young people about crimes far more often than young people commit acts that could trigger the "dangerous crimes against children" statute, I reasoned that there was a lot more at stake with Andre's case. Along these lines, Justice McGregor and I had inserted some key language into the opinion. In particular, we had helped establish the principle that in evaluating the voluntariness of a juvenile's confession under the "totality of the circumstances" standard, "a court should consider conduct by law enforcement personnel that frustrates a parent's attempt to confer with his or her child, prior to or during questioning, to be a *particularly significant factor* in determining whether the confession was given voluntarily, knowingly, and intelligently" (emphasis added). We had also made it clear that "[w]hen . . . the state fails to establish good cause for barring a parent from a juvenile's interrogation, a strong inference arises that the state excluded the parent in order to maintain a coercive atmosphere or to discourage the juvenile from fully understanding and exercising his constitutional rights." Finally, we had asserted the importance of providing young people with "age-appropriate [*Miranda*] warnings"—a measure that I hoped would lead to greater comprehension, appreciation,

[381] See, e.g., Davenport (2004); Kossan (4/24/04).

and exercise of rights by juveniles.[382] I was proud of my contribution in helping to establish greater protections for juveniles in custody, and felt somewhat absolved for my failure to convince the court in Abraham's case.

With this sense of relief came an even greater curiosity about the nature and extent of young people's understanding of the law. I wondered what Andre had known—if anything—about *Miranda* rights prior to that fateful day when he was interrogated at school. I wondered what he had learned in the aftermath of the case and what effect the case might have on Arizona juveniles' understanding of the law. Although it would be several years before I would encounter the term, *legal consciousness*, and move from mere wondering to actually investigating such questions, the seed of this dissertation had begun to germinate.

Developing the Study

As suggested above, my interest in *youth legal consciousness* started to germinate with Abraham and David (although I did not refer to this interest as such until later) and I committed myself to the study of *youth legal consciousness* at the RHCJC over the course of my first summer in Red Hook (2007). In August 2007, I returned to Atlanta,

[382] Issues regarding the rights of juveniles in custody continue to be resolved at both the state and federal level. For example, in *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011), the U.S. Supreme Court considered whether the age of a suspect subjected to police questioning is relevant to the custody analysis of *Miranda v. Arizona*. In an opinion by Justice Sonia Sotomayor, the Court held that a child's age properly informs the *Miranda* custody analysis. Justice Sotomayor explained that "[i]t is beyond dispute that children will often feel bound to submit to questioning when an adult in the same circumstances would feel free to leave," 131 S.Ct. at 2398-99. "[O]fficers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age," the Court reasoned. "They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult." *Id*. at 2407. Stressing that particular care should be taken to ensure that incriminating statements by children are not obtained involuntarily, the Court concluded that "[t]o hold . . . that a child's age is never relevant to whether the suspect has been taken into custody—and thus to ignore the very real differences between children and adults—would be to deny

where I spent the 2007-08 academic year completing my second year of graduate studies in the Department of Anthropology at Emory University. In June 2008, my wife, Laura, our then-eight-month-old daughter, Zeia, and our aging dog, Phoebe, moved to Manhattan, where Laura began her residency in internal medicine at New York Presbyterian Hospital. In that same month, I resumed my fieldwork at the RHCJC, which, as described at the outset of this Appendix, I conducted until January 2011.

As I jumped back into fieldwork at the RHCJC in the Summer of 2008—now dedicated to the study of legal consciousness among youth involved in voluntary programs at the RHCJC—I was guided by four main themes, each containing a number of questions: (1) scope and content of legal knowledge; (2) sources of legal knowledge and influences on legal consciousness; (3) nature of understandings of and experiences with the law; and (4) positionality and agency with respect to the law. I provide some context for these themes and their related questions below. I then explain how these themes and questions morphed into what became the substance and content of this dissertation.

1. Scope and Content of Legal Knowledge

Ignorantia legis neminem excusat or *ignorantia juris non excusat—ignorance of the law excuses no one* or *ignorance of the law does not excuse*—is one of the better known doctrines in criminal law. Proponents of the rule argue that people should know the law and that they should refrain from acting until they do so. Such supporters contend that the rule encourages people to learn the law and that it may, at times, be necessary to sacrifice the morally blameless person to achiever the greater good of

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children the full scope of the procedural safeguards that *Miranda* guarantees to adults." *Id*. at 2408. For brief overviews of *J.D.B. v. North Carolina*, see, e.g., Editorial (6/17/11); Liptak (6/17/11).

creating an incentive for learning the law. Furthermore, they contend, anyone could claim that he/she relied on the advice of others, which could be hard to prove and which could result in collusion between defendants and others claiming to have provided such advice.

Opponents of the doctrine assert that the failure to know and interpret properly ever statute and administrative regulation is not a reflection of moral blameworthiness. Furthermore, detractors maintain that the law is no longer definite and knowable as it may have once been, and that even lawyers and judges do not know every single regulation and statute that pertains to an increasing number and range of activities and behaviors.

