Copyright © SAGE Publications
London, Thousand Oaks, CA
and New Delhi.
www.sagepublications.com
1462-4745; Vol 6(2): 149–173
DOI: 10.1177/1462474504041259

PUNISHMENT
& SOCIETY

Youthfulness, responsibility and punishment

Admonishing adolescents in criminal court

AARON KUPCHIK
Arizona State University, School of Justice Studies, USA

Abstract
This article describes interaction in a criminal (adult) court in which adolescents are punished. As a result of the particular set of courtroom dynamics and the youthfulness of the defendants in this court, two potentially conflicting ideas about punishment are expressed concurrently: (1) proportionality, and (2) reduced culpability among youth. I demonstrate how judges talk to adolescent defendants during sentencing in ways that simultaneously communicate the defendants' criminal responsibility and their youthfulness. In doing so, judges admonish the adolescents. The delivery of this admonishment is a ceremonial event that bears some similarities to the degradation rituals described by Harold Garfinkel, and also to the reintegration ceremonies described by John Braithwaite. Yet the admonishment varies from both of these events in that it is a more practical adaptation to the particular constraints of punishing adolescents in a criminal court. Thus I illustrate how judges strategically use admonishing discourse to solve intractable problems that arise from the circumstances of this court.

Key Words
admonishment • degradation • jurisdictional transfer • sentencing • youthfulness

This article describes interaction between judges and defendants in a criminal (adult) court in which adolescents are punished. I use a case study to demonstrate how judges talk to adolescent defendants during sentencing in ways that simultaneously communicate the defendants' criminal responsibility and their youthfulness. I illustrate how judges' use of admonishing discourse strategically solves the intractable problems that arise from the circumstances of this court, such as the problem of balancing proportionality in sentencing with the reduced culpability of adolescents. Furthermore, the admonishment conforms to judges' desired treatment of a problematic population of

defendants. The delivery of this admonishment is a ceremonial event that bears some similarities to the degradation rituals described by Harold Garfinkel (1956), and also to the reintegration ceremonies described by John Braithwaite (1989). Yet the admonishment varies from both of these events in that it is a more practical adaptation to the particular constraints of punishing adolescents in a criminal court.

My research takes place in a criminal court that specializes in offenders younger than 16 who are excluded from juvenile court to be tried and punished as adults. This practice of prosecuting youth in criminal courts rather than juvenile courts is a growing one. In recent years, almost every state in the USA has revised its laws to redefine some juveniles as adults and prosecute them in criminal, rather than juvenile, courts[1] (Snyder and Sickmund, 1999). But punishing adolescents as if they were adults creates an awkward combination of pursuing substantively rational 'juvenile justice' concerns within a formally rational criminal court environment (Weber, 1968; see Kupchik, 2003). Judges responsible for sentencing these adolescents are faced with two significant dilemmas: judging the level of culpability of adolescents for their criminal offenses, and deciding how to balance the competing objectives of allowing youth second chances while punishing offenders for their crimes. As I show, these competing objectives are dealt with by strategic uses of discourse. My analysis focuses on how these particular dilemmas give rise to patterns of speaking to adolescent defendants in ways that communicate both responsibility and youthfulness.

Prior research on judicial discourse illustrates how judges speak to defendants in ways that help judges achieve professional goals. For example, court ethnographies by Carlen (1976) and Feeley (1979) demonstrate how judges use language that is unintelligible to defendants in order to communicate the defendant's low status and encourage rapid disposition of cases. Carlen's analogy of the court as a dramaturgical arena aptly characterizes how court actors stage a show in order to validate and facilitate their social control function. Similarly, Feeley's functional analysis of lower criminal courts shows how courts' treatment of defendants and court actors' language maximize the likelihood of defendants pleading guilty to avoid further case processing. Harold Garfinkel (1956), in his classic article on degradation ceremonies, illustrates how courts legitimate the imposition of punishment by degrading defendants; as a defendant's status is lowered from citizen to enemy of the people, it becomes clear that the court has no choice but to punish. By invoking moral indignation at defendants, courts are able to reinforce group solidarity. Degradation ceremonies therefore are rituals that support the functioning of courts and fortify broader social cohesion.

In his work on juvenile courts, Robert Emerson (1969) echoes this theme. He finds that courts routinely denounce juvenile defendants in order to legitimate punishment. This process is part of the routine functioning of juvenile courts as they establish their moral superiority over defendants, but it takes an extreme form when courts hand out harsh punishment such as imprisonment.

This article contributes to this body of literature by applying the study of strategic judicial discourse to a novel research setting with a contemporary research problem. The above studies demonstrate how criminal court and juvenile court actors speak to defendants, but in each case the mission of the court is fairly clear – they each seek to punish defendants and augment the court's legitimacy in doing so. The one exception to this is Emerson's (1969) work. By studying juvenile courts Emerson focuses on a court

system faced with a dual mission of social control and social welfare (see also Platt, 1977; Feld, 1999). But by the 1960s juvenile courts had instituted practices and policies for dealing with this dual goal. As Emerson (1969) clearly shows, the juvenile court he studied was in the center of a well-developed web of social welfare and social control agencies with intricate and dependent ties to one another.

In contrast, I study a court without precedent, clearly articulated goals or established practices for resolving competing concerns of punishment and child-saving. This court is a specialized criminal court that deals almost exclusively with 14- and 15-year-old defendants who are excluded from juvenile court due to the severity of their offenses. Because it is a criminal court that deals with such young defendants, this court straddles the boundary between juvenile and criminal justice (Kupchik, 2003). It therefore poses a unique structural problem – the need to appear punitive while dealing with adolescents – and offers a novel research site.

METHODS

I conducted[2] this research in what is referred to as a specialized criminal 'youth part' court in New York City. New York's laws mandate that adolescents accused of certain offenses are excluded from juvenile court to be prosecuted as adults. I describe this statutory context and the conditions that bring about this specialized court in the next section.

The data consist of observations of courtroom proceedings and interviews with judges, prosecutors and defense attorneys in this court.[3] Over the course of six months I observed 290 hearings, including 124 sentencing hearings, 145 regularly scheduled hearings to discuss the status of cases and 21 hearings in which defendants pled guilty. Rather than scheduling visits to the court to follow particular cases from beginning to end (which can take years for completion), I attended all court 'calendar' days; calendar days are days during which all cases not on trial are regularly scheduled. By attending these days I was able to observe cases in each phase of case processing, from beginning to end. I also observed two trials.

I sat beside the judge – in the witness' chair – during many of these hearings, where I observed and noted 'off-the-record' conferences at the judge's bench in addition to 'on-the-record' proceedings. None of the court participants ever acknowledged my presence next to the judge (either verbally or through physical gestures), and I remained silent during all hearings. Thus it is unlikely that my presence interfered with the content or interaction of these hearings.[4] Additionally, I attended meetings held by the judge with members of the probation office, correctional facilities, the District Attorney's office and with representatives from treatment programs working with the court.

To further assess courtroom dynamics in this court, I interviewed the judge, supervising prosecutor and defense attorneys who work in this court. I also interviewed similar court actors from a second 'youth part' court (see later) in New York City, for a total of 15 interviews. During these interviews I asked many open-ended questions followed by probes to explore themes, as well as closed-ended questions that required respondents to answer questions using scaled response sheets. The interviews each lasted from 50 minutes to two hours. The topics discussed included: the criteria used by court

actors to make decisions, the manner in which these individuals interact with one another, the practical difficulties they face and strategies for dealing with these difficulties and both formal and informal procedures for prosecuting adolescents. The interviews assessed strategies used for interacting with other courtroom workgroup actors, as well as the frames of relevance (Asquith, 1983) and ideas of childhood culpability on which actors rely when dealing with adolescent defendants. I tape recorded all interviews and sent them to a professional transcriber.

