

JUSTICE FOR SALE: THE RHETORIC OF FOR PROFIT PROBATION AND
REHABILITATION

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ABSTRACT

JUSTICE FOR SALE: THE RHETORIC OF FOR PROFIT PROBATION AND REHABILITATION

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This work analyzes the rhetoric of for-profit probation and rehabilitation companies in the United States. In particular, this study examines how dichotomies have shifted our social understanding of the word “criminal” and created an environment where a justice system mediated by money can thrive. This study uses Kenneth Burke’s theories of identification and division, Ann E. Berthoff’s theories of dichotomies and dialectic, and Michel Foucault’s theories of power relations and ceremonies of punishment, and focuses on Paulo Freire’s practice of world building and James Porter et al’s practice of institutional critique to find points of intervention that are available to rhetoric and composition scholars. Chapter One argues that Reagan’s revival of the war on drugs reframed addicts as criminals in need of incarceration rather than persons in need of help. That rhetoric created a dialectic framework that made dichotomous points out of criminals and the rest of America. Chapter Two analyzes for-profit probation and rehabilitation companies as rhetorical constructs and examines how rhetorical agency is formed and articulated within those constructs. Further, Chapter Two offers insights from interviews to analyze how communication practices shape what it means to be a criminal in the United States and how they shape what is acceptable in punishing

criminals. Interviews from participants that have been through both for-profit probation and rehabilitation companies, as well as document analysis of house bills, and rhetorical analysis of the ways for-profit companies market themselves to communities and potential employers are utilized to illustrate the gaps and fissures between how companies represent themselves and what their practices are. This study offers a reflection on and analysis of the communication practices of for-profit probation and rehabilitation companies, and is a stepping-stone to the active practice of institutional critique and world building.

INTRODUCTION

Why am I studying the rhetoric of rehabilitation and probation companies? Because, once upon a time, I was wandering the deserts of Las Cruces far away from my home. I had followed school, life, and love there. It pained me to leave, but it was necessary to satisfy the bit of wanderlust that had grown in my partner and I. The downside: I could not be around when those emergencies occur that require a family's support. My sister moved far away too. So, none of us could be there. However, those emergencies tend to follow us wherever we call home.

For my sister, it started with custody battles. Her ex-husband was abusive and mean. For that emergency we could lend support over the phone and during visits. But her reality shifted into medical issues, a strange disease with every symptom and no cure. Diseases of the body quickly shift to diseases of the mind. Tremors turn into depression, turn into seizures, turn into addiction. I was trapped in New Mexico, hearing about how hard things are and how hard they will be. This was not an emergency for the phone. Then, addiction turned to trouble with the law. Only once, but enough.

Of the struggles my sister had, one took over. The custody battle stopped. Medical care stopped (before it really began). Her existence was stalled for over two and a half years. Custody battles and medical testing stalled for over two and a half years. A justice system that defined itself by profit became the sole mediator of her reality. She no longer had access to the healthcare that was so desperately needed. She no longer had access to her children. To be clear, the initial sentence was a year of probation. Two and a half years was the sentence for an inability to pay what was owed to the courts and the probation company.

My sister's story is not an isolated event. There are many who struggle with a corrections system that is mediated by money. One example is Elvis Mann of Alabama, who accumulated nearly \$9000 in accumulated fines and fees since 2006 when he was put on probation for two traffic violations (Human Rights Watch, 22). Thomas Barrett stole a \$2 can of beer from a convenience store and ended up owing over \$1000 in fines and fees to his probation company, and was placed in jail multiple times for failure to pay (35). For-profit probation and rehabilitation companies are a burden for many in the United States. Like private prisons, these companies are tasked with providing a service to the courts while also pursuing profit-margins.

The media and the public are quickly becoming culturally aware of the problematic nature of for-profit prison systems. In 2016, the Department of Justice released an inspector general's report which showed for-profit detention centers to be substantially more dangerous for inmates and correctional officers. One of the factors they analyzed was inmate grievances, which showed 24 percent more in contract prisons at 32.2 grievances per month, compared to 25.3 for state institutions (*Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, 22). In response to the report, the Obama Administration rolled out a five-year plan to stop holding federal detainees in private prisons altogether.

However, there is less attention being paid by the public, and the media, to similar probation companies and rehabilitation facilities. Are these facilities effectively serving the people they are trying to rehabilitate? There is an asymmetrical power dynamic between these companies and the publics they are supposed to serve. The companies hold power, and their focus is profit. For-profit probation and rehabilitation

companies operate under the guise of a rhetoric of rehabilitation. They interact with courts and communities with promises of expedient, efficient, and cost-effective care for those who need it most. However, as rhetoric and composition scholars, it is imperative that we look for those gaps where the rhetoric of rehabilitation is at odds with the ethics of a business. Profit-based and private sector probation and rehabilitation companies deploy different rhetorics for the community, the courts, and for offenders. This study examines the varied rhetorical constructs of a for-profit justice system and looks at points where the representation of the system is at odds with its practices. This study builds on and contributes to the rhetorical theories of power, institutions, race, class, and control. Another major part of the following chapters is the exploration of how profit became a motivating factor in the justice system and how the rhetorical constructs of the system have shifted. This study looks for rhetorical interventions that can be made to these institutions to shift the power dynamic and bring focus back to rehabilitation.

Scholars outside of Composition and Rhetoric are addressing the rhetoric of the Prison-Industrial Complex, U.S. policy, and probation head on. For instance, Sociology Professor Michelle Phelps examines the change in U.S. policy makers' rhetoric about prisoner rehabilitation in contrast to actual change in practices since the 1970's. Similarly, Mona Lynch, Professor of Criminology, discusses the rhetoric of rehabilitation in parole discourse arguing that the rhetoric of re-introduction into functioning society is not reflected in policy and practice. Likewise, the members of Prison Communication, Activism, Research, and Education (PCARE) co-authored a call to action in 2007 against the prison-industrial complex, stating: "As communication and cultural studies scholars, we are distressed that this unprecedented expansion of the US prison system

has taken place with little public discussion and scholarly analysis” (402). PCARE operates under the premise that “when we empower the incarcerated to communicate, their lives are transformed... Communication scholars and practitioners have an important role to play in the struggle to fight our nation's race to incarcerate and work toward alternative responses to crime” (p-care.org). This call to action does not only apply to communication scholars. Composition and Rhetoric scholars should be similarly called to action against the prison-industrial complex.

Action around this issue in our field could grow out of conversations in community and public rhetorics. For example, Ben Kuebrich writes about the rhetorical strategies available to local neighborhood authors when engaging with police issues and conditions of asymmetrical power. He urges compositionists to take a direct, but careful role in community organizing to address police behavior. He argues that the burden of change in public dialogue between the police and local communities often falls upon the residents. The police do not acknowledge the need to correct their own behavior (*White Guys Who Send My Uncle to Prison*, 582). Kuebrich argues that composition scholars should study how to “push the boundaries of public speech,” while still deferring to citizens’ own assessment of the risks and benefits involved in speaking out (580,583).

Linda Flower in *Community Literacy and the Rhetoric of Public Engagement* argues for social cognitive rhetoric, located within the needs of the community, which would provide “a space for embracing difference in acts of collaborative meaning making” (99). She documents the Community Literacy Center in Pittsburg, and argues that it is a powerful rhetorical model of community engagement for marginalized and

privileged speakers alike. Ellen Cushman also engages with community rhetorics, but focuses on how a rhetorician can be an active participant in community intervention. She positions the rhetorician as an agent of social change outside of the university. Her scholarship focuses on becoming a part of a community in order to help affect change within that community. She speaks out against the social and physical isolation of universities from the communities in which they are located and argues that “the social isolation of theorists in the academy from people in communities... exclude[s] many of the people [they’re] trying to empower for the sake of positing... liberating ideas” (Rhetorician as Agent of Change, 24). Such studies about agency, social change, and asymmetrical power dynamics are important to answering the question: Who is being denied access to justice, and why? However, these scholars tend to focus on the publics around institutions, not the institutions themselves.

An analysis of for-profit probation and rehabilitation systems is important for rhetoricians because, as Paulo Freire states, to name the world is to know the world (Pedagogy of the Oppressed, 88). In naming and knowing the world, we can begin to look for rhetorical interventions. Further, through this rhetorical work, we can articulate how rhetorical agency is formed and enacted in these institutions. The next section of this chapter will give a quick overview of how for-profit probation and rehabilitation became prevalent here in the United States. After that I examine the theories of Burke, Berthoff, Foucault, and Freire to provide a theoretical framework for examining rhetorical structures within the for-profit justice system. The next section describes the methodology for the study. Finally, the introduction ends with an overview of the rest of the thesis’s structure.

Why For-Profit Probation and Rehabilitation?

The Probation Act of 1925 gave courts the power to suspend the imposition or execution of a sentence and place defendants on probation. Further, the Act authorized courts to appoint a salaried probation officer to the defendant. The probation system has historically been used to suspend part or all of the punishment for misdemeanor cases. In lieu of jail time, an offender would instead meet with a probation officer on a regular basis and demonstrate adherence to court-mandated benchmarks of good behavior. The purpose of the Probation Act was to give courts the flexibility they need to deal with low-level offenders who do not belong behind bars. However, with Reagan's revival of the war on drugs in 1982, local governments and courts lacked the financial and institutional resources to maintain probation for misdemeanor drug offences.

Michelle Alexander describes another aspect of Reagan's revival of the war on drugs. She argues that the war on drugs was meant to replace Jim Crow Laws. Alexander states that America effectively maintained racial segregation and division through the war on drugs. As Jim Crow laws were overturned, and overt racism was becoming less acceptable, there was still a strong racial divide based on a need for a racial caste system that maintained power structures in America. She describes how the War on Drugs quickly became the War on Crack, which was more prevalent in impoverished and minority populations. The narrative of the war on crack made young black men consubstantial (A is identified with B and is therefore consubstantial) to criminals. This war saw a largely disproportionate number of minorities arrested for drug related crimes. Reagan's war on drugs created criminals and the need to punish them within our justice system.

