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**BOUNDARY CHANGES AND THE NEXUS BETWEEN
FORMAL AND INFORMAL SOCIAL CONTROL:
TRUANCY INTERVENTION AS A CASE
STUDY IN CRIMINAL
JUSTICE EXPANSIONISM**

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INTRODUCTION

Debate over the purpose of punishment and other state interventions in response to crime is a modern continuation of an ancient discourse. Begun in the Western world largely as result of Cesare Beccaria's challenge to the barbaric practices and the excessively brutal retribution that governed the exercise of punishment in the nation states of previous eras,¹ the moral philosophy of deterrence continued as a rational basis for justice through the 18th century.² Yet this philosophy has not survived without controversy. Indeed, some have argued that it is through retribution that deterrence can be achieved,³ while others have observed that "deterrence theory is used widely as a cloak for vengeance."⁴ Moreover, in contemporary society, some might "feel morally uncomfortable with demanding revenge," whereas deterring criminal behavior represents "a more socially acceptable goal."⁵ Indeed, the utilitarian critique of more emotive and

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1. *See* CESARE BECCARIA, OF CRIMES AND PUNISHMENTS AND OTHER WRITINGS (Richard Bellamy ed., Richard Davies trans., Cambridge Univ. Press 1995) (1764).

2. *E.g.*, Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (Hafner Publ'g Co. 1970) (1789).

3. *E.g.*, HORACE L.A. HART, PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW (1968).

4. KARL MENNINGER, THE CRIME OF PUNISHMENT 206 (1968).

5. JEANNE B. STINCHCOMB & VERNON B. FOX, INTRODUCTION TO CORRECTIONS 49 (5th ed. 1999).

expressive rationales for punishment continues today among retribution and deterrence advocates.⁶

While deterrence reigned for several centuries as the primary theory and operational strategy for achieving the utilitarian ends of crime control and prevention, rehabilitation emerged in the twentieth century as a contender for intervention dominance. Traditional thinking about the nature and causes of crime was challenged at this point by social forces ranging from economic conditions to theoretical advancements. Just as the economic collapse of the Great Depression created doubts about long-held explanations of crime as “sins” or personal weaknesses,⁷ the advent of psychological theory and the emergence of social work as a profession offered optimistic hope that offenders could be changed and their lives redirected through alternative measures. As a result, proponents of rehabilitative theories argued for revised rationales for intervention dictating more benevolent, treatment-oriented responses to criminal behavior.

But as crime continued to increase and public policy agendas became more conservative during the late twentieth century, the tide turned yet again. By this point, many held out little hope for either changing offenders or improving conditions that cause crime, and instead argued for a kind of temporary containment of the problem. Advocates of such a pragmatic “managerial” approach to criminal justice promoted constraint-oriented incapacitation in an effort to isolate the offender socially and physically from law-abiding society.⁸ Finally, as the century came to a close, proponents of less formal, nonadversarial justice approaches gained new audiences, and advocates of restorative justice⁹ argued also for a distinctive normative theory of intervention that sought as its primary objective the repair of harm to victims, communities, and offenders caused by crime.

It was not until the second half of the twentieth century that criminal justice debate began to address a second related concern, the role of the state and criminal justice systems in administering punishment and intervention. By the late sixties, the due

6. See Lawrence W. Sherman, *Reason for Emotion: Reinventing Justice with Theories, Innovations, and Research—The American Society of Criminology Address*, 41 CRIMINOLOGY 1, 3 (2003).

7. STINCHCOMB & FOX, *supra* note 5, at 112–13.

8. E.g., Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 CRIMINOLOGY 449, 458 (1992).

9. E.g., HOWARD ZEHR, CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE (1990); JOHN BRAITHWAITE, RESTORATIVE JUSTICE AND RESPONSIVE REGULATION (2002) [hereinafter BRAITHWAITE, RESPONSIVE REGULATION].

process revolution that sought to expand defendants' constitutional protections had proposed, for example, new limits on the search and seizure powers of the state. More broadly, a new libertarian movement in criminal justice featured a critique of the effectiveness of intervention, arguing in many cases that even the most well-intended efforts of the justice systems (e.g., juvenile diversion programs) were often counterproductive in their impact. Policies such as diversion, deinstitutionalization, and decriminalization essentially sought to place limits on state intervention, not only to ensure that due process rights were protected, but also to prevent the potential additional harm of stigmatization and future vulnerability to more severe criminal justice sanctions.¹⁰

In the decade of the 1990s, concerns expressed by advocates of many of these "limiting" policies seemed to have been placed on the back burner as a crime control agenda gained prominence.¹¹ Ultimately, debate over the role of criminal justice agencies became focused on the issue of what appears to be a growing erosion or blurring.¹² One of the most frequently discussed boundary changes in the 1990s has been the assumption by criminal courts and adult corrections of jurisdiction over offenses and offenders once adjudicated in juvenile courts and managed in juvenile justice systems.¹³ Widely criticized by youth advocates and many criminologists, the erosion of the jurisdiction of juvenile courts over more serious offenders has occurred as a result of a variety of mechanisms that facilitate the transfer of young offenders into criminal courts. Moreover, importing criminal justice policies and procedures such as mandatory, determinate sentencing into juvenile courts, along with a more powerful role for prosecutors, has also challenged and circumscribed the dispositional decisionmaking authority of juvenile court judges.

While the loss of juvenile court jurisdiction over many serious and chronic young offenders has been widely discussed,

10. See, e.g., Edwin Lemert, *Diversion in Juvenile Justice: What Has Been Wrought?*, 18 J. RES. CRIME & DELINQ. 34, 40 (1981); LAMAR T. EMPY, *AMERICAN DELINQUENCY: ITS MEANING AND CONSTRUCTION* (1982).

11. E.g., DIANNA GORDON, *THE JUSTICE JUGGERNAUT* 47 (1991).

12. Charles M. Friel, *A Century of Changing Boundaries*, in 2 BOUNDARY CHANGES IN CRIMINAL JUSTICE ORGANIZATIONS 1 (Nat'l Inst. of Justice ed., 2000), available at http://www.ncjrs.org/criminal_justice2000/vol_2/02b2.pdf (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

13. See e.g., PATRICIA TORBET ET AL., *STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME* 25 (1996); Donna Bishop, et al., *The Transfer of Juveniles to Criminal Court: Does It Make A Difference*, 42 CRIME AND DELINQ. 171, 174 (1996); Jeffrey Butts & Daniel Mears, *Reviving Juvenile Justice in a Get-Tough Era*, 33 YOUTH & SOC'Y 169, 184 (2001).

there is another, more obscure side to the boundary erosion issue. Notably, despite widespread criticism of the courts in the 1990s, juvenile justice programs again appear to be intervening actively in response to runaways, incorrigibles, curfew violators, youth experimenting with alcohol and smoking, truants, and other status offenders.¹⁴ In previous decades, such cases had generally been viewed as off-limits to court intervention.¹⁵ Ironically, on the heels of a period of national concern about violent youth crime, juvenile justice agencies and programs (often with the support of lawmakers and new criminal justice system partnerships) have begun "reaching down" to reclaim jurisdiction over non-criminal forms of deviance, troublemaking, and conflict involving young people that was once dealt with informally by families, neighbors, schools, various youth development agencies, and other non-judicial entities.¹⁶

This "reaching down" phenomenon is not, however, solely about the blurring of lines between the jurisdictions of various justice agencies or the redefinition of professional roles discussed in the emerging literature on boundary change and community justice.¹⁷ Rather, boundaries being crossed or eroded are those between formal and informal social control, as legal trends and criminal justice resources appear to expand to fill a perceived void in the capacity of communities to exercise informal control.¹⁸ More specifically, juvenile justice and other formal agencies of social control appear to be engaging *public* controls in place of the informal *private* controls characteristic of families

14. Barty C. Feld, *Rehabilitation, Retribution and Restorative Justice: Alternative Conceptions of Juvenile Justice*, in RESTORATIVE JUVENILE JUSTICE: REPAIRING THE HARM OF YOUTH CRIME 17, 23 (Gordon Bazemore & Lode Walgrave eds., 1999) [hereinafter Feld, *Alternative Conceptions*]; Barry Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. Crim. L. & Criminology 471, 480 (1987).

15. E.g., JOHN T. WHITEHEAD & STEPHEN P. LAB, JUVENILE JUSTICE: AN INTRODUCTION 47 (2004).

16. E.g., Vincent Shiraldi & Mark Soler, *The Will of the People? The Public's Opinion of the Violent and Repeat Juvenile Offender Act of 1997*, 44 CRIME & DELINQ. 590, 590-91 (1998); Gordon Bazemore, *The Fork in the Road to Juvenile Court Reform*, 564 ANNALS AM. ACAD. POL. & SOC. SCI. 81, 99 (1999) [hereinafter Bazemore, *The Fork in the Road*].

17. See, e.g., Mark Moore, *Looking Backward to Look Forward: The 1967 Crime Commission Report in Retrospect*, in NATIONAL INSTITUTE OF JUSTICE JOURNAL (Nat'l Inst. of Justice, U.S. Dep't of Justice, Wash., D.C.), Dec. 1997, at 24; Friel, *supra* note 12; Katherine Coles & George L. Kelling, *New Trends in Prosecutors' Approaches to Youthful Offenders: Community Prosecution, Problem Solving, and Preventing Crime*, in SECURING OUR CHILDREN'S FUTURE: NEW APPROACHES TO JUVENILE JUSTICE AND YOUTH VIOLENCE 28 (Gary Katzman ed., 2002).

18. DONALD BLACK, THE BEHAVIOR OF LAW 68 (1976).

and extended families, as well as the *parochial* controls reflective of neighbors, community groups, faith communities, recreational programs, and educational organizations.¹⁹

One increasingly important context for this extension of formal criminal and juvenile justice control has been in the nation's secondary schools.²⁰ As a formal socializing institution with a public mandate to maintain sufficient order to provide an organizational climate conducive to the education of students, the school has traditionally exercised a quasi-formal type of social control over young people. When viewed as a kind of "micro-community," however, it is apparent that schools also rely heavily on informal, private controls that flow out of the affective or *relational*²¹ influence of individual teachers, coaches, other educational staff, and students, as well as what amounts to parochial control exercised by school organizations and conventional peer groups. "Zero-tolerance" logic and rhetoric²² have in the past decade increasingly supplemented this informal influence, as well as the official authority and decisionmaking discretion of educational professionals. As this has occurred, some would suggest that the informal and quasi-formal controls of the school have been weakened, if not displaced, by an expansion of the formal controls of police and juvenile justice.²³ One apparent result has been an increase in the number of students now being referred to the nation's juvenile courts for various forms of

19. Albert J. Hunter, *Private, Parochial and Public Social Orders: The Problem of Crime and Incivility in Urban Communities*, in *THE CHALLENGE OF SOCIAL CONTROL: Citizenship and Institution Building in Modern Society* (Gerald D. Suttles & Meyer N. Zald eds., 1985) [hereinafter *THE CHALLENGE OF SOCIAL CONTROL*].

20. E.g., Trulson et al., *Social Control in a School Setting: Evaluating a School-Based Boot Camp*, 47 *CRIME & DELINQ.* 573, 573-74 (2001); RICHARD LAWRENCE, *SCHOOL CRIME AND JUVENILE JUSTICE* (1998).

21. E.g., JOHN HAGAN, *STRUCTURAL CRIMINOLOGY* 44 (1989).

22. E.g., Trulson et al., *supra* note 20, at 577; NANCY RIESTENBERG, *MINN. DEP'T OF CHILDREN, FAMILIES, & LEARNING, IN-SCHOOL BEHAVIOR INTERVENTION GRANTS FINAL REPORT 1999-2001* (2001) [hereinafter *RIESTENBERG, IN-SCHOOL BEHAVIOR*]; *MINN. DEP'T OF CHILDREN, FAMILIES, & LEARNING, RESPECTING EVERYONE'S ABILITY TO RESOLVE PROBLEMS: RESTORATIVE MEASURES* (1998).

23. E.g., WILLIAM G. STAPLES, *THE CULTURE OF SURVEILLANCE: DISCIPLINE AND SOCIAL CONTROL IN THE UNITED STATES* 52 (1997); TODD CLEAR & DAVID KARP, *THE COMMUNITY JUSTICE IDEAL: PREVENTING CRIME AND ACHIEVING JUSTICE* 24 (1999). It is of course true that juvenile courts have always helped to reinforce the informal controls of the school through formal controls of the court developed in truancy enforcement. See ANTHONY PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1976). What has changed, as we will illustrate in the text that follows, is a broader criminal justice role and an increasing transfer of responsibility.

school conduct violations and other conflicts once addressed within the school environment.²⁴

After more than two decades of expanding the criminal justice presence in schools in response to a variety of behavioral and public safety concerns, the issue of truancy has recently risen to a position of high priority on the agenda of some criminal justice agencies.²⁵ This Article examines truancy intervention as a general case study in the blurring of boundaries between formal and informal social control when juvenile and criminal justice resources are mobilized to address a problem once seen primarily as a school, family, or community concern. To do so, we describe a large law enforcement-led truancy intervention collaborative in an urban county in the southeastern United States (hereinafter, Southeastern County). As a specific case study in early implementation of an increasingly popular centralized intake approach to truancy intervention, the Southeastern County initiative raises important policy and theoretical concerns that emerge from what we refer to as a new "expansionist" tendency in juvenile justice.²⁶

Ultimately, we attempt to place the Southeastern County truancy intervention case study in the broader context of expansion of juvenile justice boundaries in response to a variety of problems related to control and socialization of young people. As an alternative to both expansionist and libertarian policies, we also briefly consider emerging frameworks from the restorative justice literature and practice²⁷ that seek to build community capacity to mobilize social support and informal social control in response

24. See, e.g., Myriam L. Baker et al., *Truancy Reduction: Keeping Students in School*, JUV. JUST. BULL. (U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, Wash. D.C.), Sept. 2001, at 1, 2, available at <http://www.ncjrs.org/pdffiles1/ojjdp/188947.pdf> (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

25. See Sara Ingersoll & Donna LeBoeuf, *Reaching Out to Youth Out of the Education Mainstream*, JUV. JUST. BULL. (U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, Wash. D.C.), Feb. 1997, available at <http://www.zuni.k12.nm.us/las/PDF/163928.pdf> (on file with the Notre Dame Journal of Law, Ethics & Public Policy); LAWRENCE, *supra* note 20; see also Baker et al., *supra* note 24.