Where possible, to report the data from my court observations I include direct quotations as copied verbatim from official court records provided by the court reporter (stenographer). Where these records are not available,[5] I include quotations that I recorded by hand during the hearings. These records are as close to verbatim form as I could accomplish and are marked in the following text by single quotation marks (as opposed to double quotation marks for verbatim transcripts). Though not official transcripts, my records are accurate representations of all consequential dialogue and are missing only extraneous conversation. Due to the frequency of identical or very similar exchanges between court actors, I was able to use brief notations for many of these exchanges and focus my note-taking efforts on any unusual interaction. I transcribed these fieldnotes daily in order to transform my data into nearly complete records of all court activity. Though verbatim transcripts of hearings would be preferable to the data used, the fieldnotes I recorded are consistent with data used by others for similar research (Holstein, 1988; see also Atkinson and Drew, 1979).

To analyze the fieldnotes and interviews I used both traditional qualitative methods and the qualitative data analysis software, NU-DIST. The traditional methods consisted of manually scanning each transcript, coding the transcripts into themes and searching for patterns among these themes (Lofland and Lofland, 1984). I selected the data I present here because they best characterize the repeated patterns and themes that emerged from these analyses (see Emerson et al., 1995). These patterns are evident in the data from both courtroom observations and interviews, and they emerged after using both methods of analysis. This convergence of results adds confidence to the reliability and validity of the findings (see also Kupchik, 2003).

In addition to the original data I collected, I also report second-hand quantitative data. These data were collected and reported initially by the Criminal Justice Agency (CJA), New York City's pre-trial services agency, in a document describing all youth part courts in the city in 2000 (Criminal Justice Agency, 2001). I use these data here to help describe the research setting and situate the court interaction, referring to it as the CJA report.

THE RESEARCH SETTING

Legal context

The age of majority in New York is 16, meaning that all offenders at or over 16 years of age are considered adults. Moreover, as a result of the 1978 Juvenile Offender Law, 14- and 15-year-olds (at the time of their offenses) who are charged with any of 17 designated felony offenses, and 13-year-olds charged with murder, are excluded from the juvenile court. Though these defendants (hereafter Juvenile Offenders, or JOs) can

be waived back down to juvenile court, they are initially prosecuted in criminal court. However, despite their presence in criminal rather than juvenile court, JOs are not considered to be equal to older defendants. The Juvenile Offender category maintains a distinction between JOs and older defendants, while denying these adolescents eligibility for juvenile court. The rules and procedures for prosecuting JOs match those of criminal court in general, but the sentences legislatively prescribed for JOs are less severe (regarding time sentenced to incarceration) than those for adult defendants (Singer, 1996).

The 1978 Juvenile Offender Law was the predecessor to many other US states' transfer laws. Increasing numbers of states are now moving toward this model of transfer, whereby categories of adolescents are automatically excluded from juvenile court, and away from a traditional model in which a judge decides which adolescents to transfer (Feld, 1998). As a result, New York criminal courts provide a well-established research site for understanding recent trends in prosecuting adolescents in criminal courts.

With the aid of a grant from a private agency and the leadership of an influential judge, in 1993 each county in New York City other than Staten Island began to prosecute JOs in a specialized criminal court 'part'[6] (Liberman et al., 2000). As a result, after the initial arraignment stage (in a lower court before being transferred up to the [Felony] Supreme Court), most JO cases are prosecuted in a specialized criminal court before a criminal court judge who specializes in JO cases. These specialized courts – referred to by the court actors as 'youth parts' – follow identical procedures guiding case processing as other criminal courts, with two exceptions. One, a single branch of the County District Attorney's office handles most[7] of the cases in this court, rather than cases being distributed throughout several different branches. Two, a special sentencing category applies to the defendants prosecuted in these youth parts. Pursuant to eligibility rules,[8] judges can depart from legislatively fixed sentences by reclassifying convicted adolescents as 'Youthful Offenders'. After granting a defendant Youthful Offender (YO) status, the judge has the option to sentence the defendant to a less severe sentence than the state's fixed sentencing laws require, and she may do so without consent from the District Attorney. Furthermore, Youthful Offenders' cases are sealed, allowing them to claim truthfully that they have no felony convictions. According to the CJA report I refer to above, 71 percent of JO defendants in this county are classified as Youthful Offenders (Criminal Justice Agency, 2001).

Other than segregating JO defendants from older defendants and the unique Youthful Offender sentencing status, the youth parts follow the identical procedures and rules as every other court in New York City's criminal court system. These procedures are distinct from juvenile court procedures in that they allow for jury trials, they are open to the public, they are regulated by sentencing statutes with a goal of restitution rather than rehabilitation (Warner, 2000) and they follow the generally more formal criminal court style of interaction (see Bortner, 1982). Hence the Juvenile Offender Law and New York City's procedures for processing JOs combine to form a hybrid type of justice for adolescents, in which adolescents are held accountable as adults in criminal courts, but within specialized courts where many are eligible for discounted sentences and sealed case files (Kupchik, 2003).

Types of cases

Most defendants in this court are younger than 16 years old and face serious felony charges. By definition, a Juvenile Offender must be 13, 14 or 15 and be charged with one of 17 serious felony offenses.[9] A small number of older offenders, usually slightly older adolescents, also are prosecuted in the court if they are co-defendants of JOs. Or, occasionally the judge in this court may take on additional cases of non-JOs in order to assist another judge and alleviate another court's caseload.

Robbery is the most common charge the defendants in this court face (of the 17 JO eligible charges), but most of the 17 JO eligible charges are represented. According to the citywide CJA report, the approximate breakdown of JO defendants' charges in the county I studied in 2000, using broad charge categories, is as follows: 68 percent robbery charges, 9 percent murder or attempted murder, 8 percent robbery, 8 percent rape or sodomy, 5 percent weapon charges, 2 percent arson and 1 percent burglary.[10] All charges are serious felony offenses, and over two-thirds of the cases involve defendants accused of robbery. Each year, approximately 100 cases are processed to completion in this court (Criminal Justice Agency, 2001). Overall, approximately half of the defendants whose cases I observed have prior arrest records. The CJA report I refer to earlier does not contain these figures. However, my own analysis of 15-year-old robbery, assault and burglary defendants in the same jurisdiction found that 57 percent of the defendants have prior arrest records (see Kupchik et al., 2003). Most defendants who appear before the court are poor. Though no empirical data are available to support this observation, at least 85 percent of the defense attorneys in this court are provided without charge for defendants because the defendants cannot afford to pay for legal representation.[11] And, the vast majority of defendants in the court are racial and ethnic minorities. According to a separate New York City Criminal Justice Agency report on minority overrepresentation among JO defendants, only 4 percent of JO cases filed in criminal court in 1992 – and 2 percent of cases convicted there – involved white defendants (Liberman et al., 1996).

Regarding dispositions, the vast majority of cases result in conviction, usually through plea bargain. Of cases that are arraigned in this youth part, 92 percent result in conviction. According to the CJA report referred to above, 69 percent of convicted cases result in incarceration of some length, with the remaining cases receiving probation (Criminal Justice Agency, 2001).

Court personnel

Judge

The judge is without a doubt the center of action in the court. He is autocratic in his control of the court by giving frequent orders to other court officials and not hesitating to impose his will or schedule on the court's business. This judge exercises complete discretion on the pace of hearings, when to take breaks and how cases should be scheduled. Attorneys waiting for their cases to be called in this judge's court would often complain to me that the judge expects them to labor to gain his notice and his approval, and that he is quick to take offense at any perceived breach of formality or disrespect toward him.

The judge's demeanor is very official. He refers to all court participants except for

the court officers (but including the clerk, all attorneys, the defendants and even myself) as Mr or Ms, and never uses any first names. He refers to himself exclusively as 'the court', never using the pronoun 'I' (he even did this during my interview with him). Though he is very pleasant in his chambers, he engages in no small-talk or conversation when court is in session and he is on-the-record. He very rarely smiles while on the bench.