In response to the lack of resources for misdemeanor probation, private-sector companies made a bid for these services in the early 1990's. Many states were left with few options: They could put potential probationers in jail, let them go, or outsource their probation to a private company. Prisons were (and still are) overcrowded and the rhetoric of the war on drugs made it difficult to simply let potential probationers go. Therefore, the most viable option available to many local courts were private sector companies. Private probation companies have grown steadily since the 90's. These private companies, as well as much of state run probation, is offender funded. In an offender funder model, courts and local government are not financially responsible for the cost of probation. Private probation companies are offering their services in exchange for the right to charge offenders for them. According to a report published by Human Rights Watch in February of 2014:

what many of [these companies] are really selling—and what many courts are really in the marker for—is a particularly robust form of debt collection that can be billed to the debtors themselves... Accumulated fines and costs can easily stretch into the thousands of dollars and low income misdemeanor offenders often struggle to pay what they owe. (*Profiting from Probation*, 13-14)

Offender funded probation can, and often does, shift the focus from the rehabilitation of offenders to debt collection. Similar to probation, people convicted of minor drug offences can be sentenced to a rehabilitation facility as opposed to jail time. There are also limited resources for state funded drug and alcohol rehabilitation facilities. So, much like with probation, local governments and courts often turn to private companies for court-mandated rehabilitation.

The problems of a for-profit justice system can be addressed in part through rhetoric. Institutions are man-made rhetorical constructs that can be changed. They are not unwavering monoliths. Changing the language of institutions, be it in policy, representation, or in interactions, changes their fundamental structure. The next section will lay some of the theoretical framework that informs the rest of my analysis through this study.

Rhetorical Implications

Kenneth Burke describes how humans, being symbol using creatures, purposefully and rhetorically endow ourselves and other people with traits. We do this in order to identify or dissociate ourselves with certain groups. For Burke, the process of identification is a way to confront division. However, identification can also further division because in order to identify in some ways, we have to de-identify in others. Burke suggests that rhetoric can and should serve as a bridge between identification and division. Dialectic, a method for auditing the truth between two positions, can occur between two differently identified groups via rhetoric. While rhetoric can serve to “bridge the gap” of meaning and understanding between groups, the perversion of rhetoric serves to expand that gap. For Burke, the worst perversion of rhetoric is war. It is the ultimate breakdown of rhetoric and the point in which we are most divided in dichotomous points.

One way that we as rhetoricians can alter the need to scapegoat and discourage an “us versus them” mentality is to problematize dichotomies. Ferdinand de Saussure argued that meaning making through language occurs through signified, signifier, and signs. An example from the criminal justice system is addiction, which would be the

signified. If we use the signifier “criminal” for addiction, then we throw addicts in jail. If instead we use the term “sickness,” we put addicts in rehabilitation facilities. Jacques Derrida, however, argues against meaning making in language through formal structures. A proponent of deconstruction, Derrida argues that communication is reduced by the limits of context, but context can never fully be determined. Therefore, he might argue that it is impossible to communicate and understand what it means to be criminal, addicted, or sick because criminal/law abiding, addicted/sober, and sick/healthy all exist in the same point. Their context can't be determined and their dichotomous relationship is impossible.

As we engage in identification, we construct realities with clearly defined A's and B's, but those realities are intellectual constructs—products of our imagination. Anne Berthoff argues that dichotomies are a logical construction and that they do not exist in nature. She uses the shoreline to emphasize her point:

But what about sea and land? Surely one is really, actually wet and the other is really, actually dry... wet and dry constitute a dichotomy and so do sea and land, as abstract—or mythical—categories, but where does one end and the other begin, at the shore? There is no line in nature that establishes that difference.

The fact is, rather, that land and sea constitute a dialectic. (14)

Dialectic is an audit of meaning between two points. Similarly, dialectic occurs between people or groups of people. Institutions such as for-profit probation and rehabilitation companies are rhetorically constructed through the dialectic that occurs between all of the identified points in those institutions. For example: There is an audit of meaning that occurs between a local court system and private-sector probation companies. This

dialectic exists in contracts and regulatory frameworks. Similarly, there is an audit of meaning that occurs between probation officers and probationers. Dialectic serves as an audit of meaning between points in hierarchical power relations.

Michel Foucault argues that power is not an autonomous thing that can be taken and kept. Instead he discusses the concept of power relations. He defines power as “a more-or-less organized, hierarchical, coordinated cluster of relations... Power is relations; power is not a thing” (Contemporary Perspectives, 352). Power as a thing is a false binary. To construct it as such implies that one can have power, while another does not. However, Foucault understands power as a “characteristic of all relationships” (352). It is through dialectic that we engage in the meaning making/auditing practice of understanding power relations. Dialectic cannot occur without the rhetorical practices of identification, definition, and casuistry.

Paulo Freire describes a similar process of meaning making/auditing in *Pedagogy of the Oppressed*. According to Freire “To name the world is to know the world.” For Freire, meaning making is synonymous with world building. We construct the world around us by naming and negotiating. World building occurs in power relations. Two people identify themselves in dichotomous points, negotiate the power relation between them through dialectic, and define what the power relation means to the world around them. This theoretical framework allows rhetoricians to analyze hierarchical power relations and begin to shift those points towards more productive outcomes. Rhetoricians can shift how points in a perceived binary are defined and alter the dialectic that can occur there. For example, an “addict” could shift from a criminal in

need of incarceration, to a person in need of rehabilitation. In order to begin this type of work, we need a critical methodology that examines institutions as rhetorical constructs.

Methodology

The focus of this study is examining for-profit probation and rehabilitation systems as malleable rhetorical constructs on two levels: macro and micro. The macro level looks very broadly at the companies themselves and how they interact in their respective environments. Analysis on a macro level includes analyzing the laws that make space for profit-based probation and rehabilitation. It includes analyzing the dialectic that occurs in power relations in privatized justice systems. Analysis on the micro level involves looking at the seemingly small interactions that compose a company's day-to-day existence. Micro-level analysis includes looking at the documents that actually circulate in the office/facility setting of for-profit probation and rehabilitation companies. It also includes analysis of real interactions between those that are meant to be served by these companies and those that are employed by these companies. In this study, the examination of macro and micro level structures in the for-profit justice system draws on the theories of Freire's world building and Porter et al's institutional critique. James E. Porter, Patricia Sullivan, Stuart Blythe, Jeffrey T. Grabill, and Libby Miles describe the process of institutional critique "as one that "can lead to an examination of micro practices within the macro structures of an entire industry, which over time (and with the cooperation of others) can produce rhetorical and material change" (*Institutional Critique*, 627). Porter et al argue that scholarship alone is not institutional critique. Theory needs to meet action, thus creating an intervention. Similarly, Freire argues that world building is meant to be praxis: a combination of

reflection and action. This study primarily focuses on the first steps of institutional critique and world building: theory and reflection. The conclusion will suggest points of future action and intervention.

The idea of taking actions and finding rhetorical interventions in our justice system is daunting. However, institutions are not monoliths. Like history, they are rhetorical constructions that can be altered (Institutional Critique, 611). Through an analysis of world building and examination of institutions we can find micro-level points of rhetorical intervention. Those are the points through which we can foster change. As rhetoricians we can investigate these institutions on a micro level and look for “gaps or fissures, places where resistance and change are possible” (630). Porter et al describes gaps and fissures as points in the organizational structure of institutions that are discursive and can be expanded/exploited for positive change. This includes ambiguities and mismatches in terms or policy (615, 631). An example in private sector probation companies would be addressing the way the word “client” is used in different interactions. Probationers are referred to as “clients” when directly interacted with. However, they are referred to as “offenders” when private companies interact with court systems. Using the term “client” in all interactions to refer to probationers is one way that rhetoricians can suggest positive change in privatized justice systems. It is in similar gaps that rhetoric meets and becomes activism.

In order to explore world building and institutional critique on a micro level, this study utilizes unstructured interviews and expertise from people that have gone through these institutions. Unstructured interviews do not follow a set format, but instead allow for questions based on the participant’s responses. For these interviews, I prepared

around a dozen open-ended questions and asked follow up questions in a conversational manner. Andrea Fontana and James H. Frey argue that “unstructured interviewing can provide greater breadth than do the other types given its qualitative nature” (705). This study incorporates narratives through polyphonic interviewing, “where the voices of respondents are recorded with minimal influence from the researcher and are not collapsed together and reported as one through the interpretation of the researcher” (709). The questions asked in this study are open-ended, experiential, and directed at discovering what the respondent considers important parts of their narrative.

One reason I interview respondents that are no longer in these institutions is because the risk to them is minimized. Also, respondents that have been through the entire system will have an entire narrative, as opposed to someone entrenched at some level of the system. In this way, the study can look for locations where change can take place--for points of rhetorical intervention. The three interview participants to which I had access all have mixed experiences of both state and private company probation and rehabilitation. However, the discourse is similar in justice systems that are concerned with creating revenue, whether it is for the state, or private sector interests.

Beyond interviews, this study analyzes the documents that circulate in and around for-profit probation and rehabilitation companies. Further, the study looks at the macro level rhetorical framework as well as the laws that make space for corporatism in our justice system. The law and rhetorical framework analysis are cross referenced with the interview narratives in order to find the gaps where rhetorical intervention can be made. The documents are readily available and relatively consistent for for-profit

probation companies. However, I found that for-profit rehabilitation companies varied greatly in their policies and representation. This variance is based somewhat on geographic factors, but primarily based on the funding available to the facility.

Chapters Overview

Chapter one, “Criminal Binaries: How Dichotomies Pave the Way for a Justice System Mediated by,” is a historical, macro level overview of the rhetorical ecology that makes space for profit based probation and rehabilitation. Chapter one focuses on how the rhetorical framework of the war on drugs has made space for a justice system concerned with profit. This chapter situates for-profit justice within a deeper historical and rhetorical framework. It gives a deeper overview of the history of for-profit probation and rehabilitation and the economic factors that have made it a viable solution for local governments and courts. It is an analysis of the dialectic that occurs between corporate interests and the justice system. Ultimately revenue should not be a driving factor in our justice system, but the first step to altering that reality is to identify how it came to be.

