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SPEAKERS

Jenn Tostlebe, Annabel Fay, Victoria Piehowski, Jose Sanchez



Jose Sanchez 00:14

Hi everyone. Welcome back to The Criminology Academy where we are criminally academic. I am your host Jose Sanchez and today we have a guest host on the podcast.



Annabel Fay 00:24

Hi everyone. My name is Annabel Fay. I'm taking the place of Jenn to the best of my ability today.



Jose Sanchez 00:31

So welcome Annabel.

Annabel Fay 00:32 Thank you.



Jose Sanchez 00:33

It's a pleasure to have you here. And today we have doctoral candidate Victoria Piehowski on the podcast to talk with us about probation and the control of drugs and alcohol.



Annabel Fay 00:43

Just to introduce Victoria a little bit more. So as you said Jose, Victoria Piehowski. She is a PhD

student in the Department of Sociology at the University of Minnesota. She is a Melion ACLS dissertation completion fellow, as well as a Harry Frank Guggenheim Emerging Scholar Award recipient. Her work examines the intersections of coercion and care in criminal justice in varied sites such as treatment courts, probation, bail and domestic violence services. Her work can be found in Punishment and Society, Law and Social Inquiry, and RSF, the Russell Sage Foundation Journal of Social Sciences. In her spare time she tries to garden the stress away, and is on an ongoing quest to grow the perfect tomato. Thank you for joining us, Victoria.



Victoria Piehowski 01:31

Thank you so much for having me. I can't wait to talk with you both.

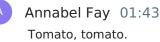


Jose Sanchez 01:35 I love that now we have tomato.



Annabel Fay 01:39 Excuse me, excuse me. What is it tomato?







Victoria Piehowski 01:47 We all know what you meant.





Jose Sanchez 01:51

And so for today's episode, we're gonna start out with a discussion about probation, drugs and alcohol broadly, then we're gonna move into an article that was written by Victoria. And then we're gonna, time permitting, close it out with discussing some of the work that Victoria is

doing for her dissertation. So with that being said, Annabel, why don't you do us the honors of taking the first crack.

Annabel Fay 02:14

Thank you. So Victoria over the last several decades, we've seen the occurrence of some major shifts that have impacted the way the criminal justice system operates. Given our topic for today on drug crimes, there are two shifts we would like to discuss. Firstly, can you talk about the war on drugs, thinking about the causes and outcomes stemming from this policy shift?

Victoria Piehowski 02:37

Yeah, so the war on drugs is really a set of policies, practices and institutions, right, and even discourses, political discourses, that arose really in the 80s, and particularly early 90s, that were centered on criminalizing or eradicating drug use. So one of the most important outcomes to sort of headline with is that the policies and practices of the war on drugs all together really helped to drive racial disparities in the American criminal justice system, right. It's the most racially disparate form of policing practice in the system today, but we kind of see that in different levels. Right. So I'll talk briefly, you know, first, a bunch of legislation was passed, right. And these laws expanded state and federal mandatory minimums, right, for drug offenses. So making it harder for judges to sentence down for people convicted of drug crimes. And another really critical piece of this legislation was denying public housing actually to entire families, even when just one member was accused of drug crime. So serious ramifications on the legislative level. But what's also important is it kind of grows in this context of really aggressive policing practices, right. So it's a cluster of practices that lots of good research have found is guite racialized and spatialized, meaning kind of centered on black and brown, low income neighborhoods in particular. I know you've had Marisa Omori on the podcast, she's written about this. But we can think about these sorts of proactive policing and broken windows policing, or quality of life policing, which really have, again, like centered on sort of low level crimes, and the enforcement around low level crimes such as, for instance, marijuana use right as this larger effort to kind of eradicate bigger crimes in these communities and neighborhoods. So in relation to drugs, Fagan and Geller have this great paper called "Pot as pretext" and they do a great job of showing the ways that black and Hispanic neighborhoods are particularly targeted for marijuana enforcement and the use of pretext is important. So like even just someone smelling Marijuana is a pretext for an officer to question that person, hassled them, search them, et cetera. Right. So it ends up being this sort of gateway to further criminalization. So altogether, this sort of legislation and enforcement, you know, both, of course, demonizes drug use and criminalizes all forms of drug use, but also links it particularly to black and brown communities. And it gave way to this like larger, it was sold on this sort of larger political rhetoric, right, that demonized and racialized drug use. And so it's interesting because, more popularly, we see this being questioned much more regularly. The idea that all drug use is bad, that marijuana is sort of a demon drug, that it's a gateway drug. But in many ways, a lot of this infrastructure still exists to enforce aggressively and police aggressively, and sanction aggressively. I also kind of want to like, situate or talk about the growth of treatment courts, which actually is happening at the same time, right? It seems sort of contradictory on its face. But as we're seeing this really increased enforcement, increased numbers of folks being pushed in for drug use into the criminal justice system. We see various places--it started in Miami--drug courts, right, sort of rethinking jail, particularly as a sanction and trying to start

what are called drug treatment courts. And we'll get into more that later. But all I want to say here is that these are actually they're often talked about as a response to the drug war, but they're kind of coming up and proliferating at the same time, which I think is sort of, historically and legally and procedurally important. Yeah.