26. Gordon Bazemore & Colleen McLeod, *Restorative Justice and the Future of Diversion and Informal Social Control*, in RESTORATIVE JUSTICE: THEORETICAL FOUNDATIONS 143 (Elmar G.M. Weitekamp & Hans-Jürgen Kerner eds., 2002).

27. *Urban Policies and Programs To Reduce Truancy*, DIGEST (ERIC Clearinghouse on Urban Educ., New York, N.Y.), Nov. 1997; DANIEL VAN NESS & KAREN HEETDERKS STRONG, RESTORING JUSTICE (1997); BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9.

to crime.²⁸ As such, these frameworks also have legal, ethical, and policy implications for the broader theme of the purpose of punishment and criminal justice intervention, as well as for the role of criminal justice agencies in such intervention.

I. LITERATURE REVIEW

In the literature review that follows, we first outline the components of the expansionist tendency in juvenile justice over the past decade. We then consider the literature on criminal justice involvement in schools in the context of the relationship between informal and formal social control, in general, and truancy intervention and related research in particular.

A. *The Context: Formal and Informal Control and the New Expansionism*

The situation is truly ironic. The argument for retaining beyond-control and truancy jurisdiction is that juvenile courts have to act in such cases because "if we don't act, no one else will." I submit that precisely the opposite is the case: because you act, no one else does. Schools and public agencies refer their problem cases to you because you have jurisdiction, because you exercise it, and because you hold out promises that you can provide solutions.²⁹

1. The Relationship Between Formal and Informal Social Control

As noted in the judge's words of frustration above, the issue of shifting boundaries between formal and informal systems of social control is not new. As suggested more than two decades ago, when there is a breakdown in informal community controls, an increase in formal, legal, or justice-related controls generally follows.³⁰ More recently, criminologists have argued that various types of informal control may serve to mediate the negative

28. See generally Francis T. Cullen, *Social Support as an Organizing Concept for Criminology*, Presidential Address to the Academy of Criminal Justice Sciences, 11 JUST. Q. 527 (1994); John Braithwaite, *Thinking Harder About Democratizing Social Control*, in FAMILY GROUP CONFERENCE IN JUVENILE JUSTICE: THE WAY FORWARD OR MISPLACED OPTIMISM? 199 (Christine Adler & Joy Wundersitz eds., 1994) [hereinafter Braithwaite, *Thinking Harder*]; Gordon Bazemore, *Young People, Trouble, and Crime: Restorative Justice as a Normative Theory of Informal Social Control and Social Support*, 33 YOUTH & SOCIETY 199 (2001) [hereinafter Bazemore, *Young People*].

29. David Bazelon, *Jurisdiction over Status Offenses Should be Removed from the Juvenile Court*, 21 CRIME & DELINQ. 98 (1975).

30. See BLACK, *supra* note 18, at 68.

impact of neighborhood, demographic, and ecological factors on youth crime and have demonstrated empirically that breakdowns in informal control mechanisms in communities lead to higher youth crime rates.³¹ While some would argue that expansion of formal criminal justice control in targeted neighborhoods is simply a *response* to these breakdowns, others have suggested that formal controls exercised by the criminal justice system may do more than simply fill gaps in informal social control. Rose and Clear, for example, argue that criminal justice intervention is far from neutral in its impact on individuals and community life—especially when it results in the breakup of families and neighborhood institutions as a result of the removal of a critical mass of young men through incarceration.³² Such impacts yield a kind of “negative social capital” that is, in turn, associated with subsequent increases in crime.³³

Indeed, communities characterized by a high level of criminal justice intervention may grow weaker and eventually lose their capacity both to mobilize the type of informal social control traditionally provided by families, neighborhood groups, and social institutions,³⁴ and to offer informal social support for offenders, crime victims, and their families.³⁵ In the past two to three decades, for example, families, neighbors, schools, and other community institutions have looked increasingly to juvenile courts and juvenile justice programs to fill perceived gaps in the control of youth crime and troublesome behavior by young people.³⁶ The resulting expansionist trend in juvenile justice systems now provides new impetus for formal intervention, supplementing and potentially displacing informal controls by

31. See ROBERT J. BURSİK, JR. & HAROLD G. GRASMICK, *NEIGHBORHOODS AND CRIME: THE Dimensions of Effective Community Control* (1993); Robert Sampson et al., *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCI. MAG. 918 (1997).

32. Dina Rose & Todd Clear, *Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory*, 36 CRIMINOLOGY 411, 471–79 (1998).

33. See, e.g., Nils Christie, *Conflict as Property*, 17 BRIT. J. OF CRIMINOLOGY 1 (1997) (questioning the neutrality of the impact of formal social control on informal processes of crime control and conflict resolution). Christie argues that the criminal justice system has essentially been engaged in a “theft of conflict” from victims and offenders and a consolidation of power and expertise that over time has resulted in a “deskilling” of citizens in the competencies needed for crime control. *Id.* See also Todd Clear et al., *Incarceration and the Community: The Problem of Removing and Returning Offenders*, 47 CRIME & DELINQ. 335 (2001) (recommending services that will alleviate the negative effects that incarceration has on the social dynamics of a neighborhood).

34. Hunter, *supra* note 19, at 239.

35. CLEAR & KARP, *supra* note 23, at 42–44.

36. Bazemore, *The Fork in the Road*, *supra* note 16, at 100.

increasing the number of front-end intervention programs and resources.

2. Rejecting Front-End Limits on Juvenile Court Jurisdiction: The End of Juvenile Justice Deconstruction

The second half of the 1990s witnessed what in many jurisdictions appeared to be an abandonment of the two-decade-long trend toward "limiting" policies initiated in the 1970s³⁷ and, for the most part, actively endorsed well into the 1980s. Diversion, deinstitutionalization, due process, and decriminalization reforms of the post-*Gault*³⁸ era of juvenile justice were based on a comprehensive critique of the juvenile justice system and sought to place restrictions on what was widely viewed as harmful formal intervention.³⁹ This multi-modal, deconstructionist policy approach, among other things, sought to remove status offenders from the jurisdiction of the court and from vulnerability to the negative impact of detention and residential facilities.⁴⁰

In an apparent response to new "get tough" legislative initiatives that removed court jurisdiction over more serious crimes and mandated transfer of increasing numbers of young people to adult court,⁴¹ state legislatures and numerous local governments began in the 1990s to relax boundaries that, in many institutions, had kept most runaways, truants, curfew violators, underage drinkers, and teen smokers out of the system. Even where this undoing of past restrictions on intervention did not occur formally, courts and juvenile justice systems seemed to find new vehicles and new rationales for taking back jurisdiction over youth who had not violated criminal statutes, but were nonetheless troublesome.

While not consistently documented, a number of examples, both nationally and within states, illustrate what could be viewed as an effort of juvenile courts to adapt to lost discretion at the "hard" end of the system by finding new targets of opportunity at

37. See generally Lemert, *supra* note 10; TASK FORCE ON JUVENILE DELINQUENCY, THE PRESIDENT'S COMM'N ON CRIME AND LAW ENFORCEMENT, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME (1967).

38. *In re Gault*, 387 U.S. 1 (1967).

39. See EMPEY, *supra* note 10, at 440-78.

40. Despite changes in juvenile justice codes in Western countries which place more emphasis on increased intervention and offender accountability, many, including Canada, the UK, Germany, and Belgium also include strict lower limits on intervention that maximize the use of informal options such as police cautioning.

41. See, e.g., Barry C. Feld, *Juvenile (In) Justice and the Criminal Court Alternative*, 39 CRIME & DELINQ. 403 (1993); Butts & Mears, *supra* note 13.

the "soft" end.⁴² First, in general, the juvenile court has shown greater interest in the past decade in status offenders.⁴³ In 1997, for example, juvenile courts handled 158,500 petitioned status offense cases, an increase of more than ninety percent over the number processed in 1988.⁴⁴ In addition, 11,600 adjudicated status offenders were confined in out-of-home placements in 1997,⁴⁵ and some 6,000 youth were in custody for a status offense on any given day in 1997.⁴⁶ Second, there is also evidence that courts in some larger states (e.g., Pennsylvania) are processing more low-level criminal offense cases and issuing supervision and placement orders for first offenders and misdemeanants that in the past generally would have been diverted from the system.⁴⁷ Third, specific initiatives have expanded control and jurisdiction over young people. For example, the expansion of curfew laws and programs that enforce these statutes is now well documented.⁴⁸ In addition, 41,000 truancy cases were processed in juvenile courts in 1998, an eighty-five percent increase over the number processed in 1989.⁴⁹ Finally, courts and other local juvenile justice agencies have utilized multiple mechanisms for enforcing failure of young people to comply with the prohibitions—including processing and temporary confinement in centralized intake assessment centers, new referral to sanctioning programs, citations, and revocation of drivers' licenses. In addition, an increase in use of secure pre-adjudicatory detention for status offenders from 8,500 to 9,400 between 1990 and 1997⁵⁰ also seems likely to be related to these new enforcement emphases.

Arguably, one practical rationale for this front-end expansion of the juvenile justice system was a new sense of desperation,

42. See generally IRA M. SCHWARTZ, (IN) JUSTICE FOR JUVENILES: RETHINKING THE BEST INTERESTS OF THE CHILD (1989); Feld, *Alternative Conceptions*, *supra* note 14, at 23; Bazemore & McLeod, *supra* note 26, at 152, 165.

43. See, e.g., WHITEHEAD & LAB, *supra* note 15.

44. Charles Puzzanhero et al., *Juvenile Court Statistics 1997*, at 37 (National Center for Juvenile Justice, 2000).

45. *Id.* at 39.

46. Melissa Sickmund, *Offenders in Juvenile Court, 1995*, JUV. JUST. BULL., Dec. 1997, at 8-9.

47. Jamie J. Fader et al., *Factors Involved in Decisions on Commitment to Delinquency Programs for First-Time Juvenile Offenders*, 18 JUST. Q. 323 (2001).

48. See MIKE A. MALES, THE SCAPEGOAT GENERATION: AMERICA'S WAR ON ADOLESCENTS (1996); WHITEHEAD & LAB, *supra* note 15; see also K. Michael Reynolds et al., *Do Juvenile Curfew Laws Work? A Time-Series Analysis of the New Orleans Law*, 17 JUST. Q. 205 (2000).

49. Baker et al., *supra* note 24, at 2.

50. WHITEHEAD & LAB, *supra* note 15; see also Puzzanhero et al., *supra* note 44, at 39.

at times bordering on hysteria,⁵¹ about perceived increases in youth involvement in a variety of deviant behaviors. While policy-makers may or may not have reflected genuine public concern in supporting the new front-end focus on drinking, drug use, truancy, premarital sex, and running away, it is the implied relationship between these behaviors and the increase in serious youth crime that seems most problematic. Support for this connection, as well as funding that surprisingly seemed to breathe new life into juvenile justice systems under political scrutiny, was provided at the federal level as part of a widely discussed national policy focus on serious offenders.

Ironically, in the wake of what by the mid-1990s had become the most severe attack on the juvenile court in its history,⁵² funding ostensibly aimed at combating youth violence instead supported a range of front-end programs and initiatives focused on youth who had not committed crimes or who were less serious offenders. The most obvious example of proposed federal legislation to support expanded use of criminal and juvenile justice penalties—including jail and detention, as well as other sanctions, such as expulsion from school—in response to low level youth conflict and troublesome behaviors, including smoking, was Senate Bill S. 10.⁵³ Ironically titled “The Violent and Repeat Juvenile Offender Act of 1997,” S. 10 seemed to be a response to the desire of law enforcement and some juvenile justice professional constituencies to gain national approval and resources for practices they wished to initiate, or had continued to employ despite prohibitions (e.g., jailing or detaining status offenders). Though out of touch with public opinion according to a national survey,⁵⁴ and ultimately defeated, the legacy of S. 10 can be seen in the national legitimacy and policy incentives it provided for encouraging practices that had been actively discouraged by federal policy in the past two decades⁵⁵ (e.g., detention of status offenders). This legacy can also be seen in less draconian legislation including the congressional appropriation in 1998 of “pass-through” funds under the Juvenile Accountability Incentive

51. MALES, *supra* note 48.

52. See TORBET ET AL., *supra* note 13; Penelope Lemov, *The Assault on Juvenile Justice*, GOVERNING MAG., Dec. 1994, at 26; Butts & Mears, *supra* note 13, at 173.

53. Violent and Repeat Juvenile Offender Act of 1997, S. 10, 105th Cong. (1997).

54. Shiraldi & Soler, *supra* note 16, at 590–601.

55. See Brief of Amici Curiae Children, Youth and Families Department, *In re Andrew A.* (N.M. Ct. App. 2002) (No. 22,891) (on file with author) (challenging detention of youth who fail to complete “grade court” requirements).

Block Grant (JAIBG)⁵⁶ to encourage states to expand juvenile justice capacity to address the apparent national increase in juvenile violent crime.