Chapter two, “To Take on Monoliths: The Cost of Rhetorical Agency in For-Profit Probation and Rehabilitation,” explores world building and institutional critique on a micro level, utilizing interviews and expertise from people that have gone through these institutions to explore how rhetorical agency manifests in for-profit probation and rehabilitation institutions. The narratives of the interviews are contrasted with the narratives told by the companies themselves. For-profit justice systems represent themselves with a rhetoric of rehabilitation. However, the practices of these systems are mediated by money. This chapter answers the question: How is rhetorical agency gained and expressed in a justice system that is motivated by profit?

The conclusion examines the question: Barring the ability to change our justice system entirely, what are some of the micro-level changes that can be made to for-profit probation and rehabilitation companies? This section looks for ways to make minor policy changes that would make them more effective for the populations they are supposed to serve. Also, this chapter identifies and articulates some resources that could be made available to assist those going through the for-profit probation and rehabilitation systems. Finally, this section gives some implications for further research into the dialectics that occur in our for-profit justice system, particularly in the realm of for-profit probation and rehabilitation.

CHAPTER 1: CRIMINAL BINARIES: HOW DICHOTOMIES PAVE THE WAY FOR A JUSTICE SYSTEM MEDIATED BY PROFIT

Binaries do not exist outside of our imaginations. Nevertheless, we construct them. We do so to make sense of the world around us, to define, in simple terms, how reality works. Binaries can allow us to identify ourselves in a certain way, and then to confront the implications of division. Productive binaries should look between two points and considers all of the identifications there. They should strive to step outside the simplicity of point A and point B and to expand upon our understanding of reality. Binaries are the beginning of a conversation about all of the things in between.

Unfortunately, binaries are often stepped in, and can serve to reinforce, prejudice. What could potentially be a dialectic between two perceived points instead becomes us versus them. The perceived binary instead becomes an oppositional dichotomy. Though it may often seem easier for the human mind to conceive of simple categories in opposition, these dichotomous relations disregard the matrix of possibilities and realities between point A and point B. To assume simple dichotomies ignores the negotiation, or dialectic that occurs between those points.

Our justice system enforces dichotomies, as opposed to encouraging dialectic. A justice system concerned with revenue needs a rhetoric of us versus them to continue operating. It depends on the American people's ability to distance ourselves from "offenders" and "criminals." This distance makes possible a mentality of "You do the crime you do the time," or "You do the crime, you pay the fine."

An example of the sort of dichotomous rhetoric that reified the division of criminal and law abiding citizen for the American people is the War on Drugs. On June 17, 1971,

President Richard Nixon declared war in a *Special Message to the Congress on Drug Abuse Prevention and Control*. His speech discusses the supply and demand of illegal drugs:

The laws of supply and demand function in the illegal drug business as in any other. We are taking steps under the Comprehensive Drug Act to deal with the supply side of the equation and I am recommending additional steps to be taken now. But we must also deal with demand. We must rehabilitate the drug user if we are to eliminate drug abuse and all the antisocial activities that flow from drug abuse.

This section of the speech begins with a dichotomous relationship: Supply and demand. However, the relationship was distanced from the American people by its illegal and illicit nature. What's interesting about Nixon's rhetoric is that it builds distance between the drug-dealer and the American people, while emphasizing the closeness of the drug-user. Nixon's rhetoric created a strong division between the "supply" and the American people. However, his rhetoric humanized the "demand" as a group that needed rehabilitation.

Nixon outlines a plan for prevention and rehabilitation through a Special Action Office of Drug Abuse Prevention. However, the American people have historically identified most strongly with the rhetoric of binaries, us versus them, war. His speech mentioned war three times:

- "To wage an effective war against heroin addiction, we must have international cooperation."

- “In our history we have faced great difficulties again and again, wars and depressions and divisions among our people have tested our will as a people- and we have prevailed.”
- “We have fought together in war, we have worked together in hard times, and we have reached out to each other in division--to close the gaps between our people and keep America whole” (Nixon).

The headlines read “Nixon’s war on drug addicts,” (*The Guardian*) and “Nixon calls war on drugs” (*The Palm Beach Post*). While Nixon’s speech called for rehabilitation, the rhetoric of war created a strong dichotomous relationship that was approachable for the American people. The rhetoric of war implied that the American people would be fighting, not rehabilitating. The rhetoric of war created a dialectic framework that made dichotomous points out of criminals and the rest of America.

Though rhetorics like Nixon’s pit people against each other, dichotomies are not inherently corrosive. The dialectic that can occur between a person who is addicted to drugs and a rehabilitation worker is different than that which can occur between a criminal drug user and a law enforcement worker. The potential dialectic is framed by how we define binary points. Ann E. Berthoff in her essay “Killer Dichotomies *Reading In/Reading Out*,” describes dichotomy as a servant of dialectic. She describes a second servant of dialectic: “Casuistry—the art of stretching words and manipulating categories” (*Farther Along*, 13). She uses the term dialectic as I.A. Richards defined it: “the continuing audit of meaning” (15). Therefore, dialectic is a form of world-building. It is the audit of meaning, a negotiation of reality.

Meaning making is transactional. In meaning making and world-building, there is a third servant of dialectic, which Berthoff calls “definition.” She argues that definition should be a dialectical act: “Whether or not a whale is a fish depends on our taxonomy: we must develop subtler criteria for definition because we are not just implicitly classifying but are forming a concept—and that is a dialectical act” (14). Before we can adapt categories and negotiate between points, we must define those points. Further, we situate ourselves to those points, what Kenneth Burke calls “identification.” We work from our perceived points to identify and negotiate reality. If the points occur within the rhetoric of war, the negotiation of reality between binary points is limited to war-like terms.

In the dialectical act of defining and negotiating binaries, we must be careful of concrete points. We cannot become overly attached to our perceived binaries, dichotomies, and definitions, because they would serve to “mask the problematic, to reify the tenuous and abstract, to override the ambiguities that should, rather, serve as ‘the hinges of thought’” (15). The more strictly we define points A and B, and the less we allow for ambiguity, the more we constrict the dialectic that can occur between those two perceived points. This is not to say that the lack of ambiguity connotes a perversion of dialectic, but instead that one should be aware of the rhetorical choice that is made when constricting dialectic. Sometimes we necessarily make that choice, other times it is a choice made for us.

I should reiterate that meaning making is transactional. Definition, Casuistry, binaries, and dichotomies are functional, logical constructs through which we engage in transactions and negotiate meaning as symbol using creatures. We negotiate meaning

with the world around us. Also, as Burke would argue the self as audience, we negotiate meaning with ourselves. However, there are negotiations that occur outside of ourselves. We are born into negotiations of country, race, gender, sexuality, morality, and so on. We can engage in these negotiations, in some ways, for ourselves and with the world around us, but the transactions were occurring well before we arrived. Burke discusses this concept in *The Philosophy of Literary Form*:

Imagine that you enter a parlor. You come late. When you arrive, others have long preceded you, and they are engaged in a heated discussion, a discussion too heated for them to pause and tell you exactly what it is about. In fact, the discussion had already begun long before any of them got there, so that no one present is qualified to retrace for you all the steps that had gone before. You listen for a while, until you decide that you have caught the tenor of the argument; then you put in your oar. Someone answers; you answer him; another comes to your defense; another aligns himself against you, to either the embarrassment or gratification of your opponent, depending upon the quality of your ally's assistance. However, the discussion is interminable. The hour grows late, you must depart. And you do depart, with the discussion still vigorously in progress.

Burke's parlor analogy is a way to consider dialectic as it pertains to interactions that are mediated by history. This study engages with the rhetoric of for-profit probation and rehabilitation companies, and also must engage with the history of those companies.

The rest of this chapter explores how corporate interests found their way into the parlor and have negotiated crime and punishment in the United States. In this chapter, I

argue that the war on drugs paved the way for current for-profit justice models. This chapter looks at the historical macro-level rhetorical framing that has helped shape our justice system as we know it today. I will examine Nixon's initial rhetoric of the war on drugs, and then the rhetoric of Reagan's revival of that war. Finally, this chapter will look broadly at some of the theories of Foucault in concert with the Nixon and Reagan era drug wars. Foucault's ceremonies of punishment provide a framework for understanding why we find it acceptable to punish the pocketbook in a for-profit justice system.

Identification and Division: How Reagan's Dichotomies Created Criminals

Reagan's revival of the war on drugs brought millions of offenders into the prison system. Federal law enforcement agencies received a massive increase in funding, but the prison system could not keep up. Prison overcrowding and lack of funding became overwhelming and the private sector stepped in. The Corrections Corporation of America (CCA) was established in 1983 and awarded a contract in 1985 for a facility in Hamilton County, Tennessee. Other startups and established corporations began entering the prison business in 1987. Today there are private prisons in 30 states in the US (Sentencing Project, 2).

Division is a useful tool for a justice system that needs to produce and maintain profit. The war on drugs defined drug offenders as criminals and put them in a dichotomous relationship with the law-abiding Americans. Further, the war on drugs created criminals. It created a need for more prison facilities and probation officers, which allowed corporate interests to negotiate within the justice system. Justice became framed in part by revenue. The for-profit justice system is tasked with producing profit and is thus invested in maintaining profit centers. The rhetoric of the war on drugs

emphasized the division between law-abiding Americans and drug criminals. That emphasis on division makes it more likely that the system can maintain offenders as profit centers.

Binaries are necessarily rooted in identification and division. Burke's *A Rhetoric of Motives* describes identification and consubstantiality:

A is not identical with his colleague, B. But insofar as their interests are joined, A is *identified with B*. Or he may *identify himself* with B even when their interests are not joined, if he assumes that they are, or is persuaded to believe so... In being identified with B, A is "substantially one" with a person other than himself... A [is] "consubstantial" with B. (20-21)

Identification is another logical tool through which we negotiate reality as symbol using creatures. It is valuable because it can be used to "confront the implications of division... Identification is compensatory to division" (22). Identification is, at its best, a cooperative act. However, the war on drugs identifies law enforcement and law-abiding citizens with a moral superiority over "offenders" and "criminals." Offenders are rhetorically endowed with qualities that allow us to go to war with them. Interestingly enough, Burke identifies the ultimate disease, or perversion, of cooperation: *war* (22).