Given that we place a premium on knowing *something* about the law—indeed, one's future could well depend on whether we know the law—I wanted to know: What do young people know about the law and justice generally? What do they know about their legal rights? What do they *think* they know, albeit incorrectly, about the law? What is the nature and scope of their legal knowledge or "legal literacy"?[383] How "integrated" is this knowledge and information about the law?[384]

2. Sources of Legal Knowledge and Influences on Legal Consciousness

Nielsen claims that "[f]or the most part, ordinary citizens have a generally accurate understanding of the law."[385] Although elsewhere she clarifies that "individuals

[383] Hirsch (2002:16).
[384] Experts in the field of consciousness studies assert that while consciousness is not reducible to "quantity of information," it is "nothing more than integrated information" (Zimmer 2010). Accordingly, my research asks whether young people's legal consciousness exists in "bits" (for lack of a better word)—do they know a small amount about independent, discrete areas of the law?—or is their knowledge more integrated and interconnected?—do they possess a "network" of knowledge about certain types of law?
[385] Nielsen (2006:226).

are unlikely to understand when they have been legally harmed"[386]—and while she certainly does not claim that ordinary citizens possess an understanding of the intricacies of various types of jurisprudence—her overall position is that ordinary citizens are more, rather than less, knowledgeable about the law. While she suggests that this knowledge may come about, in part, from the "lived consequences" of various formal laws, she is less than explicit about the sources of legal knowledge that provide ordinary citizens with "a generally accurate understanding of the law."[387]

As such, I envisioned my study as being motivated, in part, by the question, how do young people know what they know? What are the sources of their legal knowledge? What has affected or otherwise influenced their conceptions, perceptions, and understandings of the law at its players? Does their legal consciousness, including their legal knowledge, stem from direct interaction with the legal system?[388] Do they know what they know and do their perceptions of the law stem from the interaction of family, friends, and neighbors with the legal system?[389] From formal institutions, such as schools or churches?

What forms of mass media, if any, have informed what young people know about the law and how they perceive it?[390] Does their knowledge about, familiarity with, and

[386] Nielsen (2006:228).
[387] Nielsen (2006:226).
[388] See Carr, Napolitano, and Keating (2007); Chriss (2007); Hagan and Shedd (2005); Hagan, Shedd, and Payne (2005); Nielsen (2000); Taylor et al. (2001).
[389] See Chriss (2007); see also Boissevain and Grotenbreg (1989:236).
[390] See, e.g., Brigham (1998:212-13); Ewick and Silbey (1998:16, 245). Wacquant (2001:116) discusses the melding of street and carceral symbolism, "with the resulting mix being *re-exported* to the ghetto and diffused throughout society via the commercial circuits catering to the teenage consumer market, professional sports, and even the mainstream media."

broader conceptions about the law stem from "street lit" or "gangster books"? [391] From "Stop Snitching" campaigns? [392]

Do "outlaw" images portrayed by rap artists have bearing on young people's conceptions, perceptions, and understandings of the law at its players?[393] Chuck D (Carlton Douglas Ridenhour), founder of the hip-hop group, Public Enemy, has referred to rap as "the black CNN."[394] But much rap (or, at least, much "gangsta" rap) promotes crime, promiscuity, misogyny, and rape, and glorifies the drug trade, street gangs, drive-by shootings, and violence, more generally—especially that directed at the police.[395] Moreover, as Wilson (2005:345) observes, "rap artists have a long and storied history with the American judicial system." Indeed, many well-known rap artists have faced multiple criminal charges (and, in some cases, served jail or prison sentences)—from Tupac Shakur, Snoop Doggy Dog, Dr. Dre, and Flavor Flav[396] to Jay-Z[397] and Sean (then known as "Puff Daddy" or "Puffy" and now known as "P. Diddy" or "Diddy") Combs[398]

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[391] Cox (201: 599); see also Chura (2010:142, 146). In an interview, one of my informants revealed that his mother had written a book. I early purchased the book online and read it as soon as it arrived. Unbeknownst to me, the book, *Sweetest Revenge*, was a self-published piece of urban fiction, containing explicit profanity, sex, and violence. Given its graphic details, I am fairly certain that my informant had not read his mother's work. Though I enjoyed reading it and wondered whether it contained autobiographical elements, I refrained from asking my informant about it.

[392] See, e.g., Brown (2007); Carr, Napolitano, and Keating (2007 (citing Gregory 2005; Lee 2006; White 2005)); Herbert (8/24/06); Honigman (2009); Natapoff (2009); Police Executive Research Forum (2009); *see also* Bykowicz (2007); Jacobs (2007); Kocieniewski (5/21/2009); Kocieniewski (12/30/2007); Kocieniewski (9/19/2007); Kocieniewski (7/29/2007); Myers (2007); Reavy (2007); Sanneh (2007a); Warren (2008); *see generally* Chura (2010); Frazier (2008); Johnson (2012); Kocieniewski (12/21/2007); Kocieniewski (11/19/2007); Kocieniewski (10/28/2007); Kocieniewski (7/9/2007); Maldonado (2010).

[393] See Ferrell (1998:76); see also Chura (2010); Eckholm (2006); Honan (2008); Sanneh (2007a); see generally Leeds (2007); Parker-Pope (2007); Sanneh (2010); Sisario (2008).

[394] Katel (2007:127).

[395] Katel (2007:127-32); cf. Miet (2012). Wacquant (2001:116) Wacquant discusses the "*fusion of ghetto and prison culture*, as vividly expressed in the lyrics of 'gangsta rap' singers and hip hop artists, in graffiti and tattooing, and in the dissemination, to the urban core and beyond, of language, dress, and interaction patterns innovated inside of jails and penitentiaries" (citing Cross 1993; Phillips 1999).

[396] See Ferrell (1998); see also Piepenburg (2010); Richards (2010).

[397] See Gimenes (2001); Richards (2010).