Jose Sanchez 06:50

Yeah. That is super interesting. Because yeah, I did. I always thought that it was like as a response, because, you know, you hear people saying, like, the failed war on drugs, and the like, you see, maybe like drug courts, gaining popularity. But yeah, you always hear people talking about them as we're responding to the drug wars with these drug courts. So yeah, hearing that they actually came up simultaneously is an interesting tidbit.

V

Victoria Piehowski 07:15

And even at that time, I would say like, the pioneers would still be, you know, critical of the sort of people processing of just like arresting, arresting, arresting, right. But the fact is, it was it was at the same time, right. It's not like a per se or response, right. These sorts of logics have always been kind of at odds, or at least competing in some ways, and collaborating in other ways over the history of like American criminal justice. Right. So drug courts are kind of this contemporary iteration of that that's coexisting with harsh punishment.

Jose Sanchez 07:49

And then talking about like, moving from the war on drugs, or like responding to the war on drugs. We've seen a second shift. Very, very recently, like a couple of weeks type of recent. On October 6, we saw President Biden pardon many people who had been convicted of federal marijuana related crimes. Can you tell us a little more about sort of the context that preceded this decision? And do you see foresee any like impacts coming from this decision beyond just Okay, now, you're forgiven for this crime?

Victoria Piehowski 08:22

Sure. So the word federal here is so important for this discussion. So in the US, we we have a sort of what's how do we describe it? Well, the states are kind of like our own little countries here, right? Like, criminal justice operates wildly differently across the country in many ways. And so when we see trends, we often see them in sort of states first, right. And the federal jurisdiction is somewhat limited over the states. So more specifically, to your point, there's been a growing tension over time, right? Because states are beginning to either legalize the use or decriminalized marijuana, or the third option, make it legal for medical purposes, right. And so this is all while at the federal level, marijuana is still illegal, right. And so 19 states have legalized and 37 more states allow it for medical reasons, which causes a lot of confusion and problems, right. You've got two really distinct ideas and laws and practices around marijuana. So this has been going on for a while, as has discussion about the drug war and its racialized impacts, which Biden did reference in his announcement. So to this point, most enforcement around actual simple possession happens at state and local levels, right? Federal law

enforcement is not really set up or not really doing like simple possession type work, right. So at the federal level, this pardon is going to kind of it's going to touch a smaller number of people than I might like. Right? So according to the US Sentencing Commission, actually, no one is currently incarcerated in a federal prison for simple possession, there are people with criminal records who are now eligible for this pardon. Right? And that that group of folks who are not incarcerated, but have these convictions is about 6500 people. And it can be meaningful, what does it mean to be forgiven? Right? Like, in this specific context, that means they get some civic rights back, right. So voting, serving on a jury, but and only and only if they don't have other felonies on their record that barred them from these things. So it is a bit of a complex thing, right? People have to be eligible otherwise, on their criminal records, and, and these are the specific rights, but if a pardon does not remove it from your record, interestingly, you have to then apply for expungement to actually have, which is a separate legal process, right? To have it removed, actually, for purposes like, you know, getting a job, whatever, you know, for those other reasons that you don't want it on your record, right. So that's that piece. And I'm sorry, if I'm being a little long winded, feel free to cut me out.

Victoria Piehowski 11:25

But in terms of impacts, like it's a larger question on these other pieces. So Biden also urged governors to issue the same mass clemency right, and pardons. And so if they were to heed that call, that could be could be much more meaningful, right. But I think, and I'm not super, I'm not an expert on this. But there's some at least political skepticism that the governors who are sort of adverse to this idea are not necessarily going to change based on this urging, right, like, it's not like they're forced to do it in any way, right. And governors that are more sympathetic to this idea have in many cases already done similar types of things. So so that was more of a question mark. The one that's like a little more potentially impactful is that President Biden also urged the Health and Human Services Secretary to review how marijuana is actually classified under the law. So this is when you hear scheduling, schedule one, schedule two, etc. That's a classification system. So right now marijuana is considered a schedule one drug, which means, you know, like, along with heroin, that means there's no medical use for it right, you can see where this tension with the state's comes into. So one thing about it is it's really hard to research what the effects of marijuana are, if it allegedly under the law has no medical impacts, right. So the reviewing of the scheduling could result in making it a schedule two, which might help open up some research opportunities. But that is pretty incremental. Right? What you might to get to see a really big impact, what you might look for is, obviously for it to be totally legalized or descheduled, we would say, right, but who knows? We don't know. We don't know what's going to happen. But that I mean, if it is descheduled like that could potentially pave the way for pretty massive changes, right. But I guess we have to kind of keep our eyes out and see what happens there.

Jose Sanchez 13:33

Yeah, absolutely. I'm going to confess, and I probably shouldn't do this on the podcast being a criminologist, but I'm not super great about keeping up with the news, mostly, because sometimes I feel like it just gonna, like raise my blood pressure, to levels that I don't need. So I actually the first time I heard about this happening was through our communication, and you kind of like mentioned it.

Victoria Piehowski 13:59 Oh, yeah.