While many of the states receiving JAIBG funds appear to have used portions of these allocations to expand detention and residential bed capacity consistent with what most observers judged to be congressional intent to target violent crime, others also developed new front-end "preventive" programs that, in many instances, seemed designed specifically to increase court capacity to respond to troublesome youth behaviors not believed to be adequately addressed by current youth services and educational programs. Some of these funds also allowed for experimentation with new and innovative practices including restorative and community justice programming, and some supporters of the new federal legislation no doubt sought to strengthen juvenile justice systems in order to recapture some of the court's jurisdiction over serious youth crime. However, there is no evidence to suggest that these new resources have reduced the number of juvenile offenders whose cases were processed in criminal courts.⁵⁷

B. *Three Components of the New Expansionism*

Three independent, yet mutually reinforcing, core components of expansionism provide the ideological basis and practical resources for the juvenile justice system's effort to strengthen its credibility and mandate by widening its jurisdiction over youthful behaviors that had previously been off-limits or low priority for intervention.

1. Zero Tolerance

Perhaps the most fundamental ideological rationale behind the new expansionist tendency is the group of policies generally labeled "zero tolerance." As a new mantra with apparently unassailable logical and moral authority, zero tolerance seemed sud-

56. Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1998).

57. We are not suggesting that a state's use of funds for front-end programs rather than for residential beds was an unwise choice, and indeed, some states appear to have used funds for needed training and technical assistance focused on long-overdue system reform agendas. We simply argue that the JAIBG initiative provided a readily available source of revenue for those jurisdictions feeling pressured to pilot programs intended primarily to address behaviors such as truancy, smoking, and curfew violations. For evidence that juvenile justice expansion has not slowed the rate of transfer to adult courts, see Butts & Mears, *supra* note 13, at 178.

denly in the middle of the past decade to justify due process violations, new and old forms of confinement, forced treatment, punishment, and outright exclusion of young people who cause trouble for authorities in a variety of educational, recreational, social service, and even juvenile justice residential program contexts.⁵⁸ Moreover, parallels between zero tolerance in schools and the zero-tolerance policing associated with the focus on order-maintenance,⁵⁹ though formally disconnected, may become increasingly relevant with the expansion of the law enforcement role in the schools—especially in response to truancy.⁶⁰

Because youth in the 2000s can enter the juvenile justice system through more doors than in recent decades, many problem-solving and conflict resolution practices that would traditionally have been employed in various informal contexts (e.g., classrooms) now seem to be bypassed, making way for expanded use of other “fast-track” paths into the juvenile justice system. Under the logic of zero tolerance, a crime control perspective now increasingly holds sway in the broader school context; thus, a variety of forms of rule-breaking have become justifications for the exclusion of troublesome young people. As this has occurred, juvenile justice agencies under siege appear to have regained credibility in part by accepting a new role in enforcing zero tolerance in the schools, and in doing so, reinforcing the work of the now familiar efforts of school law enforcement officers with a new cadre of school probation officers.⁶¹ Such indirect juvenile justice support for zero tolerance, as well as the successful resistance to the call for abolition of juvenile justice systems, has not been garnered by traditional juvenile court professionals and their advocates acting alone. Rather, it has no doubt been due to the influence of partners in new alliances between the court and its programs with law enforcement, prose-

58. Zero tolerance is not a philosophy limited to schools, but has for some time been a guiding principle of operation in secure residential facilities in juvenile justice programs that make use of increasingly strict behavioral rules that ironically permit ejection of young people from these programs for some of the very behaviors they are attempting to correct. Public spaces under more strict regulations such as malls, downtown civic centers, and other locations may become a setting for a contest between young people and those business owners and civic leaders who also promote zero tolerance regulation in such contexts. See, e.g., ROB WHITE, *PUBLIC SPACES FOR YOUNG PEOPLE: A GUIDE TO CREATIVE PROJECTS AND STRATEGIES* (1998).

59. BERNARD HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* 43–45 (2001).

60. E.g., Trulson et al., *supra* note 20, at 576–77.

61. *Id.*

cutors, and other criminal justice agencies not traditionally viewed as partners with the juvenile court.

2. New System Collaborations and Boundary Erosion

Reinforcing zero tolerance as a response to troublesome young people has been the emergence of new, stronger collaborations between what have traditionally been "loosely coupled" components of criminal justice systems with frequently incompatible agendas.⁶² In the mid-1900s, weakened juvenile justice organizations, such as probation and local treatment agencies, as well as the court itself, began to align themselves with more politically powerful components of the system—i.e., local law enforcement and prosecutors. Such alliances have often been built around collaborations to implement new initiatives focused on gang prevention and intervention programs, centralized intake/assessment centers, curfew enforcement centers, and a range of early intervention and prevention projects often associated with new sources of funding.⁶³

The surprisingly seamless coordination between law enforcement and social services in the implementation of such new forms of front-end intervention seems to signal the beginning of another type of professional boundary erosion. Specifically, as will be illustrated in the case study presented in this Article, prosecution/enforcement sectors began to assume more responsibility and leadership for what were once essentially social services and public health functions, while traditional juvenile justice agencies, in turn, were asked to focus more attention on surveillance, enforcement and sanctioning tasks. Through pursuit of the common goal of more effectively identifying and processing "youth-at-risk," the new collaborative in support of expansionist polices seemed to combine elements of "soft side" counseling, remedial education, and substance abuse treatment with more aggressive and coercive law enforcement and expanded prosecution and suppression (i.e., gang units). While multi-dimensional intervention offerings have apparently done much to insulate such collaboratives from vulnerability to criticism by youth advocates or civil libertarians, the end result may be goal confusion or a merger of priorities to achieve the least common denominator. Such a merger may also give precedence to what has been called

62. John Hagan, *Why Is There So Little Criminal Justice Theory?*, 26 J. RES. CRIME & DELINQ. 116, 118 (1989).

63. See generally Shay Bilchik, *Community Assessment Centers: A Discussion of the Concept's Efficacy*, Monograph, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Juvenile Justice, Washington, D.C. (1995); Reynolds, *supra* note 48.

a “managerial” criminal justice approach⁶⁴ in which leadership seeks to achieve the most politically acceptable solution that may have little to do with traditional criminal justice goal attainment (e.g., reducing recidivism).

3. New Faith in the Court and Quasi-Formal Processing: Specialized Juvenile Justice Courts and Programs

In what appears to be a reversal of the aforementioned deconstructionist reforms that sought to minimize court intervention and avoid the tendency to overload youth in trouble with surveillance and services,⁶⁵ many juvenile courts in the 1990s began to increase the range of quasi-adversarial options available under direct supervision of the court itself. While less formal than traditional courts and often promoted by progressive judicial leaders who wished to make courts more flexible, accessible, and “user-friendly,” these new specialty, “boutique,” or “problem-solving” courts⁶⁶ nonetheless keep control of various problems and issues under judicial control and in fact define new behaviors as appropriate for formal intervention. Most importantly, the new courts and associated juvenile justice programs appear to have become a primary vehicle to facilitate the “reaching down” phenomenon. In some locations, for example, smoking courts, drug and alcohol courts, teen courts, truancy courts, curfew courts, and even “grade” courts have appeared on the juvenile justice landscape.⁶⁷ With the exception of drug courts, studies of the impact of these new initiatives are very scarce. What is clear, however, is that these programs and specialty courts provide new doorways for bringing more non-criminal and low-level crime problems once handled informally into the court process for resolution.

Ironically, the deconstructionist idea of the court as the last and least desirable forum for resolving complex and typically non-legal problems seems to have been reversed by the new specialty court movement, even as (or perhaps, because) the juvenile court has lost jurisdiction over more serious and chronic youth crime.⁶⁸ Indeed, the new specialty court movement and

64. See Feeley & Simon, *supra* note 8.

65. See generally SCHWARTZ, *supra* note 42; SUSAN GUARINO-GHEZZI & EDWARD J. LOUGHRAN, *BALANCING JUVENILE JUSTICE* (1996).

66. Greg Berman & Jeffrey Feinblatt, *Problem-Solving Courts: A Brief Primer* 23 LAW & POL'Y 125 (2001).

67. E.g., Brief of Amici Curiae Children, Youth and Families Department, *In re Andrew A.* (N.M. Ct. App. 2002) (No. 22,891) (on file with author). See WHITEHEAD & LAB, *supra* note 15.

68. Butts & Mears, *supra* note 13, at 177.

related court-sponsored programs⁶⁹ seem considerably less concerned with the priorities of the post-*Gault* court, including minimizing unnecessary intervention and maximizing due process.⁷⁰ Perhaps completely lost, at least in some new court-sponsored programs, is the concern of original diversion advocates⁷¹ that programs, despite good intentions, may actually be harmful.⁷² In that regard, there also appears to be a lack of awareness of possible criminogenic, stigmatizing influences associated with bringing together large groups of troubled youth in a way that may be likely to reinforce a deviant identity.⁷³

Yet, court leadership is not solely responsible for what is, in fact, a broader based problem. Like their counterparts in other sectors, court practitioners are often seeking to strengthen practice and avoid further erosion of their jurisdiction. Thus, while the concerns we raise about the widening of the court mandate in response to problems in the socialization of young people are not unlike some of those raised by critics of diversion policies in previous decades,⁷⁴ expansionism is about more than "net-widening." Our concerns, therefore, do not imply support for a "hands-off" or "radical nonintervention" approach as advocated by some court critics in the 1970s.⁷⁵ Indeed, at the conclusion of this Article, we propose positive solutions that could involve the court in a leadership role to promote a more effective, informal, community-focused paradigm for intervention in response to youth crime.

In summary, by direct, official, and quasi-formal intervention with categories of youth not subject to court controls in recent decades, the three components of criminal/juvenile justice expansionism have worked together to legitimize and operationalize a general erosion of formal/informal social control boundary distinctions. This erosion has been accompanied by a marked increase in status offenders, as well as first offenders and

69. See, e.g., Brief of Amici Curiae Children, Youth and Families Department, *In re Andrew A.* (N.M. Ct. App. 2002) (No. 22,891) (on file with author).

70. See GUARINO-GHEZZI & LOUGHRAN, *supra* note 65, at 93-101; Bazemore, *Young People*, *supra* note 28, at 203-04.

71. Lemert, *supra* note 10, at 34-46; EDWIN M. SCHUR, *RADICAL NONINTERVENTION: RETHINKING THE DELINQUENCY PROBLEM* 3-4 (1973).

72. E.g., Kenneth Polk, *When Less Means More: An Analysis of Destructuring in Criminal Justice*, 33 *CRIME & DELINQ.* 358 (1987).

73. Gordon Bazemore, *Delinquent Reform and the Labeling Perspective*, 12 *CRIM. JUST. & BEHAV.* 131, 135 (1985).

74. See generally Lemert, *supra* note 10; Polk, *supra* note 72; Dean G. Rojek, *Juvenile Diversion: A Study of Community Cooptation*, in *READINGS IN JUVENILE DELINQUENCY* 316 (Dean G. Rojek & Gary F. Jensen eds., 1982).

75. See, e.g., SCHUR, *supra* note 71; SCHWARTZ, *supra* note 42.

misdeemeanants, being processed through juvenile courts and placed in residential and other restrictive environments once reserved for more serious juveniles. One of the most interesting aspects of this new expansionism is its implications for the nature of schools, both as institutions of informal and quasi-formal social control, and as a potential feeder system into the juvenile justice system. The issue of policy responses to truancy provides an important case study for more closely examining changes in these formal/informal boundaries.

C. *Schools, Truancy, and the Structure of Social Control*

Historically, school partnerships with criminal and juvenile justice agencies have centered on the use of criminal justice officials as informational sources, with their efforts aimed at prevention through education. Increasingly, however, partnerships between schools and agents of the criminal justice system are characterized by atmospheres structured for student control and crime prevention, rather than education, signaling important changes in the social control mechanisms used in schools and on our children.⁷⁶

The origins of the erosion of formal and informal boundaries in the school context predate the new concerns with expansionism discussed here. The criminal justice presence has been a notable feature of the secondary education landscape since the initial placement of school resource officers (SROs) in many of the nation's high schools two decades ago.⁷⁷ Historically, the initial role of criminal justice in schools was relatively non-intrusive, focused primarily on education and prevention.⁷⁸ SROs have also clearly reinforced the discipline and security structure of schools, both in ways that are generally applauded, as well as in ways that have drawn significant criticism.⁷⁹ For example, schools have for some time used officers for investigation, surveillance, and arrest functions, and with the recent impetus toward zero-tolerance policies, schools have been able to "off-load" disciplinary responsibilities to juvenile courts and/or juvenile justice programs. Though typically seen more as advocates for students under their supervision, school probation officers likewise reinforce more authoritarian components of the disciplinary struc-

76. *E.g.*, Trulson et al., *supra* note 20, at 574.

77. *See* LAWRENCE, *supra* note 20.

78. *E.g.*, Trulson et al., *supra* note 20, at 576.

79. *See* STAPLES, *supra* note 23.

ture and, on occasion, may also facilitate removal of supervised youth from school.⁸⁰

A more decisive change in emphasis toward crime control is now also seen in the "language used to refer to criminal justice officials, their role activities, the changing architectural environment of schools, and the panoply of rules and restrictions emphasizing suppression of criminal activity."⁸¹ Consistent with zero tolerance, the shift in language is replete with such terms and phrases as "combating" victimization, "fighting campus crime," and "enforcing discipline." In some jurisdictions, job titles for professionals once called "resource officers" or "school liaisons" are now "security officers," "guards," "gang intelligence officers," or "drill instructors." This language is consistent with an apparent role change in which police activities on campus focus more on investigatory and enforcement efforts.⁸² While programs such as DARE and other anti-crime educational projects continue to emphasize prevention, some schools now use criminal justice professionals in disciplinary programs, including school "boot camps" and "intensive supervision programs."⁸³

Despite this new and different criminal justice presence in schools, only in recent years has skipping school again become a criminal/juvenile justice issue. That it should be viewed in this way, however, is perhaps not surprising given the emphasis on access control, surveillance, law enforcement, drug sweeps and testing, monitoring, and crowd control that are becoming part of daily life in many urban schools. In this context, truancy, like other forms of rule violation and disruption of school routines, is increasingly seen as a problem to be solved by criminal justice methods, regardless of its causal origins.