A sense of importance is visible from his demanding manner – he never *requests* reports from agencies, he *demands* them and dictates by when they must be received. When a case before him encounters a scheduling conflict (such as an attorney on trial for two cases at once) the judge always assumes priority for his case and demands that the actor involved in the conflict prioritize the judge's demands and wishes. In the following court fieldnotes I demonstrate this judge's sense of self-importance in reference to how he treats an attorney who appeared in court one hour late:

The judge begins the hearing by scolding the defense attorney for showing up late here this morning.

> Judge (to defense attorney): 'Do you want to discuss the defendant first, or have your sanction hearing?'

At this, the defendant looks at his attorney and laughs.

The attorney has no coherent answer, but says he is ready to account for his tardiness, and he apologizes.

> Judge: 'Fine, then we'll conduct your sanction hearing now. Do you have an explanation?'
> Defense Attorney: 'I was in domestic violence court and had a very ill client. Because of this I was hung up. I intended to be here on time, or to call, but I had no opportunity.'
> Judge: 'Have we spoken about this before?'
> Defense Attorney: 'Yes'.
> Judge: 'You must show at 10:00 or call by then. I can't run a part like this. I accept your apology without a financial sanction, but next time there will be a painful sanction.'

According to attorneys, other judges understand that because attorneys defend many clients in several different courtrooms on the same days, they may be unable to appear at any specified time. Most other judges are willing to hear other cases while waiting for these attorneys. This judge, however, refuses to wait for anyone and insists that all attorneys show up in his court by 10:00 – even though most of them then have to wait over an hour or two for their cases to be heard – or to call the court by then. As I observed this court, I would hear attorneys complain daily about waiting.

Prosecutors

Shortly after his appointment to this youth part, the judge requested that a single bureau (division) within the District Attorney's office handle all JO cases. This duty was assumed by a bureau in the DA's office that previously had handled only crimes occurring in public schools. This bureau sends a single Assistant District Attorney (ADA) to the youth part for all calendar cases. Cases going to trial or involving special offenses (murder, rape, gang crimes) are handled by other ADAs. All decisions about cases are made by the Bureau Chief and directed to the ADA handling the case. The ADA then

reports back to the Bureau Chief about what happens in court and the Bureau Chief decides how to react for the next court appearance.

One result of this arrangement is that decision making is centralized and out of the hands of the ADA who actually is in the courtroom. Decisions are made by the Bureau Chief, though the ADA in court carries out these decisions. According to the ADA, this often puts her in an awkward position, as she may not know the background of a case or a defendant – she usually knows only what is in front of her in the file she reads that morning. I witnessed many instances of the ADA not having necessary information requested by the judge because it was not recorded in the file, or because she was not sufficiently familiar with the case. Another difficulty is that the ADA assigned to the youth part often is required to substitute for other prosecutors. Cases that are assigned to other ADAs may continue on dates when the ADAs are on trial elsewhere, so the ADA in court must make arguments in their place, though with very limited knowledge of the case at hand. The ADA in court frequently resorts to reading the file during the hearing and proposing arguments she formulates at that moment.

Defense attorneys

There are four categories of defense attorneys in this court. The distinction between them corresponds to how they are paid and to what organization they belong. The first category consists of attorneys who work for the Legal Aid Society, which is publicly funded but a separate entity from the court system. The Legal Aid Society used to handle almost all cases with indigent defendants in the city until a few years ago when a dispute with the Mayor left them financially weak. Now they handle about half of the cases, with no apparent pattern to which cases they assume and which they leave for other agencies (below).

The second category is the [County] Defender Services, which is an agency created in the past few years to help absorb some of the cases that the Legal Aid Society is no longer able to assume. According to a Legal Aid attorney: 'When our funding was cut in '95, alternate providers [the County Defender Services] were set up so each borough has an alternate provide except in Staten Island where we were completely defunded.'

The third category consists of 18B attorneys. The code '18B' refers to the statute authorizing the courts to appoint these attorneys. These are private attorneys who sign up with the 18B office to take on cases with indigent defendants that are not assigned to either the Legal Aid Society or [County] Defender Services. Often this occurs when co-defendants are represented by the two above indigent defense agencies, thus the court needs an attorney not affiliated with either of these agencies to represent a third defendant on the same case. This prevents a conflict of interests between attorneys from the same office representing co-defendants on the same case. The state pays for the defense of these defendants, at a flat rate of $40.00/hour for in-court time, and $25.00/hour for out-of-court time. These cases are assigned out of a centralized office, and there is no specialization for adolescent offenders. Court actors unanimously perceive this wage to be exceptionally low, and a recent series of articles in the *New York Times* described these attorneys as so poorly funded that many are forced to take on hundreds of clients in order to sustain a living wage (Fritsch and Rohde, 2001).

Members of each of these three categories of attorneys assume cases by appearing in arraignment courts. Defendants face a lower court arraignment within 24 hours of their

arrest – at this point attorneys are assigned to those who cannot afford to pay for private attorneys. Attorneys from Legal Aid Society and each County Defender Service alternate which arraignment shifts they cover. Legal Aid covers the majority of arraignments (usually about two-thirds), with County Defender Services covering the rest. Attorneys who assume 18B cases also attend arraignments. Each 18B attorney agrees to cover a certain number of shifts per month and assume any cases that cannot be taken by the other two groups of attorneys.

The fourth category consists of private attorneys who are paid by the defendants themselves. This may be the only option for defendants who are deemed by a judge in a hearing to be able to pay for their own defense. Most private attorneys charge one of two flat fees for their services; whether or not the case goes to trial determines which of the two fees is paid by the defendant. As I state earlier, though no figures are available to illustrate how often defendants are able to hire attorneys, my observations and conversations with court staff suggest that over 85 percent of the criminal court defendants are considered indigent and represented by one of the former three groups of attorneys.

Physical setting

The court is located in the County Supreme Court building, in the downtown area of one of the boroughs of New York City. The Court building is a large, marble building with broad steps and thick marble columns; it looks like the home of a branch of government. Upon entering the building, all visitors must have their bags scanned by an x-ray device and walk through a metal detector. Employees, however, may show identification and walk through without scrutiny.

The youth part is on the fifth floor along with three other courtrooms. The courtrooms are along one side of a long corridor lined with wooden benches. Defendants and their families often occupy these benches when the court is not in session, such as lunch-time and before the day begins. This hallway is the source of a lot of activity between defendants and attorneys, who often can be seen discussing their upcoming cases. It is also a good place for a researcher to observe defendants interact with families who have come to court with them.

Inside the courtroom, there are four rows of wooden benches at the back of the room (closest to the entrance) for seating. The first row is reserved for attorneys, press and police, and marked as such with signs on the wooden gate in front of the first row that divides the seating area from the actual court arena. Families and defendants awaiting hearings sit in the other three rows. Because the youth part is within the adult system, all processes are open to the public – however, other than one occasion when a reporter came to court, I was the only apparent non-participant or family member there during all of my observation time.

The courtroom itself has a very dingy and official atmosphere. The floor is composed of grey linoleum tiles. The walls consist of wood panels without interruption by any windows. There are two doors behind the judge, on either side of him, that lead to the judges' chambers, administrative areas and prisoner transportation routes. The ceilings are very high, about 22 feet. Light comes only from the recessed bulbs in the ceiling. The judge sits above everyone on a dais raised about three feet. Above his head, engraved in the wall, is a quotation: 'The Good of the People is the Chief Law – Cicero'. The

witness box, from where I observed many hearings, is immediately to the left of the judge (also on the raised platform, but not as high as the judge). To the left of that is a jury box with 14 chairs. Opposite the witness box, on the right of the judge, is a segmented area like the witness box, but used to hold paper files and a printer. The court clerk's desk is directly next to that, on the floor level. File cabinets and a table for the court security officers are against the right wall. Plain wooden tables for the prosecution and the defense are situated in the middle of the front area; the prosecution is on the left, the defense on the right. The gate separating the audience from the front of the court is wooden, about three feet tall, and has openings along both sides. Only the prosecutor is allowed to use the opening on the left – everyone else walks to the right and goes through the gate next to where the officers sit.