Jose Sanchez 14:00

And so, you know, when I was like, Okay, I should probably Google this and see what's actually happening. I'm not gonna lie when I saw federal related crimes, I was like, Okay, this is one of those more like, symbolic things, because usually that's one of those crimes that typically gets handled at the state level. And in order for it to go up to the federal level, it usually has to be something like, you're trafficking like pounds of marijuana across state lines, or whatever. So like, I don't know that, like, how many people are actually going to be impacted by this. But so yeah, I kind of had some intuition that that was kind of going to be the case. But that second part that you brought up, seems like it could be could make things a little more interesting. With the reclassification of marijuana. Yeah, that's kind of a long time coming. I think.

Victoria Piehowski 14:47

Definitely. I think it's, yeah, it's so hard to say right? It's very speculative right now and I think there are definitely some critiques out there that this is like to symbolic to incremental, but to me, yeah, we won't know until we find out what happens with that classification. Because I think it's, I think that's potentially a big deal. There's been a weird sort of. Yeah, I just think that tension between the state, like sort of state medicalization and federal schedule one classification is is interesting. So that is being sort of addressed. And we'll see.



Annabel Fay 15:19

Well, Victoria, I was actually going to ask, I mean, I know that it's going to be hard to look at how, as you guys are talking about what the impact of this is going to be in terms of incarceration. So President Biden's decision, again, he will have an impact on those who are incarcerated. But we also imagine, it will also have big impacts on those under other forms of supervision, like probation, which is the main focus of our topic today. So just shifting into that, could you just discuss what you think might happen with probation?



Victoria Piehowski 15:48

You know, it's possible nothing.



Annabel Fay 15:53

I really appreciate your honesty. I appreciate that.



Victoria Piehowski 15:59

And I say this, because, you know, probation operates, you know, theme of this podcast, maybe probation operates differently, all over the country, right. But one thing we found in Minnesota was that like, you know, people were being put under conditions to abstain from any alcohol and any drug use while on probation, under supervision. So, you know, alcohol is legal for adults, and it's a substance that becomes suddenly illicit when you're under supervision. So for jurisdictions that are very committed to like this sort of abstinence model to substance use, they can continue to, I think, I'm fairly certain, can continue to make marijuana use illicit right. And it can remain something that for folks under supervision is something is a way they can be governed and surveilled throughout their terms. But, you know, the other thing is, the optimist in me wants to think that jurisdictions will kind of rethink marijuana as a sort of, like, demonized substance, right. And the way that, and I think, in some ways that's very much started in some places, but again, remains to be seen. I think that's where research on specific practices and specific place matters.

Annabel Fay 17:13

Yeah. And I think it's sort of as you said, it's sort of like, will states take that into account in terms of if you're using it as sort of this hold on probation in terms of alcohol, how is that legislation even going to be taken into effect with a system like that. But you also talk about something called the penal welfare continuum? Could you tell us a little bit about that?

Victoria Piehowski 17:33

Absolutely. So this is a term that comes from Brydolf-Horwitz and Katherine Beckett. They have a piece about the penal welfare continuum that really talks about this convergence of the criminal justice functions of the state with its welfare functions. So we tend to think of the you know, criminal justice and welfare as these completely separate, distinct responsibilities of the state. But a really large body of work has shown that, in many ways, sites of punishment and welfare actually kind of work together, sometimes have overlapping functions, particularly in this contemporary era, kind of large scale welfare reform under the Clinton era and on particularly, that welfare services have become kind of more stigmatized and actually more disciplinary and focused on behavior modification, and character. And at the same time punishment, sort of take, is increasingly taking on responsibility with care, health care, welfare, etc. Right. And so we're seeing this overlap and Brydolf-Horwitz and Beckett pushes to see this dynamic as actually a continuum, where, you know, one side is much more completely punitive, right, we might think of just like jail or prison without any service whatsoever as being that side, and one being like sort of this more welfare, you know, services, kind of without strings attached without, you know. And that as folks are kind of pushed along, we might see kind of different sites along this continuum, right. And so within this there is they call it the murky middle, which is where we, you know, where they put supervision, where we see probation. And this murky middle has a really kind of the greatest enmeshment of these two spheres, this interconnection between sort of discipline and care.

Annabel Fay 19:32

Yeah, it sounds like you're speaking to the like the ongoing dichotomy of rehabilitation and punishment and how there's been such a fluctuation between the two. That's really interesting. You talk about the murky middle. I mean. vou've iust briefly touched on it. How would vou fit

probation into this continuum? Could you elaborate a little bit more for us?

Victoria Piehowski 19:52

Yeah. So for us, it's in our paper, Michelle and I describe how probation works as a kind of a hub in this murky middle. And what we mean by that is it, it really shuttles people off to various sites of social services and enforces their participation in those sites with the threat of violations of probation, right. And so, right, shuttling people off, it sends people off to these sites. And you know, it's not like, when I say shuttle off, I mean, it's not that, like a probation officer is providing health care in their office, right? They're mandating someone they supervise to, you know, go to, for instance, like a private nonprofit drug treatment center, right. So they're sending them out, and they're enforcing their participation in those spaces. And at the same time, those spaces kind of play a role in monitoring and surveilling folks who stay there or use those services.

