

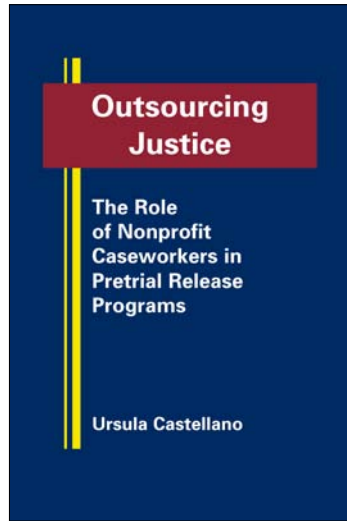
EXCERPTED FROM

**Outsourcing Justice:  
The Role of  
Nonprofit Caseworkers in  
Pretrial Release Programs**

Ursula Castellano

Copyright © 2011

ISBN: 978-1-935049-29-6 hc



**FIRSTFORUMPRESS**

A DIVISION OF LYNNE RIENNER PUBLISHERS, INC.

1800 30th Street, Ste. 314

Boulder, CO 80301

USA

telephone 303.444.6684

fax 303.444.0824

This excerpt was downloaded from the  
FirstForumPress website  
[www.firstforumpress.com](http://www.firstforumpress.com)

# Contents

<i>Acknowledgments</i>	<i>ix</i>
1 Outsourcing Justice	1
2 Mapping the Pretrial Terrain	17
3 Nonprofit Casework in Context	41
4 Screening Potential Clients	57
5 Judging Release Criteria	77
6 Assisting in the Defense	99
7 Policing Compliance	123
8 New Courthouse Careers	143
<i>Appendix: Pretrial Career of an Ethnographer</i>	<i>157</i>
<i>References</i>	<i>165</i>
<i>Index</i>	<i>173</i>

# 1

## Outsourcing Justice

Each afternoon at four, the Open Door holds case review meetings, a venue where caseworkers collectively evaluate felony defendants referred by the court for pretrial release services. The program director, Wayne Brooks, invited Judge Nancy Beal to the meeting to learn about treatment options for defendants once they are released from jail. As the meeting commenced, Supervisor Kelsey Martinez tapped at her laptop and the first case was shown through the LCD projector and up on the large white screen. The program status for Laura Polanyi, a twenty-two-year-old Caucasian woman, was labeled “negative termination” meaning she was going to be dropped from the caseload. Kelsey summarized the situation: “Laura was sent over [to the Open Door] from Judge Janice Lee for assessment, a kind of informal diversion. She hasn’t been following through on the treatment plan or coming to groups.” Judge Beal, who was seated in the back, asked: “Is there nothing more you can do for her?” Kelsey explained, “[Judge Lee] is tough; she [usually] only gives defendants one chance.” “Sometimes it takes several chances to get someone to change,” Judge Beal responded. Kelsey nodded in agreement to the sentiment but added “it really depends on the judge” in reference to her ability to negotiate greater leniency from the court. Kelsey posed two possible options to her staff: “We can remand her into custody for [drug] detox or set up weekly court dates and give the client a harsh warning.” Kelsey tabled the decision when caseworkers could not come to a quick agreement and moved onto the next case.

Kelsey next introduced Robert Gallagher, a thirty-one-year-old Caucasian man. Kelsey explained that his paperwork was sent over to the Open Door by Judge Will Hwang. Caseworker Vince Smith, who interviewed Robert in jail the previous day, summed up the situation. “He has an extensive criminal history. He said he developed mental health issues coming out of the Marines, PTSD [post traumatic stress disorder]. I need to contact MHS [mental health services] for a diagnosis. He’s done lots of time, wants a VA [Veteran Administration]

pension. He agrees to take meds but balked at going to [counseling] groups. He is homeless and has battery charges. He may be eligible for residential drug treatment.” Kelsey added, “We may need to do a second interview to get more information. [Robert] was released through us twice before and terminated negative. There’s no plea in the case yet.”