In sum, this court is a formal, official criminal court, but one that deals nearly exclusively with adolescents. It contains a dogmatic judge and mostly poor, minority defendants represented by attorneys paid for by the state. The court brings together competing objectives and requires court actors to consider them simultaneously – the defendants are juveniles who are denied the opportunity to be prosecuted in juvenile court, yet a special punishment status allows judges to sentence them to lighter sentences than given to adults for the same offenses.

COURT HEARINGS: RESPONSIBILITY AND YOUTHFULNESS

The court I study is an interesting research site because it brings together two potentially conflicting, long-held ideas about punishment: proportionality and reduced culpability among youth. As I describe earlier, this court is an official criminal court within the Supreme Court system of New York City; this court's architectural and organizational arrangements are dramatically different from the informal legal environments of juvenile courts as described by other researchers (Emerson, 1969; Bortner, 1982; Jacobs, 1990). Yet almost all of the defendants in this court are 14- and 15-year-old adolescents. Because of this discrepancy, the judge talks to defendants in ways that communicate both responsibility and youthfulness. This interaction between judge and defendant takes place during the sentencing phase of cases, after defendants have been convicted.

Case 1: Admonishment

Consider the following transcript of a hearing in which a JO defendant pleads guilty to a robbery at gun-point. This transcript demonstrates clearly how the judge speaks to defendants to communicate both responsibility and youthfulness:

> Judge: ". . . I am not taking your plea of guilty unless you're guilty. I am going to tell you what you are accused of and then I want you to tell me what you did. You're being accused of acting in concert with [co-defendant 1] and [co-defendant 2] to do a gunpoint robbery. The accusation of the grand jury of [County] on [indictment number] is that the three of you acting together, each of you helping the other, on October 19th in [County], you forcibly stole property, that property was a handbag, which had United States currency in it, credit cards and other personal items belonging to [victim], and that in the course of the commission of that crime or immediate flight therefrom, one of the three of you displayed what appeared to

be a handgun. You're being accused of committing this robbery armed with a deadly weapon, a handgun. That's the accusation. Tell me what you did."
Defendant: "You want me to tell you from the beginning?"
Judge: "You don't have to tell me what you had for breakfast, but I want to know about [co-defendant 1] and [co-defendant 2] and you meeting upon some young lady who was relieved of her property."
Defendant: "All right. Me, [co-defendant 1] and [co-defendant 2] was walking. We went to [Shopping Plaza] and we didn't have no money for the bus so we decided to rob someone. So we was walking home from [Shopping Plaza]. And we seen the lady and we went up to her and [co-defendant 1] pulled out the gun."
Judge: "Who pulled out the gun?"
Defendant: "[co-defendant 1]"
Judge: "Right"
Defendant: "And [co-defendant 1] went in front of her. She got scared. She screamed. And we – [co-defendant 2] was pulling the bag."
Judge: "You and [co-defendant 2] were pulling her bag?"
Defendant: "Yeah."
Judge: "Like a purse or something?"
Defendant: "Yeah, a purse."
Judge: "Was this a shoulder strap or in her hand or what?"
Defendant: "It was on her shoulder."
Judge: "You took it off her shoulder?"
Defendant: "Yes."
Judge: "Who took it off her shoulder?"
Defendant: "[co-defendant 2]"
Judge: "What did you do?"
Defendant: "She got scared and screamed so we ran."
Judge: "Did anybody have the purse?"
Defendant: "It dropped I think."
Judge: "So how far was the purse from her when it dropped?"
Defendant: "Two feet."
Judge: "Did somebody have the purse in their hand for at least a little while?"
Defendant: "No."
Judge: "How did the purse get two feet from her?"
Defendant: "Well, I think [co-defendant 2] dropped the bag when we started running, it dropped. So it wasn't much time for him to hold it."
Judge: "So [co-defendant 2] got a chance to get it, ran just a little bit but dropped it?"
Defendant: "Yeah."
Judge: "Is that what happened?"
Defendant: "Yeah."
Judge: "This gun that [co-defendant 1] had, what kind of gun was it?"
Defendant: "Your honor, I don't know."
Judge: "You know it was loaded?"
Defendant: "No. I don't know no, your honor."
Judge: "This gun was loaded and operable, correct, [Prosecutor]?"
Prosecutor: "Yes, sir."
Judge: "Do you know what type of gun?"
Prosecutor: "It was a .25 automatic."
Judge: "Automatic. Okay. What's your mom do? Is she working?"
Defendant: "Yes."

Judge: "What kind of work does she do?"
Defendant: "She works in [local hospital]. She is a unit clerk."
Judge: "A unit clerk?"
Defendant: "Yes."
Judge: "That's a fine job. And your grandmother, is she working or is she retired?"
Defendant: "No, she is retired."
Judge: "What did she used to do?"
Defendant: "She used to work in [another hospital]."
Judge: "What did she do for them?"
Defendant: "I don't really know, but I know she worked with nurses, helped them."
Judge: "Did your mom ever have somebody stick a gun to her head?"
Defendant: "No your honor."
Judge: "How would you feel if somebody did that to your mother, took her paycheck, she can't buy food or pay the rent?"
Defendant: "I'd be angry."
Judge: "Why?"
Defendant: "Because."
Judge: "What if it was somebody that needed money to get on the bus really bad?"
Defendant: "It doesn't justify to do what we did."
Judge: "I don't understand. Why not?"
Defendant: "We wasn't thinking when we did it."
Judge (raising his voice): "How much thinking you got to do to stick a loaded automatic .25 caliber gun in somebody's head to get carfare? How much thinking does it take? This lady is forty-three years old. She is no different than your mother, probably the same age as your grandmother a few years ago. Just people minding their own business. Now, when you look at your mother now and see how she must feel knowing that her son participated in a gunpoint robbery, can you see the shame you brought on her? So how do I know you are not going to do this again?"
Defendant: "Because I learned my lesson."
Judge: "What lesson is that?"
Defendant: "That if I don't have it, I could work hard to get it. And if I can't get it I have to do without it."
Judge: "But if you hadn't gotten caught you'd have the money. It would be real easy, right? Didn't you stand behind her when this happened?"
Defendant: "Excuse me, your honor?"
Judge: "You were standing behind her. Was it two in the back one in the front?"
Defendant: "No, we was all around."
Judge: "Surrounding her?"
Defendant: "In front of her, yeah."
Judge: "Tell you what I am going to do, Mr. [], you are getting this break, but I promise you that if you slip up on this case, I guarantee you I will sentence you to the maximum that I can. And you're very young to be doing three and a third to ten years, but that's exactly what I'll do. So if you really learned your lesson, learning that lesson is going to include one hundred percent compliance with the terms of this agreement. You are not going to cut school. You are not going to be using any drugs. I am going to have you tested to see that you're drug free. There will be curfew in place every day of the week. Your life is going to change quite a bit from this day forward so that you can walk freely out this door. If you slip up, I am going to send you away for the maximum. Okay? If you don't slip up, you may get out of this without being a felon."

This dialogue explicitly conveys the defendant's responsibility in this offense. By admonishing the defendant, the judge is at pains to demonstrate to the defendant how wrong his actions were, and how responsible he is for the suffering of both the victim and his own family. The judge personalizes the offense by asking how the defendant would feel if this act had been done to his mother. Furthermore, he points out to the defendant that his mother feels shame because of his criminal actions. The judge also threatens the defendant with a severe sentence of several years in prison in case the defendant does not comply with the requirements and restrictions ordered by the judge. The judge's comments are delivered in a hostile tone, and they imply that the offense was a foolish act and the defendant a fool for committing it.