Jose Sanchez 20:51

I'm doing work right now. We're evaluating a gang program in Denver. And a lot of those people are on probation. And you see, like, I mean, I get to talk to their probation officers every now and then and they're like, you know, we have the, or we've referred them to receive the several services, one of them being this gang program that, you know, we're evaluating. And they'll email or call, like, Hey, did they show up? Like, did they actually, like participate? Like, basically, they just kind of like keeping tabs on them. Yes, like, it's like, kind of like, it makes sense when you say like that, they're just like this hub that kind of shuffles them in and out of wherever it is that they need to go, while kind of keeping like their thumb on them, like, you better be going there. Like, like, I'm actually going to call this person and ask for like a progress report.

Jose Sanchez 21:48

And so, we knew that probation officers generally supervise people who have been convicted of a crime, but they're not necessarily being sent to prison. So like, their sentence might be like, three years of probation, and they're given certain terms that they have to follow. So like we mentioned you can't drink alcohol, you can't smoke marijuana. So there's certain conditions that you have to follow while you're on probation. And so we're talking about drug crimes. And when talking to probation officers, and like this kind of has been my experience, a little bit has been that we see them kind of talk about this duality of roles that they have, where they kind of have to straddle this weird line of being law enforcement, but also social workers. What exactly would you say is the function of a probation officer? And is this sort of duality of roles accurate?

Victoria Piehowski 22:40

Yeah. So I think the duality is, I think it's like a tension that exists in this placement because of where it occupies where it sits in the penal welfare continuum, right. So I think you explain the function really, really well. The job of the probation officer is to supervise someone who's sentenced to probation and kind of check in with them, make sure that they're fulfilling

whatever conditions and requirements and mandates of the courts. But, you know, at the same time, probation has this history of being a rehabilitation focused institution. Again, that's why it's used as an alternative in many ways to incarceration, it's seen as a more rehabilitative space than a jail or prison. And so there is a tension. And it's also kind of, must be hard to avoid when you just look at when you really just think specifically about what a probation officer might be doing day to day. So like, just even think, you know, as you try to enforce, right, it might be a law enforcement imperative to say, Oh, you're not doing what you should do. But when you get down to why they're not doing what they could do, right, it's going to, it may very well be related to social material reasons. And so let's, I'll do something more concrete here. Like, let's give the example of, you know, it's a very typical condition that you have to maintain an address when you're on probation, right? Well, if you're homeless, it's very, you're going to not be in compliance with that very basic condition of probation. So, as a PO, a probation officer, you see this, maybe you see someone who is not housed, and they don't have an address, you have a choice, you can file a violation against them, they violated their probation, right? But they're going to probably continue violating their probation. And so the duality is there, right? Do I work in a sort of social service capacity to help this person find stable housing? Or do I say sort of like, my job is to enforce the law here, right. So the duality is there. But the question that raises I think, is like how individual probation officers then sort of weigh those responsibilities against one another. And I think lots of things can save that. Like, you know, the very policies of the office, they're in the resources in their local area. Right? Do they feel like they have the ability to help people access resources, but frankly, also their own discretion and decision making when they're faced with those choices.

Annabel Fay 25:16

So one area that's never really been discussed on The Criminology Academy [TCA] is drug courts. What are drug courts, what is their function, and how do they fit within this penal welfare continuum you've been talking about?

Victoria Piehowski 25:29

Yeah. So much like probation. In fact, many people in drug court are serving out their probation in drug court, right? So drug courts are really in the murky middle. And they kind of, they basically operate as a sort of intensive and sort of cohort based probation in a way, right. So they seek to work with people suffering from substance use disorder. And again, they pair this close surveillance and sort of threat of enforcement with a number of treatment resources, right. So it's more treatment intensive. But it's all together very intense, right? People often have a lot of conditions, they have to seek out a lot of treatment, and they do potentially face consequences for not complying. Now, a little caveat on this is that, like every other caveat that I've said, is, they operate differently, depending on where they are in the US. Right. So there is this sort of central body called the the NADCP, National Association of Drug Court Professionals. And they're sort of this recognized authority on the kind of best practices of how to run a drug court, but they're not in a legal authority, right. So often, these drug courts are also local organizations as well. And, you know, the way that they combine treatment and sanction, for instance, is sort of organizational. And by that, I mean, they develop organizational norms in their local space based on needs, rationales, etc.



Annabel Fay 27:01

So, in your opinion, two questions here. Do you think that these courts are effective at reducing drug related crimes? And do you actually think there's a need for a separate court in this sense?



Victoria Piehowski 27:16

Yeah, so good question.



Annabel Fay 27:18

Tricky question, tricky question. I know. It's okay, so that's why I said, in your opinion, rather than give me the hard facts.

Victoria Piehowski 27:28

You know, I've looked into some of the evaluation research for this, and it's not, not my wheelhouse, right. But my take from the meta analyses of the research on drug courts is there seems to be some consensus that they overall reduced recidivism. However, I'm just a little bit...I think that that can pave over a lot of variation, right.