The rhetoric of war does little to confront the implications of division. War is combative; it reinforces strong dichotomies and is the breakdown of the dialectic that can occur between those dichotomies. This rhetoric is especially dangerous when the enemy is ambiguous. An ambiguous enemy is a concept that can be adapted and manipulated. An example would be President George W. Bush's war on terror. Terror is an ambiguous and undefined enemy, which brought American troops into Afghanistan

and Iraq to fight terrorist organizations and the regimes accused of supporting them. People in positions of power create dichotomies, such as “Either you’re with us, or you are with the terrorists” (Bush). Further, those in power can use casuistry to shape and manipulate definitions. Through this perversion of the dialectic process, a person can push agendas. This perversion of the dialectic can also be seen in the rhetoric of the war on drugs, beginning with Nixon and continuing with Raegan.

Nixon’s war on drugs was not entirely war bent. His solution was two-tiered and his focus was stemming the tide of heroin addiction. He mentioned war in a different way during his speech: “While by no means a major part of the American narcotics problem, an especially disheartening aspect of that problem involves those of our men in Vietnam who have used drugs.” Nixon’s announcement of the war on drugs came at the height of American protest about the Vietnam War. It was the war that “we have fought together in... and reached out to each other in division—to close the gaps between our people” (*Special Message to Congress*, June 17, 1971). Nixon’s focus on the rehabilitation of Vietnam veterans was a rhetorical move to garner support from the American people. It focused on the implications of division.

However, Ronald Reagan’s administration redefined the terms of the war on drugs. The difference between Nixon’s war on drugs and Reagan’s was that Nixon’s rhetoric still humanized the addict. Nixon pushed for rehabilitation, because the “demand” side of the equation was still on the side of the American people. However, Reagan’s rhetoric saw the addict as a criminal, opposed to the American people. He would shift the focus away from rehabilitation. Reagan shifted Nixon’s rhetoric of the war on drugs when he became president of the United States. On June 24th, 1982, he

reiterated the rhetoric of war while signing an executive order concerning federal drug abuse policy functions:

We can put drug abuse on the run through stronger law enforcement... We're rejecting the helpless attitude that drug use is so rampant that we're defenseless to do anything about it. We're taking down the surrender flag that has flown over so many drug efforts; we're running up a battle flag. We can fight the drug problem, and we can win. And that is exactly what we intend to do. (Reagan)

The difference in Reagan's rhetoric of war versus Nixon's was the focus on law enforcement. Reagan's rhetoric gave the American people a war worth fighting, a war that could be won. He focused America on a new dichotomy of criminal addicts versus good citizens and law enforcement.

In a radio address in October of 1982, Reagan would officially declare his administration's war on drugs. He told the American people that "Previous administrations had drug strategies, but they didn't have the structure to carry them out. We now have that structure." The "structure" was his plan to coordinate the 9 departments and 33 agencies of Government in a "planned, concerted campaign." Reagan's administration was rallying the troops. His call to action:

The mood toward drugs is changing in this country, and the momentum is with us. We're making no excuses for drugs—hard, soft, or otherwise. Drugs are bad, and we're going after them. As I've said before, we've taken down the surrender flag and run up the battle flag. And we're going to win the war on drugs. (Reagan)

The "surrender flag" was previous administrations' failure to crack down on drugs "hard, soft, or otherwise." Rehabilitation took a backseat to enforcement because it was time

for America to “run up the battle flag.” Both Nixon and Reagan did the rhetorical work to cement binary relationships in the war on drugs. Reagan’s rhetoric focused on dichotomies and law enforcement, while Nixon needed more focus on rehabilitation to garner support.

An especially important relationship that existed in both Nixon and Reagan’s speech was what Nixon termed as the “supply and demand” of drugs. This relationship can be reconfigured to point to two potential solutions for the problem of drugs in America: enforcement and rehabilitation. Nixon clearly identified the binary of drug dealer/drug user, and identified a solution for both. For the drug dealer, grower, importer, he identified law enforcement as the solution. For the drug user, which included Vietnam veterans, he identified rehabilitation as the solution. An important consideration about the way Nixon constructed his binary of drug dealer/drug user for the American people is that it is a them/them binary. He did not force the American people to identify on one side of the relationship.

Reagan, on the other hand, shifted the focus from drug dealer/drug user, to a dichotomous relationship between addict and law enforcement. His rhetoric transformed the binary from them/them to us versus them. Reagan forced the American people to identify with law enforcement and to distance themselves from criminals and addicts. By focusing on the criminalization of drugs, he gave the American people something to attack, to win against. He made those that are struggling with drugs consubstantial with criminals, offenders, “an especially vicious virus.” This is most obvious with his rhetoric against the crack “epidemic” in our inner cities and his push for mandatory minimum sentences for possession. Reagan shifted what it meant to be a criminal in the war on

drugs. It was not just those that were providing the drugs, but also those that were using them.

Reagan's casuistry further constrained the dialectic that could occur in the war on drugs. Shifting the binary to us versus them made law enforcement the viable and preferred solution over rehabilitation. The product of this shift is that budgets for federal law enforcement agencies grew while the budgets for agencies responsible for drug treatment, prevention, and education shrank. These budget shifts are explained by Michelle Alexander in *The New Jim Crow*:

Between 1980 and 1984, FBI antidrug funding increased from \$8 million to \$95 million. Department of Defense antidrug allocations increased from \$33 million in 1981 to \$1,042 million in 1991.... By contrast, funding for... the National Institute on Drug Abuse, for example, was reduced from \$274 million to \$57 million from 1981 to 1984, and antidrug funds allocated to the Department of Education were cut from \$14 million to \$3 million. (49-50)

Reagan's renegotiation of the war on drugs shaped incarceration in the United States for decades, and continues to shape how the justice system works in the United States. Alexander writes: "As law enforcement budgets exploded, so did prison and jail populations... More than 2 million people found themselves behind bars at the turn of the twenty-first century" (58). This increase in prison and jail populations are a direct result of how the Reagan Administration renegotiated the war on drugs. Alexander continues: "More than 31 million people have been arrested for drug offenses since the drug war began. To put the matter in perspective, consider this: there are more people in prisons and jails today just for drug offenses than were incarcerated for *all* reasons in

1980” (60). I do not suspect that Reagan’s end-game in renegotiating the terms of the war on drugs was to increase our prison population. In the next section I examine Michelle Alexander’s argument on the purpose behind Reagan’s rhetorical choices in the war on drugs.

Consubstantiality: The Binary Behind the Binary

The us versus them binary that Reagan created with his drug war was simply a re-enforcement of an already existing hostile dichotomy based on race. Alexander argues that Reagan mastered a rhetoric that exploited racial hostility or resentment for political gain without making explicit references to race (48). Reagan’s presidency was partially built on racial hostility. Alexander argues that, “At the time he declared this new war, less than 2 percent of the American public viewed drugs as the most important issue facing the nation... [but the] drug war from the outset had little to do with public concern about drugs and much to do with public concern about race” (49). He couched his racial rhetoric in the war on drugs and used a hostile dichotomy to identify himself with disaffected whites and win the presidency.

This dichotomy was further re-enforced with Reagan’s Anti-Drug Abuse Act of 1986, which saw far harsher “punishment for the distribution of crack—associated with blacks—than powder cocaine, associated with whites” (53). The act mandated a minimum sentence of 5 years without parole for possession of 5 grams of crack cocaine. It mandated the same sentence for possession of 500 grams of powder cocaine. Crack and cocaine are essentially the same substance, except for the fact that crack is processed with sodium bicarbonate and water, and can be vaporized and inhaled (drugpolicy.org). This allows a person to get an intense high, while using

significantly less of the drug, thus making it possible to sell in small quantities for cheap. Alexander points out that “Joblessness and crack swept inner cities precisely at the moment that a fierce backlash against the Civil Rights Movement was manifesting itself through the War on Drugs” (51). Reagan used the crack “epidemic” to embolden his war on drugs and further a binary of racial hostility.

His rhetoric not only made criminals consubstantial with addicts, but also with inner cities and black people. Reagan’s rhetoric successfully renegotiated and redefined two existing binaries. He redefined Nixon’s them/them binary of supply and demand, to an us/versus them binary of law abiding citizens and law enforcement, versus criminals and addicts. He also renegotiated an existing binary steeped in post Jim Crow racial hostility under the guise of his war on drugs. In making so many people consubstantial with criminals, Reagan’s war on drugs created a lot of criminals. Further, he created the need to punish a lot of criminals, so much so that our prison system could not keep up. Reagan’s dichotomies created the need for new forms of acceptable punishment. Punishment that has taken the form of fines and fees in a modern for-profit justice system. The next section of this chapter will explore how we moved from punishment of the body, to punishment of the soul, and then to punishment of resources.

Foucault’s Ceremonies of Punishment: Why Do We Punish Pocketbooks?

Foucault discusses the “spectacle of the scaffold” in *Discipline and Punish*. He explores the disappearance of torture as an acceptable form of punishment and how “The body as the major target of penal repression disappeared” (8). There was a time in the Medieval Era in which torture was a public spectacle and the preferred form of punishment for those that have committed a crime. Torture and public execution on the

scaffold was the way in which the sovereign restored his power. It was a spectacular ceremony to remind the people of the King's power. Further, it reminded the people that the justice of the King was an armed justice. However, Foucault describes a point at which the people no longer gave their support to the spectacle of the scaffold. The lower strata of the population came to revolt against the ceremony: "This was especially the case if the conviction was regarded as unjust—or if one saw a man of the people put to death, for a crime that would have merited, for someone better or richer, a comparatively light penalty" (61).

This revolt against the punishment of the body is similar to the backlash to Nixon's first operation in his war on drugs: Operation Intercept. Nixon announced operation intercept in September of 1969, shortly after taking office. It was a surprise measure meant to reduce the entry of Mexican marijuana into the United States. The operation resulted in a near shut down of the border (Doyle, *Operation Intercept*). This was a punishment aimed at restraining bodies, and it was so controversial that it lasted less than a month. Nixon was forced to rethink his measures.