[398] See Frazier (2008); Gimenes (2001); Katel (2007); Richards (2010).

to Project Pat[399] to T.I.[400] to DMX,[401] Kanye West,[402] Chris Brown,[403] Tru-Life,[404] C-Murder[405] to Ja Rule,[406] Lil Wayne,[407] and many others.[408] Record company executives have joked that "the longer a rapper's arrest record, the longer his record . . . stay[s] on the charts."[409] While some question whether lengthy rap sheets still enhance rappers' popularity,[410] the dominant perception is that having a brush (or brushes) with the law is *de rigueur* in the rap industry. When Lil Wayne was to be sentenced in 2010 in Manhattan Criminal Court on gun possession charges, some fans played down the seriousness of the charge: "'Every rapper is getting a year in jail right now.'"[411] Do—and if so—how do some of hip-hop's lyrics and messages, and rappers run-ins with the law,

[399] See Sanneh (2007b).
[400] See Caramanica (2008); Itzkoff (9/3/10); Johnson (2010); Richards (2010).
[401] See McElroy (2009); Richards (2010).
[402] See Itzkoff (4/15/2009).
[403] See Caramanica (2011); Itzkoff (6/24/2009, 8/27/2009; 3/23/11; 3/25/11); Ryzik (8/7/09).
[404] See Baker (6/26/09).
[405] See Harris (2009); see also Caramanica et al. (2005).
[406] See Molloy (2012).
[407] See Kilgannon and Moynihan (2010); Richards (2010).
[408] In 2005, the hip hop magazine, *XXL*, produced, what it referred to as, its "first-annual jail issue," containing stories about the following "MCs" behind bars: Chad "Pimp C" Butler, Terrence Lewis Cook (a.k.a. "Drama"), Chi Ali Griffith, Mysonne Linen, Gregory "Cold 187um" Hutchinson, Antron "Big Lurch" Singleton, McKinley "Mac" Phipps Jr., Corey Miller (a.k.a. C-Murder, a.k.a. C-Miller), John Forté, Tracey "Tray Deee" Davis," Shawn "C-Bo" Thomas, Ezekiel Jiles (a.k.a. "Freekey Zeekey"), Tab Virgil (a.k.a. "Turk") (compiled by Caramanica et al. 2005). The issue also contained an article on the criminal case against rapper Lil' Kim (Kimberly Denise Jones)—she was convicted of conspiracy and perjury—as well as correspondence from prison from her manager, Damion "D-Roc" Butler, short reflections on prison "bids" by T.I., Ras Kass, Styles, Hell Rell, Slick Rick, and Cormega, and a piece on the post-prison life of Marvin Bernard ("Tony Yayo") of the hip hop group, G-Unit (see Matthews 2005; Rubin 2005). For additional examples, see, e.g., Gimenes (2001) (stating that "[t]he artists who make the newspapers [seem to be] do[ing] so for their actions and lifestyles far more often than for their music," and discussing the arrests of Jay-Z, Sean "Puffy" Combs, DMX, and Lil' Kim); Richards (2010) (discussing T.I., Lil Wayne, Gucci Mane, and Lil Boosie's run-ins with the law in 2010, and noting the jail time served by rap stars such as Snoop Dogg, Slick Rick, Lil' Kim, Mystikal, Foxy Brown, and DMX).
[409] Saunders (1993:24D); see also Ferrell (1998:76).
[410] Richards (2010) acknowledges that at one point in time, going to jail may have helped rappers careers, but suggests that "the amount of hip-hop star power in prison this year [2010] is staggering, causing some fans to wonder if the culture has reached a crisis point—and if the careers of some of its brightest talents will survive." For a discussion of One Mic—a project that teaches young offenders life skills, while at the same time helping them hone their skills in rhyming, writing lyrics, and producing—see Miet (2012).
[411] See, e.g., Kilgannon and Moynihan (2010:A29 (quoting Karl Mukaz, 22, a French exchange student attending Berkeley College in White Plains, N.Y.)).

affect or otherwise influence young people's knowledge, perceptions, and understandings of the law?

Do young people's knowledge about the law and attitudes towards it derive or gain traction from news stories, such as ones the reported the 1991 beating of Rodney King by the Los Angeles Police Department, or the 1997 assault and sodomizing of Abner Louima, a Haitian immigrant, and the 1999 killing of Amadou Diallo, an unarmed Guinean immigrant who was shot forty-one times in the foyer of his own apartment building—both of which took place at the hands of the New York Police Department (NYPD)[412]? As Librett, a retired police officer admits, "police officers are often accused of excessive use of force, racism, and acts of official corruption"[413]—and which often attract the attention of the news media.[414] Of course, some cases bring more publicity than others. For example, the Sean Bell shooting incident of 2006, which drew comparisons to the 1999 killing of Diallo, resulted in large protests and sparked fierce criticisms of the NYPD.[415] Henry Louis Gates, Jr.'s arrest outside his Cambridge, Massachusetts, home in 2009, by Cambridge Police Sgt. James Crowley, attracted the international news media spotlight, and generated a national debate about racial profiling by the police.[416] More recently, images of NYPD officers pepper spraying Occupy Wall Street protestors in Fall 2011 grabbed headlines and graced the front pages of

[412] Bourgois (2003:xxi).
[413] Librett (2008:259); see also Henderson and Simon (1994).
[414] See Tyler (2003:328) (stating that "police-citizen interactions have been publicized in the media as ones tinged with bias").
[415] See Baker (4/25/09; 2/17/10); Baldwin (2009); Barnard (2009); Buettner and Rivera (2006); Cardwell (2006); Chan and Khan (2006); Chen and Baker (2010); Eligon (10/9/08); Healy (11/30/06); Herbert (11/30/06); Parascandola (2011); Powell (2009); Robbins (3/5/11); Sulzberger (5/19/10).
[416] See Baker and Cooper (2009); Goodnough (7/21/09; 7/24/09); Herbert (8/1/09; 8/4/09); Lavoie (2009); Saulny and Brown (2009); Solomon (2009); Staples (7/24/09); Wilson and Moore (2009); Zezima (2009; 2010); Zezima and Goodnough (2009).

newspapers.[417] Others, such as the 2009 killing of Omar J. Edwards, an African-American police officer, by Andrew P. Dunton, a Caucasian police officer, in a case of mistaken identity,[418] or the 2008 NYPD subway sodomy incident involving Michael Mineo, whose accusations of police brutality evoked Louima's case,[419] resulted in comparatively less press. Nevertheless, it seems that just about every day, newspapers and television stations report on police misconduct,[420] which may contribute to the loss public confidence in the legal system, noted in Chapter 1. What do young people know about these incidents and how do they shape their understandings and perceptions of the law and its players?