Victoria Piehowski 27:52

And so, as a gualitative scholar, I have a couple of concerns and would kind of reframe how we think about testing the outcomes, right. So as I said, these courts operate really differently. And a lot of the studies sort of operationalize. So this is Logan and Link have a 2019 article meta analysis on this. And one thing they point out is that recidivism is operationalized somewhat differently in a lot of these studies. So it's a little bit, that's one challenge of coming up with sort of an overall idea. But you know, they're also institutional structures themselves. And by that, I mean, like, they have policies that sort of affect who actually gets into drug courts. So my work is on, my dissertation work is on Veteran's treatment courts, which operate very much like drug courts and sort of follow very similar sort of best practices, at least in Minnesota. So in this case, there's a treatment team that makes the decision of those interested who actually gets admitted into the courts. So within this, there is sort of, in many places, this institutional incentive to admit people that are going to do well in the courts, right. And it makes sense on a human level, you don't want to, like, admit someone into this court who you think this person has got a really hard time following extremely intense court surveillance, like this court will be that. They will just end up like... they used graduated sanctions, meaning they start with the most limited and kind of move up, right. But like, if you don't have a sense this person is going to do well, this court will be bad for them, they will just end up punished, essentially, without getting the benefits of treatment. Right. So and then at a sort of higher institutional level, a lot of these courts operate under sort of the judiciary, and they're kind of accountable to those judicial authorities in terms of the outcomes for their court. So there's an incentive to produce good results, right. And so, what happens is that the sample that we have for drug courts, I

think, could be sort of cherry picked. Right? So we have good results for this cohort of folks. But we don't know how to think about this model in terms of the larger criminal justice involved population, right? Maybe!

Annabel Fay 27:52 Yes.

Victoria Piehowski 30:15

So these are things I point out, I guess as like a very qualitative and institutional, like, institutions focused scholar, right. These are the kinds of difficulties of making sort of big policy statements on not work. So I think, you know, due to these concerns about their institutional structure, there's like kind of a filter into them, and that they operate so wildly, sometimes, differently. My perspective is that, you know, a more fine grained question of like, who does this work for? And what places? And under what sorts of policies or conditions right. So one concern is that, you know, courts that use a lot of jails, and one of my big concerns is courts that use a lot of jail sanctions or move to jail sanctions quickly, for potential violations, I would be very concerned that they're producing worse outcomes, right, not always fully understanding, like how destabilizing even a short term stay in jail can be, and even might sort of operationalize jail as a sort of treatment. Right. So those are kind of concerns.

Victoria Piehowski 31:27

And in terms of if it should still, if we need a separate court? Yeah, I think, again, it's still I don't have a yes or no, I think it's an open question. And my concerns are more about how we deem people treatable or not treatable, right. And how those things can intersect with things like race and gender and class and status. Right. So I mean, I would, I would sort of connect these concerns to the observations of like, Anjali Om, McDonough, Merch, and others about sort of the way that the contemporary opioid crisis has really been framed as a public health crisis, right, and primarily affecting white people and thinking about that, in comparison to the drug war, right, which is framed much more as drug use as a criminal act of primarily black and brown community. So my worries are that, like, within the criminal justice system, we sort of have a history of sorting folks into these categories, in ways that that can perpetuate inequality and access.

Jose Sanchez 32:34

Alright. Wouldn't it be nice if we could just have a yes or no answer? But we're like over 50 episodes in and I don't think we've been able to find one. And, actually, so it's funny, you mentioned some of like the impacts that jail can have on people. So our next episode that's gonna release is actually looking at the impacts that jail has on like mental and behavioral health. So.



Victoria Piehowski 33:01

Oh, my gosh.

O

Jose Sanchez 33:02

So that's one to look out for. So related to drug use, often intertwined is addiction. Right. So often, we see drug addiction being discussed, depending on who you're talking to, you can see it discussed as this active choice that people make, and it's sort of this misfortune that they've really brought upon themselves. Is this really the right approach that we should be taking when like looking at addiction, or should we be so reframing it more through, like a health lens of like illness and disorder? And this is the like, this more health approach is the right way? How does it then maybe change the way that we go about dealing with drug crimes?

Victoria Piehowski 33:46

I mean, yes, this is a great, and very nuanced question. So, I mean, you've talked about these really two predominant models of looking at drug use, right? So we have got, we've got the criminal justice, it's, you've made a choice to do this and it's something we don't want you to do. So we're going to disincentivize this choice in this sort of rational way, by threatening you with jail or some other bad thing. Predominately jail, right. The problem is, you know, the consequences of jail are very, very severe and really destabilizing, as we've we've pointed out. So with the punitive perspective, there is absolutely a potential for the notion of responsibility to change, right? So therefore, the institutional reaction could look really different if the root of like problematic drug use, for instance, is disease than simply locking someone up is not only really pointless. It doesn't work. It's not smart on crime. But it's also kind of inhumane right to continualy lock people up or subject them to consequences.

Victoria Piehowski 35:04

So the bigger question, though, is, like how does it change with a treatment perspective. So, I think that offering people treatment offers, like some potential to at least change the institution that's dealing with them, in hopefully, ways that don't make permanent criminal record or less destabilizing. I will say that the sort of disease model of addiction does hold on to this idea of individual difference. So while you know, you're not responsiblealized in the same way, if you are suffering from addiction, or proceed that way, there are ideas that, of course, that different people are more susceptible to addiction than others, right. So it is a very individualizing perspective. And that's why I think that we have what we have now, with drug courts, and with many probation and other sorts of related sites, is sort of this hybridized version, that is both punishment and it can fit treatment, right, it takes this respons...you still have sort of responsibility to go to treatment and comply with treatment and submit, you know, negative urine samples, etc, right? Even if there is sort of like a softening about this idea of the source of drug use. So for one thing, to really understand the sort of disease model we would need, I think we would need to have more institutions that treat drug use that are accessible to people outside of the criminal justice system. So that's one thing like that's not...those exist for people with more money, right, but like not for the marginalized, and the folks who are disproportionately caught up in the criminal justice system.