William Rand, a forty-six year-old-African American man, was the next case to light the screen. “He was sent over to the Open Door by the courts for an initial assessment,” Kelsey narrated. “He left after a few hours and never came back [to the office]. He’s paranoid, DD [dually diagnosed with a mental illness and a substance abuse problem] and an alcoholic. He may FTA [fail to appear in court] on Monday. We’ll need to do a ‘lost and found’ [meaning look for him on the streets]. He hangs out around Seventy-seventh and Peachtree in the Northside area. If he reoffends, do we still want him?” The staff agreed to accept him onto the caseload if he attended mental health counseling. The fourth case up for review and discussion was Dalton Smith, a thirty-eight-year-old African American man. “What’s going on with him?” Kelsey motioned to Mario Alvarez, his assigned caseworker. “He needs to submit to UAs [urinary analyses] daily and they must be clean.” He continued, “If he doesn’t go to court on Monday, stay the bench warrant for one day to locate him.” Kelsey added, “You know, he’s on the drug court waitlist so we will need to make a collaborative decision with [Drug Court] staff [about his treatment plan].”

Towards the end of the meeting, Judge Beal began to inquire about the differences between the Open Door and several of the other jail alternative programs. “Is Pathways looser than Open Door?” she posed the question as if to indicate some prior knowledge. “Yes,” Kelsey replied without further comment. Judge Beal and I left the Open Door agency together and walked up to the corner facing the Hall of Justice on a brisk December evening. She remarked positively on the pretrial release options for defendants: “[It’s] wonderful because [otherwise] what do you do with people once you let them out of jail?”

\*\*\*

Reach, Second Chance, Pathways, and Open Door are nonprofit pretrial release programs contracted by the San Miguel County criminal courts to amass comprehensive information about defendants petitioning for release on their own recognizance (ROR).<sup>1</sup> The Reach program processes pretrial release petitions for new felony arrestees. Second Chance provides ROR services to persons arrested on misdemeanor warrants. Pathways is a pretrial release and case management program

for homeless defendants charged with misdemeanor offenses. The Open Door is an intensive, supervised pretrial release program for high-risk felony defendants. These four programs represent an expansion of pretrial release services to defendant populations who might otherwise remain in custody due to their social and criminal justice histories.

The case review meeting provides a window into the social worlds of nonprofit pretrial release caseworkers. The original intent of these programs was to offer an alternative to jail for persons who could not afford to buy their freedom. As evident in the vignette, these programs appear to provide a range of services both inside and outside the courtroom. The staff at the Open Door knew a lot about Laura, Robert, William, and Dalton both as potential clients and as criminal cases. In the case review meeting, Kelsey, Vince, and Mario discussed legal tactics to sanction noncompliance and encourage therapeutic options for court-referred persons. Judge Beal's reference to Pathways as "looser" also hinted at diverse program cultures and connections to traditional court functionaries. The structure of the case review also foretold of changing roles beyond the officialdom of the courtroom. At the nonprofit's main office, Kelsey presided over the meeting, and the judge, an audience member, listened to her recommended courses of action.

Pretrial release programs function to ameliorate the monetary discrimination of the bail system and bring equal justice to all defendants pending the adjudication of the criminal charge. Traditionally, a person arrested for an offense secured his or her release from jail by promising to appear in court or depositing valuable property. Eventually, personal bartering arrangements were replaced with contractual business relationships, and in the development of the bail system, defendants posted a cash bond to get out of jail. Those who could afford the financial guarantee were at liberty in the community and those who could not were held to answer. In turn, the monetary emphasis on the bail decision facilitated a private industry to capitalize from the criminal justice process. To broker earnings, the defendant paid a premium usually ten percent of the bail and the bondsman underwrote a surety to the court for the remainder.<sup>2</sup>

Community-based organizations have been at the forefront of overhauling traditional bail practices and institutionalizing pretrial release services into local justice systems.<sup>3</sup> National and state legislation encouraged judges to prioritize nonfinancial release conditions and placed greater emphasis on community supervision to help ensure defendants appeared in court. The San Miguel courts contracted with private, nonprofit organizations to evaluate defendants for release on

their own recognizance (OR) independent of other judicial functions. Judges determined that civilian personnel could make a more objective assessment because the criminal justice system is inclined to hold people in custody.<sup>4</sup> Nonprofits are often characterized as principled intermediaries and not unduly influenced by politics, patronage, or profit. While the agencies in this study readily assumed the task of lessening the social and economic inequalities of the legal system they imported values and practices for achieving justice for primarily poor defendants with unforeseen consequences.