Yet, to raise critical concerns about criminal justice involvement in the educational process is not to underestimate the scope of the problem that truancy may well present. Although the proportion of truancy cases processed through juvenile courts is relatively small (twenty-six percent of all formally handled status offense cases), some have observed that the juvenile justice system has become "the final stop for truants, and [is increasingly] a mechanism for intervening with chronic truants."⁸⁴

80. *E.g.*, Trulson et al., *supra* note 20, at 576.

81. *Id.*

82. *Id.* at 576-77; *see also* STAPLES, *supra* note 23, at 45-49.

83. Trulson et al., *supra* note 20, at 576-77.

84. Baker et al., *supra* note 24, at 2.

Though this pattern is now well documented, less well understood are the social control issues and new role implications for criminal justice professionals in the regulation of school attendance. Moreover, while there is considerable evidence pointing toward truancy's causation, policy development and research on the impact of various intervention techniques are in their relative infancy.

1. Understanding the Truancy Problem: Impacts and Causes

Few would question the assertion that chronic absenteeism today increases the estrangement of young people from the educational mainstream and hence from preparation for productive participation in the conventional labor market. In addition to the implications for human capital and for the general well-being of youth and families, truancy has been identified in a number of empirical studies as a risk factor associated with substance abuse, gang activity, and a variety of criminal activities, as well as serious behavioral disorders in adulthood.⁸⁵ Though causal order and robustness of some of these effects have been at issue in a number of studies, truancy, like dropping out,⁸⁶ represents the tip of the iceberg of social isolation that serves as one critical indicator of a variety of school alienation and failure issues that may be directly implicated in negative outcomes such as future delinquency and crime.⁸⁷ Law enforcement officials in recent years have also raised claims, though not always empirically substantiated, of a linkage between high rates of truancy and daytime burglary and vandalism.⁸⁸

Regardless of the nature of the causal paths or the potential impact, the antecedent predictors of truancy have been rather well established. Etiological research is relatively clear, for example, about the multidimensional nature of the truancy problem. While causal explanations have at times emphasized one of three domains—the individual, the school, or the family⁸⁹—efforts to

85. *E.g.*, Allison J. Bell et al., *Truancy Intervention*, 27 J. RES. & DEV. EDUC. 203 (1994); Eileen M. Garry, *Truancy: First Step to a Lifetime of Problems*, JUV. JUST. BULL. (U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, Wash. D.C.), Oct. 1996, at 1.

86. *E.g.*, DELBERT S. ELLIOTT & HARWIN L. VOSS, *DELINQUENCY AND DROP-OUT* (1974).

87. *See* YOUTH DEV. & DELINQUENCY PREVENTION ADMIN., U.S. DEP'T OF HEALTH, EDUC., & WELFARE, *DELINQUENCY PREVENTION THROUGH YOUTH DEVELOPMENT* (1972); Denise Gottfredson, *Changing School Structures to Benefit High-Risk Youths*, in *UNDERSTANDING TROUBLED AND TROUBLING YOUTH* 246 (Philip E. Leone ed., 1990).

88. *See generally* Baker et al., *supra* note 24.

89. *E.g.*, Bell et al., *supra* note 85.

identify personal characteristics that set truants apart from other students tend to implicate family and school dimensions. For example, truants are often found to have a parent suffering from alcoholism⁹⁰ and to experience family histories of abuse,⁹¹ maltreatment, or neglect.⁹²

The school environment itself is implicated, and in fact, the likelihood of being truant may vary by the school a student attends. With regard to school-related variables, truants tend to display reading scores two years below their grade level,⁹³ have poor skills in a number of academic subjects,⁹⁴ feel frustrated and bored with school, remain isolated from the school culture,⁹⁵ and experience more negative encounters with teachers.⁹⁶ For example, a survey of students in one study revealed that when students were asked why they were truant, school-related variables (e.g., bullying, lack of attention to learning styles, learning disabilities, and physical impairments) dominated their answers.⁹⁷

Thus, it is not surprising to find researchers concluding that effectively treating the problem of chronic absenteeism requires looking beyond the scope of the personal identities of individual truants and focusing on school, community, and family-related factors ranging from domestic violence to teacher neglect and negative role models.⁹⁸ In that regard, Harte notes that since 1985, the literature on absenteeism has shifted from focusing on the student to viewing the school as part of both the problem and the solution.⁹⁹

90. E.g., Melissa Owings West & Ronald J. Prinz, *Parental Alcoholism and Childhood Psychopathology*, 102 *PSYCHOL. BULL.* 204, 207-09 (1987).

91. Richard Famularo et al., *Child Maltreatment Histories Among Runaway and Delinquent Children*, 29 *CLINICAL PEDIATRICS* 713, 714 (1990).

92. See Garry, *supra* note 85.

93. David Galloway, *Research Note: Truants and Other Absentees*, 24 *J. CHILD PSYCHOL. & PSYCHIATRY & ALLIED DISCIPLINES* 607, 609 (1983).

94. David P. Farrington, *Delinquency Prevention in the 1980s*, 8 *J. ADOLESCENCE* 3 (1985).

95. Richard E. Rood, *Advice for Administrators: Writing the Attendance Policy*, *NASSP BULL.*, Apr. 1989, at 22.

96. Barbara Sommer, *What's Different About Truants? A Comparison Study of Eighth-Graders*, 14 *J. YOUTH & ADOLESCENCE* 411, 419-20 (1985).

97. William B. Berger & Susan Wind, *Police Eliminating Truancy: A PET Project*, *FBI L. ENFORCEMENT BULL.*, Feb. 2000, at 17.

98. See generally Ingersoll & Le Boeuf, *supra* note 25, at 2-3; Bell et al., *supra* note 85.

99. AUSTIN J. HARTE, *IMPROVING SCHOOL ATTENDANCE: RESPONSIBILITY AND CHALLENGE* (1994), *microformed on ERIC Identifier No. ED383042* (Educational Resources Information Center).

2. Truancy Intervention in Context: The Structure of Responsibility and Leadership

While the search for explanations has clearly incorporated multiple variables, truancy-reduction policies and practices most often target individual students for remedial services, counseling, or at times, simply punishment. The potential exists to conceptualize and implement broad truancy reduction strategies, similar to those being employed in response to bullying and related problems.¹⁰⁰ But the dominant reality of truancy intervention is typically influenced by a rather narrow set of policy frameworks that lead to a replication of limited, student-targeted strategies that vary only in their view of individual motivation for unexcused absences.¹⁰¹

While these interventions may assume multiple forms within varying organizational structures,¹⁰² when law enforcement agencies assume primary leadership roles, one might expect truancy to be defined first and foremost as a primary risk factor for involvement in daytime crime. Consistent with boundary change literature, we will explore the extent to which such singular definitions of the problem are reinforced by changing role adaptation of criminal justice professionals. In addition, a primary concern is that criminal justice system dominance may evoke a "no fault" response from schools and other institutions of informal or quasi-formal social control.¹⁰³ When they relinquish policy authority over the problem, school professionals tacitly accept and further legitimize the crime suppression rationale in exchange for being absolved of responsibility for troublesome young people. This displacement of socialization functions with a crime control response may also criminalize behaviors once viewed in the school context as simply troublesome, or as viola-

100. BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9, at 219.

101. In an effort to progress beyond both generic and one-dimensional approaches, some jurisdictions are focusing on a multi-faceted combination of holistic problem-solving techniques targeting specific needs with a "menu" of responses that can take the form of assistance ranging from providing health care to making arrangements for transportation, child care (for younger siblings), school clothing, and even such fundamentals as access to washing machines or a quiet place to do homework. School-based intervention programs have also been found to be more effective if, along with attendance monitoring and student counseling, they also involve parents and other citizens and community groups; see generally HARTE, *supra* note 99; John Haslinger et al., *Countering Absenteeism, Anonymity, and Apathy*, 54 EDUC. LEADERSHIP 47, 47-49 (1996); MINN. DEP'T OF CHILDREN, FAMILIES, & LEARNING, *supra* note 22.

102. See, e.g., Baker et al., *supra* note 24, at 11.

103. MARK D. JACOBS, SCREWING THE SYSTEM AND MAKING IT WORK: JUVENILE JUSTICE IN THE NO-FAULT SOCIETY 265-84 (1990).

tions of institutional rules rather than legal or universal norms. The extent to which this potential is reflected in the case study reviewed here is among the issues explored throughout the remainder of this article.

III. OVERVIEW OF THE SOUTHEASTERN COUNTY TRUANCY REDUCTION AND INTERVENTION COLLABORATIVE

The program mission of the Southeastern County truancy intervention combines several elements of crime control and a social welfare/therapeutic perspective. Initiated by a popular sheriff, the collaborative effort was aimed at implementing a comprehensive approach to intervention that combined a specific and general deterrence component with assessment and follow-up services on a prescriptive basis. On a continuum of possible interventions, including secure detention for truants that is used in a number of jurisdictions,¹⁰⁴ the initial vision of the Southeastern County intervention falls closer to the less intrusive end. In the following section, we present a brief overview of the program's operational design. Then, based on qualitative interviews, focus groups, and participant observations, we provide a general description of the dominant focus of the intervention itself and its implications for role adaptation on the part of criminal justice professionals.

A. *Operational Context*

Although center staff and sheriff's deputies had gained three years of experience operating a smaller truancy pick-up program, the first year of operation of the fully-funded, multi-component truancy center was the beginning of the 1999–2000 school year, at which point the center was equipped to accommodate over one hundred truants per day. A case management component was also added, with services provided by two clinical service provider agencies.

The primary stated goal of the Truancy Unit was to reduce the incidence of unexcused absences from schools in Southeastern County. Secondary goals were to reduce delinquent behavior among processed youth and to reduce the rate of juvenile crime during school hours.¹⁰⁵ Consistent with state statutes,

104. See, e.g., Brief of Amici Curiae Children, Youth and Families Department, *In re* Andrew A. (N.M. Ct. App. 2002) (No. 22,891) (on file with author).

105. Funding and general political support for the program, located in the largest city in Southeastern County (county population approximately 1,600,000), came after the number of truants processed through an interim truancy unit had almost doubled in the 1997–98 school year, and the school

admission requirements allow for processing youth who meet the following criteria: (1) between the ages of six and seventeen and currently enrolled in a Southeastern County public or private school day school; (2) not currently suspended or expelled from school; (3) not enrolled in a GED program; (4) not in a court-ordered program; (5) not in a home or work study program; and (6) not a runaway.¹⁰⁶

1. Processing and Intervention Focus

The decisionmaking process begins when sheriff's deputies or other local law enforcement officers encounter youth not accompanied by an adult during school hours. The officer is expected to call the youth's school to confirm that he/she has not been granted an excused absence and verify that the youth meets the criteria for admission to the unit. In fact, with the exception of youth currently under court-ordered supervision (who were taken to delinquency intake), or runaway youth (who were taken to shelters), the vast majority of unaccompanied youth on the street met formal, legal criteria for admission to the center. Because exclusions by virtue of excused absence, home schooling, or GED enrollment were unlikely for an unaccompanied youth, release dictated by statute was rare, and officers were granted a great deal of discretion in processing decisions. Primarily, they had to evaluate the credibility of claims for being on the street during school hours. Though some officers established their own guidelines for decisionmaking, such as distance from school, and allowed a "grace period" for viewing youth as tardy versus truant, there were no formal policies to guide these decisions, and officers ranged from allowing a fifteen minute window to two hours. Youth who were judged by officers to be truant were transported to the Truancy Unit, located in a separate wing of a large building also housing a centralized county juvenile assessment center used as an intake center for youth picked up by police for alleged delinquent behavior. Those judged to be simply late for school—and presumably on their way to class—or

board had published an estimate that 2,700 students per day were truant during that year.

106. A state statute implemented in 2000 changed one important criterion for admission: youths who are suspended or expelled from school and are not under the supervision of an adult, can now be picked up and taken to the Truancy Unit. Though apparently illogical given the expressed goal of reducing truancy among processed students (i.e., by getting them back in school), the new statute may well reinforce the more implicit, but increasingly dominant goal of suppression of youth crime.

those presenting other legitimate excuses for not being in school, were released.

The experience of being processed through the Truancy Unit Intake Room, a holding area where youth wait prior to entry into the facility itself, is one that evokes a sensation similar to that of being arrested and taken into custody. In this sense, it is not unlike many other juvenile or criminal justice processing experiences dominated by an emphasis on security, confiscation of property, regimentation, and authoritarian discipline. The approach of the police officers in charge at this stage is business-like; youth are searched, property is confiscated, and vital data (e.g., name and phone number of parent or guardian) are collected. The tone of officers' interaction with the young people is generally respectful, but there is no tolerance for disruptive behavior or loud talking. After an intake form is completed on all youth and entered for processing, the Department of Juvenile Justice (DJJ) database is checked to see if there is an outstanding pick-up order, or if the youth is under the jurisdiction of the court (i.e., probation, commitment, or conditional release). If the youth is listed in the database as currently on probation, the DJJ probation officer is contacted to verify that information. It is at this point that the connection between the response to truancy as troublesome behavior and juvenile justice is made most directly. Specifically, if the youth is on probation for burglary, auto theft, or a crime of violence, a sheriff's deputy files a violation report, and the youth is transferred to the "delinquency side" of the assessment center.¹⁰⁷

The intervention itself during the time at the center is minimal, involving essentially a basic assessment, brief interview, and enforced silence. After initial processing, each youth is brought into a large "classroom" and seated at a desk where he/she is told to stay until told to move. A classroom monitor (a school board employee) then explains the rules of conduct while at the Truancy Unit, which require that students must: (1) place their heads on their desks while they are seated; (2) raise their hand if they have a question; and (3) not talk to anyone unless asked a question by a staff person. While truant youth complete an

107. The rules also note that the Truancy Unit classroom is a School Board facility and that failure to follow the rules may result in disciplinary action. In perhaps the starkest illustration of the enforcement emphasis and the blending of socialization and formal social control, truant youth are informed that any time their disruptive behavior inside the facility warrants, they may be transferred to the "delinquency side" of the larger facility in which the truancy program is housed. Transferred youths are then charged with a delinquent act under the state juvenile justice code.

assessment tool at their desks, clerical support staff members collect information on attendance and other background characteristics and create a file for each youth. The assessment tool is placed in the file, and then used by an intake assessment counselor to conduct an interview with the youth. A counselor reviews the contents of the file, checks the accuracy and veracity of the information with the youth, and may then attempt to gain additional assessment information from an informal interview. At this time, some informal counseling may be provided regarding school problems and the importance of attendance. Based on assessment scores and the general assessment notes recorded by intake counselors, a youth may be referred to school for remedial services or to a case manager for other assistance.

