Journal of Law in Society & Levin Center at Wayne Law
2021 Symposium

**Opioid Paradigms: How Crisis Can Inform Change**
Panel 2 - Opioids and Emerging Justice Reform

Panelists: Professor Valena Beety, Professor Jelani Jefferson-Exum, Brittany Kelly
Moderator: Professor William Ortman
Opening Remarks: Jim Townsend
From Warfare to Wellness: Moving Away from a War on Drugs Perspective

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Nixon's war on drug addicts

From Richard Scott
Washington, June 17
President Nixon told Congress today that the drug problem in the United States had assumed the dimensions of a national emergency. He asked for an additional $64 million to provide emergency measures for dealing with it.

PUBLIC ENEMY NUMBER ONE
In the United States
IS DRUG ABUSE

NIXON
Graph 4: Change in Incarceration Rate, 1910-2000

America’s incarceration rate is nearly 7 times what it was at the beginning of the century, and is three times what it was in 1980.

Source: Justice Policy Institute analysis of Bureau of the Census and Bureau of Justice Statistics Data.
War on Drugs: Weapon Accuracy Report

- **Bureau of Justice Statistics study (1993):** “[T]he average sentence imposed for crack trafficking was twice as long as for trafficking in powdered cocaine.”

- **USSC Report, February 1995:**
  - 88.3% of crack cocaine offenders were Black
  - “The 100-to-1 crack cocaine to powder cocaine quantity ratio is a primary cause of the growing disparity between sentences for black and white federal defendants.”

- **USSC Report to Congress (2002):**
  - An “overwhelming majority” of crack offenders were black – 91.4 percent in 1992 and 84.7 percent in 2000.
  - “[T]he average sentence for crack cocaine offenses (118 months) is 44 months – or almost 60 percent – longer than the average sentence for powder cocaine offenses (74 months), in large part due to the effects of the 100-to-1 drug quantity ratio.”
“This one sentencing rule contributes more to the differences in average sentences between African-American and White offenders than any possible effect of discrimination. Revising the crack cocaine thresholds would better reduce the gap than any other single policy change, and it would dramatically improve the fairness of the federal sentencing system.”

Casualties of the War on Drugs

**FIGURE 6A.**
Rates of Drug Use and Sales, by Race

At the state level, blacks are about 6.5 times as likely as whites to be incarcerated for drug-related crimes.

**FIGURE 6B.**
Rates of Drug-Related Criminal Justice Measures, by Race

Source: BLS n.d.; Carson 2015; Census Bureau n.d.; FBI 2015; authors’ calculations.
How Should We Address Opioid Addiction?

58% of Americans favor treatment
67% of Democrats favor treatment
51% of Republicans favor treatment

26% of Americans favor punishment
18% of Democrats favor punishment
34% of Republicans favor punishment

Results based on April 2017 ORC International CARAVAN Omnibus Survey
“Inequitable treatment has its roots in the correctional eras that came before it: each one building on the last and leading to the prison landscape we face today.”

- Vera, Reimagining Prison Web Report
Drug Policy: Rural Prosecutions, Strategies and Reforms

Valena Beety
Professor, Arizona State University Sandra Day O’Connor College of Law
Deputy Director, Academy for Justice
What is “rural”?
Persistent poverty counties are those where 20 percent or more of county residents were poor, measured by the 1980, 1990, 2000 censuses, and the 2007-11 American Community Survey.
Note that county boundaries are drawn for the persistent poverty counties only.
"In nearly every instance, nonmetropolitan poverty rates are higher for each racial and ethnic group and age category."

- Brown & Schafft, *Rural People and Communities in the 21st Century: Resilience and Transformation*

### Table 8.1 Economic and Educational Attainment Status of U.S. Racial and Ethnic Groups by Metropolitan Status, 2015

<table>
<thead>
<tr>
<th>Economic Status</th>
<th>Metro</th>
<th>Nonmetro</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All</td>
<td>White</td>
</tr>
<tr>
<td>Poverty Rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>total</td>
<td>15.0</td>
<td>12.1</td>
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<tr>
<td>under 18</td>
<td>21.1</td>
<td>16.4</td>
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<tr>
<td>65+</td>
<td>9.2</td>
<td>7.6</td>
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<tr>
<td>Median Income</td>
<td>60,542</td>
<td>64,801</td>
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<tr>
<td>Educational Attainment</td>
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<td></td>
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<tr>
<td>&lt; HS</td>
<td>13.0</td>
<td>10.9</td>
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<tr>
<td>HS Grad</td>
<td>26.3</td>
<td>26.5</td>
</tr>
<tr>
<td>Some College</td>
<td>29.0</td>
<td>29.2</td>
</tr>
<tr>
<td>Bachelor's +</td>
<td>31.8</td>
<td>33.5</td>
</tr>
</tbody>
</table>