Punishment on the body is considered inhumane, and the shift in public opinion can be tied to the eighteenth century when the gallows lost their public support. When the spectacle of the scaffold was no longer a viable option, a new ceremony became necessary, and that ceremony was held in the courtroom. The act of punishment was distanced from the people. Instead the ceremony was expressed through investigation and conviction. As the ceremony changed, so too did the preferred form of punishment. According to Foucault, "punitive practices had to become more reticent. One no longer touched the body, or at least as little as possible, and then only to reach something

other than the body itself” (11). The preferred form of punishment turned to prison and jail sentences. If punishment cannot be enacted on the body, then it is enacted on the soul, on a person’s time. This is especially true here in the United States, where our prison population accounts for nearly 22% of the world’s prison population (amnestyusa.org).

Foucault shows that the peasants would no longer stand for punishment at the scaffold. He writes that, “In the ceremonies of public execution, the main character was the people, whose real and immediate presence was required for the performance” (57). People began to see torture and public execution as inhumane and unnecessarily harsh. They no longer wanted to be a main character in that narrative, so the narrative was shifted. Punishment was distanced to prisons and the spectacle instead took place at the point of conviction. Who, then, is the main character in the ceremonies of the courtroom? For Reagan, it needed to be the American people, and their presence was required for the performance. He focused heavily on drug convictions, to the great detriment of rehabilitation programs.

To make the people willing participants in the spectacle of the courtroom, Reagan fueled the flames of the crack “crisis,” which resulted in the rhetoric of “black ‘crack whores,’ ‘crack babies,’ and ‘gangbangers,’ [which] reinforced already prevalent racial stereotypes of black women as irresponsible, selfish ‘welfare queens,’ and black men as ‘predators’—part of an inferior criminal subculture” (The New Jim Crow, 52). Thus, Reagan strengthened the dichotomy of black criminal versus law abiding white citizens. The spectacle of the courtroom and our justice system served to justify that dichotomy.

The courts have historically had two options other than jail/prison when it comes to drug convictions. One is rehabilitation facilities. The other option is probation, which is typically used in misdemeanor offences. As opposed to serving time behind bars, an offender would be released for a fixed period of time. During this time, they would meet regularly with a probation officer to demonstrate that they are adhering to the court-mandated terms of their probation. Local courts and governments often lack funding for the sheer number of probation officers the system requires, so the services are outsourced to private companies. These private companies operate on an “offender-funded” business model. The model guarantees the courts that probation services will cost them nothing.

A report issued by Human Rights Watch in 2014 discusses the negotiation power granted to private companies from the courts:

Courts that use private probation companies include a condition in probationers’ sentences requiring them to pay all fees the company is entitled to levy against them in full. Failing to pay a probation company its money thus becomes a violation of probation conditions just as serious as failing to pay court-ordered fines. As this report shows, in practice if not in theory, the privatization of probation often means delegating a significant amount of the courts’ coercive power to probation companies as well. (Profiting from Probation, 16)

These fees can easily range in the thousands and tens of thousands of dollars. They can be a serious financial hardship in parts of the country that suffer from poverty, job loss and economic stagnation, and “in some cases these are precisely the localities where public revenues are low and the pressure on courts to generate revenue is most

acute” (14). In these localities where funding is short, the courts turn to private companies to negotiate punishment. The binary has shifted from the medieval torturer versus criminals, to the modern jailer versus criminals, and then to the corporate debt collector versus criminals.

As the binary has shifted, the person in charge of punishment has shifted. So too has the preferred form of punishment. The prison system does not have the resources to imprison every drug offender. Further, much of the public opinion would not support jail/prison time for misdemeanor drug offences. The preferred form of punishment instead becomes resources. It is not okay to mete out punishment on the body. It is not okay to mete out punishment on the soul, but it is okay to mete out punishment in the form of fines and fees. The introduction of corporate interests in the probation system created a new negotiation of binaries, one that would define what it means to be a criminal in the United States. Further, the private-sector would define what it means to punish a criminal in terms that would benefit corporate interests: Money.

When money becomes a means for mediating the justice system, the focus shifts from rehabilitation to revenue. This is not to say that one cannot be rehabilitated in a justice system driven by profit, but that rehabilitation must be bought. Rhetorical agency and the ability to navigate the justice system comes with a price tag. Further, the ability to pay that price tag is a show of power. The old system valued the power of the sovereign. Rituals of punishment were meant to re-enforce the power of said sovereign.

How do the rituals of punishment shift as our values shift? In the case of a justice system that is mediated by money, our rituals become a re-enforcement of the power of money. In a culture that values resources, bought justice re-emphasizes the power of

those resources. Further, those with resources and status are aware that they can buy a level of justice. The system is still rhetorically constructed to re-emphasize power dynamics and relations. When the system is mediated by money, access to money equals agency in power relations. The next chapter explores the ways in which money becomes rhetorical (as voice and time) in a for-profit justice system.

CHAPTER 2: TO TAKE ON MONOLITHS: THE COST OF RHETORICAL AGENCY IN FOR-PROFIT PROBATION AND REHABILITATION

The ways in which we negotiate and define power relations informs, and, in some ways, creates our reality. World building occurs in the way we interact with those around us. It occurs in how we define what is acceptable, and how we negotiate expectations. In a justice system that defines its success by profit and revenue, those without resources are at a disadvantage in these negotiations, and have much of their reality defined for them. Debt collection works because its rhetoric fundamentality alters a person's reality. People are pushed, through threats of what might happen if they should fail to pay, into engagement with these companies. Further, debt collectors operate by constant phone calls and emails, and companies collecting debt operate in a world that is mediated by resources.

Similarly, the world named by for-profit justice systems is one that taxes the poor for being poor in the form of monthly fees and fines. It is one that punishes and jails the poor for the inability to pay for probation on time. The world that is named by these systems is one in which the only way to negotiate effectively, to have agency, is to have that thing that defines the world: Money. The path to rhetorical agency in a justice system that is mediated by resources is to have resources. Money becomes that which helps offenders navigate the seemingly monolithic and historically entrenched institution of our justice system.

However, Paulo Freire argues that history is not a monolith. He argues that people are in a process of becoming. They are unfinished beings with a likewise unfinished reality. According to Freire, "looking at the past must only be a means of

understanding more clearly what and who [we] are so that [we] can more wisely build the future” (*Pedagogy of the Oppressed*, 84). History is changeable and people must recognize the “here and now” as a point of departure (85).

Similarly, Porter et al reminds us that institutions are not monoliths. They argue that many forms of institutional critique stay at a macro level with high-theory discussion, which makes institutions “easy to criticize but impossible to change” (625). However, institutions were created by and operate through micro-level interactions which serve as points for rhetorical intervention. They point out that people created institutions and, thus, can change them (611). Both history and institutions are rhetorically constructed and can thus be altered. The institutions that we perceive as monoliths are composed through action. Freire describes this action as a process of world building, of changing monoliths.

World building is the process of reflecting on the existing rhetorical construct, naming its parts, and then acting to change the existing paradigms. One aspect of “naming the world” is examining the “hierarchical coordinated cluster of [power] relations,” that exist in the for-profit justice system (Foucault, *Power/Knowledge* 198). Foucault argues that power is meant to be productive; it is meant to produce knowledge and help humankind. The ideal justice system should be a productive one, maintaining peaceful communities and helping to rehabilitate those that find themselves in difficult situations. However, a for-profit justice system is motivated by revenue. Therefore, a rhetoric of rehabilitation in a justice system defined in terms of profit is driven by money becoming rhetorical, which leads to productive outcomes of power relations for the

individual within the system. Money becomes rhetorical agency in the form of time and voice.

This chapter explores how agency is constructed within a judicial system that is mediated by money. It utilizes document analysis of house bills, and rhetorical analysis of the ways for-profit companies represent themselves to communities and potential employers. This chapter also utilizes interviews to look for the gaps and fissures between how companies represent themselves and what their practices are. I conducted three interviews for this study. The participants are all adults who have been through both probation and rehabilitation, and have a full narrative of their experience with the corrections system. I chose people that have already dealt with and are outside of the corrections system so that participants could honestly articulate their experiences without fear of legal ramification. For the sake of anonymity, each participant's name has been changed and any specific facility names are changed to general terms. The next two sections analyze how money becomes rhetorical agency in the form of time spent inside the judicial system. The following section analyzes money as rhetorical agency in the form of voice within the judicial system.

Money as Time

One of the mistakes I made in my first interview was to assume that jail, rehabilitation, and probation/parole were all parts of a linear system that occurred in that order. I understood that a person could violate the terms of their probation and end up back in jail. However, I did not understand how easy it was for offenders to slip from one space in the corrections system into another. The first person I interviewed (here named Mary) described to me the cyclical nature of for-profit systems and how common it was

to move from one part of the system to another, and back again. Mary describes something called “shock time” and some of her experiences in a rehabilitation center (which is here referred to as the residential center):

Anytime you mess up, like buying things from the vending machine that you weren't supposed to buy, talking to a guy, missing a transpo stop, and any number of things, you could get shock time. Shock time is 30-90 [days] in jail. When you came back, you had to start over. For people that go to the residential center as a probation violation, when they go to shock time, their court ordered time at the center freezes. The probation center can send you to the residential center for your shock time. Your probation doesn't restart until you're out of the residential center. . . It's a horrible cycle that they send people on. Some of these people are guilty, but the system is cycling them through for profit, not rehabilitation. (Mary)

For Mary, shock time in the residential center operated as a punishment for minor transgressions. She describes that, after a verbal warning, she would get a write-up. Three write-ups made her eligible for shock time starting at 30 days. Mary remarked that “The CA's (Client Associates, essentially guards) could find any reason to write you up.” Shock time was a reality for Mary both during probation and in the residential facility.

I did some research into the laws that could make space for “shock time” and I found a very similar thing close to home. In June of 2011, North Carolina adopted the Justice Reinvestment Act, which states that probation officers can “place a probationer in jail for two to three days” without a courts approval or hearing. Repeated failure to

pay can result in up to ninety-days imprisonment. According to a 2014 report by Human Rights Watch, “What many [private probation companies] are really selling... is a particularly robust form of debt collection that can be billed to the debtors themselves.” Many states have adopted laws that make the failure to pay fees and fines a violation of probation. In this instance, money is agency. If you have the resources to pay the fines and fees levied by the probation company, you can keep yourself out of jail.