Students may stay at the facility for a maximum of six hours, by which time the youth must be released to parents, guardians, or a competent adult willing to sign for them. The parent or other adult picks up his child at the center or meets the child at home after the child is delivered there by an officer.

2. Intervention Focus and a Summary of Impact Results

As noted in the introduction, partners in the collaboration sought and secured funding for a multi-component intervention approach that included assessment and referral for remedial and clinical services. However, despite the emphasis of truancy center clinical staff, and the fact that a substantial proportion of youth received referrals, independent surveys of parents conducted as part of the program evaluation revealed that a relative handful of these youths (about 33, or 8% of a sample of 270 processed youth) could be confirmed to have received *any* follow-up service.¹⁰⁸ Hence, for various reasons to be discussed in subsequent sections of this Article, the services component of the truancy center was eventually phased out.

108. GORDON BAZEMORE, LESLIE LEIP & JEANNE STINCHCOMB, Evaluation Report from the [Southeastern] County Truancy Reduction and Intervention Program 57 (2001) [hereinafter EVALUATION REPORT] (on file with authors). (The name of the county has been redacted from the report to retain confidentiality.) See also Gordon Bazemore, Jeanne Stinchcomb & Leslie Leip, *Scared Smart or Bored Straight: Testing a Deterrence Logic in an Evaluation of Police-Led Truancy Intervention*, 21 JUST. Q. (forthcoming 2004) (manuscript at 34, on file with authors).

a. *The Logic of Deterrence*

The primary "intervention theory"¹⁰⁹ connecting this initiative with both reductions in subsequent unexcused absences and prevention of future delinquent behavior was therefore specific deterrence.¹¹⁰ Although critics may view this theory somewhat dubiously as the primary basis for truancy reduction,¹¹¹ a logical linkage was perceived by program staff between these interventions and future truancy and delinquency.

Simply put, according to Southeastern County Truancy Unit program managers and staff, a primary emphasis of the above-described truancy protocol was to make the experience at the center as unpleasant as possible. Moreover, consistent with the classic deterrence model that seeks to maximize the swiftness, certainty, and severity of punishment,¹¹² an intensive deployment of special units and truancy patrol vehicles in targeted areas greatly increased the likelihood of apprehension, while expedited delivery to the center and rapid processing made the punishment almost immediate. Inside the center, certainty was achieved by consistent application of strict rules of conduct, including enforced silence. Though not necessarily viewed as explicitly painful, and thus perhaps of limited severity, staff argued that the lack of stimulation of any kind, educational or

109. See Carol Weiss, *How Can Theory-Based Evaluation Make Greater Headway?*, 21 EVALUATION REV. 501 (1997).

110. E.g., ANNE L. SCHNEIDER, DETERRENCE AND JUVENILE CRIME: RESULTS FROM A NATIONAL POLICY EXPERIMENT (1990); Mark C. Stafford & Mark Watt, *A Reconceptualization of General and Specific Deterrence: A Critical Review*, 30 J. RES. CRIME & DELINQ. 123 (1993). The specific deterrence focus in Southeastern County is also coupled with a general deterrence emphasis that assumes that would-be truants will learn that skipping school could result in being caught and taken to the center. Similarly, proponents of the initiative assumed that the *threat* of officers patrolling neighborhoods for truants would deter youth planning daytime crime. Though program administrators and the sheriff's office also claimed a reduction in daytime crime based in part on the presence of truant officers on patrol in the neighborhoods, this general deterrence hypothesis is not easily tested without knowledge of influence on motive and strong control groups. While the specific deterrence focus, in addition to the basic assessment and service referral component, provided the primary justification for the program, general deterrence could have been accomplished in other less expensive ways (e.g., by simply picking up truants consistently and returning them to school with a warning or citation).

111. See, e.g., Baker et al., *supra* note 24, at 41; Ingersoll & LeBouef, *supra* note 25, at 2-3; see generally HARTE, *supra* note 99.

112. See generally SCHNEIDER, *supra* note 110; Raymond Paternoster, *The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues*, 4 JUST. Q. 173 (1987).

otherwise, ensured that the center would not be perceived by anyone as, in any way, enjoyable or interesting.

Empirical studies report mixed results ranging from moderately positive to inverse relationships between the threat of punishment and future offending.¹¹³ From a deterrence perspective, the experience of truancy unit processing and intervention may have had any of a number of impacts: (1) reduce future truancy and delinquency; (2) fail to produce an effect; or (3) have a negative impact. For many students, avoiding another day of enforced silence (and general aggravation) could provide a threat sufficient to deter them from skipping school and offending, or at least reduce the frequency of this behavior in order to minimize the likelihood of detection. For such students, the experience itself might also serve as a "wake-up call," or deterrent that stifles further involvement in these behaviors—or alternatively triggers parental and other adult supportive responses that steer the youth back to a path of regular attendance. In the latter case, the so-called "deterrent" effect may be less about the threat of spending the day in the center *per se* and much more about what will happen when their parents find out, and/or what knowledge of their stay at the center might do to their reputation at school among both teachers and peers.

b. *Impact Findings*

In a pragmatic world, if the intervention achieved its objectives of reducing truancy and delinquent behavior, some of the other concerns raised herein about the loss of informal social control and expansion of system boundaries might be of less concern. But impact findings from a recent evaluation of this truancy center based on a quasi-experimental design¹¹⁴ suggest that this intervention was not successful by empirically designated outcome standards. When random samples of youths stopped by police for truancy and processed at the center were compared with those who were stopped but not processed, processed youth had lower rates of truancy during a one-month period after processing, but significantly *higher* rates in a more long-term period that included the remainder of the school year. The authors concluded that while the deterrence strategy appeared to have a moderate short-term impact, in the long run, it

113. *E.g.*, Paternoster, *supra* note 112; Derek B. Cornish & Ronald V. Clarke, *Introduction to THE REASONING CRIMINAL* 1, 5–10 (Derek B. Cornish & Ronald V. Clarke eds., 1986); SCHNEIDER, *supra* note 110.

114. Bazemore, Stinchcomb, & Leip, *supra* note 108 (manuscript at 31–33).

appeared to increase truancy and, moreover, had no impact on delinquent behavior.

While the reasons for these findings are not entirely clear, it may be helpful to consider the specific deterrence hypothesis that young people experimenting with truancy might, as a result of the experience of being apprehended and processed, avoid future truancy due to concern about the consequences of future apprehension. In a sense, one could potentially reason that processed youth might be "shocked" into increased school attendance by the experience of center processing.¹¹⁵ Such shock, if it occurs, would presumably be less salient the second or third time around, a presumption that is in part confirmed by a subsequent increase in truancy, as well as by a significant relationship between a tendency toward prior truancy and delinquency and similar post-processing truancy and delinquent behavior.¹¹⁶ Moreover, calculating the precise level of punishment severity required to effectively implement deterrence-based strategies is extremely difficult, and even the most salient effects of threats and punishment are likely to be short-lived.¹¹⁷ Deterrence logic also suggests that when threats are not followed through, an initial decrease in offense behavior might be followed by a return to previous patterns. It may be the case that after two or more punitive responses, the offender becomes so accustomed to the punishment that it is no longer something to be feared. In addition, according to some research, punishment may also produce a counter-deterrent effect, when individuals whose behavior is the target of change exhibit a "defiance reaction,"¹¹⁸ and in fact increase investment in the behavior of concern. A different kind of counter-deterrent effect more consistent with labeling theory¹¹⁹ might also explain the increase in truancy among processed youth by suggesting that a young person experiencing a kind of status degradation ceremony might increase involvement in truancy because the experience of being processed causes an internalization of a dominant identity

115. *Contra* JAMES O. FINCKENAUER & PATRICIA W. GAVIN, SCARED STRAIGHT: THE PANACEA PHENOMENON REVISITED (1999).

116. Bazemore, Stinchcomb & Leip, *supra* note 108.

117. Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOCIOLOGICAL REV. 261, 269-70 (1984); BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9.

118. *E.g.*, Lawrence W. Sherman, *Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction*, 30 J. RES. CRIME & DELINQ. 445 (1993).

119. SCHUR, *supra* note 71; HOWARD S. BECKER, *OUTSIDERS: STUDIES IN SOCIOLOGY OF DEVIANCE* (1963).

as a troublemaker, and thereby normalizes truancy and promotes continued involvement in this behavior.¹²⁰

In the absence of data on how the intervention was actually perceived by students, the authors could not claim that the impact evaluation provides a perfect test of the deterrence hypothesis. We suggest, however, that the quasi-experimental study provides an appropriate assessment of deterrence as a practical policy approach to truancy. That is, the strict discipline focus, though perhaps imperfect in delivery of the appropriate severity of punishment or the threat of future consequences, seems typical of what agencies are likely to replicate in implementing a county-wide anti-truancy initiative. Hence, these data shed doubt on the capacity of such efforts to deter truant youth from future unexcused absences, as well as on the capacity of a law-enforcement-led coalition to implement a broad multidimensional strategy. These concerns are addressed further in the case study analysis that follows.

IV. CASE STUDY FINDINGS AND ANALYSIS

Despite the negative impact findings, the Southeastern County initiative presents an opportunity for learning that may generalize the theory about criminal justice responses to problems in schools and institutions of informal control. In particular, the manner in which the collaboration evolved and incorporated interests of the various stakeholders contains valuable lessons for those wishing to replicate this design or develop alternative truancy intervention approaches.

Notably, the fact that the center continues to operate today—albeit without the services component—suggests that negative evaluation results pertinent to primary goals (i.e., truancy and delinquency reduction) may be deemed irrelevant as long as an intervention initiative appears to be meeting other core needs. We suggest that these needs are primarily those that can be best understood with reference to the primary components of the expansionist agenda.

A. *Truancy Intervention and Zero Tolerance*

First, zero-tolerance logic provided a strong ideological and normative justification for relaxing barriers to police access to young people who are not in school during regular hours. Such justification also involved little concern about granting officers

120. See generally Lemert, *supra* note 10 (arguing that court stigma normalizes delinquency and promotes continued involvement).

wide discretion about whether to give credence to explanations of tardiness, excused absences, or even suspension. Zero tolerance also provided justification for growing school reluctance to accept certain young people back into school when returned by police after processing. The ultimate signs that some school staff may have viewed the center as a means of getting rid of troublesome students were the reported calls from school personnel to request pick up and processing of non-truant youth who were simply causing problems in the classroom. Though infrequent, such calls were symbolic of the salience of the zero-tolerance message indicating that schools (and ultimately, families and community groups), were allowed to transfer responsibility for troublesome students to the greater authority of criminal justice professionals.

Despite the less than positive impact of truancy center intervention on school attendance and subsequent delinquency, getting young people off the streets, whatever its true value in crime control, apparently began to take precedence over due process concerns. This incapacitation approach to truancy further strengthened what appears to be a new feeder system that more quickly transitions troublesome young people directly from school and into the juvenile justice system. In light of the recent proclamations of "success" in the somewhat parallel urban initiatives that encourage aggressive policing approaches to disorder,¹²¹ it is logical to assume that such zero-tolerance responses to truancy may continue to operate and spread in influence, even in the face of dubious or negative evidence of effectiveness in goal attainment.¹²² Moreover, as we suggest below, criteria for success and outcome indicators may even be adjusted to fit an intervention consistent with a managerial agenda based on incapacitation.

B. *New Faith in Courts and Juvenile Justice Programs*

Through a specialized response that promised greater efficiency and effectiveness, the Southeastern County Truancy initiative provided a clear example of the trend in juvenile justice toward resuming jurisdiction over behaviors once considered off-limits to the justice system. In short, the center operationalized many of the core elements of the expansionist tendency in crimi-

121. E.g., William J. Bratton, *The New York City Police Department's Civil Enforcement of Quality-of-Life Crimes*, 3 J. LAW & POL'Y 447 (1995); *contra* HARCOURT, *supra* note 59, at 23-58.

122. E.g., FINCKENAUER & GAVIN, *supra* note 115.

nal and juvenile justice outlined earlier and illustrates many of the problems with this new development.

Though the court itself played a relatively limited role in this endeavor, the truancy collaborative (like the specialized courts and other related programs that have recently begun to “reach down” to intervene in response to youthful misbehavior) seemed oblivious to the possible negative impact on the identities and futures of young people potentially stigmatized by such intervention. And unlike earlier times, when questions were raised as a matter of course about the potential harm of intervention,¹²³ partners in the initiative never seemed to doubt that a collaborative of criminal justice and social service agencies operating a centralized truancy approach would be capable of making things better, rather than worse, for young truants, their families and their communities.

Specifically, as reflected in the message of specialized courts, juvenile justice and social service partners in particular placed extraordinary faith in the value of (1) a coordinated, centralized approach that isolated the truancy problem from the school and community; (2) an assessment to identify problems of individual truants, based on the assumption that collecting data on these problems would lead to remedial or therapeutic solutions; and (3) a specialized focus on truancy, with faith that social service experts could remedy the problem. Though never really tested as a result of implementation shortcomings, the conclusion that this strategy could not be easily operationalized without sacrificing some component (i.e., services) is a lesson in itself. More important, however, was the rather dubious nature of the strategy of isolating the truancy problem from its origins in the school and community (also consistent with zero-tolerance values) and ultimately, the pragmatic managerial focus of the multi-agency collaborative led by the Southeastern County Sheriff's Department.