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[417] See Boyle, et al. (2011); Dwyer (9/28/11); Long (2011).

[418] See Baker (5/27/10); Baker and Rashbaum (2009); Bernstein (2009); Hauser (6/3/09); Hauser and Zraick (2009); Kleinfeld (2009); Kovaleski (2009); Zraick (2009).

[419] See, e.g., Baker (10/30/08; 10/31/08); Baker and Fahim (2009); Baker and Moynihan (2008); Barnard and Baker (2008); Buckley (2008); Fahim (1031/08; 10/26/08; 1/22/10; 1/26/10; 2/12/10; 2/13/10; 2/17/10; 2/19/10; 2/23/10; 5/25/10); Haberman (2010); Powell (2009); Sulzberger (7/1/10).

[420] During the course of my fieldwork, I casually collected newspaper articles either reporting instances of police corruption and/or incompetence, discrimination and disparities in arrests and "stop and frisks," and excessive use of force, or acknowledging the lack of public confidence in the NYPD as a result of these phenomena. See, e.g., Antenucci et al. (2012); Associated Press (3/20/10); Baker (2007; 6/10/08; 4/28/09; 5/1/09; 1/22/10; 5/12/10; 5/20/10; 7/3/10; 9/1/10; 10/8/10; 9/8/11; 1/21/12); Baker and Goldstein (2011); Baker and Rivera (2010); Baker and Warren (2009); Baldwin (2012); Bowen (10/7-9/11); Brown (2009); Chan (2009); Dolnick (2010); Dwyer (7/19/09; 12/23/09; 6/22/11); Editorial (2/19/10; 5/14/12); Eligon (1/6/10; 5/13/10; 5/27/10; 6/19/10; 6/25/10; 7/15/10; 9/8/10; 3/22/11; 5/27/11a; 5/27/11b; 5/30/11); Garrison (2012); Glater (2007); Goldstein (5/27/11; 10/6/11; 2012); Goldstein and Baker (2011); Goldstein and Harris (2011); Hauser (1/16/09; 9/29/09); Hays (2012); Herbert (4/23/07; 3/2/10; 7/6/10); Kleinfeld (2011); Lee (2007); Levin (2012); Maddux et al. (2012); McShane (2011); NYCLU News (2012b); O'Connor (7/21/10; 7/23/10); O'Connor and Baker (2011); Ortiz (10/18/10); Paddock et al. (2012); Parascandola et al. (2011); Powell (2009); Rayman (2012); Rivera (2009); Rivera et al. (2010); Schram and Macintosh (2011); Secret (2011); Seifman (5/11/12b); Staples (6/15/09); Stelloh (9/9/10); Sulzberger and Eligon (2010); Tyler (2003); Weischelbaum (2011); Wilson (2008).

Note that police in other jurisdictions have also been accused of brutality, corruption, racism, and excessive use of force. See, e.g., Associated Press (2008, 9/12/10, 1/6/12, 4/24/12); Bernstein (2010); Caulfied (2012); Contreras (2010); Davey and Fitzsimmons (2010); Editorial (5/7/10); Fahim (7/19/10); Kovaleski and Lee (2010); McKinley (2009, 7/1/10, 7/9/10, 7/10/10); Mungin 2005; Péréz-Pena 2010; Robertson (2/15/10, 2/25/10); Rosencrans (2012); Malkin (2011); Van Natta (2011); Welch (2012); Wilson and Kovaleski (2011); Wollan (2009); see generally Associated Press (3/30/12); Jones (2007).

Note also that accusations of misconduct have not been limited to law enforcement; judicial and other governmental corruption and discrimination frequently makes the news. See, e.g., Associated Press (6/3/09; 11/14/09; 11/18/09); Blumenthal (2005); Brick (2007); Brisman (2010); Dewan (2010); Eligon (10/21/09); Metro/AB (2011); Pinto (2012); Urbina (2/14/09); Urbina and Hamill (2009); see generally Dowd (2012). For a rare example of a prosecutor helping to *clear* two men he believed were wrongly convicted, see Weiser (2009).

3. Nature of Understandings of and Experiences with the Law

Americans' knowledge and understanding of government, history, and law is notoriously poor. According to Lepore, "[a]t some forty-four hundred words, not counting amendments, our Constitution is one of the shortest in the world, but few Americans have read it. A national survey taken this summer [2010] reported that *seventy-two percent* of about a thousand people polled had never once read all forty-four hundred words."[421] Commentators across the political spectrum in the United States frequently deride the civic ignorance of everyone from American children to adults—many of whom would have trouble passing the U.S. Citizenship Test.[422] Our elected officials are hardly better paradigms. Dan Quayle, vice president to George H.W. Bush, was renowned for his misstatements regarding the operation and oversight of government, although he did express hope that "We're going to have the best-educated American people in the world."[423] (9/21/1988). Sarah Palin, a former governor of the State of Alaska and John McCain's running mate in 2008, famously referred to a non-existent cabinet—the "Department of Law"—in an *ABC News* interview.[424] In 2010, Delaware GOP Senate nominee Christine O'Donnell asked during a debate at the Widener University School of Law with her opponent, Democrat Chris Coons, "where in the Constitution is the separation of church and state?," and then repeatedly expressed