Court officials have long relied on outside providers to recommend alternative solutions for crime-related problems, but few studies analyze the role and function of nontraditional actors in criminal case processing. Criminal justice systems are increasingly delegating the task of information gathering and character evaluation to private sector organizations. What kind of justice do nonprofit caseworkers produce and how does it differ from traditional courtroom justice? Do risk assessment and rehabilitative potential take on new meanings when judicial decision making is contracted out to nongovernmental organizations? When justice is for hire, does court officials' legal authority manifest in new ways? This book weaves together several threads to tell a story that is commonly left at the margins of contemporary studies on criminal justice reform. It reveals the practice of law in the private sphere of the nonprofit agency and how the non-legal approaches to problem solving are transported into public courtrooms. Additionally, it maps out the organizational contingencies, ideological compromises, and role conflicts that govern pretrial release decision making at the San Miguel Hall of Justice. I investigate the changing roles of nonprofit pretrial release workers, court officials, and defendants as they navigate this new criminal justice terrain.

### **Partners in Crime**

The book is part of an ongoing dialogue about what happens to publicly funded government services when they are contracted out to private entities, what Crawford refers to as “contractual governance” (2003: 480). This shift of civic responsibility is well documented in the public policy literature (Backer 2005; Boris and Steuerle 2006; Brinkeroff 2002; Salamon 2002; Smith and Lipsky 1993). Salamon (2002) surveys broad scale reorganization of publicly funded services and delegation of civic decision making powers to a private workforce. Smith and Lipsky (1993) refer to nonprofit personnel in the governmental arena as the

“new street level bureaucrats” (13) to understand the ways in which they redefine citizen-state relationships through their everyday actions.

As constitutive partners in crime, nonprofits, acting as state sanctioned agents, offer a public sector parallel to private sector outsourcing. Court officials, in collaboration with community-based organizations, address a range of institutional problems such as jail and prison overcrowding, heavy court dockets, and high recidivism rates in order to reduce the ancillary costs associated with traditional prosecutorial justice without committing substantial internal resources (Jurik et al 2000). These partnerships in crime are evident and long standing. Lidz and Walker (1977) trace the origins of therapeutic control to the 1960s national heroin drug crisis which spurred cooperative relationships between clinicians and court personnel to treat nonviolent drug offenders. Miller and Johnson’s 2009 book on problem solving courts contextualized the prisoner reentry movement as assisted by “community transition programs” (72) which rely upon local social welfare agencies to provide a diverse range of programmatic services. A centerpiece of California’s Department of Corrections and Rehabilitation is community partnerships with corrections to supervise newly released parolees (Backer 2005). Martin Silverstein’s (2001) research on Canadian parole hearings observed that outside case managers were taking on the responsibilities of risk management for whole populations of criminal offenders as they transition back into free society.

Criminal justice scholars and practitioners acknowledge the participation of nonlegal actors in both supporting and principal courtroom roles. Importantly, these studies report on the various ways in which they affect the judicial process. In Robert Emerson’s (1969) *Judging Delinquents*, the juvenile court clinic was staffed by social workers and child psychiatrists in residency. They typically deferred to the judge’s assessment of which cases merited therapeutic intervention however and defined their role as an advisory arm to the court and not as an advocate for treating criminal behavior. In comparison, Seligson (2002) finds in her book, *The Bilingual Courtroom*, that court appointed interpreters affect the evidentiary content of court testimony by using “linguistic alterations” (11) of attorneys’ questions and witnesses’ responses. Along these lines, there is a small but growing set of literature on treatment professionals in alternative courts and immediate sanctioning programs. The technological surveillance program for domestic violence offenders in Ibarra’s (2005) study involved victim assistants and victim advocates some of whom were associated with community organizations for battered women. In a Prop 36 drug

treatment program, independent social service providers provided a variety of residential and outpatient services for participating offenders (Burns and Perrot 2008). In Leslie Paik's study of a California juvenile drug court (2006), participating clients were referred to an outside social service program, and substance abuse counselors are active members of the court team and offered in house treatment expertise to court officials. Nolan's book *Reinventing Justice* revealed that treatment providers played a prominent role in the drug court theater (2001). Elsewhere, I investigate how case management professionals, working at the intersections of the social welfare and criminal justice systems, leverage courtroom decision making that results in greater leniency or enhanced punishment for clientele (Castellano In Press).