Inability to pay results in potential jail time, but also in more fines and fees. In the case of privatization, probationers are also responsible for those levied against them from the probation company. These companies tend to gain the most traction in localities where public revenues are low and the pressure is turned to the courts to generate revenue. Courts in impoverished areas do not have the funding to maintain the necessary probation officers, so they farm the services out to private companies. These companies levy fines and fees on probationers with the full authority of the courts behind them due to laws like the Justice Reinvestment Act. Probationers get trapped in a system that can turn a \$125 parking ticket into thousands of dollars in fines and fees, and potentially jail or “shock” time.

This practice could be an effective way to encourage offenders to self-discipline. However, when write-ups and shock time are threats for buying things out of a vending machine, talking to someone of the opposite sex, or failure to pay a fee on time, it creates a rhetoric that is dehumanizing and limits a person’s capacity for world-building. This rhetoric creates power relations where the dialectic is mediated in terms of minor infractions having major consequences. Mary describes how many people end up back in jail from probation:

You have to pay up your bills, because if you don't pay up your bills they give you a sanction. If you're sick and you can't pay, you get sanctioned. If you're sick and you lose your job, and they forgive your sickness, they can still sanction you for losing your job. If you get enough sanctions (3, same as write-ups), you could go back to jail. (Mary)

The fact that the probation company emphasized the importance of paying fees and fines on time, even to the point of threats, was a common thread in all the interviews I conducted. The rhetoric of debt collection is destabilizing. It is difficult to negotiate in a power relation when a person is constantly considering the ways that they could be punished. Fear tactics and threats are meant to pull rhetorical agency away from a person, to make them believe that a situation is desperate and that they absolutely must, for fear of losing everything, pay their bills on time.

However, paying on time and paying in full are two different issues. One could pay the minimum amount, avoid jail time, and still have their probation extended. Here is an excerpt from another interview:

Tyler: Basically, you had to come in and pay your money. They only cared about that. As long as you had all your money paid off, they weren't going to come after you.

Me: Did they tell you what would happen if you couldn't afford the fees?

Tyler: I wouldn't get off probation and stuff like that. You'd have to keep going to probation until you could pay off the fees.

(Tyler)

Similar to Tyler, the threat of extra time on probation was very real for Mary. After nearly two years of probation, she had paid almost \$5000 in court fines and probation fees, but still owed about ten times that amount. Her probation officer told her that they were going to extend her probation for another year, which also would have extended the monthly probation costs (including weekly drug testing). She states:

I couldn't afford another year of probation. If I did the extra year, and I still hadn't paid my fees, then they would have given me another year beyond that. They could keep me indefinitely. I had a decent paying record. It wasn't that I hadn't paid. It was just that I didn't have enough. I decided to revoke my own probation and go into the residential center. My bill was cut in half, and I wasn't stuck in the vicious cycle. (Interview 1)

For Mary, less freedom was preferable to the vicious cycle in which she found herself. The reality of her situation was that she could not afford to get off probation. Her misdemeanor offences would result in perpetual fines, fees, reports to probation officers, and weekly drug tests. The rhetoric of probation as a means of rehabilitation falls short when a person is threatened with perpetual punishment for an inability to “pay their bills.” The rhetoric of rehabilitation falls especially short in regards to private sector probation companies like Sentinel.

Sentinel is one of the first and largest private sector probation companies. In the company's marketing, they boast that their practices “Eliminate... cumbersome, bureaucratic notification procedures to allow for faster, more proactive, and more effective participant management” (Sentineladvantage.com). Sentinel has engaged in world building by defining laws like the Justice Reinvestment Act in terms of efficiency

and proactivity. However, the world they are building is not one that favors rehabilitation. In practice, the ability to put probationers in jail for failure to pay their fines and fees results to strong arm tactics and the rhetoric of debt collection. Further, they define the bureaucratic notification procedures, such as getting the court's approval prior to sentencing an offender to jail time, as cumbersome and, thus, unnecessary. One aspect of institutional critique is identifying mismatches in the organization of institutions. Sentinel's representation to the courts and the reality of their practices is one such mismatch.

Sentinel markets itself as "Keeping those that should not be in the correctional system out, and preventing those that are already in the system from coming back" (Sentineladvantage.com). This rhetoric of rehabilitation is, at face value, a productive outcome of power relations. Sentinel Offender Services couches a business, which is driven by profit margins, in the rhetoric of rehabilitating their clients. However, the rhetoric of for-profit probation differs greatly from the reality of their practices. This is especially true with "pay only" probation. According to Human Rights Watch:

"pay only" probation is used for offenders who would not be on probation at all if they had more money... At sentencing, judges who use probation this way ask offenders whether they can pay their fines and court costs immediately and in full... Those that can't are put on a long-term payment plan and sentenced to probation. (*Profiting from Probation*, 25)

This practice essentially eliminates the idea of rehabilitation as a driving purpose for probation. The focus is instead on making sure that offenders make restitution for their criminal offense. This restitution is in the form of a fine and, often, court costs which in

North Carolina are typically \$198 (*Criminal Court Costs and Fees*, NC Court System 5, July 15, 2016). This is a steep cost for most, considering that courts in impoverished areas are the ones pressured to generate revenue and thus are the ones that turn to pay-only probation.

This form of punishment contributes to a culture of discipline that says money is an acceptable form of punishment. At its best, this form of punishment leads to self-disciplining, which would be a productive outcome of power relations. We are aware that misdemeanor and municipal offenses will result in a ticket. Our pocketbooks are punished, and that is often enough to keep us from committing misdemeanor offenses. However, the practice of pay-only probation is not a productive outcome of power relations. It is not productive self-disciplining when it is moved to private sector companies. Pay only probation translates to profit margins. Further, these companies charge supervision fees, which vary based on state law, to offenders who are on probation.

Here in North Carolina, the supervision fees are \$40.00 per month (N.C.G.S. 15A-13439(c)(1)). These fees operate similarly to credit card fees in the sense that the fee is deducted from monthly payments towards court costs or other fines. Hypothetically, if a person owes \$40 for a municipal violation and \$198 in court costs, but can only pay \$80 per month, that person would accrue an extra \$240 in supervision fees. Further, the only supervision that is provided in the case of pay-only probation is checking monthly to see that payments are being made. The reality of for-profit probation when an offender does not have the resources to pay fines and fees immediately is that of perpetual punishment. This punishment takes the shape of

extended probation terms and “shock time.” Private probation companies rhetorically construct a world in which a probationer feels compelled to continue paying fines and fees to avoid punishment. These companies are allowed to do so by the courts because they have presented themselves as a cost effective and efficient solution to an overcrowded corrections system.

Money as Voice

Limited access to resources can inhibit a person’s rhetorical agency in interactions with the justice system. Money buys better representation, or space in a facility that is concerned with rehabilitation. Space for prisoners and probationers is a major concern in the United States justice system. One thing that has carved out a space for private interests in the justice system is the sheer volume of offenders that are sentenced to probation and parole. According to the Bureau of Justice Statistics, there were a total of 4,650,900 adults on probation or parole in the United States at the end of 2015 (*Probation and Parole in the United States*, 2015). Just here in North Carolina the Superior and District courts handle more than 3.2 million cases a year (nccourts.org). Considering the number of cases that appear before a judge, it is difficult to imagine an extensive amount of time given to individual offenders. The system is overburdened and underfunded. Further, considering the emphasis to move people through the court system quickly, many offenders lack proper representation, or representation at all.

A report released by the National Association of Criminal Defense Lawyers (NACDL) describes how some jurisdictions do not appoint counsel due to restrictive financial eligibility guidelines, and how other jurisdictions will offer offenders a “waiver of counsel” to expedite trial (*Minor Crimes Massive Waste*, 15-16). Factors such as the

volume of cases and limited access to proper representation strip a person of their agency and voice when dealing with the justice system.

Another factor that strips a person of their agency when dealing with the justice system is the obfuscation of laws. During my research, I have scoured through North Carolina laws, statutes, and court data. It took hours to find specific pieces of information, or to interpret the laws, which are couched in impossible legal jargon. Legally, all of this information has to be made public. However, it does not have to be presented in a way that the public can understand. Court information is contained in impossible Excel spreadsheets:

| PERIOD | REPORT | DC | SC | COURT | REGION | CASE TYPE | RESULT | CASES | AGE: 000-030 | DAYS: AGE: 031-060 | DAYS: AGE: 061-090 | DAYS: AGE: 091-120 |
|------------------------|----------|-----|-----|-------|----------|--|--------------------------------|-------|--------------|--------------------|--------------------|--------------------|
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | MOTOR VEHICLE NEGLIGENCE TRIAL BY JURY | | 1 | 0 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | MOTOR VEHICLE NEGLIGENCE VOLUNTARY DISMISSAL | | 46 | 1 | 3 | 1 | 1 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | CONTRACT | CLERK OF SUPERIOR COURT | 1 | 0 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | CONTRACT | VOLUNTARY DISMISSAL | 3 | 1 | 1 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | REAL PROPERTY | DISMISSAL ON ORDER OF THE COUR | 2 | 1 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | REAL PROPERTY | FINAL JUDGMENT NO TRIAL | 4 | 3 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | REAL PROPERTY | TRIAL BY JUDGE | 4 | 0 | 0 | 1 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | COLLECT ON ACCOUNTS | CLERK OF SUPERIOR COURT | 5 | 0 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | COLLECT ON ACCOUNTS | FINAL JUDGMENT NO TRIAL | 3 | 1 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | COLLECT ON ACCOUNTS | TRIAL BY JUDGE | 4 | 0 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | COLLECT ON ACCOUNTS | VOLUNTARY DISMISSAL | 8 | 1 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | OTHER | CLERK OF SUPERIOR COURT | 8 | 3 | 3 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | OTHER | DISMISSAL ON ORDER OF THE COUR | 6 | 0 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | OTHER | DISCONTINUED (SYSTEM ENTERED) | 5 | 0 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | OTHER | FINAL JUDGMENT NO TRIAL | 10 | 0 | 0 | 0 | 1 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | OTHER | TRIAL BY JUDGE | 9 | 1 | 0 | 0 | 0 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | CVS | ALAMANCE | OTHER | VOLUNTARY DISMISSAL | 36 | 1 | 1 | 1 | 1 |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | E | ALAMANCE | DISPOSED | | 1,459 | 711 | 21 | 13 | |
| 01JUL2015 -- 30JUN2016 | FILED | 15A | 15A | E | ALAMANCE | FILED | | 1,298 | | | | |
| 01JUL2015 -- 30JUN2016 | PENDING | 15A | 15A | E | ALAMANCE | PENDING | | 899 | 38 | 44 | 37 | |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | E | ALAMANCE | DISPOSED | | 1,459 | 711 | 21 | 13 | |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | SP | ALAMANCE | DISPOSED | | 710 | 169 | 62 | 33 | |
| 01JUL2015 -- 30JUN2016 | FILED | 15A | 15A | SP | ALAMANCE | FILED | | 629 | | | | |
| 01JUL2015 -- 30JUN2016 | PENDING | 15A | 15A | SP | ALAMANCE | PENDING | | 499 | 51 | 33 | 33 | |
| 01JUL2015 -- 30JUN2016 | DISPOSED | 15A | 15A | SP | ALAMANCE | DISPOSED | | 476 | 147 | 45 | 77 | |

figure 1: North Carolina Civil Caseload Activity Report for 2015-16

Bills are also presented impossibly. For example:

Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, G.S.