[421] Lepore (2011:72 (emphasis added)).
[422] See, e.g., Clabough (2011); Hansen (2011); Healy (2008); Romano (2011).
[423] September 21, 1988. See, e.g., http://www.rinkworks.com/said/danquayle.shtml.
[424] While attempting to explain why, as President of the United States, she would not be subjected to the same ethics investigation that prompted her to resign her post as governor of Alaska, Palin remarked in an *ABC News* interview of July 7, 2009: "I think on a national level your Department of Law there in the White House would look at some of the things that we've been charged with and automatically throw them out." Palin's knowledge of U.S. Constitutional law is not much better. In an interview with Katie Couric of *CBS News* on October 1, 2008, Palin had trouble naming a decision of the United States Supreme Court other than *Roe v. Wade*: "Well, let's see. There's—of course in the great history of America there have been rulings that there's never going to be absolute consensus by every American, and there are those

disbelief that the prohibition against the establishment of religion is contained in the First Amendment.[425] More recently (August 2011), Michelle Bachmann, a lawyer, member of the U.S. House of Representatives from Minnesota's 6th District, and former candidate for the Republican nomination in the 2012 U.S. presidential election promised: "if nominated by the Republican Party, I will not rest until I elect 13 more titanium-spined senators"—perhaps forgetting that Presidents do not elect U.S. Senators.

Notwithstanding these sensational examples and the general public's (dismal) knowledge and understanding of civics—and putting aside the questions of *what* young people know about the law and the sources of that knowledge (themes #1 and 2 above)—I conceived of my research as asking: *How* do young people understand and experience the law and the criminal justice system (specifically, law enforcement and courts)? In other words, in addition to the first and second themes (described above) regarding the scope, content, and sources of legal knowledge and influences on the development of legal consciousness, my study of youth at the RHCJC has been guided by the question of how and in what ways do young people come in contact or interact with the law and the and the criminal justice system, and how they comprehend those encounters.

According to Ewick and Silbey, "[m]ost of the time . . . people don't think of the law at all. . . . [F]or most of us the law generally sits on a distant horizon of our lives, remote and often irrelevant to the matters before us."[426] They continue:

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issues, again, like Roe v. Wade, where I believe are best held on a state level and addressed there. So, you know, going through the history of America, there would be others but—"

[425] See Barr (2010); Shear (2010). Upon questioning whether the First Amendment imposes a separation between church and state, the audience at the law school broke out in laughter. Refusing to be dissuaded, O'Donnell repeated, "Let me just clarify. You are telling me that the separation of church and state is in the First Amendment?"

[426] Ewick and Silbey (1998:15). In a similar vein, Silbey (2005:332) states:

> More often than not, as we go about our daily lives, we rarely sense the presence of the law. Although law operates as an assembly for making things public and mediating

> legal regulation is only rarely a matter of active contemplation and calculation. Typically we become aware of the law and our relationship to it only when the formal law—and the violence embedded in it—makes an appearance. Our pulse quickens at the sight of a police cruiser or the sound of a siren. At that moment, we scrutinize our own behavior and status in regard to the law's intentions and powers. Most of the time, this legal regulation is taken for granted, without consideration or challenge.[427]

Following this line of thinking, I considered my research to be asking: Under what conditions do young people actively contemplate the law and legal regulation? Do young people distinguish between various types of legal regulation that control different aspects of their daily lives? Do they distinguish the branches of government[428]—do they hold different perspectives on courts than police, for example? Or do they lump all parts of the criminal justice system together and hold one overall perspective on all its respective, but interconnected parts? Do they perceive law as enabling or disabling—do they conceive of law as restrictive or do they believe that law provides them with freedom and rights? Do they believe that law enforcement plays a role in keeping a community safe? Do they view law enforcement as annoying, intrusive, and threatening? Or do they experience law enforcement as both threatening and disruptive, and as playing a role in community safety? Do they regards courts as just and fair, capable of reaching "the

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> matters of concern, most of the time it does so without fanfare, without argument, without notice. We pay our bills because they are due; we respect our neighbors' property because it is theirs. We drive on the right side of the road (in most nations) because it is prudent. We register our motor vehicles and stop at red lights. We rarely consider through which collective judgments and procedures we have defined 'coming due,' 'their property,' 'prudent driving,' or why automobiles must be registered and why traffic stops at red lights. If we trace the source of these expectations and meanings to some legal institution or practice, the origin is so far away in time and place that the matters of concern and circumstances of invention have been long forgotten. As a result of this distance, sales contracts, property, and traffic rules seem to be merely efficient, natural, and inevitable facts of life.

[427] Ewick and Silbey (1998:250).
[428] See Sarat (1977).

right" decisions and imposing appropriate sanctions, or do they feel courts are institutions of inequality where "justice" is meted out on the basis of race, class, and age?