I. PEOPLE OF COLOR IN RURAL CRIMINAL COURTS

- Lack of funding for courtroom players (prosecutors, defense attorneys) = captured system
- Rural communities of color are impacted by the opioid crisis and punished
Rural communities of color and the opioid crisis

Native American Overdose Deaths Surge Since Opioid Epidemic

By ASSOCIATED PRESS • MAR 15, 2018

Overdose deaths in Native American communities have skyrocketed in the time the opioid epidemic has swept the U.S. and federal officials are looking for solutions.

Native Americans and Alaska Natives saw a fivefold increase in overdose deaths between 1999 and 2015, Dr. Michael Toedt told the U.S. Senate Committee on Indian Affairs on Wednesday.

Centers for Disease Control and Prevention figures indicate the increase in that period was higher for Native Americans than any other group, jumping to roughly 22 deaths for every 100,000 people in metropolitan areas and nearly 20 for every 100,000 people in non-metropolitan areas.
I. RESPONSE TO OPIOID CRISIS

“If you choose to sell heroin, you’re killing people and you’re murdering people. You’re just as dead from a shot of heroin as if someone puts a bullet in you.”

Lycoming County Coroner Charles Kiessling, Head of the Coroners Association in PA.
Rural POC face part-time prosecutors and court appointed defense attorneys captured by the court.

Reinforces an established system of pleas.

Rural POC also suffer in the opioid crisis – and are more likely to be charged with heightened crimes like Drug-Induced Homicide.
Prosecutor Initiatives
1. Partnering with Pre-Arrest and Prevention Programs
2. Decision on Whether to Prosecute
Baltimore City State's Attorney Marilyn Mosby dismisses 1,000+ cases during pandemic
3. Sentencing Review
Wayne Law Alumni Wall of Fame

September 23, 2019

Wayne Law inducted five new members into the Alumni Wall of Fame ceremony Wednesday, Sept. 18. Inductees were: Hon. Dorothy (posthumous), Tyrone Fahner ’68, Hon. Elizabeth Gleicher ’71, and Valerie Newman ’92.
4. Post-Conviction Drug Courts as Reentry
Why It’s Time to Abandon Drug Courts

By Miriam Krinsky and Leo Beletsky | March 5, 2021
Issues at a Glance

Reconciling Drug Courts, Decarceration, and Harm Reduction
Thank you!

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Community Level Intervention Strategies to Confront the Criminalization of Substance Use Disorder

Cross-Sector Collaboration Along the Sequential Intercept Model Applying Critical Race Theory

Brittany Kelly J.D., M.S.W., L.S.W.
Associate Director, Hall Center for Law and Health
IU Robert H. McKinney School of Law

This is not legal advice
Part One: The Criminalization of Substance Use Disorder in the US

Substance Use Disorder (SUD) is a medical diagnosis\(^1\)

An estimated one half of all people in prison meet the criteria for SUD\(^2\)

Someone enters the criminal justice system based on an allegation of drug possession for personal use every 25 seconds\(^3\)
What is “Critical Race Theory”

“How does the law construct race?”

“How has the law protected racism and upheld racial hierarchies?”

“How does the law reproduce racial inequality?”

“How can the law be used to dismantle race, racism, and racial inequality?”
Criminalization of Substance Use Disorder Disproportionately Experienced by the Black Community

Over their lifetime, white people are more likely than Black people to use illegal drugs\textsuperscript{5}

However, Black adults are more than 2.5x as likely as white adults to be arrested for drug possession and 4x as likely to be arrested on charges of marijuana possession\textsuperscript{6}

Black people are more than 10x as likely as white people to be in jail and 6x as likely to be in prison\textsuperscript{7}
The Opioid Use Disorder Epidemic Brings a Shift in Public Perception and Response