90-95(a)(3), upon dismissal by the State of the charges against the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. (GANC, HB 642, 12)

This is a small section of the aforementioned Justice Reinvestment Act that makes it possible for private sector probation companies to place an offender in jail for up to 90 days without court approval. However, section 5.(b) G.S. 15A-145.2 allows for the expunction of records for first offenders under 21 years of age at the time of the offense for certain drug offenses(GANC, HB 642, 12).

In a justice system focused on rehabilitation, the ability to expunge the criminal record of first offenders is a productive outcome of power relations. The only reason I can interpret this specific section of the law is because it was explained to me during one of my interviews. Morrison explains:

My lawyer was able to argue for the youthful offender deal. My five-year probation was dropped to two years with good behavior and I could ask for an expungement because it was my first serious offence. It was a risk. I would love to be an example of how they gave me a chance and it's possible. (Morrison)

After the interview, I decided to hunt around for the youthful offender deal and, through a long investigation, found it attached to the Justice Reinvestment Act. This document is legally accessible to anyone with an internet connection. However, access and accessibility are two different things.

Other documents that are legally accessible include the Sentinel Offender Management contracts with different states. I found three contracts: One is with the County of Los Angeles and is 167 pages long. Another is with the state of New Hampshire and is 95 pages long. The third, is a pricing contract with the state of Arkansas, which is only 13 pages long. All three contracts are based on the offender-funded model, which means that: “3.1. [The] contractor shall provide services through a rental system to offenders. 3.2. [The] contractor shall be responsible for collecting fees from offenders at no cost to the Department of Corrections” (24 GC Agenda, 78).

Similar offender funded models are the standard for probation in many of the United States. However, the third document I found (pricing contract with Arkansas) offers some insight on how Sentinel operates with the ethics of a company and strays from the rhetoric of rehabilitation. For many of their optional services such as radio frequency electronic monitoring services, or five panel drug screening, Sentinel requires the state guarantee a minimum number of offenders that will require that service. The minimum for five panel, observed drug screens is 750 offenders per month at a rate of \$22.00/screen (Contract 00212, Appendix E). The push to get offenders to use these additional services has resulted in litigation for Sentinel. In the case of Luse and Ligocki v. Sentinel Offender Services, LLC, it was ruled that:

Despite the absence of any written or verbal court authorization permitting drug testing, [a] Sentinel probation officer, without legal authority, informed each Plaintiff that she would be required to urinate in a cup and submit her urine to a Sentinel employee. In the case of Plaintiff Ligocki, her Sentinel probation officer

required her to urinate in a cup with the bathroom door open, and in the presence of a Sentinel employee. (2-3)

It is likely not company policy to falsify the need for non-court-mandated drug screening, but this and over a dozen other lawsuits are a result of power relations mediated by resources as opposed to the need for rehabilitation.

Without training, translating and decoding the contractual and state laws is time consuming, frustrating, and, in many cases, impossible. How can one have a voice in a legal system in which they do not speak the language? How can one have a voice in the justice system when they are engaged in a power relation with someone who misunderstands or abuses their position of authority? The answer comes back again to money as rhetorical agency. One of my participants, Morrison, was a person for whom the corrections system, including rehabilitation and probation, worked. He had no question as to why he got through the justice system in a productive way: he could afford someone to navigate the system. He could afford someone who spoke the language, negotiated on his behalf, and helped him have a voice. In talking about his experience, he said:

Morrison: I would say it's good to be alive. Everybody does deserve a second chance. It's like night and day. I'm completely different. The justice system did help me. The bad things had to happen for me to get to the good things, and a part of that was the justice system. I guarantee it's not the same for everybody, but it worked for me. In all seriousness, I realize how lucky I was. Maybe there were some people in there that maybe had lesser charges and might've had to serve some time.

Me: Why do you think you were so lucky in all of this?

Morrison: A good lawyer with connections. I mean, there's something to be said for a lawyer that takes a \$10,000 retainer. There's got to be a reason for that. It's sometimes hard to admit, though. I feel like it was given to me. I grew up in a middle-class family and I had a good lawyer, and it feels like it was given to me. I still had to work, though. The opportunity was given to me.

(Morrison)

This lawyer negotiated what could have been a maximum ten years in prison to three months in a rehabilitation facility, six months in a halfway house, two years on probation, and an expunction of the crime from Morrison's record (via the Justice Reinvestment Act). Having an advocate in the court that speaks the language is crucial to being able to negotiate the power relations of the justice system in a manner that is productive for the person in need of rehabilitation.

The participants that I interviewed who did not have similar representation, but instead had court-appointed representation, remarked on how little time they spent in the courtroom. They were shuffled through in a matter of minutes. My other two research participants could not afford someone to properly represent them, and thus give them a voice in court. Additionally, they were silenced in other ways. I spoke to Mary about the men in the residential center. She had this to say:

We had an overflow wing of guys in our building, which means they shared our vending and bubble space (where the CA's sit). The men would come through our building all the time. We ate with them and took meds with them. They were in line with us, but we weren't allowed to talk to them. (Mary)

Mary was told that she couldn't speak with the opposite gender, although they were generally around. The facilities could not accommodate wings separated by gender, but it was still important to keep men and women from speaking with one another. This policy was, once again, enforced by potential write ups and "shock time". I asked Morrison, who had financial help to get into a more upscale rehabilitation center, about men and women in his facility and he said: "I wanna say there was like 60 or so residents when I got there. You know, 30 girls, 30 guys, give or take a little bit" (Interview 2). His was a coed facility, without strict regulations on who you could and could not talk to. In this instance, money could buy a literal voice, or the rhetorical agency to speak with those around you.

Interestingly, both Mary and Morrison stated that community was the most important aspect of rehabilitation. Mary had this to say:

I learned more from the girls I was in with and the people and seeing their hardships, seeing them fuck up. I learned more from that than I ever did from any class. When you go through that sort of stuff with people: Being in a room with four girls who would get stuck in lockdown because some other girl in lockdown went crazy. The four of you got nothing better to do for six hours, but talk about life and shit. You figure out a lot more than any class that I was court-ordered to take. (Mary).

It was precisely in those conversations and the opportunity to world build with like-minded people, that rehabilitation was most productive. Morrison relates his experience:

You learned how to talk to people without drugs, or how to hang out with people without drugs. I would say that being around the right people, people that are

doing the same thing you are... I've heard that "You are the sum of the five people you hang out with most." Obviously, if you're hanging out with a couple of other people and all they're doing is drugs, then there's a good chance you're doing that too. You all are doing the same thing, but that's not really authentic. The drugs are giving you the conversation. It was like a synthetic community. Getting out of that, I started having real conversations. (Morrison)

In the process of world building, voice and common experience are the most important factors. Money serves as a way to navigate certain power relations for productive outcomes. Money serves as rhetorical agency in the hierarchy of clustered relations. However, when it came down to it for both Mary and Morrison, they both exercised their rhetorical agency in navigating the power relations between them and their peers. In this way, they spoke their own rhetoric of rehabilitation.

The document analysis and interviews excerpted in this chapter leads us to conclude that money is a determining factor for rhetorical agency in a for-profit justice system. Money becomes rhetorical with the ability to afford representation, as in Morrison's case. Also, the absence of money on the part of offenders grants rhetorical agency to for-profit probation and rehabilitation companies to construct a world of fines and fees for those they are meant to help. Analysis of how private sector companies represent themselves to the courts determines mismatched points between representation and actual practice.

The question still remains: What can we, as rhetoricians and advocates do to alter these institutions? The next chapter explores the rhetorical interventions that will promote rhetorical agency for probationers and those in need of rehabilitation. Further,

the next chapter considers ways to approach policy makers, adjust our language, and hold companies accountable for their practices.

CONCLUSION: WHAT WE CAN DO: RESTORING THE RHETORIC OF REHABILITATION

“It is ugly to be punishable, but there is no glory in punishing. Hence that double system of protection that justice has set up between itself and the punishment it imposes. Those who carry out the penalty tend to become an autonomous sector; justice is relieved of responsibility for it by a bureaucratic concealment of the penalty itself.”

– Michael Foucault, *Discipline and Punish*

Foucault originally wrote the above lines in 1977. Since that time, we have seen the rise of for-profit prison systems in the 1980’s, and for-profit probation in the 1990’s. Further, we have seen the increased use of for-profit centers for court-mandated rehabilitation. So, while there is no “glory” in punishing, there is certainly profit. The autonomous sectors that mete out justice to a large population of our United States citizens are private and corporate. For-profit probation and rehabilitation facilities are accountable to shareholders, investors, and profit-margins, which pulls focus away from rehabilitation. It is for this reason that for-profit institutions, as they are currently constructed, have no place in our justice system.