Victoria Piehowski 36:45

I would also just just like, you know, throw another wrench in there, I would add a third perspective. And that's sort of the comes from critical addiction scholars, which is essentially social structural. Right. So one big name here is Bruce K. Alexander, who argues that societies actually manufacture addictions in ways and he points specifically to social dislocation, meaning the removal of people from their close ties and family, community, culture, even spiritual ties from one another. And that addiction is kind of this way that people cope with this loss of this very significant human need. And kind of grinding out more when we're thinking about society that remove people from their cultures, communities, families, right. And we just take a look at even the history of settler colonialism in our country, which not only displaced people from their land, but actually was a program of trying to destroy cultures. And furthermore, the slave trade which separated families, and it seems like I'm getting far afield here, right. But these are really, this is a really important historical fabric. And the consequences of these huge social shifts are still very much with us. So I guess I just have this in the background of my head, when I'm thinking about this treatment versus punishment and trying to bring in the social structural perspective, which is hard in these spaces, right. I do think treatment has a role to play. And I just wonder, in the context we have now what it means to subject people to sort of too short or brief treatments sometimes, and then return them into incredibly challenging circumstances. Like if we are taking critical addictions scholarship seriously, like returning people into societies that engender addiction, and then just re punishing them over and over again. And at some point, it's like, oh, you had all the treatment resources. So now you're now we just think you're in that first category of people who are just making the choices, you know. So that's a bit of a long winded response to your question, I apologize. But I try to balance those three perspectives when I'm thinking about how institutions are acting on and things like that.

Jose Sanchez 39:17

Right now, that makes sense. But okay, so I think we've set up a good foundation to start getting into your paper. So the paper that we're going to talk about was authored by Victoria and her colleague, Michelle Phelps. It's titled strong arm sobriety: Addressing precarity through probation, and it was published in 2022 in Law and Social Inquiry. In the article Victoria and Michelle draw on interviews with 166 adults that were on probation in Minnesota to examine how probation operates as a hub in the criminal justice system that directs people into services and prison. They also introduced the concept of strong armed sobriety. So our first question for you about your paper is: What was the motivation behind this paper? And sort of what were the gaps that you were looking to address with this paper?

Victoria Piehowski 40:08

I think, kind of broadly, probation is just an incredibly important institution in American criminal justice, right. So my co author, Michelle Phelps has done a lot of work on this, and she calls this mass probation. But by 2020, over half of people serving sentences were on probation. So despite how common it is, there's not very much work that frames it as an important site of governance itself, and particularly at this sort of murky middle space. And I think less of that work considers it in depth from the perspectives of people actually on probation. So that was a

V

big motivation. We had this big interview pool. And we were really hoping to understand how it is actually experienced by people who are on it, how do they understand governance. And so we looked into it, and we were reading people's stories, we're interviewing them, and we were just kind of bowled over by how much probation and the experience of governance on probation itself was shaped around substance use conditions and treatments, right, whether through mandates, or just the simple surveillance of drug tests or urine analysis. UAs. And so, as you mentioned, in the intro, as probation workes as this hub, it was sort of a hub that seemed dominated by substance use in both directions, both in sanction and treatment.

Jose Sanchez 41:32

Okay, so, in this paper, you introduced the idea of strong arm sobriety. Can you explain to us what you mean with this concept?

Victoria Piehowski 41:40

Yeah. So we're drawing off of Theresa Gowen and Sarah Whetstones work on strong arm rehab. And really, we're just kind of broadening this term out to probation itself. So we specifically mean, it's this coercive type of care that's needed out to adults on probation, to both manage and punish drug and alcohol use while on probation.

Jose Sanchez 42:08

Right. And so you mentioned coercion, and so it kind of seems to go a little hand in hand with strong arm sobriety. Can you tell us a little more about, like the coercion aspect, like who are the parties involved in coercion? And maybe how do they coerce someone into sobriety?

Victoria Piehowski 42:26

Yeah, so kind of in a variety of ways. So I think the PO, the probation officer, is really pivotal here. But more broadly, treatment referrals are sort of backed by coercion. Meaning, if the court or your probation officer orders you to some kind of treatment, and you don't comply, and they find out that you don't comply, you may be subject to criminal legal consequences, such as having your probation revoked, right. So most centrally, the probation officer has that responsibility of making those decisions. But, you know, the sites that you're referred to for treatment, as we referred to also, have a less direct role, right? They're not making decisions, but in many cases, they are reporting on the person on probation's compliance. So in our case, like folks who are either doing inpatient or outpatient drug care often did their urine analysis at those treatment sites, right. So those treatment sites had to, you know, if it was a positive test, right, they have this connection with the PO to report that a positive test came through.



Jose Sanchez 43:39

Okay, so getting into like your actual study, something that we noticed with your sample was in demographics, particularly with age, it seemed like you had a pretty even distribution with

other groups kind of novering in like that mid 20 percentage range. And so like you have 40 to 49 year olds making up 26% and over 50, making up about 27% of your sample, with the caveat that this might look a little different between jurisdictions. Were you a little surprised to see people that old kind of in your sample? Somehow I always kind of imagined younger people? I mean, like, there's nothing that says that you can't be on probation when you're older. Right. But I guess we tend to think of offenders as being on the younger side. So were you surprised by the older people in your sample?