4. Positionality and Agency with Respect to the Law

According to the psychotherapist Erik Kolbell,

[m]ost children exercise very little power over the decisions that affect their lives. They don't decide who their parents are, where their family will live, where they will attend school, when they will reach puberty, who will or will not befriend them. They have limited control over their athletic skills, their looks, their wit, or whether, in the great Serengeti that is their schoolyard, they will be predator or prey. They are as much the subject of their story as its author.[429]

Kolbell's list of areas in which young people exercise little control is representative, rather than exhaustive. To offer just one example, young people in the United States have very little power to use, enact, or engage with the law. According to Greenhouse, "most Americans have no experience with litigation. While most adult Americans have consulted a lawyer once, the vast majority of those consultations are over the administration of a mortgage or a will."[430] In contrast to American adults, young people in the United States have even fewer occasions to interact with the law and its players. Young people do not sue each other. For the most part, American youths under the age of eighteen do not marry or divorce each other. They cannot enter into binding contracts (and thus, for example, buy a house or purchase stocks), vote, run for public office, or execute a will. As such, they may have limited involvement with the law or its legal players—or, little *awareness* of their rights and restrictions under the law. What

[429] Kolbell (2010:D5).
[430] Greenhouse (1989:258).

role or place—if any—do they see for themselves in the legal system? Do they see themselves as pawns or subjects in an authoritarian system? In other words, is law something that is *done to them*?[431] Or do they feel as if they can be active players who can influence and affect law? In other words, is law something *that they do*?

The scope and content of RHYC kids' legal knowledge, the sources of their legal knowledge and the influences on their legal consciousness, the nature of their understandings of and experiences with the law, and their positionality and agency with respect to the law—all were—indeed, *are*—good avenues of exploration. And while the questions posed under the themes above were, for me, good starting points for my research and helpful guides throughout my fieldwork, I quickly found that attempting to grasp some aspects of the kids' legal consciousness (specifically, what they knew about the law and how they conceived of their place in it or with respect to it) presented a practical problem and methodological quandary.

Legal consciousness is "inherently *indeterminate*," McCann writes. "In other words, the discourses and logics at work in legal consciousness are fluid, flexible, dynamic, and subject to multiple constructions and repeated reconstruction."[432] On an intellectual level, I understood that my "object" or "subject" of study—*youth legal consciousness*—was a shape-shifting moving target. But I did not really comprehend what this meant until I started to follow kids from their recruitment and group interviews for the RHYC training through their nine-to-ten-week training course and then through their service as RHYC members. Over these periods, I became aware of my sense of what I thought the RHCJC as an institution *might* or *could* (and, at times, I thought

[431] See, e.g., Ewick and Silbey (1998:9), who describe "Millie Simpson's" perception that "[t]his is a world in which things happen to people, rather than one in which people do things."

should) explain to the kids about the law, the speed with which the kids' legal consciousness was evolving in response to what they were being taught, and the role of the RHCJC as an institution in this process of the kids' transformation. I also realized that while the training sessions would offer only glimpses of the scope and content of RHYC kids' legal knowledge, the sources of their legal knowledge and the influences on their legal consciousness, the nature of their understandings of and experiences with the law, and their positionality and agency with respect to the law, the training sessions would expose what *the RHCJC* wanted the kids to learn about the law. Moreover, I recognized that by focusing on what messages the RHCJC was (or was not) transmitting and how the kids responded to those lessons and what they revealed in response, I might be able to describe how the kids' attitudes and ideas about and positions with respect to the law were changing over time. In other words, I realized that if attempting to paint a portrait of the kids' legal consciousness (to use a phrase from Chapter 5) would leave too many gaps and holes, I might be able to track the movement, transformation, or metamorphosis of their legal consciousness.

Once I made this "discovery," it was too late in this particular training cycle to try to ascertain what the kids' legal consciousness might have been prior to the start of their involvement with the RHCJC. Even if I had been equipped with this awareness and knowledge prior to the start of the training cycle in which I made this discovery, I knew that I would be limited in what I could learn about the kids' legal consciousness at time zero (0). Grilling kids about what the knew about the law, how they perceived cops, and how they envisioned law's power and potential prior to their training might run the risk of discouraging them from participating. Given the RHCJC's generosity in granting me

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[432] McCann (2006:xiii).

permission to study its youth programs, I did not want to jeopardize this access in order to try to better understand the kids' legal consciousness before their RHYC training. Even if I could be assured that the kids would not be scared off, I feared that querying them about their relationship to the law at the start of the RHYC training might give them the impression that I was working *for* the RHCJC, rather than *studying* the RHCJC, and that I had some sort of decision-making authority with respect to their involvement with the RHYC as a trainee and member. Because I wanted it to be clear to the kids that I was not an RHCJC staff member—and because I hoped that by making my independent status transparent from the get-go I might receive more forthcoming answers in interviews at a later juncture—I decided that I would not employ any methods other than observation at the start of an RHYC training cycle. While this meant that I had less of a sense of the kids' "baseline" legal consciousness with which to track the impact of the training over time, it did enable me to sit in on the group interviews and training sessions, unobtrusively record my observations (including the kids' surprisingly honest answers during the "corner game"), and eventually win their trust as an outside researcher who would protect their confidentiality and who held little influence with respect to their involvement with the RHYC. I describe the methods that I did employ during the course of my fieldwork in greater detail in the next section of this Appendix.

Methods

According to van Maanen, cultural anthropologists wishing to write ethnographies—written representations of a culture (or an aspect or dynamic of a culture)—should rely on direct, sustained participant observation and repeated interviews

of key informants.[433] Similarly, Sarat contends that interviews and participant observation are standard tools for all of social science and that "these techniques are, in one respect, intended to insure the accuracy and reliability of observations; at the same time they, as well as other social science methods, work to establish the authority of social scientists and their descriptions."[434] Sanjek concurs with this two-pronged methodological approach. He explains that "interviews . . . are an indispensible [sic] part of fieldwork, and we learn things through them we cannot learn in any other way. Interviews . . . allow us to extend our ethnographic reach in time and space, to learn about events we cannot observe, and with careful, directed use, to achieve illumination of larger issues that originate in fieldwork observations."[435] That said, Sanjek warns that interviews may be problematic "because human beings are apt to reinterpret or reformulate the past to make it conform with their ongoing sense of the present"[436]—a position consistent with Harris, who contends that individuals can develop "false consciousness" and misrepresent the meaning of their own behavior to themselves and to researchers.[437] Thus, as Sanjek,[438] Harris,[439] and others[440] suggest, while much can be ascertained about individuals' understandings and experiences of law through direct questioning, interviewing is not without risk. Participant observation, which Bernard refers to as "the foundation of cultural anthropology,"[441] helps mitigate this risk and