C. *Managing the Problem: Boundary Erosion, Role Adaptation, and the Structure of Leadership*

The third element of the new expansionism—more powerful, untraditional criminal justice/social service partnerships—also played an important role in the truancy initiative. As the driving force in what was otherwise a loosely coupled collaborative, the sheriff's office provided the political capital needed to gain widespread acceptance for the initiative. For example, obtaining initial funding was arguably easier, and financial sup-

123. E.g., SCHUR, *supra* note 71; Polk, *supra* note 72.

port has remained at a high level despite questionable evaluation results, even at a time when juvenile justice funding for prevention programs has been reduced across the state. From another perspective, such general credibility could also have allowed the collaborative to experiment with one or more of several more creative alternative strategies. Such approaches, for example, might have allowed for different configurations of responsibilities, including those that might attempt to maximize the role of school reform, or to encourage police agencies to assume a more service-oriented role beyond the traditional scope of law enforcement.¹²⁴ However, opportunities were missed to promote a truly collaborative, multi-modal intervention in which juvenile justice, social services, the court, schools, and community groups were equally involved. Rather, the leadership structure became almost exclusively centered around the demands of identifying, intercepting, and processing truants.

1. Who's in Charge? Agenda Control

Problems associated with shared responsibility and cooperative efforts are to be expected in the initial stages of large collaborative efforts. Indeed, early stages of the process evaluation revealed emerging problems with developing a clear definition of partner roles, as well as the interagency understanding, acceptance of responsibility, and effective overall leadership needed to coordinate the efforts of school, law enforcement, service providers, and community resources. Yet, weaknesses in communication and follow-up were overshadowed by the strengths of the emerging leadership and management structure. Despite the intent to develop a multi-agency partnership with a broader focus than law enforcement, the sheriff's staff exercised primary leadership both in bringing the coalition together and in managing the internal and external operations of the center.

Although the social services component provided one important rationale for funding, as the initiative progressed, it appeared to move even further away from a multi-dimensional model and more in the direction of a crime control model—a focus clearly illustrated by the imbalance of expenditures for the time allocated by sheriff's deputies to intercepting and processing truants, compared with the funds expended on services and assessment.¹²⁵ From this fiscal perspective, responsibility for the overall strategy appears to have moved further away from school

124. *E.g.*, Baker et al., *supra* note 24, at 8; George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, PERSP. ON POLICING, Nov. 1998, at 1.

125. *See* EVALUATION REPORT, *supra* note 108.

and community ownership and closer to criminal justice ownership.

2. Boundary Erosion and Role Adaptation

The Southeastern County Sheriff's Department in some ways exemplifies the challenge to traditional professional boundaries among police agencies today. As a case study, the intervention that the department led is also relevant to the debate about role adaptation in terms of responses to problems of crime, disorder, and troublesome behavior.¹²⁶ Undoubtedly, classic concerns exist about police serving as "judge and jury," judges demonstrating bias in cases that involve advocacy, and similar separation of powers issues. Nevertheless, some view boundary flexibility as an indication that rigidity is breaking down in order to allow for more targeted, responsive, flexible, and effective intervention.¹²⁷ Such intervention has been heralded as ultimately achieving a "more ambitious form of justice"¹²⁸ based on a broadening of professional roles.

The transfer of responsibilities for responding to youth crime and troublesome behavior from social service agencies to law enforcement and/or prosecution-led collaboratives seems likely to continue in the future. Moreover, there is no reason to suggest that such shared responsibilities and role adaptation on the part of all stakeholders in such partnerships could not result in more effective outcomes. However, in this case study, there was little to indicate that law enforcement officers had modified their traditional roles to support either the educational mission of the school or the social service mission of agencies addressing the needs of youth and families with problems related to truancy, and there was no evidence of community participation in the truancy initiative.

This initiative presented many natural opportunities for such innovation. It might be expected, for example, that sheriffs' deputies assigned to the truancy unit would not only provide traditional law enforcement services, but also, to some degree, take on a more interdisciplinary role.¹²⁹ Such role adaptation might, for example, manifest itself in officer provision of assistance and support, thereby enhancing credibility for the service/remediation aspect of the truancy initiative or the broader

126. See generally Friel, *supra* note 12.

127. See CLEAR & KARP, *supra* note 23; Friel, *supra* note 12.

128. Moore, *supra* note 17, at 12.

129. See generally MALCOM K. SPARROW ET AL., BEYOND 911 (1990); Coles & Kelling, *supra* note 17.

educational and socialization agenda of the school.¹³⁰ Because of their role in picking up students and transporting them to the center (and ultimately to school or home), officers inevitably spent far more time with youth, school personnel, and parents than social service workers did. This provided opportunities for officers to get to know some of these young people informally, and perhaps provide informal counseling of the type noted in some studies of youth encounters with officers in community policing initiatives.¹³¹ While officers admittedly are not therapists, some relate well and more naturally to young people than do social workers operating from the perspective of a clinical agenda. But the fact that little interaction occurred other than “just the facts” questioning and a few warnings to sit still and be quiet suggests that this more positive, relational interaction was not encouraged and may actually have been discouraged in the interest of time.

Additionally, officers could have been a critical source of information that was often missing to the social services professionals who—by virtue of the large number of youth being processed and liability concerns—were forced to focus almost all of their attention on emergency cases or those with immediate need for an intensive response to chronic problems. Officers also had ample opportunity to support the socialization and remediation mission and, indeed, might have been more persuasive than counselors and social workers in convincing youth to attend tutoring or special education classes, or in persuading parents of the importance of their role in ensuring follow-through with referrals and monitoring subsequent attendance. As the initiative continued, however, case managers almost uniformly reported difficulties in getting parents and young people to follow-up with service referrals—or even to return their calls—and often experienced weak, if any, cooperation from school authorities. Most officers seemed to take little interest in understanding or supporting the services component and little, if any, investment in sheriff’s department staffing was allocated towards enhancing the integrity and quality of the service intervention component. In fact, some observations of officer/youth interactions during transportation back to school or to the student’s

130. *E.g.*, Trulson et al., *supra* note 20, at 585.

131. *Cf.* Gordon Bazemore & Scott Senjo, *Police Encounters with Juveniles Revisited: An Exploratory Study of Themes and Styles in Community Policing*, 20 POLICING: INT’L J. POLICE STRATEGY & MGMT. 60 (1997) (arguing that many community police officers developed supportive mentorship relationships with youth in trouble and assisted families in crisis).

home suggested that deputies were often unaware of referrals made by social service staff and unfamiliar with service providers.

Finally, since a number of the sheriff's deputies had previous training and experience in prevention and education as school resource officers, many could have been involved in educational activities in the facility, had such activities been part of the center's agenda. Yet, despite the sheriff's office commitment to programs such as DARE and other widely supported and well-resourced police prevention programs in the schools, administrators chose not to utilize officers for such educational/preventive functions during the four to six hours that most youth were being held at the center.

Realistically, all performance incentives for the officers seemed to be tied to the number of youth not in school who were processed at the center, which minimized the time devoted to informal interaction in favor of maximizing both the volume of truant arrests and the speed at which youths could be transported to the center. Little, if any, of the rather substantial investment of law enforcement staffing in the initiative was allocated to enhancing the integrity or quality of the services or the educational component. Hence, most officers retained a highly directive law enforcement posture—pick-ups were methodical and driven by concern for volume; processing was intended to quickly gather basic information; monitoring while in the center was focused on order maintenance and making the experience as devoid of stimulation as possible; contact with families was limited to only what was necessary according to the letter of the law; and contact with the school was similarly focused on efficiency concerns.

With regard to role adaptation, it was ironically the service professionals who were expected to adapt to the law enforcement/crime control focus, rather than vice versa. Department of Juvenile Justice (DJJ) probation officers, for example, received complaints from officers because they generally refused to file truancy-related violations of probation for youth under their supervision who had been processed through the center. While enforcing probation regulations and filing violations is obviously not the only role of probation staff, this policing/enforcement function represented a core expectation that reflected the overall coercive nature of the intervention.¹³²

132. Sheriff's deputies might instead have sought to work with local juvenile justice managers on how probation staff might partner with them on advocacy efforts *to keep youth in school* or on efforts to monitor attendance. Juvenile justice and law enforcement also could have worked together to develop and to

In summary, the expectations of social service and school board professionals were to some degree adjusted to fit a crime control and incapacitation agenda. However, little, if any, adaptation in the law enforcement role was apparent. The sheriff's office leadership, combined with the apparent lack of incentive and encouragement to modify or "stretch" professional roles, was a major factor in creating and sustaining the crime control focus of the intervention.

3. Managerial Solutions, Initiative Goals, and the Redefinition of Success

To the extent that multiple criminal justice and social service entities cooperated in its implementation, it could be argued that the truancy initiative was to some degree successful. Yet, the crime control agenda that attained clear dominance in the initiative was not one that seemed to represent the professional interests of each stakeholder. While no partner appeared to actively oppose such a focus, this dominance was due not so much to a shared commitment to the law enforcement emphasis as it was to the failure to mobilize concern for the viability of the service program and to the minimal level of participation of school administrators and staff in the process. Indeed, there was no "in-school" component of the initiative other than the unmet assumption that processed youth would receive high priority for school follow-up service. In fact, the initial collaborative commitment to services and remediation soon gave way to sheriff's department leadership in maximizing incapacitation. Despite the demonstrated failure to deter processed truants and even apparently to avoid making the problem worse for processed youth,¹³³ the collaborative could claim something perhaps even more valuable: a sense of having "dealt with" the problem.

The incapacitation focus reflects a new pragmatic approach in criminal justice in which leadership seeks to achieve the most politically acceptable solution. This "managerial" criminal justice approach¹³⁴ may deflect attention from traditional goals such as reducing recidivism and/or crime rates in favor of shifting toward more expedient objectives that can be viewed as "handling" the problem. In the current case, if specific deterrence had failed and services were not provided, it was nonetheless pos-

nurture neighborhood mentors and guardians for truants on probation; they might have developed agreements to have probation officers take home youth on probation who had been processed at the Truancy Center.

133. See Bazemore, Leip & Stinchcomb, *supra* note 108.

134. Feeley & Simon, *supra* note 8.

sible to claim that incapacitating youth not in school during school hours was reducing daytime crime by making processed youth ineligible to commit such crime.

The incentive structure associated with this "managerial" focus on temporary crime control through incapacitation was best illustrated by what was referred to by truancy center officers as "sweeps day." On the first Wednesday of each month, officers mobilize for large-scale arrests joined by members of local police forces throughout the county and school resource officers, as a show of force and indication of seriousness of the crackdown on truants. On a morning in September 2000, for example, researchers observed some forty young people being brought to the center and processed in a period of approximately two hours. The symbolic importance of sweeps day for understanding the incentive structure for officers involved in the truancy initiative is that it indicates in a more extreme form the ongoing operation of a quota system that gives ultimate priority to getting young people off the streets and into the truancy center for processing—ultimately, as a crime control strategy.

Arguments in favor of this incapacitation approach to truancy that maximizes efforts to intercept young people have strong parallels with justifications for the focus on disorder in aggressive, order-maintenance policing.¹³⁵ The growing consensus among researchers that the widely accepted premise of "broken windows" policing efforts¹³⁶ directed at curbing disorder will reduce serious crime is conceptually and empirically flawed. At best, disorder is a secondary, or even spurious, variable in a causal chain where "collective efficacy"—the willingness and capacity of citizens to exercise informal control¹³⁷—is the primary antecedent causal factor.¹³⁸

Similarly, truancy policies based on incapacitation or general deterrence premises assume without sufficient empirical evidence that daytime crimes are more likely to be committed by truants than by other juveniles and adults. In so doing, proponents may spuriously attribute any reduction in daytime crimes to aggressive incapacitation of truants or to deterrence-based threats of expanded enforcement and additional consequences

135. *Contra* HARCOURT, *supra* note 59 at 23–58.

136. *E.g.*, GEORGE L. KELLING & C.M. COLES, *FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES* (1996).

137. Sampson et al., *supra* note 31, at 918.

138. Robert J. Sampson & Stephen W. Raudenbush, *Disorder in Urban Neighborhoods: Does It Lead to Crime?*, NAT'L INST. JUST. RES. BRIEF, Feb. 2001, at 1, available at <http://www.ncjrs.org/pdffiles1/nij/186049.pdf> (on file with the Notre Dame Journal of Law, Ethics & Public Policy).

that may have little relationship to the source of the problem. Despite lack of impact, or negative impact, on community capacity or young people themselves, the intervention in question can be vaguely justified by a general deterrence logic only if one is willing to assume that truants are, first, more likely to be or become offenders, and second, are likely to be discouraged from offending and unexcused absences by the threat of truancy pick-up and processing. The incapacitation argument, while requiring fewer such interdependent assumptions, does require that the *right* individuals—those who would have committed crimes—are incapacitated.¹³⁹

Success in achieving even formally articulated goals such as reducing truancy is, of course, not a necessary requirement for continued support for a program or initiative.¹⁴⁰ Though the truancy intervention failed in meeting one of its primary goals—in this case, unexcused absences among processed youths—the claim of reductions in daytime crime as an apparent (or self-evident) result of incapacitating or deterring truant would-be offenders appears in Southeastern County, for the time being, to be justification enough. With the proper political clout, reinforced by the strength of system collaboratives led by law enforcement and prosecutors, such evidence-free approaches may, once in place, become self-justifying. Like “order maintenance” policing, the expansionist policy behind such youth justice initiatives is grounded in a unique view of the world and of those who violate social norms.¹⁴¹ Moreover, the dominant policy lens of expansionism in turn shapes future policy-making options. Of even greater importance perhaps is the fact that these policies and perspectives are, as Harcourt suggests, reinforced by the very practices they are used to justify:

When we assess policing strategies and punitive practices, we need to think about how they will effect our perceptions, . . . how they will, for instance, influence the way we interpret the propensities of the homeless person, of the

139. Though they emphasized specific deterrence and (initially) supported the services component, sheriff's office proponents had also sold the initiative as a way to reduce property crime rates in affected neighborhoods in the county. This logic was based on the assumption that truant youth were committing much daytime crime and that processing would reduce opportunities for offending, i.e., an incapacitation effect.