Yet the judge also spares the defendant from imprisonment, stating "you're very young to be doing three and a third to ten years [in prison]". This defendant was one of three adolescents who committed the crime, and this was not the offender who held the handgun used to threaten the victim. During bench conferences about this case, the defense attorney argues that this defendant was not the ringleader in the offense. Because of these mitigating factors, and because the defendant did not have any prior convictions in criminal court, the judge utilizes the 'Youthful Offender' sentencing option to give the defendant 'a break' by sparing him from a prison term. Thus the judge also communicates, through his speech and his actions, that the defendant is less culpable for this offense than an adult would be given the same circumstances.

The admonishing tone and content of the judge's discourse in this hearing is typical of the judge's speech to defendants in certain types of cases. In fact, his reference in the above hearing to the defendant's mother – "How would you feel if somebody did that to your mother?" – is a routine part of sentencing hearings. The judge speaks this way during cases in which he is unsatisfied with the sentencing options available to him. According to the judge, there is an insufficient number of non-custodial options available to him that are more restrictive than probation.

This judge takes steps to remedy this problem of insufficient non-custodial sentencing options. Every three months he holds meetings with representatives from the prosecutor's office, the department of probation and several private treatment agencies. These treatment agencies include inpatient and outpatient programs; they offer services designed to deal with a variety of issues such as substance abuse, anger management and employment skills; and they vary in the restrictions they require and the supervision they offer, with some giving mandatory drug tests and checking on defendants' curfew statuses daily. Typically, about 50 people attend each of these meetings. The judge's stated aim at the beginning of each of these meetings is to facilitate communication between the court and potential sources of non-custodial intervention for defendants, so that he has a greater number of non-custodial options that are more restrictive than probation. This stated desire for punishments that fall between probation and incarceration is echoed by a second youth part judge as well:

> Some kids that you would like to – some of these kids need what's called a structured setting, which is a euphemism for 'well they can't be on probation at home, because that's not a structured setting'. It means there's not enough structure in the family of this child, even coupled with a supervising probation officer to provide an appropriate place to supervise the kid. So

> then a structured setting to a family court judge could mean places that are short of jail, that provide all sorts of services that are not, you know, a jail. For me there is no such place. I have – there is nothing intermediate to me. . . . There is no state [treatment] facility [short of prison] where I can mandate the kid.

Case 2: Admonishment as an intentional strategy of enhancing penalties

Earlier I argue that the judge's admonishment contains reference to both the defendant's responsibility and reduced culpability due to youthfulness, and that it occurs frequently when the judge is satisfied with neither a sentence of probation nor imprisonment. In the following hearing we see that this is an intentional strategy by the judge to add a rhetorical punitiveness to a relatively lenient sentence. The judge in this court has great discretion over sentencing, mainly due to his ability to give YO treatment to adolescent defendants. He applies this discretion when he uses admonishing language as a sentence enhancement for cases in which he desires a sentence more punitive than probation but (often) less severe than incarceration.

The following hearing involves a defendant with a history of severe parental abuse, who previously had been sentenced to probation by the judge. The defendant recently was re-arrested and returned to court for not reporting to his probation officer. The hearing, which includes an attorney, a representative from the treatment program in which the defendant was ordered to participate and a representative from probation who acts as a prosecutor for violation of probations, begins as follows:

> Defense Attorney: 'Your honor, may we approach?'
> Judge: 'I don't know, is Mr. [] ready to go to State prison?'
> Defendant: 'No.'
> Judge: 'Why not?'
> (Defendant mumbles something incomprehensible.)
> Judge: 'I'm fed up with you. I've given you so many chances that you have messed up that I can send you to prison and sleep comfortably' . . . . 'Why is it I don't believe you? Is it that every time you come back having violated the conditions of your release? Do you want to go to prison?'
> Judge (to the defense attorney, who had already asked to approach the bench): 'You can come up now.'

The attorneys, program representative and the judge then discuss the case for about five minutes at the judge's bench:

> Judge (in a loud voice, audible to the defendant): 'Why should I waste my time? I think there's something about prison he wants to explore. I don't care any more.'
> (Then, with lowered voices inaudible to the defendant:)
> Defense Attorney: 'I understand your frustration, but I think he would respond to another chance.'
> Program Representative: 'He is smart. I'd like to see him do well.'
> Judge: 'I don't think he is a danger to anyone. He's just playing games and isn't taking probation seriously. The next time there's nothing I can do – I'll have to send him up.'
> (They all banter casually for a minute or two.)
> Judge: 'What do you think?' (to the prosecutor)

> Prosecutor: 'I'm not very familiar with this case.'
> Judge: 'You mean you trust me and have confidence in my opinion – that's very well said.'
> (They all laugh.)
> Judge: 'This is his absolute last chance. This case is sad.' (to defense attorney:) 'You should talk to him and make a last ditch effort.'
> Judge: 'I'll make some noise and let him go.'

They then re-commence the hearing.

> Judge: 'Mr. [], There's a saying: "fool me once, shame on you; fool me twice, shame on me". This is your last chance.'
> Defense Attorney: 'We ask the court for one more chance. Mr. [] has never been violent.'
> Judge: 'This is your last chance. You'll do the max if you mess up again. You know the rules, don't pretend you don't.'

The judge then releases the defendant and re-instates his probation.

After the hearing ended, I asked the judge about this case and why he chose to threaten the defendant and then release him from custody. He expressed a reluctance to incarcerate the defendant, because of his sympathy for the defendant who has had a very difficult life due to parental abuse and neglect. The judge indicated the belief that this juvenile is not fully accountable for his actions, as his crimes are more the manifestation of immaturity and a reaction to prior abuse than responsible, rationally considered actions. The judge stated that instead of incarcerating the defendant, he is trying to achieve 'behavior modification' by scaring him. In this attempt to scare the defendant the judge uses a very hostile tone and raises his voice when he threatens him, denounces his behavior and imputes responsibility to the defendant for any potential future punishment.

With these statements the judge illustrates his beliefs that adolescents are not fully culpable for their crimes, and that most adolescents should receive treatment-oriented intervention rather than strictly retributive punishment. This corresponds to the judge's views of adolescents as less mature and responsible than adults. According to the judge:

> I've come across studies which show that how a teenager thinks and processes information is different than the way that an adult does it and there were brain scan studies, I believe there were MRIs to show there is a difference. I've heard from physicians who spoke in youth-concentrated criminal justice concentrated impaneled speeches where one physician spoke of how the mind is still being formed. So I don't believe that a child under the age of 16 or 17 is equivalent to an adult. They are not fully formed and they are still changing.

> I seek to analyze the crime, the individual, what in their background might be a contributing factor to this conduct, is it anything that can be addressed through some sort of intervention and does the intervention make sense in light of the nature of the offense committed?

This judge identifies himself in public as a 'child-saver', stating that he 'wants to save as many children as possible'.[12] With this self-identification he borrows language from the founders of the juvenile court, who envisioned judges as paternal figures who would prevent delinquency through reform-oriented court intervention. In response to being asked how he would ideally like to handle cases of adolescents he stated:

> . . . if I was going to do social engineering, I suppose what I would do is create a system where the courts would deal with these issues, the Family [Juvenile Court] and the Supreme [Criminal Court], would be permitted access to impaneled and certified experts in child psychology, child behavior, mental health, where assessments could be done that would be state-of-the-art to evaluate the child's cognitive skills and educational level, where we would have the benefit of a full analysis of the capacity of the individual in front of us and access to expertise at will. And then we can do what is appropriate based on a better understanding [of] who is in front of us.

These responses bear striking resemblance to the philosophies stressed by the Progressive-era founders of the juvenile court (Platt, 1977; see also Garland, 1985).

Understanding the judge's attitude toward adolescent offenders helps place his admonishing language in perspective. The judge labels his method a 'carrot and stick' approach to helping adolescents desist from crime. He seeks to offer most adolescents the opportunity to desist from crime without accumulating an official criminal record. His ability to offer YO treatment allows this possibility, as defendants with YO status benefit from sealed cases and do not have official criminal records. But the judge also scares and threatens defendants with harsh punishment if they fail to respond to his efforts to help them with second chances.