Most studies of traditional courts however place nonlegal actors at the margins of their investigative focus and at the organizational periphery of the courtroom. *Outsourcing Justice* is centered on the contractual involvement of nonprofit programs and their staff at the pretrial stage of criminal case processing. I explore caseworkers' and court officials' subjectivities, agency cultures, and network ties to understand how they interdependently encumber or unburden who gets out of jail.

### **Caseworkers in the Courthouse Community**

In the *Process is the Punishment* (1979), Feeley observed that the lower courts operated more like marketplaces than rational hierarchical bureaucracies. Rules and procedures were routinely ignored or modified to settle cases quickly. Court officials made deals and cut bargains to reach dispositions in a seemingly haphazard fashion. This study follows in the rich tradition of courtroom studies that seek to understand institutional decision making practices and how organizational actors shape the practice of law (Blumberg 1967b; Cicourel 1995; Eisenstein and Jacob 1977; Emerson 1969; Feeley 1979; Sudnow 1965; Ulmer 1997). Developed in an earlier era, the concept of the courtroom workgroup theorizes that legal actors work collectively with the expressed goal of processing criminal cases quickly and judiciously. Court officials modify their separate powers to dispose of cases by way of informal negotiations and plea bargaining and, consequently, few cases are adjudicated by jury trial (Dixon 1995; Eisenstein and Jacob 1977; Feeley 1979; Lipetz 1984). Eisenstein and Jacob (1977) characterize the workgroup's operation as a balancing act between the goals of individual actors and the collective interests of their sponsoring organizations. As customary to the workgroup, members collectively



establish going rates to reflect the group's consensus about what particular crimes are worth in terms of reaching a settlement (Feeley 1979; Sudnow 1965; Walker 2001). In subsequent research, scholars introduced the notion of courts as communities, which pays closer attention to how courtroom cultures constitute the workgroup dynamics (Eisenstein, Flemming and Nardulli 1988; Flemming, Nardulli and Eisenstein 1993; Ulmer 1997).<sup>5</sup> Combined these archetypes of criminal case processing are beneficial for understanding how organizational and political factors influence court officials' adjudicative strategies as well as the meanings they ascribe to legal procedures.

Most of the research on traditional courts presupposes that judges and attorneys are the central actors involved in sentencing decisions. There is less attention paid to the decision making practices at the pretrial release stage of criminal case processing. Demuth (2003) argues that given the substantial amount of discretion available to courtroom actors as well as little oversight, it is important to understand the undercurrents of decision making at this juncture. Throughout this book, I explore how "normal casework" (Jacobs 1990, 101) plays out in ways unique to the cultural context of outsourcing justice to the private sector. In many respects nonprofit caseworkers fulfill a similar function as the "supporting figures" (94) in Feeley's (1979) New Haven court study. These auxiliary personnel, including police officers, clerks, bail bondsmen, bail commissioners, and pretrial service representatives, provided basic information to arrestees; they were responsible for diagnosing and labeling problem cases; and they produced the documents that made up the case file that judges, prosecutors, and defense attorneys relied upon to settle case outcomes. However I show that nonprofit pretrial release workers actively contributed to the workgroup's institutional parameters for judging the worth of a case, and they came to their task with an orientation different than law-trained actors. They were regarded by court officials as trustworthy advisors, and court officials frequently followed along with caseworker recommendations on how to proceed with criminal matters. The data suggest that contract caseworkers accomplished more than gathering and passing on information to the courts; they participate in the formative decision making practices associated with the making of a criminal case. As we will read, pretrial release workers have broadened the scope and depth of their participation in criminal court proceedings beyond the official parameters of their prescribed duties.

Caseworkers' roles and responsibilities in the courtroom workgroup were also facilitated by linkages to their employing agencies. Nonprofit pretrial release programs are semi-autonomous units on par with

traditional court officials' sponsoring organizations. The assistant district attorney's willingness to plea bargain on a particular case, for example, is partially informed by the directives and priorities of the Chief Prosecutor. Similarly, while Reach, Second Chance, Pathways, and Open Door must abide by their contractual obligations to the court, they are independent entities governed by a separate board of directors, bylaws, and mission statements. The programs' orientations towards criminal justice issues are related to internal procedures, organizational principles, and interpersonal staff dynamics. Caseworkers and their respective programs, in effect, participate in pretrial release decision making in ways that facilitate and thwart the cooperative goals of traditional court functionaries.