[433] van Maanen (1983, 1988).
[434] Sarat (1990:350).
[435] Sanjek (2000:281).
[436] Sanjek (2000: 282).
[437] Harris (1979, 1990).
[438] Sanjek (2000).
[439] Harris (1979, 1990).
[440] See, e.g., Bernard et al. (1984).
[441] Bernard (2006:342).

ensure that what the researcher gleans is not merely "the product of dialogue between ethnographer and chosen informant."[442]

Participant observation is especially important in the realm of legal anthropology. For Conley and O'Barr, participant observation is the means for ethnographers to see and hear disputes evolve and to watch, transcribe, and record legal proceedings.[443] In her study of legal consciousness among working-class Americans in Massachusetts, Merry critiques survey research on understandings of and attitudes towards law on the grounds that "this approach flattens the way people understand and use law. It assumes that each individual has, rather than a series of interpretations of different facets of law, an overall stance toward law as a thing."[444] Because "legal consciousness, as part of culture, partakes of both the particularity of a situation and the overall context in which the situation is considered," Merry argues that legal anthropologists studying legal consciousness must undertake participant observation to gauge how individuals' understandings of law develop through experience.[445] Merry asserts that individuals' positions with respect to the law are not constant and are often not easily recognized and explicit by the individuals themselves.[446] As such, scholars of legal consciousness cannot rely on questioning alone, but must study attitudes toward and perceptions of the law as revealed in their actions—something that requires the patience and attention of participant observation.[447]

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[442] Sanjek (2000:282).
[443] Conley and O'Barr (1998).
[444] Merry (1990:5).
[445] Merry (1990:5).
[446] Merry (1990).
[447] See, e.g., Comaroff and Roberts (1981); Geertz (1983); Gluckman (1955); Merry (1990, 2000); Rosen (1989, 2006).

For the aforementioned reasons, I relied on both participant observation and informal, unstructured, and semi-structured interviews in order to explore the legal consciousness of youth at the RHCJC. And for me, the two methods went very much hand-in-hand. Indeed, the interviews and participant observation served as complementary components, each serving as a "check" on the other: the interviews helped flesh out and clarify what I saw and observed; the participant observation guarded against the potential intentional and unintentional misreprsentations of interview-subjects.

In my study, participant observation entailed accompanying program coordinators on recruiting trips to various local high schools, observing the interview process for positions in the various programs, attending meetings, events, and proceedings associated with different youth programs, and helping to chaperone fieldtrips to museums and colleges. Interviews with youth offered a way to follow up the work done through participant observation and ask about program particulars, the RHCJC as a whole, and the ways my subjects conceived of and envisioned the law. Where possible, I interviewed youth program participants at various stages of their involvement in their programs (usually at the beginning of participation in the program, sometime during program participation, and again at the end), which was crucial to understanding how youths' conceptions, perceptions, understandings, and visions of law, courts, and law enforcement change(d) over time. I also conducted interviews with RHCJC staff. These interviews were vital for understanding the various programs' mission statements, curricula, funding sources, and recruitment strategies, as well as the "ethical climate" of

the court,[448] which affect the values and practices of RHCJC staff and, as a result, those of the youth in RHCJC programs.

Given that legal consciousness can be produced through myriad subtle and indirect ways,[449] scholars of legal consciousness recommend investigating individuals' "everyday practices" that contribute to and give rise to their experience and understandings of law.[450] This involves spending time with one's research subjects away from the "site of ideological production."[451] Initially, this meant trying to observe and interact with youth involved with RHCJC programs outside and away from the RHCJC. And to some extent, I was able to accomplish this by accompanying program coordinators on recruiting trips to various local high schools (where I often saw current RHCJC youth and met future ones) and on the fieldtrips to museums and colleges, as noted above.

But I was troubled by the fact that schools are, themselves, "site[s] of ideological production." I was also aware that even though youth on an RHCJC-sponsored fieldtrip were out-of-state and away from the site of ideological production, they were still operating under the gaze—or within sight—of RHCJC staff members. Thus, I attempted to spend time with RHCJC-affiliated youth independently from RHCJC staff (such as when I took a group of RHYC kids out for pizza and to see the movie, Takers, starring the rappers, Chris Brown and T.I.). But these "off-site" interactions were occasional and interspersed, in large part because consistent and sustained contact with RHCJC-affiliated youth outside and away from the RHCJC would not have been possible: they spent most

[448] Wilkins (1998:97).
[449] Merry (1988).
[450] See Ewick and Silbey (1991-92); Greenhouse, et al. (1994); Merry (1986, 1988); Sarat and Kearns (1993).

of their days at various Brooklyn high schools, would come to the RHCJC after school, and afterwards, would often go their separate ways. In other words, while some of the youths were classmates with each other or lived in the same housing projects—and while some became friends during the course of their participation in RHCJC youth programs—the youth were not a group outside of the context of the RHCJC. Attempting to spend time with the kids when they were not at school or at the RHCJC would have effectively been not that much different than an informal one-on-one or small-group interview. There was no way to observe and participate in the lives of the RHCJC-affiliated youth as a group away from or outside the gaze of the "site of ideological production."