The judge's intention of helping defendants by admonishing them distinguishes this treatment from what others have described as degradation. Earlier I refer to Garfinkel's seminal description of courts as degradation ceremonies (1956). Garfinkel describes how courts lower the defendants' status in public and irrefutable ways. In contrast, the judge I study admonishes defendants in an attempt to help them *avoid* a criminal status through further criminal involvement. This attempt is based on individual circumstances, rather than ritualistic.

To some extent, the admonishment resembles Braithwaite's (1989) description of reintegrative shaming, a cornerstone of restorative justice. According to Braithwaite, successful reintegration requires a defendant to acknowledge her offense in front of the victim(s), and to confront the defendant with the wrongfulness of the crime. In later work, Braithwaite (Braithwaite and Mugford, 1994) delineates several features of successful reintegration ceremonies[13] for juveniles. To summarize, shaming is productive and can help reintegrate offenders back into society if: it is focused on condemning the act and not the individual; it does not lock the offender into a deviant identity; it allows for meaningful, open interaction between offender and victim; it is a co-operative process that is shaped by contributions of all involved parties; and it is an individually shaped ceremony rather than ritualistic or pre-determined. Braithwaite and Mugford (1994) claim that by meeting these conditions, restorative justice can be achieved whereby juvenile offenders are restored to non-offender citizen status, and the damage they do can be repaired. Braithwaite's work is echoed by recent research suggesting that correctional rehabilitation is facilitated by offenders' acknowledgment of wrongdoing (Maguire, 1995; for a review see Pratt, 2000).[14]

Like reintegration ceremonies, admonishing adolescents in criminal court is intended to help the offenders, and usually it is a precursor to releasing the defendant into the community. But unlike reintegration ceremonies, the admonishment does not directly involve the victim or the offender's parents. These individuals only are allowed to

influence proceedings indirectly, through statements of the defense attorney or the prosecuting attorney. In addition, admonishment is similar to reintegration in that it is used to spare the defendant from available and more severe sentencing options such as imprisonment. Yet admonishment differs from reintegration because the judge seeks to punish the adolescent with his harsh speech, rather than to treat the defendant.

Case 3: Exceptions to the practice – lost causes

Earlier I state that the judge intentionally invokes this strategy of admonishment during sentencing for most cases. Among the defendants whose sentencing hearings I observed, the judge admonishes approximately two-thirds of them.[15] Defendants who are not admonished have one of three characteristics in common. Some of them show remorse and fully comply with the judge's court orders throughout case processing, which the judge recognizes and encourages during sentencing rather than admonishing the defendant. In a few cases, defendants tell the judge they will plead guilty because they are afraid of a long prison term if convicted, but openly state that they do not admit their guilt; the judge does not admonish these defendants who have not admitted to any wrongdoing. This holds true for cases settled by trial rather than plea bargain as well, though trials are very rare in the court.[16]

The third, and most common, exception to the judge's use of admonishment is when the case is seen as a 'lost cause'. In describing juvenile courts, Robert Emerson (1969, 1981) discusses cases for which 'last resort' sanctions are reserved. These are cases in which the defendant shows repeated non-compliance and exhausts the court's portfolio of less severe sanctions, leaving only incarceration as a viable sentencing option. I observed such cases in this court as well:

> Judge: 'Is there any legal cause why sentence shouldn't be imposed today?'
> Prosecutor: 'No your honor.'
> Defense Attorney: 'No your honor.'
> Judge: 'Before I impose sentence each of you has a right to be heard. Do any of you wish to be heard?'
> Prosecutor: 'No your honor.'
> Defense Attorney: 'No your honor.'
> Judge: 'Mr. []?'
> (The defendant shakes his head 'no'.)
> Judge: 'I reviewed the investigation and sentencing report and didn't find anything in it that I didn't know. Mr. [], you have a prior violent felony conviction. I have already deemed this case a second violent felony conviction. As a second violent felony conviction, I'm sentencing you to five years in jail. Mr. [], you may want to have a chat with your attorney about what it means to be a persistent violent felon. It may be that another conviction would give you persistent violent felon status which would mean a life sentence. Talk to your attorney.'

This concise sentencing hearing is representative of how the judge talks to defendants for whom he prescribes last resort sentences. Despite his youthfulness, this defendant has already used up his second chance, and the judge refuses to grant YO treatment or give the defendant a reduced sentence. More importantly, the judge sentences the defendant to five years in prison rather than admonishing him.

As I report earlier, 71 percent of JO defendants citywide receive Youthful Offender

status (Criminal Justice Agency, 2001). This figure corresponds to my observations in this one youth part. Most cases with any mitigating evidence are given Youthful Offender treatment, and these defendants are admonished by this judge. Mitigating evidence includes factors such as: the defendant following co-defendants rather than leading them (or committing the crime alone), no actual violence having occurred and the defendant having no prior arrest record. The other cases – approximately one-third of the JO cases – either involve a significant prior arrest record or an offense too severe for any potentially mitigating evidence to matter. These cases are lost causes.

Case 4: Cases on the border

In the next example, the judge admonishes a defendant but still sends him to prison. This hearing illustrates a case on the border of being a lost cause. This is a very serious case – the defendant and his accomplice ordered Chinese food to be delivered to an address where they were hiding and waiting to rob the delivery person. The offenders then assaulted and robbed the delivery person, stole his car and tried to escape pursuit of the police. During the attempted escape they drove at high speeds down a city sidewalk and crashed the stolen car into an occupied police car. Despite the very serious nature of the offense – they performed a potentially lethal assault on police officers, endangered the lives of innocent bystanders and physically attacked and robbed a person – the judge spares the defendant from the full punishment reserved for adults convicted of robbery and assault. Acting against the objection of the prosecutor, the judge sentences the defendant to prison but still gives the defendant YO status. The corresponding prison term he receives (a minimum of one and one-third and a maximum of four years) is significantly lower than the potential sentence if not for the YO status (up to a minimum of three and one-third and a maximum of ten years). After asking the defendant details about the offense, the judge continues:

Judge: "Did you get a chance to enjoy the food?"
Defendant: "No."
Judge: "Are you getting enough to eat at home?"
Defendant: "Yes."
Judge: "So what was the point of this?"
Defendant: "We wanted the car."
Judge (derisively): "And a little food to go with it?"
Defendant: "No. We didn't take the food."
Judge: "So if you wanted the car, the car was outside while he is in the building."
Defendant: "Yeah."
Judge: "Why didn't you just take the car?"
Defendant: "Because we took the money, too, then we went out and took the car."
Judge: "So you wanted the money and the car?"
Defendant: "Yes."
Judge: "Did you go into his pockets?"
Defendant: "Yes."
Judge: "Did you take his keys?"
Defendant: "No."
Judge: "Did [co-defendant] take his keys?"
Defendant: "The keys were in the car already."
Judge: "Is your mother working?"

Defendant: “Hah?”
Judge: “Is your mother working?”
Defendant: “Yes.”
Judge: “How would you like two men just like you to meet her in the hallway, [rob] her and choke her, how would you like that?”
Defendant: “I wouldn’t like that.”
Judge: “Why?”
Defendant: “Hah?”
Judge: “Why not?”
Defendant: “Because I don’t want nobody to rob her.”
Judge: “Why? You got no problem with robbing people, what’s wrong with somebody robbing your mother? Is it because he’s Chinese? Why a Chinese delivery?”
Defendant: “I don’t know.”
Judge: “Well, you went in his pockets and you got the car. How much of the idea was yours?”
Defendant: “Half.”
Judge: “I tell you what, if it’s half your idea or one-tenth your idea, it’s all your state prison. You got that math?”
Defendant: “Yes.”
Judge: “And I am going to give you a little more math. Because of the blessing that you were dumb enough to do this when you were fourteen instead of sixteen, you’re only doing one and a third to four. Otherwise you’d have to start at five years and maybe do fifteen. Do you understand that?’
Defendant: “Yes.”
Judge: “You’re some kind of tough guy, Mr. [last name]?”
Defendant: “No.”
Judge: “Are you sure?”
Defendant: “Yes.”