I suggest that contracting pretrial release operations out to the private sector expands our conceptualization of the workgroup in that the numbers, types, and activities of organizational actors involved in routine criminal court processing are more diverse than is commonly acknowledged by scholars and for whom the public is made aware. The network ties between nonprofit caseworkers and court actors further indicate that workgroup dynamics, in space and place, are now mapped out over larger criminal justice topography. Building from Flemming Nardulli and Eisenstein (1993) and Ulmer (1997), I refer to the interagency arrangements between traditional justice actors and nonprofit caseworkers as a courthouse community. The term represents a fuller accounting of the range of stakeholders as well as their sponsoring organizations involved in criminal case processing at the pretrial stage. The notion of a community also represents how outside environmental factors such as mass arrests, budget reductions, and legislative changes impacts pretrial release operations. Courts, as open systems, are made up of loosely coupled yet interdependent units and organizational actors compete for institutional resources and power (Feeley 1979; Hagan, Dewitt and Alwin 1979). Case outcomes are influenced by the ebb and flow of different stakeholders, disparate access to information, and shifts in political capital. The degrees of familiarity and stability among courthouse actors in the community also structure how much power, discretion, and control individuals have to influence case outcomes.<sup>6</sup> The empirical analysis of this book in essence explores what governs judicial processes in a California courthouse when justice is outsourced to nonprofits. The forthcoming chapters reveal that pretrial release practices are not bound by penal statute but are products of how courthouse actors navigate the contested terrain.

### **Contested Terrain: Risk, Justice, and Power**

The book's narrative shows that outsourcing decision making powers to nonprofit organizations and their staffers transforms traditional courtroom justice. First, it culminates as a structural shift in the primary oversight entity at the pretrial decision making stage from the judiciary to the private sector. Second, it reallocates budgetary resources from correctional operations to jail alternative programs. Third, caseworkers' level of participation in criminal case processing brings into view a cultural change in the craft of justice (Flemming Nardulli and Eisenstein 1993). Outsourcing justice involves actors moving institutional values from conventional to alternative approaches to routine casework. The data reveal that what constitutes pretrial courtroom practices however is perilously mapped onto the blurred boundaries between the criminal justice and social justice worlds. I show how these partnerships in crime bring the definitions of risk, justice, and power into a contested sphere.

I explore the way that risk is conceptualized and actualized in the contours of outsourcing justice to private agencies. Caseworkers and court officials labor in what Loseke (2003) calls the "troubled persons industry" (139). The troubled persons in this context are target defendant populations that represent certain social problems, and policies are enacted to address these problems. The primary task of caseworkers and court officials in this study is to negotiate decisions that render defendants eligible or ineligible for pretrial release services. The decision to release an arrestee on his or her own recognizance is a risk-based judgment that the individual will appear in court without monetary bond. Caseworkers' ability to evaluate which defendants are worthy of release stems from court officials' willingness to delegate their authority, yet the mechanisms that make up the court referral and caseworker recommendation reveals varying subjectivities and organizational realities that result in incongruent release decisions and outcomes. Risk decisions on both sides are also products of intuition, opportunism, coercion, and persuasion, similar to the social worlds of sentencing in Ulmer's study (1997). In addition, outsourcing justice results in a transfer of risk; caseworkers are increasingly accountable to the court to demonstrate their competencies as legal actors. Defendants turned nonprofit clients are held personally accountable to outside providers to take responsibility for their actions and demonstrate a willingness to self correct destructive patterns of behavior. Judges who are accountable to public constituents take on occupational and political liability by using jail alternative programs to adjudicate cases. This risk may be enhanced given that court officials are following the counsel of

staff persons who are not lawyers or credentialed social service professionals. Courthouse community members adapt to these contingences in creative ways to achieve their goals: they become risk modifiers, risk assessors, and risk takers.