140. Cf. FINKENHAUER & GAVIN, *supra* note 115 (arguing that Scared Straight and similar “shock” oriented delinquency intervention and prevention programs continue to enjoy wide popularity despite repeated empirical studies demonstrating that these programs increase delinquency among participants).

141. See generally MALES, *supra* note 48.

unattached adult, the rowdy teenager. . . . We need to . . . examine how they create us as modern subjects. Our intellectual and conceptual frameworks—as citizens and researchers—are shaped in part by the punitive practices we experience. . . . [P]ropensities [and] human nature may well be the product of the policing and punitive practices that surround us.¹⁴²

The truancy reduction strategies illustrated in this case study, and similar initiatives that we have identified as part of the new juvenile justice expansionist trend (e.g., curfew enforcement, specialized courts, and assessment centers), are different from the more aggressive order maintenance interventions in one important way. Because of the benevolent motives of providing service and remedial and therapeutic assistance generally associated with social welfare and juvenile justice treatment and prevention programs, front-end initiatives that may have unintended negative consequences have largely escaped critical analysis. They are similar to these other forms of expansionism, however, in one important respect. That is, in the pragmatic world of zero-tolerance “managerial” criminal justice,¹⁴³ effectiveness in achieving the most immediately practical outcomes—e.g., incapacitation rather than reduction in recidivism or prevention—may be justification enough, despite continued failure to achieve primary stated objectives.

V. DISCUSSION

A. *Old and New Policy Lenses: Libertarian and Restorative Justice Perspectives*

At its inception, the Southeastern County truancy intervention was characterized by an understanding of the truancy problem as seen through two “policy lenses.”¹⁴⁴ First, a *social welfare/therapeutic lens* places emphasis on social deprivation that may result in psychological problems or learning disabilities as the primary causal factors. Both problems prevent the student from keeping up with his/her age group, make adjustment to school difficult, and thus encourage withdrawal in the form of truancy. Solutions to psychological problems typically involve referral for counseling of some kind, while learning problems are viewed as deficits to be addressed by remedial education. Though poten-

142. HARCOURT, *supra* note 59, at 242–43.

143. See Feely & Simon, *supra* note 8.

144. See Helen Ingram & Anne Schneider, *The Social Construction of Target Populations*, 23 ADMIN. & SOC'Y 333, 351–53 (1991).

tially broad-based and preventive, both, like the solutions proposed by the Progressives who founded the juvenile court,¹⁴⁵ are often individualized and reactive responses to young people that do not attempt to address broader causal issues.¹⁴⁶ Second, through the *crime control lens*, the truant may be viewed primarily as a troublesome or delinquent youth whose motivation for truancy is part of a general pattern of commitment to youth crime and antisocial behavior—and, by virtue of not being in school, presents a public safety risk. This view is expected to be more dominant in programs initiated by criminal justice agencies and may lead to a variety of approaches to the problem, ranging from pre-adjudicatory detention of truant youths to appearance before “truancy courts,”¹⁴⁷ processing through a variety of truancy centers such as the one examined in this study, school-based “Boot Camps,”¹⁴⁸ parental sanctioning approaches, or referral to other special programs.¹⁴⁹

Regardless of the strength of implementation, most of the time both deterrence and therapeutic or remedial responses to truancy will arguably miss the “target” or source of the problem. Both crime control and social welfare lenses lead to problem definitions that promote professionally-driven, individualized solutions. In contrast, what is often needed is a strengthening of informal control or guardianship and/or informal support and resources that might, for example, maximize the role of families, friends, neighbors, and teachers as “natural helpers.”¹⁵⁰ Additionally, as appears to be the case in Southeastern County, these lenses may neglect consideration of the role of schools in the truancy problem. While greater in some truancy initiatives than others,¹⁵¹ the role of the school in Southeastern County—once the initiative was underway—seemed almost an afterthought. The larger lesson here appears to be that once an issue has been

145. Cf. PLATT, *supra* note 23.

146. See CAROL PASTERNAK, WHY ISN'T JOHNNY IN SCHOOL? EFFECTIVE STRATEGIES FOR ATTENDANCE, IMPROVEMENT AND TRUANCY PREVENTION (1986); Garry, *supra* note 85.

147. See, e.g., Brief of Amici Curiae Children, Youth and Families Department, *In re* Andrew A. (N.M. Ct. App. 2002) (No. 22,891) (on file with author).

148. E.g., Trulson et al., *supra* note 20.

149. E.g., Baker et al., *supra* note 24; Ingersoll & LeBoeuf, *supra* note 25.

150. ANNIE E. CASEY FOUNDATION, WALKING OUR TALK IN THE NEIGHBORHOODS: PARTNERSHIPS BETWEEN PROFESSIONALS AND NATURAL HELPERS (2002), available at <http://www.aecf.org/initiatives/familytofamily/tools/16936.pdf> (on file with the Notre Dame Journal of Law, Ethics & Public Policy); Bazemore, *Young People*, *supra* note 28, at 226.

151. E.g., Baker et al., *supra* note 24.

defined primarily as a criminal justice problem, criminal justice solutions will dominate.

1. Limiting Justice System Intervention

There is, of course, another lens for viewing the truancy problem that would place strong restrictions on intervention based on doubts about the fairness, appropriateness, and effectiveness of either crime control or social service approaches. Through the *libertarian* lens,¹⁵² young people engaged in minor crimes and trouble are viewed as participants in relatively normal and generally episodic behavior. From this perspective, if left alone and not stigmatized, these young people will naturally “grow out of” such behaviors.¹⁵³ Even the most benevolent intervention programs are therefore viewed as potentially harmful due to the likelihood that they will “widen the net” by bringing more young people into what is perceived to be a system from which it is difficult to exit.¹⁵⁴ The diversion experience of the 1970s and 1980s—as well as problems with the new expansionist tendencies discussed in this Article—at first blush gives a great deal of credibility to this critique. Unfortunately, however, the libertarian/noninterventionist tendency is one that too easily minimizes or ignores both perceptions of citizen safety and genuine conflict and disorder at the neighborhood level.

Though we have suggested that formal criminal justice and social service solutions may indeed do more harm than good, especially in addressing non-criminal problems, a non-interventionist response that appears to suggest that problems will go away simply by ignoring them is often disrespectful to communities. Such a response is therefore both practically and politically untenable. Indeed, in the context of boundary erosion and juvenile justice expansionism, apparent neglect of problems viewed as the responsibility of government agencies leaves a vacuum of social control that ironically may increase political support for policy approaches such as the Southeastern County truancy initiative and then shield them from critical examination.¹⁵⁵ While

152. See generally GUARINO-GHEZZI & LOUGHRAN, *supra* note 65; HERBERT PACKER, *THE LIMITS OF THE CRIMINAL SANCTION* (1967).

153. *E.g.*, SCHUR, *supra* note 71.

154. Polk, *supra* note 72, 358–78.

155. Although a handful of writers give primary emphasis to the role of public “socializing” institutions such as schools in the analysis of the causes of youth crime, truancy and drop-out, as well as in developing targets for intervention, *e.g.*, YOUTH DEV. & DELINQUENCY PREVENTION ADMIN., *supra* note 87, criminal justice libertarians remain fixated on the issue of net-widening, while interventionists continue to call for increased funding for front-end programs,

debate between justice libertarians and interventionists remains focused on whether to expand or restrict formal criminal justice and social service intervention, neither perspective gives adequate attention to the role and potential influence of informal social control nor its place in a coherent youth policy and a responsive criminal justice agenda informed by broader theoretical perspectives and empirical research on communities and crime.¹⁵⁶ Such an agenda would be sensitive to the relationship between criminal justice and communities in the context of both the harm of crime and the harm of intervention.¹⁵⁷ It would also be grounded in research on the resiliency of offenders, victims, and communities that documents the presence and value of pro-social commitments and positive relationships even in the most high-risk environments.¹⁵⁸ Ultimately, both interventionist and libertarian lenses promote simplistic views that ignore the community as a stakeholder capable of playing a fundamental role in the response to youth crime.

2. Informal Controls, Micro-Communities, and the Lens of Restorative Justice

a. *Diminishing Informal Control*

From an historical perspective, truancy policy, like many other responses to youth trouble and crime, may be viewed as a case study in how efforts to centralize, professionalize, and expand juvenile justice, social services, and even prevention not only widen system nets, but also arguably weaken *community nets*,¹⁵⁹ ultimately leaving communities helpless and hapless.¹⁶⁰ In the truancy intervention example presented here, an unintended consequence of such an initiative may be that local schools and other community partners begin to feel less responsibility and capability to play their intended, traditional roles in the response to unexcused absences and other school problems.

e.g., Arnold Binder & Gilbert Geis, *Ad Populum Argumentation in Criminology: Juvenile Diversion as Rhetoric*, 30 *CRIME & DELINQ.* 309 (1984).

156. See generally JOHN BRAITHWAITE, *CRIME, SHAME AND REINTEGRATION* (1989); BURSİK & GRASMICK, *supra* note 31; Sampson et al., *supra* note 31.

157. Rose & Clear, *supra* note 32.

158. See generally PETER BENSON, *ALL KIDS ARE OUR KIDS* (1997); Lisa Maher, *Punishment and Welfare: Crack Cocaine and the Regulation of Mothering*, in *THE CRIMINALIZATION OF A WOMAN'S BODY* 157 (Cynthia Feinman ed., 1992); Michael Rutter, *Resilience in the Face of Adversity: Protective Factors and Resistance to Psychiatric Disorder*, 147 *BRIT. J. OF PSYCHIATRY* 598 (1985).

159. Braithwaite, *Thinking Harder*, *supra* note 28, at 219.

160. See JOHN MCKNIGHT, *THE CARELESS SOCIETY: COMMUNITY AND ITS COUNTERFEITS* (1995).

Although sheriff's deputies understood the need to "fill the gap," many also expressed concerns about what may be viewed as the irony of the "success" of the truancy reduction initiative (at least in terms of removing truants from the streets)—i.e., a decline in the willingness of schools and families to assume more than minimal responsibility for school attendance. Unfortunately, assumption of these tasks and roles in the response to youthful misconduct by a criminal justice agency in a highly visible and comprehensive initiative may send an inadvertent message to schools, families, and neighborhood groups to leave such problems "to the experts." Having sent this message, it will ultimately seem confusing, if not irresponsible, to then ask for more community support and collaboration. Indeed, officers frequently complained about the lack of accountability on the part of schools, families, and neighborhoods as the real source of the truancy problem. The true irony of the Southeastern County case study could, therefore, be that an initiative which many officers felt should be aimed at least partially at mobilizing and energizing parents, schools, and neighborhood support groups to assume more responsibility seemed instead to further reduce the authority and commitment of these groups.

This phenomenon is neither the fault of the sheriff's office, nor is it unique to schools and law enforcement policy. The larger context for the truancy reduction policy is that the role and mandate of the school as a public, community-based institution with irreplaceable socialization responsibilities has become increasingly restricted in the wake of zero tolerance and the increase in criminal and juvenile justice involvement. Moreover, as criminal justice agencies have taken on increasing responsibility for tasks once dealt with by citizens at the neighborhood level by less formal means, some have argued that communities are losing their capacity to respond to many of the problems that now find their way into arrest files. Indeed, efforts to centralize and expand the reach of criminal justice and social services may have diminished both the skills and initiative of citizens, institutions, and community groups in responding to crime and disorder because, as Clear and Karp observe:

When agents of the state become the key problem solvers, they might be filling a void in community; but just as in interpersonal relationships, so in community functioning, once a function is being performed by one party, it becomes unnecessary for another to take it on [P]arents expect police or schools to control their children; neighbors expect police to prevent late night noise from people on their street; and citizens expect the courts

to resolve disputes [I]nformal control systems may (therefore) atrophy like dormant muscles.¹⁶¹

In recent years, there has been an apparent decline in the number and strength of “village” level *private* and *parochial* forms of social control¹⁶² that allowed neighborhood adults to informally sanction and provide guidance and support to young people. While this decline represents a net loss in the “social capital” required for the maintenance of safe communities,¹⁶³ such considerations are not arguments in support of either less government or of efforts to off-load criminal justice functions on communities.¹⁶⁴ Any critique of the expansion of the criminal justice role presented here is therefore not intended as a recommendation to abandon criminal justice responsibility in response to truancy. Rather, our argument is for a reconsideration and re-visioning of the role of juvenile and criminal justice agencies *vis-à-vis* the need for micro communities such as schools and parochial institutions to assume, or reassume, these functions.

b. Restorative Justice and School Capacity Building

What, then, can be done to develop an alternative response to the very real problems in socialization, social control, and human and social capital of which high rates of truancy are symptomatic? An implicit theme throughout this Article has been the neglect of the role of the school as a socializing and social control agent. However, if the school can be conceptualized as a kind of micro-community with its own social ecology and structures of both formal and informal control, an alternative policy lens may be of assistance in focusing attention on issues of the school “community” as part of both the problem and the solution to truancy and school crime. One such alternate perspective is provided by the emerging restorative justice framework.¹⁶⁵

As a harm-focused model of justice that defines crime around damage to individuals, relationships, and community

161. CLEAR & KARP, *supra* note 23, at 38.

162. Hunter, *supra* note 19, at 238–39.

163. See generally Sampson et al., *supra* note 31; ROBERT PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (2000); Bazemore, *Young People*, *supra* note 28.