The defendant is spared the full brunt of an adult conviction because he is only 14 years old, and because his co-defendant is the one who actually choked the victim and who drove the stolen car into the police officers. These factors convince the judge to give the defendant YO status and a relatively lenient prison term given the severity of the crime. In contrast, his co-defendant receives a longer prison term and was denied YO status. This case is on the border between ‘salvageable’ and ‘lost’ causes; the offense is too severe for a non-custodial punishment to be appropriate, but the judge still wants to give the defendant a discounted sentence coupled with admonishment.

OTHER HEARING PARTICIPANTS

The above discussion of admonishment during sentencing focuses solely on the judge. This is because the judge has great discretion over sentencing decisions. The ability to give defendants Youthful Offender status allows the judge to prescribe sentences that depart from sentencing guidelines and that are against the prosecutor’s objections. Without Youthful Offender status, the judge must sentence defendants to the statutorily prescribed amount and must abide by the prosecutor’s sentencing agreement.

Elsewhere, however, in describing this same court I have illustrated how during the sentencing phase the courtroom workgroup opens up to include a greater number of individuals than during earlier stages of case processing. During sentencing,

representatives from treatment program agencies or from the department of probation become involved in cases. This expands the courtroom workgroup from the prosecutor/defense attorney/judge triad to which the courtroom workgroup is confined while debating guilt or innocence (Kupchik, 2003).

Within this expanded courtroom workgroup, the judge maintains complete authority with regard to sentencing. As I state earlier, giving Youthful Offender status allows the judge to disregard the prosecutor's wishes, thereby marginalizing the prosecutor from the sentencing process. The other participants – the defense attorney, external program representatives and possibly the defendant – all seek to have a non-custodial sentence imposed. Because they know that admonishment is reserved for defendants given Youthful Offender status with either no prison time or a short prison sentence, they encourage this use of an informal sentencing process. According to one defense attorney:

> Obviously the main perspective being a defense attorney is that you are looking for the judge to accord Youthful Offender status because there are obviously substantial benefits for the person facing criminal charges. So the way you do that is by trying to convince and paint the picture of the youth to the judge to persuade the judge that Youthful Offender status is appropriate.

Dismissal or acquittal are very rare in this court – as I state earlier, 92 percent of JO cases in this county result in conviction (Criminal Justice Agency, 2001). As a result, defense attorneys seek Youthful Offender status and a corresponding lenient sentence. They appear before this judge frequently, and are familiar with his behaviors. Thus, the defense attorneys and program representatives willingly encourage the admonishment of defendants because usually it is coupled with the lenient sentences they seek as resolutions to cases. This co-operation is illustrated by the second case I present earlier, in which the defense attorney requests a second chance for the defendant and the judge announces his plan to admonish and release the defendant ('I'll make some noise and let him go').

CONCLUSION

In this article I describe the use of admonishing language as a judge's strategy for simultaneously communicating defendants' responsibility and youthfulness during sentencing of select cases. The cases selected are those for which the judge seeks to give the defendant a relatively lenient sentence, either without a prison term or with a reduced prison term, but to add a rhetorical punitiveness as an informal sentence enhancement. I demonstrate how the judge's language communicates two potentially conflicting themes: that the defendants are responsible for their behaviors and deserve harsh punishment, and that the defendants are less culpable for their crimes than adults due to their youthfulness.

The unique situation of this youth part and the personality of the judge who presides over it shape this practice of admonishment. This court occupies an awkward place between juvenile and criminal justice; it is formally a criminal (adult) court, but one with 14- and 15-year-old defendants and a special sentencing framework that allows reduced sentences for youth (Kupchik, 2003). Moreover, despite this sentencing

framework the judge complains of insufficient non-custodial sentencing options. The lack of non-custodial options creates a mismatch with this judge's self-proclaimed 'child-saving' philosophy, and his ideas that most delinquent juveniles need therapeutic services rather than imprisonment.

Given this mismatch of available punishments and the judge's philosophy, and the awkward position of the court itself (between juvenile and criminal justice), admonishment has a functional role during the sentencing process. By admonishing defendants, the judge can express the hostility of a community against criminal offenders, attempt to deter the defendants from further crime and yet offer a relatively lenient punishment. It communicates the defendants' responsibility and denounces them for the harm they have caused, but it allows them second chances by sparing them from lengthy prison terms.

Because this practice is in part brought about by this particular judge's personality – he is a dogmatic and dramatic manager of his court – one could question the generalizability of my results. But as I argue, admonishment is deployed as a means of alleviating the tensions caused by prosecuting adolescents as if they were adults. One would imagine that very few judges would be able to ignore the immaturity of 14-year-olds and punish them as if they were fully adult defendants. The admonishment is, in part, an example of how adults speak to juveniles who misbehave more generally. Such treatment might be increasingly common as greater numbers of adolescents are excluded from juvenile courts to be punished in criminal courts that do not have sufficient non-custodial sentencing options. The judge in question may indeed be more prone to dramaturgical excess than many other judges, but the same tendency and practice might be used elsewhere as well. During an interview with the second New York City youth part judge (see earlier description of data), the judge stated that he, too, threatens defendants in a manner reminiscent of the admonishment I describe. When discussing the difficulty of not having suitable intermediate sanctions for adolescents who re-offend, but whom he does not want to send to jail, he stated:

> Is it always jail? No – I give them lectures. Sometimes probation calls me up and says, 'You know, we're having a problem with this kid.' You listen to it and say, well I'm not gonna put him in jail, but bring him in tomorrow. And I'll get his lawyer in here and I wanna try to scare him, you know, give him a lecture, read him the riot act. You know, 'If I get another call like this you're, you know, gonna go to jail', or whatever.

This second judge recognizes the particular problems faced by a hybrid court, and at least verbally endorses the use of 'tough talk' in court.

Though the use of admonishment, as I have observed, is partially a product of a judge's personality, my research shows that it is indeed structured by the particular problems faced when adolescents are prosecuted in a criminal court. This concurs with previous scholarship demonstrating that although judicial activity varies as a function of judges' personalities (Hogarth, 1971; Gaylin, 1974), their actions also are shaped by the institutional settings in which they work and the organizational problems that they face (Emerson, 1969; Balbus, 1977; Feeley, 1979).

Because New York's method of prosecuting adolescents in criminal courts demonstrates increasingly common characteristics of other states' efforts to criminalize

delinquency, there is ample cause to think that the process I find here may be generalizable to other courts as well. The method of transfer to adult court examined here is perhaps the most rapidly proliferating jurisdictional transfer mechanism, as greater numbers of US states have lowered their jurisdictional boundaries between juvenile and criminal courts and excluded greater numbers of offenders from juvenile court by statutory exclusion (Feld, 1998, 2000). In addition, the sentencing scheme in this court – fixed sentencing with room for judicial discretion (by giving youthful offender status) – is similar to that of criminal courts in many other states (see Savelsberg, 1992) and increasingly common with regard to the criminal court prosecution of adolescents (Feld, 1998). Further research that includes a greater number of jurisdictions and judges could address how widespread this practice is.

Acknowledgements
The author would like to thank David Garland, Vanessa Barker, Joseph DE Angelis, David Greenberg, Benjamin Fleury-Steiner, Ruth Horowitz, Richard Sparks, David Gadd and anonymous reviewers for their helpful comments on earlier drafts of this manuscript. Please direct correspondence to aaron.kupchik@asu.edu. This material is based on work supported by the National Science Foundation (SES-0004334) and by the National Institute of Justice (2001-IJ-CX-0005). Any opinions, findings and conclusions or recommendations are those of the author and do not represent the views of either funding agency.