Victoria Piehowski 44:30

Yes, yes, we were. Yeah, same reasons, the sort of youth crime curve, and also just the idea that probation is perhaps sometimes seen as a first sort of sanction right into that graduated sanction. And you would expect someone who's a little bit older to not necessarily be their first involvement or whatever. So yeah, for all those reasons, we were surprised. So I wouldn't see this age view as necessarily representative of those on probation in Hennepin County. Our sample was propulsively heterogeneous-meaning we just wanted to talk to people from multiple different backgrounds, ages, races, gender/sex, because we were trying to see the different pathways to and through probation. So I think what happened with that was just kind of how sampling works out. I think we interviewed, there certainly are older folks on probation in Hennepin County, that's certainly the case. And Hennepin County is kind of known for long probation. Not just Hennepin County. Minnesota is known for very long probation sentences. So in some cases, it was folks who'd been on probation for a bit, but I think that we probably just interviewed some of the older folks, and they were just connected in networks of similarly aged folks with criminal justice involvement and probation, particularly, and I think it just kind of, they shared our study, and it sort of just naturally snowballed that way organically, I should say organically snowballed that way. I'm speculating. But that would be my guess for why we see that. I don't think we should take that to reflect that population, per se.



Jose Sanchez 46:14

Yeah. I just thought it was interesting that it kind of shock out that way.

Victoria Piehowski 46:19 It is! Yeah.



Jose Sanchez 46:19

I just like never imagined someone that's like over 50 being on probation, but I guess it does happen. Right. Okay, so like now get into like the meat and potatoes of your paper, you split the paper into three processes of probation: treatment, testing, and revocation. So we want to start with treatment. Can you sort of discuss, give us kind of like a brief intro into what you mean by treatment with probation? And then kind of what were your findings regarding this section of your paper?

Victoria Piehowski 46:50

Yeah. So I'll just say to this sort of operationalizing question, I think, important here is the instrument we used to interview. So we use like an interview guide that actually combined closed ended questions with open ended questions. We often did. So there were some Likert scale, there were some like one words. And then there was like some, like, tell me about your experience with this type of questions, right.

Victoria Piehowski 47:16

And so how treatment came out across those interviews was, we asked people about the referrals that they received from their probation officers, and if they were either recommended or mandated. And then what those obviously were, so this really varied between inpatient and outpatient treatments, local groups, such as Alcoholics Anonymous, or Narcotics Anonymous, and a variety of classes that actually weren't necessarily drug treatment, right, like anger management type, parenting classes, domestic violence classes, etc. So those were kind of all put into the, those were sort of the treatment, the forms of treatment that people experience.

Jose Sanchez 47:58

And so what was probations roll in the strong arms sobriety, as it related to like the treatment aspect?

Victoria Piehowski 48:05

Yeah. So what we found across our sample was that treatment was, in some ways, like a double edged sword. So I'll explain this, this first piece, right. So treatment services, were really important to people on probation. And in fact, when people thought that probation was helpful, they most commonly said because it helped them with alcohol and substance use. And that treatment was really core to that right. Drug Treatment was also an access point for other needed services that weren't necessarily drug treatment. So we also had folks who were routed into drug treatment, but ended up getting attached to like, psychotherapy that way, people got temporary housing that way.

V

Victoria Piehowski 48:47

And so, you know, on the flip side, when people were dissatisfied, most commonly it was because they didn't, they felt like their PO didn't give them any services or help them reach out to services.

V

Victoria Piehowski 49:00

But, you know, the double edged sword piece and certainly treatment was really nested within this coercive scaffolding, right. So this meant that, as we've talked about, treatment could be another node of surveillance for people. And folks were often compelled to take treatment, whether they wanted it or not, or felt like it fit with their situation or not. And so at the same



time, treatment could be perceived as very demeaning, and it could be perceived as ill placed. And we talked about throughout the paper, this idea of misrecognition. People felt like in some cases, what they were really struggling with was really misrecognized by the way they were shuttled off to treatment.

Victoria Piehowski 49:42

And so in our paper, I won't go too in depth on this question, but we profiled two people more in depth who are kind of on opposite ends on this right. So we profiled Donna, she's a 43 year old black woman who spoke quite highly of the treatment she received. So she had had this long history of criminal justice involvement had always been kind of just processed in and out. And then she's arrested. And she's evaluated. And she's sent to drug treatment in Hennepin County where she gets, again, access to a plethora of resources. So she was like, yeah, I don't want to be on probation, but it's worth it to get access to these things I've never had access to. For her, particularly, therapy was really critical, right. And she found out for her case it was the drug use was, again, coping for not having resources to kind of deal with and addressed her long history of trauma. And probation just ended up being the place where she was able to access those resources. And even addiction was this idea that she was addicted was sort of her access point to these other services.