This chapter will explore how rhetoric and composition scholars can undo the dehumanizing rhetoric of the war on drugs and the rhetorical framework that constructs offenders as profit points. Nixon and Reagan effectively launched a public relations campaign that would eventually identify people in need of help as offenders, criminals, felons, and convicts. Nixon spoke of the need for a war on drugs. Reagan stated that the previous administration’s efforts were creating an America that was helpless against

that war. He told the American people that the mood toward drugs was changing, and they believed him. Now, the justice system is one that labels and stigmatizes. However, rhetoricians and writing experts have the expertise and the exigence to launch our own public relations campaigns.

A crucial aspect of activism is access and accessibility of information. In 2002, the Prison Communication, Activism, Research, and Education Collective (PCARE) created a public relations campaign to address the dehumanizing nature of private prisons. PCARE's online presence was dedicated to collecting information about their collective work and important developments in the American penal system in an accessible space for colleagues and allies (p-care.org). Rhetoricians can use a similar model for collecting information about rehabilitation and probation in the United States.

Information for the education of potential allies is necessary, but how can rhetoricians intervene directly with for-profit probation and rehabilitation companies? The first move that we must advocate for is abandoning the language that was so effective in Reagan's PR campaign. Sentinel Offender Services, the residential center, Judicial Corrections Services, and for profit justice institutions in general need a humanizing language that does not include offender, criminal, convict, or felon. A model for a new language already exists in the service industry, which caters to "clients" and "guests."

A PR campaign would advocate rhetorical shifts in identification from "offender/criminal" to "client/guest," that would make existing power relations more productive. My third interview participant, Morrison, confirmed that he was referred to as a guest and patient in his rehabilitation facility. Mary, on the other hand, was referred to

as an “adult offender.” Both people were in their respective facilities for treatment, but also to avoid jail time. However, Mary was referred to as an offender, and that identification lent itself to her overall treatment in the facility. Currently Sentinel refers to those that are on probation as participants and offenders. “Offenders” is used with law enforcement, corrections, and the courts, whereas “participants” is used with those that are on probation. The term “clients” is generally used to reference the court systems that hire Sentinel. “Client” should be reserved for those that are on probation through Sentinel and other for-profit-probation companies universally, and “offender” should be removed from the lexicon entirely. This small shift would accomplish two things:

- Courts and for-profit probation companies will use language that shifts the focus to the person on probation.
- Those that are on probation will be identified with a term that implies and promotes rhetorical agency.

Similarly, rehabilitation companies would benefit from using the term “guest,” or “patient” universally. We can begin by changing our own terminology in activist work, and look for opportunities to advocate for changes.

Rhetoricians and professional writers can also advocate for stricter hiring practices and can assist in composing training materials. Another important thing that came up during all three interviews that I conducted was how important it was during rehabilitation to talk to someone who was knowledgeable about drugs and addiction. Further, all three interviewees agreed that the most important factor in rehabilitation was being able to talk to counselors and other residents that understand what it is like to

suffer from addiction. Tyler related in his interview that during his rehabilitation meetings:

They gave you a bunch of facts that were wrong. I remember having a long talk about one pill that they said was less dangerous than some others when it was far superior in death rates. They were undereducated about what was going on and very unprofessional. The whole experience going there didn't teach me anything new, or how to prevent harm and stuff like that. (Tyler)

Similarly, the defendants in the case of Luse and Ligocki v. Sentinel Offender Services were undereducated about company policy, and extremely unprofessional. These instances call for an assessment and alteration of employee training techniques and company hiring practices. Admittedly, the initial cost of increased training and education for employees would be an investment. However, these companies market themselves with a rhetoric of rehabilitation that is dissimilar from their practices. Further, on a pragmatic level, increased training and education results in less litigation and better public relations.

The most necessary interventions are those that will reduce the focus on revenue in the for-profit justice system. The most important interventions protect the pocketbooks of offenders and brings focus to rehabilitation. For example, companies need to remove supervision fees from pay-only probation. These fees spiral a relatively small (by comparison) debt into a potential life sentence of fees and fines. Further, these fees turn the rhetoric of rehabilitation into the rhetoric of debt collection. As Tyler stated in his interview, "As long as you had all your money paid off, they weren't going

to come after you” (Tyler). This rhetoric of debt collection is aggressive. It is a perversion of productive power relations.

Another rhetorical intervention is to remove those aspects of power relations that are constructed to prohibit, inhibit, and refuse. Power is meant to be productive. Prohibition, inhibition, and refusal are symptoms of extreme forms of power (*Foucault Live*, 220). Lawmakers must amend/repeal laws that give for-profit probation and rehabilitation companies the ability to place an offender in jail for non-payment of fees or fines. Laws, such as North Carolina’s Justice Reinvestment Act manifest themselves in threats of jail time unless an offender can pay up. These laws are couched in the rhetoric of expediency and efficiency in helping probationers and the courts. However, the practice of these laws by for-profit probation companies results in unnecessary jail time for people. Also, jailing those that cannot pay their fines on time costs the courts money. The narratives of for-profit rehabilitation and probation companies do not match with those of the people they are meant to help.

As rhetoricians, professional writers, and allies, we must represent real narratives to lawmakers. Narratives like Thomas Barrett’s, who stole a \$2 can of beer in April of 2012. He pleaded guilty in a small court in Georgia. He was sentenced to \$200 in fines, 12 months of probation, and 12 months of an alcohol monitoring bracelet. His probation and monitoring were through Sentinel Offender Management Services. Barrett spent over a month in jail before he could afford the \$80 start-up fee for alcohol monitoring. Once free, he sold his plasma for up to \$300 a month to pay for his basic needs and monitoring fees (\$360 a month).

By February 2013, Barrett owed more than \$1000 in fees to his private probation company. Further, he was still unable to pay his court fees. Because of a law like North Carolina's Justice Reinvestment Act, Barrett was once again thrown in jail due to his inability to pay (Profiting from Probation, 35). Barrett's court district was burdened with the pressure to produce revenue, which is why he was dealing with private-sector probation in the first place. The pressure for revenue also makes oversight of private probation companies difficult for the courts. Companies like Sentinel market themselves as a partnership with the courts that "Can have a lasting, positive outcome on their efforts to rehabilitate offenders—all while helping them become effective and cost efficient" (Sentineladvantage.com). The rhetoric promises more effective rehabilitation of offenders. However, Barrett was not rehabilitated more effectively by Sentinel. His "rehabilitation" included cutting back on meals and selling plasma to keep up with fees. Sentinel's representation and rhetoric of rehabilitation does not match Barrett's narrative.

Sentinel's rhetoric also promise cost-efficiency for courts. But, from a purely financial standpoint, Barrett's case was the opposite. According to the Georgia Department of Corrections, it costs approximately \$55 a day to keep an inmate in a probation detention center (FY 2014 Allocation of Costs to Inmates, 1). The cost to the municipality to keep Barrett in jail was over \$1500 a month. Also, due to supervision fees from Sentinel, Barrett was unable to pay anything to the court. The only group that benefitted in this case was the private probation company.

Within a rhetorician's purview is identifying the disconnect between words and actions. Just as a lawyer interprets law for those without similar expertise, a rhetorician

interprets rhetoric. Further, we help develop guides and principles for guiding action. There are disconnects in the way probation and rehabilitation companies represent themselves to the courts versus their actual practices. Barrett's narrative is only one example of many. According to Human Rights Watch:

Many courts lack to the institutional resources to ensure proper oversight of [private] companies, but if public officials dedicate public resources to solving this problem, it cuts back on net financial returns... The net result is this: in many courts the only people tracking important baseline data about a probation company's dealing with probationers are the company's own employees.

(Profiting from Probation, 57)

The reality of an underfunded justice system that relies on for-profit probation is that many courts and lawmakers are unaware of the disparity between representation of practices and application of practices. They are simply not hearing these narratives.

One such set of narratives is for-profit probation and rehabilitation companies' use of aggressive threats about extended time in the system, or jail time. Mary discussed the payments for her residential facility and said that "If someone couldn't come up with the money, they couldn't get out" (Mary). She ended up with an extra two months in the center due to inability to pay her fees. This was after explicitly choosing the rehabilitation center to avoid an extra year on probation. Probation and rehabilitation at the point of an extended sentence for inability to pay fines and fees is essentially the same as pay-only probation. Unfortunately, an inability to pay does not keep the bills from snowballing. Fines and fees must stop accumulating at the end of a probation or

rehabilitation sentence. Further, court fees need to take priority over supervision fees and fines for late/missing payments.

Money as a rhetorical construct in profit based justice systems depends on division, and an intervention that must be made is to destigmatize the need for rehabilitation. Beyond the need to adjust fee structures and how they operate, it is necessary to reframe the rhetoric of these institutions so that they are not mediated by money. The world defined by money can only operate in terms of money. By identifying addicts and offenders as criminals, the justice system distances them from those that are not addicts and criminals. The for-profit justice system operates in concrete terms of identification. It labels offenders, drug addicts, and criminals, and punishes them accordingly. Addiction is a transitive state. To label someone as an addict ignores the dialectic that occurs between addiction and health. Also, to label someone as a criminal, ignores the dialectic that occurs between law abiding, and law breaking.

Both of these pairs (addicted/healthy, criminal/law abiding) are false binaries. They are logical constructs that keep people from recognizing themselves somewhere on that spectrum. The most crucial rhetorical intervention that any one of us can make is to recognize these concrete terms for what they are: false. Recognizing the need for rehabilitation as a spectrum allows for ambiguity in false dichotomies. Ambiguity should serve as the hinges of thought from which we define and articulate new points between false dichotomies. In the end of Morrison's interview, he offered some advice for anyone who would judge an offender in the system:

When it comes down to sentencing, really know what you're sentencing people for besides the crime. It comes down to judgement, and judgement is sometimes

opinion based. There's so many differences between individuals. There are so many interactions and personalities. That goes for the justice system and the people that have to serve time. (Morrison)

Morrison's advice reminds us that what is often lacking in for-profit justice systems is humanization. Power relations occur between humans, not profit margins. Only by destigmatizing and humanizing all that are engaged in world building and dialectic, can we achieve productive outcomes.

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