Notes

1 Prior research discusses this trend as a part of a broader movement of increased penalties for criminal offenders overall (Feld, 1999). Transfer policies have proliferated in the USA since the late 1970s, approximately the same period of time during which the condition of mass imprisonment has grown (see Garland, 2000, 2001). And, similar to this broader trend in punishment, transfer policies are couched in terms of responsibility, just deserts and retribution.

2 Note that I use the past tense to describe my data collection methods and when referring to past events, though the following data and court processes are described in the present tense to better illustrate contemporary courtroom dynamics.

3 For further details on this particular court, the statutes guiding court actors and my data collection strategies, see Kupchik (2003).

4 Many judges in this court system conduct hearings with a legal clerk or administrative clerk by their sides, thus attorneys are accustomed to a person sitting next to a judge.

5 Official transcripts may be unavailable in criminal court if the case is sealed and the defendant refuses to allow the researcher access to the transcript.

6 In New York, courtrooms with assigned judges are called court parts.

7 Other bureaus from the DA's office, specialized bureaus, often prosecute sex offenses or gang offenses.

8 To be eligible for youthful offender status, a defendant must be younger than 19 (which all JOs are, by definition) and must not have any prior convictions for any of 17 'designated felony offenses'.

9 The charges include various degrees of murder, kidnapping, arson, robbery, assault, manslaughter, burglary, rape and possession of a weapon.
10 The sum of these figures is 101 percent due to rounding.
11 The defense attorney's status may be announced when she states her organizational affiliation while reading her appearance into the record at the start of each hearing. Or, it may be expressed when the court actors discuss monetary bail, a discussion that often includes the topic of the defendant's financial status and inability to pay a high bail amount.
12 The judge stated this on 12 November 2000 at a meeting held by the judge with all agencies who work in the court.
13 He uses this phrase as an intentional comparison to Garfinkel's work.
14 The judge claims to read the correctional and criminological literature in order to deal more effectively with adolescent offenders. It is possible that he has shaped his use of degradation to conform to currently fashionable correctional practices, but I have no verification of this.
15 It is impossible to quantify precisely this number, because most defendants have several sentencing hearings before the final sentence is imposed, and it can be difficult to recognize a defendant from one case to the next over the course of several months. Thus, defendants may be counted twice, despite my efforts to not do so.
16 According to the judge, over 90 percent of cases are settled by plea bargaining. Though I have no empirical measure, this seems to be a very conservative estimate based on my court observations.

References

Asquith, Stewart (1983) *Children and justice: Decision-making in children's hearings and juvenile courts*. Edinburgh: Edinburgh University Press.

Atkinson, J. Maxwell and Paul Drew (1979) *Order in court: The organisation of verbal interaction in judicial settings*. New Jersey: Humanities Press.

Balbus, Isaac D. (1977) *The dialectics of legal repression*. New Brunswick, NJ: Transaction.

Bortner, M.A. (1982) *Inside a juvenile court: The tarnished ideal of individualized justice*. New York: New York University Press.

Braithwaite, John (1989) *Crime, shame and reintegration*. New York: Cambridge University Press.

Braithwaite, John and Stephen Mugford (1994) 'Conditions of successful reintegration ceremonies: Dealing with juvenile offenders', *British Journal of Criminology* 34(2): 139–71.

Carlen, Pat (1976) *Magistrate's justice*. London: Martin Robertson.

Criminal Justice Agency (2001) *Annual Report on the adult court case processing of juvenile offenders in New York City, January through December 2000*. New York: Criminal Justice Agency.

Emerson, Robert (1969) *Judging delinquents: Context and process in juvenile court*. Chicago, IL: Aldine.

Emerson, Robert (1981) 'On last resorts', *American Journal of Sociology* 87(1): 1–22.

Emerson, Robert M., Rachel I. Fretz and Linda L. Shaw (1995) *Writing ethnographic fieldnotes*. Chicago, IL: University of Chicago Press.

Feeley, Malcolm (1979) *The process is the punishment: Handling cases in a lower criminal court*. New York: Russell Sage Foundation.

Feld, Barry (1998) 'Juvenile and criminal justice systems' responses to youth violence', in Michael Tonry and Mark H. Moore (eds) *Crime and justice: An annual review*, vol. 24, pp. 189–261. Chicago, IL: University of Chicago Press.

Feld, Barry (1999) *Bad kids: Race and the transformation of juvenile court*. New York: Oxford University Press.

Feld, Barry (2000) 'Legislative exclusion of offenses from juvenile court jurisdiction: A history and critique', in Jeffrey Fagan and Franklin E. Zimring (eds) *The changing borders of juvenile justice*, pp. 83–144. Chicago, IL: University of Chicago Press.

Fritsch, Jane and David Rohde (2001) 'Lawyers often fail New York's poor', *New York Times* 8 April: 1, 38.

Garfinkel, Harold (1956) 'Conditions of successful degradation ceremonies', *American Journal of Sociology* 61(5): 420–4.

Garland, David (1985) *Punishment and welfare: A history of penal strategies*. Vermont: Ashgate.

Garland, David, ed. (2000) *Mass imprisonment in the USA: Social causes and consequences*. California: Sage Publications.

Garland, David (2001) *The culture of control: Crime and social order in contemporary society*. Chicago, IL: University of Chicago Press.

Gaylin, Willard (1974) *Partial justice: A study of bias in sentencing*. New York: Alfred A. Knopf.

Hogarth, John (1971) *Sentencing as a human process*. Toronto: University of Toronto Press.

Holstein, James A. (1988) 'Court ordered incompetence: Conversational organization in involuntary commitment hearings', *Social Problems* 35(4): 458–73.

Jacobs, Mark (1990) *Screwing the system and making it work*. Chicago, IL: University of Chicago Press.

Kupchik, Aaron (2003) 'Prosecuting adolescents in criminal courts: Criminal or juvenile justice?', *Social Problems* 50(3): 439–60.

Kupchik, Aaron, Jeffrey Fagan and Akiva Liberman (2003) 'Punishment, proportionality and jurisdictional transfer of adolescent offenders: A test of the leniency gap hypothesis', *Stanford Law and Policy Review* 14(1): 57–83.

Liberman, Akiva, William Raleigh and Freda Solomon (2000) *Specialized court parts for juvenile offenders in New York City's adult felony courts: Case processing in 1994–1995 and 1995–1996*. New York: New York City Criminal Justice Agency.

Liberman, Akiva, Laura Winterfield and Jerome McElroy (1996) *Minority over-representation among juveniles in New York City's adult and juvenile court systems during fiscal year 1992*. New York: New York City Criminal Justice Agency.

Lofland, John and Lyn H. Lofland (1984) *Analyzing social settings: A guide to qualitative observation and analysis*. California: Wadsworth.

Maguire, James, ed. (1995) *What works: Reducing reoffending*. New York: John Wiley & Son.

Platt, Anthony (1977) *The child savers: The invention of delinquency*, 2nd edn. Chicago, IL: University of Chicago Press.

Pratt, John (2000) 'Emotive and ostentatious punishment: Its decline and resurgence in modern society', *Punishment and Society* 2(4): 417–39.
Savelsberg, Joachim (1992) 'Law that does not fit society: Sentencing guidelines as a neoclassical reaction to the dilemmas of substantivized law', *American Journal of Sociology* 97(5): 1346–81.
Singer, Simon I. (1996) *Recriminalizing delinquency: Violent juvenile crime and juvenile justice reform*. New York: Cambridge University Press.
Snyder, Howard and Melissa Sickmund (1999) *Juvenile offenders and victims: A national report*. Pittsburgh, PA: National Center for Juvenile Justice.
Warner, Eric (2000) *The juvenile offender handbook*. New York: Looseleaf Law Publications.
Weber, Max (1968) *Economy and society*. Berkeley, CA: University of California Press.

AARON KUPCHIK is an Assistant Professor of Justice Studies at Arizona State University. He has recently completed his PhD in Sociology at New York University.