I explore the role of nonprofits in the courthouse community to understand the conflicting perceptions of justice between law-trained actors and caseworkers and how they are negotiated in context. Courts are more than organizational systems that process people through to various institutional outcomes. They represent the basic tenets of American democracy: fairness, due process, and the presumption of innocence. The architects and supporters of pretrial release programs hoped to ameliorate the social and economic inequalities of what Walker calls “checkbook justice” (Walker 1993: 65). Part of the remedy was outsourcing decision making authority to an independent third party for a more impartial and fair handed assessment of a defendant’s petition for nonfinancial release. As we will read, a range of pretrial release program services are now fully institutionalized in lieu of bail bonds for many offenses and suspended sentences formerly overseen by probation are replaced with informal diversion sentences under the supervision of these programs. The criteria however that are used by courthouse members to guide jail alternative decisions brings into view larger and more salient questions about the fundamentals of pretrial release. Is it a legal right or a social privilege? What resources are available to caseworkers to help shape what is an inherently judicial determination? Which entity, government or nonprofit, is held accountable for release outcomes? Along these lines, this book also explores the degree to which these agencies surrender their own social justice ideals to participate in contractual governance and, as a counterweight, to what extent they are able to address perceived systemic injustices. In all, the book grapples with how actors achieve justice enhancing practices on the boundary of law and community.

I show how outsourcing justice exercised inverse power differentials and undercut traditional legal procedures. Court officials were less able to move defendants into jail alternative programs short of caseworkers’ willingness and capacity to accept them. Staffers’ operative powers are enhanced because much of normal casework takes place in the separate private sphere of their nonprofit agencies. Judges and attorneys, however, also adapted to this new playing field to find ways to maneuver and manipulate casework to their own ends. While caseworkers and court officials alike were pressured to succumb to bureaucratic and managerial controls on their decision making they carved out personal autonomy to conspire to a kind of outlaw justice.

They used subservient, discursive, and direct power in particular contexts and catered to certain audiences as a means to make things happen. In Jacobs' (1990) book on the juvenile justice system, probation officers adapted their work practices in ways that enabled them to achieve certain goals in spite of "erratic organizational support" (125). Similarly, nonprofit caseworkers and traditional court officials acclimatized to the organizational ambiguity and altering casts of courtroom actors by tactically vying for influential power. In total, the book documents how outsourcing decision making powers to nonlegal personnel reengineers the structure and function of the lower courts in important ways and results in new institutional roles for caseworkers, defendants, and court officials.

### **Overview of the Book**

The book is organized into three parts. Part one consists of the introductory chapters one, two, and three which chart out the book's theoretical framework, the history and internal organization of the San Miguel courthouse community, and a descriptive account of caseworkers' occupational experiences administering justice. Part two is the ethnographic heart of the book and consists of the empirical chapters four, five, six, and seven and the presentation of the main findings. Part three contains the concluding chapter that summarizes the main findings and offers directions for future research.

Chapter two describes the sociopolitical conditions that created an infrastructure for nonprofit legal advocacy in the San Miguel Hall of Justice, specifically the bail reform movement and the jail overcrowding crisis. I discuss the internal organization of the courthouse community and the primary actors involved in pretrial release practices. I explore the local cultures of nonprofit programs and criminal justice officials and how they cultivate different interagency relationships and reputations. I also map out the general organizational processes that nonprofit caseworkers in partnership with court officials employ to filter cases through the justice system. Chapter three explores how nonprofit agencies afoot in the criminal justice system negotiated surrounding courthouse policies, personalities, and politics to reduce rates of incarceration. In turn, I consider how caseworkers strategically manage their own professionalization in ways that advance their advocacy agenda and elevate their reputational status as agents of the court.

The analytic focus of chapter four draws upon data to illustrate how caseworkers operated at the forefront of the risk assessment stage to conduct character evaluations and assemble evidence of defendants'

entitlement to ROR. I highlight the interviewing strategies that screened out problem referrals and provided special advocacy for weak referrals. Caseworkers facilitated interviews in a manner congruent to their commitment to alternative justice and to advocate for jail alternatives which directly benefited defendants who might otherwise remain detained. Defendants' self disclosures however revealed aspects of their lives that caseworkers labeled as evidence they were not amenable to community-based supervision. Chapter five explores the organizational level negotiations and disputes in the courthouse community over the criteria guidelines for judging release eligibility. The data illustrate that courthouse actors relied on various strategies to test the parameters of a good risk beyond the penal statute. The release criteria were also shaped by caseworkers' technologies and methodologies for compiling cases as well as interpersonal relationships with law-trained actors. In addition, nonprofit management scrutinized caseworkers' discretionary power to reject referrals and modified policies that contributed to higher rates of inmates denied entry into the program.