This left me worried that some might view my lack of interactions with RHYC kids outside of and away from the "site of ideological production" as a limitation of my study. But as my research shifted from the nature, scope, and content of the kids' legal consciousness to the specific ways in which the RHCJC—the "site of ideological production"—was working to transform the kids' legal consciousness, what was once a concern became my study's raison d'être.

More generally, I came to realize that unlike adults, young people's "everyday practices" are far less likely to contribute to and give rise to their experience and understandings of law. While most youth involved with the RHCJC have had some interactions with police officers and while many youths' experiences with police officers have been less than positive (especially for those youth living in public housing projects), they have little occasion to encounter and interact with other individuals in the justice system outside the context of the RHCJC. Young people do not get married. They do

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ngton and Merry (1988:731).

not sign contracts, purchase real property, or sue each other. In fact, outside the RHCJC, the youth have little opportunity to "do" law—to be active players who can influence and affect law and legal processes. And while young people may encounter the law through mass media and may think about it and talk about it as a result,[452] they are unlikely to sit on the steps of a brownstone or hang out at a street corner discussing payment of child support or taxes owed to the I.R.S. Thus, while spending more time with the youth outside and away from the "site of ideological production" might have helped me paint a more complete picture of some of my informants as individuals, I strongly suspected that the "everyday practices" that I might have observed would have had limited bearing on their experience and understandings of law—and certainly much less so than the investigation of adults' "everyday practices" revealed for Ewick and Silbey,[453] Greenhouse, Yngvession, and Engel,[454] Merry,[455] and Sarat and Kearns.[456] Studying youth in Red Hook, rather than youth at the RHCJC, might have produced a broader picture of the influences on youth legal consciousness than what my fieldwork was able to uncover and reveal. But it would have likely come at the expense of the depth of understanding that I was able to achieve by focusing on the context of the law-related youth programs at the RHCJC—and the role that the RHCJC played in transforming the kids' legal consciousness—to say nothing of the additional time that the former would have required.

The allusions above to different "angles of view" (or "fields of view"), focal lengths, and depths of field gives rise to one last component of my methodology. While

[452] See Chapter 1; Brisman (2010/2011).
[453] Ewick and Silbey (1991-92, 1998).
[454] Greenhouse et al. (1994).
[455] Merry (1986, 1988).

scholars of legal consciousness stress the importance of participant observation and interviews, some have pushed for a shift to broader data collection methods.[457] I interpreted this to mean documentary photography and "document collection," for lack of a better phrase.

Employing skills learned as a student at Spéos: Paris Photographic Institute in Paris, France during academic year 1995-96 and refined as an MFA student at Pratt Institute in Brooklyn, NY from 1998-2000, I photographed street life in Red Hook and various events at the RHCJC (such as staff cook outs, meetings, parties, and graduations that are held for youth who complete their programs), as well as events held in the community with RHCJC involvement or participation (such as the Cops and Kids Stickball Tournament that took place in 2007 and 2008, and the yearly National Night Out Against Crime). While documentary photography provided me with visual images for this dissertation, it also helped me to contextualize my participant observation and occasionally assisted in the recollection of details when transcribing scratch notes from participant observation into full-fledged field notes. Finally, documentary photography enabled me to meet more Red Hook residents, including those whom I might otherwise have had more difficulty getting to know. For example, on several occasions, I was contacted after an event by someone whom I did not know (and sometimes someone whom I had wanted to meet) who had heard that I had photographed the event inquiring if I might share my images with him/her. On many occasions, I provided individuals

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[456] Sarat and Kearns (1993).

[457] See, e.g., McCann & March (1996); McCann (1999). See also Nielsen (2000:1062), who observes that "scholars of legal consciousness have begun to advocate broader data collection to understand variation in legal consciousness and to map the relationship between consciousness and social structure."

with a CD of images taken during an event that they ran or sponsored as a token of my appreciation for access to the event and their time.

In addition to documentary photography, I collected and reviewed curricula, lesson plans, handouts, grant proposals, and other related documents for each of the programs that I studied at the RHCJC, as well as for many of the projects that I did not study. (James also provided me with a physical mail box at the RHCJC and an email account (abrisman@courts.state.ny.us), which allowed me to receive emails and attachments, as well as announcements about events, activities, and programs that I might not otherwise have heard about.) On some occasions, document collection preceded interviews with relevant RHCJC staff, enabling me to rely on the documents to better frame my questions. In other instances, I received documents from an RHCJC staff member or youth program participant after I had formally or informally interviewed him/her or after I had observed an event or proceeding related to the staff member's or youth's particular program. In these instances, the documents served to flesh out aspects of the interview or observation. While I was careful not to let the documents replace questioning or observation, at times documents allowed me to make better use of my time with staff members and youths—affording me the opportunity to move more quickly through technical or factual questions to probe and elicit their thoughts and reflections.

Finally, I also gathered flyers, announcements, and other materials about the RHCJC, the neighborhood of Red Hook, youth programs in Red Hook unaffiliated with the RHCJC, and about events and activities in the community. Again, while such document collection did not replace interviewing or participant observation, it did provide me with additional sources of information, as well as create ways for me to learn

about events and meet Red Hook residents. Indeed, and as noted above, I first learned about the RHCJC from a New York Times article, and I subsequently used articles in smaller circulars as the subject of interviews or springboard for conversations. This document collection in, out, and about Red Hook allowed me to adhere to Sanjek's recommendation that qualitative researchers working in urban areas complement their "bottom-up ethnographic understandings 'in the city' [with] . . . top-down study 'of the city'"[458]—a process that, I hope, enabled me to understand how the specific history of Red Hook and the RHCJC affected (and continues to affect) the behavior, culture, and legal consciousness of those young people within my chosen fieldwork locale.

[458] Sanjek (2000:282).

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