- Along with the white community, Black men and women have also experienced the toll of this epidemic.
- It has been portrayed as a problem experienced most severely by the white population.
- Responses to the opioid use disorder epidemic:
  - 2017: National public health emergency declared
  - 2018: First Step Act brings more access to treatment
- Contrast these responses with the harsh sentencing penalties of the War on Drugs when drug use was associated with the Black community.
Legalization and Decriminalization of Substances is Slow-Moving

Many advocates across multiple disciplines agree that decriminalization and legalization of drugs is necessary. Currently, no drugs are decriminalized at the federal level and the only federal decriminalization efforts have been around marijuana.
Part Two:
The Sequential Intercept Model and Cross-Sector Collaboration as Tools for Community-Level Intervention
What is the Sequential Intercept Model

The Sequential Intercept Model (SIM) details how individuals with mental health and substance use disorders may encounter the criminal justice system and transition within it.¹⁵
Why Focus on Intercepts 0, 1, & 2

When programs and initiatives focus on addressing the underlying reasons a person came into contact with the criminal justice in the first place, overall community safety and a reduction in recidivism is achieved.\textsuperscript{16}

\textdollar\textdollar\textdollar\textdollar: Research shows that when only ten percent of people were diverted to treatment rather than incarceration, $4.8 billion dollars were saved.\textsuperscript{17} Every dollar invested on drug treatment returns twelve dollars in savings that translates directly to a reduction in crime and health care costs.\textsuperscript{18}

The collateral consequences that follow a person with a substance use disorder related conviction, long after their sentence is served, are numerous.\textsuperscript{19}

Those with substance use disorder related convictions were found to be the second most likely group to be rearrested, second only to property related crimes.\textsuperscript{20}
What is Cross-Sector Collaboration

Cross-sector collaboration acknowledges that in order to solve complex problems, we must bring together various stakeholders to craft equally complex solutions\textsuperscript{21}

Sectors include nonprofit, government, philanthropic, business\textsuperscript{22}

Collaboration is key\textsuperscript{23}

Include the community in the solution: tackles power dynamics and allows for a co-designed solution\textsuperscript{24}
Cross-Sector Collaboration Builds Recovery Capital

Many people experiencing substance use disorder lack support from family and friends and are living in poverty\textsuperscript{25}

“Recovery Capital,” is the assets available to a person in recovery that ultimately help them succeed\textsuperscript{26}

A community is uniquely situated to provide both social and legal supports that build up a person’s recovery capital\textsuperscript{27}
Part Three

Examples of Cross-Sector Collaboration along the Sequential Intercept Model
**Medical Legal Partnership (MLP) with a focus on SUD**

In Indiana, this is called Project CLeAR\(^{28}\)

| Allows for legal solutions to common barriers experienced by a person living with SUD\(^{29}\) | Erodes distrust of the legal system\(^{30}\) | Fights the stigma of addiction\(^{31}\) | Prevents relapse\(^{32}\) |
The Bail Project

- America’s cash bail system disproportionately harms people of color\textsuperscript{33}
- Pretrial detention can lead to loss of employment, housing, or immigration status\textsuperscript{34}
- Those detained pretrial are more likely to plead guilty, convicted more often, and more likely to be sent to prison\textsuperscript{35}
- “Community Release with Support” Model\textsuperscript{36}
- Relies on partnerships with community resources to get people back to court\textsuperscript{37}
Lack of a driver’s license can directly affect a person’s ability to access recovery services\(^{38}\)

In debt-based suspension states, driver’s licenses are often suspended for reasons unrelated to public safety, including unpaid fines and fees\(^ {39}\)

Suspensions are disproportionately experienced by the Black community\(^ {40}\)

In 2020, Michigan passed HB 5846 which prohibits suspension of driver’s licenses for reasons not related to dangerous driving.\(^ {41}\)
## Takeaways: Something for Everyone

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<thead>
<tr>
<th>Know</th>
<th>Know the resources in your community</th>
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<tbody>
<tr>
<td>Broker</td>
<td>Broker those resources to people experiencing SUD</td>
</tr>
<tr>
<td>Break down</td>
<td>Break down silos in your community</td>
</tr>
<tr>
<td>Collect</td>
<td>Collect data to inform larger legislative change</td>
</tr>
<tr>
<td>Apply</td>
<td>Apply a CRT lens and always ask those four critical questions</td>
</tr>
</tbody>
</table>
Thank You!

Feel free to contact me with comments or questions at bjglaze@iu.edu