Chapter six highlights how caseworkers expanded their occupational terrain into the early stages of legal adjudication. I primarily focus on the micro level courtroom theater in which caseworkers played the role of assistants to the defense and employed rhetorical strategies to advocate for judicial leniency. I show that caseworkers' legal mediations in the courtroom structured different types of encounters between defendants and traditional court professionals which resulted in alternatives to prosecutorial justice. Chapter seven explores how caseworkers policed defendants' compliance with the terms and conditions of their release. In the courthouse community, caseworkers were the key sanctioning agents and they used the courts as leverage to both motivate and terminate noncompliant clientele. Court officials' emergent treatment authority however often disavowed staffers' recommendations to revoke services for recalcitrant offenders.

In the concluding chapter eight, I surmise that outsourcing justice alters traditional role expectations for caseworkers, legal officials, and defendants. Specifically, I argue that "justice for hire" culminates into new institutional careers for both pretrial release agents and the accused. Caseworkers carried out judging, lawyering, and policing functions. Criminal offenders managed dual statuses as defendants in the courtroom and clients of a nonprofit agency. Judges and attorneys took on roles as treatment facilitators rather than legal arbiters. I propose several avenues for further exploring the emergent role of nonprofit personnel in specialty dockets, including drug and mental health courts.

Lastly, in the method appendix, I discuss how I grappled with my pretrial career as an ethnographer and an unpaid caseworker.

### **Courthouse Ethnography**

This book is based on approximately twenty-four months of ethnographic research with four pretrial release programs in a California criminal justice system. The data are a nexus of participant observation, informal and formal interviews, and archival casework materials. While crafting the research design, the decisive factor that I used to recruit participants was nonprofit organizations that provided contracted pretrial release services for the courts. To collect the data, I spent approximately six months in each program as an observer and unpaid caseworker. This research was collected in two parts. The first stage of the research was conducted in 1998 and 1999. The second stage was conducted between 2002 and 2004. I completed follow up research during the interim period writing the book, including interviews with caseworkers and a judge in 2010.

I independently approached the executive director at each pretrial release agency with a written statement of intent describing the research project, a copy of the interview guide, and the approval letter from the Institutional Review Board (IRB). As a participant observer of pretrial release practices, I sought access to the county jail. The directors of each program sponsored my application for a jail clearance card through the San Miguel sheriff's department. I was required to attend a four hour jail orientation, submit to a background check, and place my fingerprints and photograph on file. I received a laminated I.D. card that included my name, photograph, the date of expiration, and sponsoring organization. I wore the clearance card on my person at all times in order for law enforcement officials to easily identify me as authorized personnel. The clearance card gave me unrestricted access to the processing center in the San Miguel jail as well as nonpublic areas of the courthouse.

Ethnographic research in multiple settings and the collection of multiple forms of data was also done for this book. To capture and record the observational data, I wrote detailed field notes to compile thick descriptions of three organizational settings where the activities of caseworkers took place: the courthouse, the pretrial release agency, and the county jail. These settings are connected to one another in ways that constitute how release decisions are negotiated. During formal courtroom proceedings, I took jottings on the talking strategies that caseworkers and judges used to promote or dispute the defendant's petition for release. I recorded the informal plea discussions between

caseworkers, judges, and attorneys in the courthouse corridor. In addition, I observed judges, lawyers, and pretrial release workers engaging in sidebar deliberations and discussing cases in judicial chambers. Ethnography of nontraditional organizational actors in the courtroom contributes to a deeper and more complex understanding of how privatization of criminal justice programs happens on the ground. This methodological approach illustrates the value of “studying up” (judges) (Nadar 1969: 289), studying the middle (caseworkers), and studying down (defendants) to gain a deep understanding of criminal justice processes. At the county jail, I observed caseworkers interview arrestees to assess their eligibility for release. I also spent many hours of participant research doing interviews, completing criminal background checks, preparing court recommendations, observing courtroom negotiations, and attending pretrial conferences in judicial chambers in the course of studying nonprofit caseworkers. I took field notes on how caseworkers worked individually with newly released defendants to help them achieve their treatment goals at the pretrial release agency.