164. See generally ADAM CRAWFORD, THE LOCAL GOVERNANCE OF CRIME: APPEALS TO COMMUNITY AND PARTNERSHIPS (1997).

165. E.g., BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9; MARA SCHIFF & GORDON BAZEMORE, UNDERSTANDING RESTORATIVE CONFERENCING: A CASE STUDY IN INFORMAL DECISIONMAKING IN THE RESPONSE TO YOUTH CRIME (2003) (final report submitted to the National Institute of Justice, NIJ Grant 1999-IJ-CK-0060).

configurations,¹⁶⁶ the normative theory of restorative justice is best defined by three core principles.¹⁶⁷ These principles gauge the success of any intervention response to crime by the extent to which harm is repaired (Principle 1), key stakeholders are actively engaged in decision-making about such repair (Principle 2), and relevant affected communities increase their capacity to respond to crime and conflict, with formal criminal justice systems in a supporting rather than directive role (Principle 3). When crime, harm, trouble, and conflict are understood as collective problems of weak relationships within communities, made weaker still when new crimes occur or conflict is not addressed, such reparative or healing processes and outcomes seem to offer a broader framework that could replace punishment and treatment as the primary currencies of criminal justice intervention.¹⁶⁸

While they share with criminal justice libertarians a general concern about the potential harm of criminal justice intervention, and with interventionists a concern that ignoring problems of social control invites more repressive formal responses, proponents of restorative justice express strong preference for informal resolutions that mobilize community controls and support.¹⁶⁹ Such resolutions result from deliberations that occur in nonadversarial decisionmaking practices generically described as "restorative conferencing,"¹⁷⁰ which seek to maximize involvement and input of victims, offenders, and community members in the response to the harm of crime and conflict. Restorative conferences, which typically result in agreements for offending

166. ZEHR, *supra* note 9, at 181.

167. VAN NESS & STRONG, *supra* note 27, at 37.

168. See Bazemore, *Young People*, *supra* note 28. Restorative community justice stands in sharp contrast to other "harm focused" criminal justice models that emphasize law and order, or zero-tolerance policing. The latter models arguably seek to redefine *offensive* behaviors such as public drunkenness, vagrancy, and youthful status offenses as harmful, and thereby as *offenses* justifying legal intervention. See RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES (Gordon Bazemore & Mara Schiff eds., 2001) [hereinafter RESTORATIVE COMMUNITY JUSTICE]. In contrast, restorative justice proponents seek to minimize formal intervention and maximize informal community resolution and, therefore, would not seek to define harmful behaviors as crimes. *Contra* Bratton, *supra* note 121.

169. See, e.g., John Braithwaite, *Restorative Justice: Assessing Optimistic and Pessimistic Accounts*, in 25 CRIME AND JUSTICE: A REVIEW OF RESEARCH (Michael Tonry ed., 1999); Bazemore, *Young People*, *supra* note 28; Christie, *supra* note 33.

170. E.g., BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9; Gordon Bazemore & Mark Umbreit, *A Comparison of Four Restorative Conferencing Models*, JUV. JUST. BULL. (U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention, Wash. D.C.), Feb. 2001, at 1.

parties to repair the harm and/or work to resolve ongoing conflict, can provide an alternative to traditional disciplinary responses in the school setting.¹⁷¹ Use of conferencing in schools has recently demonstrated positive results in reducing suspensions, disciplinary responses (such as referrals to the principal's office), and school violence.¹⁷² Hence, to the extent that these and other restorative processes might be employed as problem-solving responses to truancy, they may increase attachment of truant students to school, while also developing a school culture and climate more capable of mobilizing and building internal networks of informal control and support.¹⁷³

3. Understanding and Confronting the New Expansionism

Beyond Black's theory that the expansion of formal law is a function of the decline in community informal social control,¹⁷⁴ we have suggested that changes in the extent and nature of criminal justice expansion may actively weaken informal controls as part of a reciprocal impact. That is, as Rose and Clear argue, "state controls, which typically are directed at individual behavior, have important secondary effects on family and neighborhood structure [that] impede the neighborhood's capacity for informal control [and thereby] exacerbate the very problems that lead to crime in the first place."¹⁷⁵ For the most part, however, analysts have focused attention almost exclusively on the effect of more apparent harms of large scale formal interventions such as the incarceration of young black men in urban communi-

171. See generally David Karp & Beau Breslin, *Restorative Justice in School Communities*, 33 YOUTH AND SOC. 249 (2001); RIESTENBERG, IN-SCHOOL BEHAVIOR, *supra* note 22.

172. See generally BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9; RIESTENBERG, IN-SCHOOL BEHAVIOR, *supra* note 22.

173. See ART PEARL & TONY KNIGHT, THE DEMOCRATIC CLASSROOM (2000); Bazemore, *supra* note 28. As suggested in the best practices and literature review, such intervention practices would include a number of "whole-school" interventions aimed at school retention. Notably, recent alternatives to suspension and traditional disciplinary actions in K-12 schools, such as family group conferencing and other restorative justice decision-making processes, may for a number of reasons also exert positive impact on school retention, and theoretically impact overall school climate. Other positive youth development strategies and youth involvement efforts to engage students in a variety of decision-making processes in school to promote effective citizenship and a sense of "ownership" of the school as community have also been shown to be effective. PEARL & KNIGHT, *supra*. See also RIESTENBERG, IN-SCHOOL BEHAVIOR, *supra* note 22.

174. BLACK, *supra* note 18, at 68.

175. Rose & Clear, *supra* note 32, at 441.

ties,¹⁷⁶ or have expressed concerns about the harmful impact of the aggressive, zero-tolerance responses to low level crime and disorder.¹⁷⁷ Because of generally benevolent motives associated with new social service collaboratives and the expressed intent to assist youth at risk, partnerships such as the Southeastern County truancy initiative have generally not been the target of critical analysis.

As important as empirical evaluation findings may be in challenging this approach to truancy intervention,¹⁷⁸ there are even greater implications for broader policy development in the response to school based trouble and crime. Most critically, the Southeastern County experience as a case study in youth policy and criminal justice policy analysis should be understood in the wider context of expansionism and the transformation of boundaries between formal and informal social control. Theoretically, if neighborhood disorder control has an impact on crime *only when* it is linked to the development of social capital and collective efficacy as some research suggests,¹⁷⁹ similarly, truancy intervention may be effective in reducing youth crime only when it builds school and broader community capacity to socialize and integrate young people. Increasingly disconnected from pro-social adults and a conventional future, many young people at risk appear collectively to be part of an expanding international cohort that can no longer be characterized as simply "marginal," but is perhaps best described as a generation of "abandoned youth."¹⁸⁰ Left behind by economies that no longer provide for entry level rungs in an employment ladder connected to work careers, members of this group are thus more "free" to become involved in troublesome behaviors, violation of truancy statutes, and youth crime.

CONCLUSION

For the future, we suspect that perceived breakdowns in social control within community institutions such as schools will lead in many jurisdictions to responses similar to the one developed in Southeastern County. Indeed, given other potentially more harmful alternatives on the current scene (e.g., secure

176. *Id.*

177. HARCOURT, *supra* note 59.

178. *E.g.*, Bazemore, Stinchcomb, & Leip, *supra* note 108.

179. *E.g.*, Sampson & Raudenbush, *supra* note 138.

180. *E.g.*, Kenneth Polk, *Positive Youth Development, Restorative Justice, and the Crisis of Abandoned Youth*, in RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES 265 (Gordon Bazemore & Mara Schiff eds., 2001).

detention for truants), the current response may well appear to be among the least objectionable options. From this perspective, it must, therefore, be acknowledged that the Southeastern County sheriff took risks and exercised proactive leadership in taking on the task of mobilizing other agencies to address an important community problem.

Criminal justice officials—whether in law enforcement, prosecution, or the judiciary—may be expected to adopt politically popular “managerial” solutions to persistent problems of youth socialization and social control. By forging new partnerships and seeking to promote flexibility, such responses stretch the boundaries of formal social control agencies. However, there is nothing inherently good or bad about “collaboration”—like “community,” another “magic word” with few negative connotations, but often little concrete meaning.¹⁸¹ The greatest danger we see is when such system-driven collaborations are presented as a kind of “community justice” response that in fact simply brings about change in the location of intervention, rather than mobilizing neighborhood resources around problems such as truancy. Like other components of juvenile justice expansion discussed herein, such collaborations may erode more effective informal controls and instead shore up a professional capacity to relieve schools, neighborhoods, and extended family networks of responsibility for dealing with troublesome, though non-criminal, young people.

Thus, there are good reasons for skepticism and a clear need for critical perspectives on proposed new partnerships, as well as on the range of “new justice” solutions such as specialty courts and various efforts to improve flexibility and “customer service.” Similarly, despite its appeal as an alternative lens for breaking out of policy boxes, the community emphasis of restorative justice¹⁸² is no panacea for resolving problems of the type discussed in this Article. Hence, depending on the quality and context of their implementation, restorative practices may even add to the problems of expansionism if proponents of these approaches accept without question the current role of police or probation officers in many schools or fail to question vague calls for partnerships that do not challenge dominant policy lenses. Currently, restorative community conferencing programs in some parts of the country appear to have simply fit into slots in the expansionist agenda of juvenile justice systems, taking many

181. See STANLEY COHEN, *VISIONS OF SOCIAL CONTROL: CRIME, PUNISHMENT AND CLASSIFICATION* 2–4 (1985).

182. See generally RESTORATIVE COMMUNITY JUSTICE, *supra* note 168.

case referrals of students suspended from schools for a wide range of “offenses” and rule violations consistent with zero tolerance.

While restorative justice advocates would accurately argue that these programs almost always provide a better alternative than current options—suspension or referral to court¹⁸³—they may also contribute to the problem when their programs address issues that should arguably have been engaged in and by the school community itself. The opposite tendency can also be seen, however, in cases where restorative programs and initiatives have insisted upon working first with educational personnel and students to develop such responses in the school itself.¹⁸⁴ The goal of such work is to build the capacity of schools as communities to mobilize informal control and support and, thereby, whenever possible avoid formal intervention that may harm individual students, as well as school culture and climate.¹⁸⁵

Arguably, the important causal factors in the problems of youth socialization, troublesome behavior, and conflict for which truancy is one symptom are more properly issues of social justice. Indeed, a major underlying thesis of this Article is that such issues are difficult to impact in any positive way through criminal justice strategies.¹⁸⁶ Though not straightforward, there are, however, connections within the broader restorative movement that may allow practitioners and community members to begin to actualize Christie’s notion of crime as an opportunity for social transformation.¹⁸⁷ Proponents of these new visions also recognize the limits of an individually-focused, case-driven, profession-

183. *E.g.*, BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9; Sherman, *supra* note 6.

184. MINN. DEP’T OF CHILDREN, FAMILIES, & LEARNING, *supra* note 22.

185. For the most part, restorative justice in the United States and Canada appears to be generating a surprising and qualitatively different kind of citizen participation in justice decision-making processes that thus far seems contrary to other experiences with similar initiatives. *See* JOE HUDSON ET AL., FAMILY GROUP CONFERENCES: PERSPECTIVES ON POLICY AND PRACTICE 1–17 (1996); PAUL McCOLD & BEN WACHTEL, RESTORATIVE POLICING EXPERIMENT: THE BETHLEHEM PENNSYLVANIA POLICE FAMILY GROUP CONFERENCING PROJECT (1998); David R. Karp, *Harm and Repair: Observing Restorative Justice in Vermont*, 18 JUST. Q. 727 (2001). While prior studies of community policing, *e.g.*, DENNIS P. ROSENBAUM, ET AL., THE PREVENTION OF CRIME: SOCIAL AND SITUATIONAL STRATEGIES (1998), generally reinforce the commonly accepted wisdom of an apathetic public, results of recent evaluation studies of restorative justice practices now provide promising evidence of positive impacts of restorative justice practices on victims, offenders, and community, *e.g.*, BRAITHWAITE, RESPONSIVE REGULATION, *supra* note 9; Sherman, *supra* note 6.

186. *See* Polk, *supra* note 180.

187. *See* Christie, *supra* note 33.

alized response unconnected to efficacious communities. Because of this, they are becoming involved in intentional efforts to rebuild now-weakened informal networks of community social control and support for young people through restorative justice processes. Indeed, restorative practices might become a catalyst for a "democratization of social control" whereby a kind of "bubbling up" becomes possible as social justice issues are increasingly aired in restorative community justice forums.¹⁸⁸ One practitioner, who has noted that restorative processes naturalistically engage social justice by breaking down social distance, suggests simply that

the problem of crime is generating opportunities to understand and practice democracy in the community in [new] ways. . . . [C]reating safe communities requires active citizen involvement. Such involvement means re-engaging all citizens in the process of determining shared norms, holding one another accountable to those norms, and determining how best to resolve breaches in a way that does not increase risk in the community.¹⁸⁹

In any case, even describing the parameters of the new expansionism and considering alternative policy responses to social problems is very challenging without an alternative vision, however utopian such a vision might be. It is also extremely difficult to break away from ingrained, but limited policy choices dictated by currently dominant policy lenses. For a more optimistic perspective, we may turn for guidance to one of the most seemingly pessimistic critics of community-focused solutions to complex problems, Stanley Cohen, who has stated his "preference is to be pragmatic about short-term possibilities, but to be genuinely utopian about constructing long-term alternatives."¹⁹⁰

188. Braithwaite, *Thinking Harder*, *supra* note 28; John Braithwaite & Christine Parker, *Restorative Justice Is Republican Justice*, in *RESTORATIVE JUVENILE JUSTICE: REPAIRING THE HARM OF YOUTH CRIME* 103 (Gordon Bazemore & Lode Walgrave eds., 1999).

189. Kay Pranis, *Restorative Justice, Social Justice, and the Empowerment of Marginalized Populations*, in *RESTORATIVE COMMUNITY JUSTICE: REPAIRING HARM AND TRANSFORMING COMMUNITIES* 287, 288 (Gordon Bazemore & Mara Schiff eds., 2001).

190. COHEN, *supra* note 181, at 252.