Second, consistent with calls for triangulation of data sources, I completed a total of forty-nine interviews, lasting approximately one hour each, with some interviews lasting as long as two hours with caseworkers, judges, and bail commissioners. I used a semi-structured guide as the primary data collection instrument for conducting the interviews with the research subjects, and I conducted semi-structured interviews with thirty-four caseworkers, three program directors, eight judges, and three bail commissioners. In addition, I interviewed the legal counsel to the sheriff’s department about the history of jail overcrowding, pretrial release policies, and the role of nonprofits in the county justice system. I also spoke informally with one female superior court judge about the pretrial release services and their impact on the courts and criminal justice system. This conversation was not included in my interview totals. The third component of this methodology was to collect written records that directly related to defendants’ participation in the pretrial release program, including caseworkers’ files, court referral slips, and other internal memorandum. In addition, I collected data about the bail reform movement and the subsequent federal consent decree in California to reduce jail overcrowding as well as articles from local newspapers, government documents, and legal journals. I also analyzed the nonprofits’ mission statements, organizational brochures, court reports, and other written materials. In total, the research design revealed differences in how legal cases are constructed across multiple institutional settings. These data best identified the features and contingencies of the caseworker’s role in the courthouse community.



Throughout the book, I use the acronyms OR (Own Recognizance) and ROR (Release on Own Recognizance) to refer to the judicial decision to discharge a person from custody on their promise to appear to court. I will most commonly refer to nonprofit personnel as caseworkers or staffers. The programs did use local job titles to refer to their occupational roles in the criminal justice system. Reach caseworkers called themselves pretrial investigators. Open Door staffers called themselves court alternative specialists and Pathways personnel referred to themselves as case managers. I will refer to individuals who enter the criminal justice system in terms that reflect the stage of their pretrial process. If, at the point of a referral, the district attorney has not filed criminal charges, he or she is an arrestee. Once the DA files formal charges against the individual his or her status changes to defendant. If the defendant is accepted into the pretrial release program, he or she gains an additional and elevated status of client. The book will also reveal local programmatic terms for individuals at various stages of their pretrial status. For example, Pathways clients who successfully completed their court-ordered treatment and earned a dismissal were called “graduates.” Second Chance referrals who failed to comply with program directors were labeled “duds.” Open Door defendants who successfully or unsuccessfully complied with programmatic expectations were called positive and negative terminations, respectively. The reader should also note that caseworkers often referred to bail commissioners as judges. Finally, I want to note that there were aspects of these programs and their staff that I chose not to disclose for purposes of protecting their identity and their various strategies for achieving tasks that might prove controversial.

---

<sup>1</sup> To protect the identity of the study site, all names, organizations, and locations have assigned pseudonyms.

<sup>2</sup> The bondsmen then act as a third party to help ensure that the defendant appears for court.

<sup>3</sup> The bail reform movement occurred in tandem with a number of historically specific events that advanced the liberties of marginalized social groups, notably the Civil Rights Movement, Johnson’s War on Poverty, and the Women’s Rights Movement. In 1964, the Department of Justice under President John F. Kennedy and the Vera Institute co-sponsored a national conference to discuss the problems of bail in the criminal justice system, which was widely attended by judges, law enforcement officials, and other court personnel (Thomas 1976).

<sup>4</sup> The source of this datum is a taped interview with San Miguel Superior Court Judge Herbert Mills (a pseudonym).

<sup>5</sup> In collective fashion, work orientations are influenced by shared beliefs among court officials about how to handle criminal cases, their commonly held

values and traditions as well as the special use of language to express ideas (Flemming, Nardulli and Eisenstein 1993).

<sup>6</sup> Prior research noted the degree of stability and familiarity among judges, prosecutors, and defense attorneys in the workgroup were essential for understanding how criminal cases were handled (Eisenstein and Jacob 1977). Workgroup familiarity is generally defined as how well participants know each other and how frequently they interact. The more familiar court officials are with one another, the more likely they are to negotiate case settlements informally, agree about courtroom values and have compatible goals (Eisenstein and Jacob 1977). Workgroup stability refers to how long court officials are assigned to a particular courtroom. In unstable workgroups, judges and attorney rotate in and out of the courtroom on a frequent basis which means that court officials are more likely to rely on formal procedures to settle cases and have lower goal compatibility.