Victoria Piehowski 50:50

At the same time. You know, for some folks, like I said, treatment wasn't welcome. It wasn't well placed. And it was really problematic. So we talk about Carl, he's a sixty year old black man. And he was serving probation/parole concurrently. And in his situation, he was sort of on the brink of homelessness, right? He was staying in a halfway house when we interviewed him. And he'd already overstayed his term there. He basically worked out a deal with the administrator at the halfway house to stay longer, but he had no money, he was on disability, but all the payments went to the halfway house except for a very tiny amount, which is typically how halfway houses work, right? So no capacity to actually save this money that was supposed to, you know, theoretically be coming to him. And he wanted to access this housing program. But that housing program required that you'd be homeless for 15 days to be eligible for the services. And he was like, okay, in 15 days, I'm homeless, my PO is going to find out and he's gonna violate, I know he will violate me for that. So he was in this kind of rock and a hard place. And his PO really wanted him to go to drug treatment. And he's like, I don't have a drug problem!, I have a housing problem, right. And this is sort of that where treatment becomes the shuttling process right? For him for Carl, like drugs had nothing to do with what he was going through. And he knew he'd already kind of gone through the circuit that like this was going to be another dead end. Another temporary housing situation at the end of which he was going to have to struggle yet again, to find something more sustainable.

Jose Sanchez 52:27

Right. Yeah, it's interesting how that goes, because I've talked to people who were on probation. You do have like, the people like, you know, they put me in, like parenting classes. And it's been great. And other people are like, they keep making me take these drug tests and I don't use drugs, so I don't know why they like that's part of my probation. Right. But speaking

of that, so one of the things that we've talked about is, like terms of probation and drug and alcohol testing is a pretty common one that we've seen where people are, you have to go and test so that they can make sure that you're not using drugs or alcohol. Can you tell us more about your findings as it related to testing and probation?

Victoria Piehowski 53:11

Yeah, so for one thing, you know, testing varied across our sample a lot. So some people, in the very most limited form of supervision didn't actually have to test. And then you had other people, it varied up to where some people were testing multiple times a week, right. And Minnesota has this--and I don't know, if they still use it--Hennepin used this color wheel system, which some folks are assigned to a color. And then they are supposed to call in. And you know, in theory, it's like a wheel that spins. And if it lands on your color, then you have to test. So it's the idea of introducing randomization into this to hope, you know, the idea is to prevent people from gaming the system essentially. And so the higher your level of supervision the more you have to call, right. And so people had to go to a central, typically a central testing facility downtown and submit a sample during business hours, which was another kind of difficulty, right? If you have to get off work, if you don't have a car. Minneapolis has pretty inadequate...some public transportation, but it might take you a really long time to get there. Right? If that's your only means. So again, it was sort of a double edged sword, I think for some people, particularly folks, and for some reason, particularly men in our sample that identified as having addiction issues personally, they sort of welcomed testing as this sort of coercive motivation, in a sense, and we talked about a few of those folks, but in this section, we really focus on people who found it demanding, intrusive, and sort of this misrecognition piece who felt like either I don't really use drugs like you were saying with who you spoke to. Or like, Yeah, I used them, but like, not really that you know what I mean? Like this, I'm not someone who needs to



Jose Sanchez 55:08

Like it's not really an issue.

Victoria Piehowski 55:10

It's not an issue. It's not problematic in my life, right. And so we actually talked about folks in our sample who actually found ways to continue using substances while taking these drug tests, even with the sort of randomized system. We call this kind of compensatory use. And this was really common with marijuana, right. And this is just goes down to the simple science of drug testing, right? When you use marijuana, especially if you're a somewhat regular user, that remains in your system for a really long time. Like, if you're a regular user up to a month or more, after you stop using it. So it's, like, easy to catch someone for using marijuana. So the people who had kind of had marijuana as part of their habits in their life, and now suddenly had to, you know, submit these tests, often compensated with other substances. And we talked about that. And perhaps ironically, right, other substances such as alcohol and cocaine, just go through your system a lot quicker, it's actually easier to use them and still submit a clean, negative sample regularly. So we kind of focus on this intersection of people who are like, yeah, I use, it's not really an issue. But still, like really, we're worried about or their lives were sort of shaped by having to submit these negative samples. And one person we talked about is Adam, he is a 29 year old, white man who he actually was arrested in a different state for fraud, nothing to do with drug use, he ends up moving because he kind of the arrest is like a bigger downturn in his life. So he moves to Minnesota where he has family. And when he gets transferred, he starts to having to submit drug tests, right? He never had to do that before in the jurisdiction he was formerly at. And he was a regular weed user, right? So he kept having many positive samples. And at first, his PO was not really bothering him about it. So he just was like, Okay, I'll just keep, I don't know, I'll keep doing this. And then she really, really worried about it. So she ordered him multiple times to get what's called a Rule 25 assessment, which is just, it's an a court order for an evaluation. It's supposed to find out like, Do you have a substance use disorder or not? So he has this Rule 25 assessment, the assessor says, No, there's no addiction issue. His PO orders him to get another assessment. He does. That assessor says no, there's no substance use issue here. And then his probation officer is pretty mad. And she, according to him, she says, like, if you don't go to treatment, I'm going to violate you on probation. Well, he doesn't have the means to pay for treatment or insurance, because that's very, very expensive, right? So in Minnesota, if you get a Rule 25 assessment, and you're at the proper income threshold, and they've found that you have a substance use disorder, the state will pay for your treatment, right. So that's basically the only way he could have accessed it. So not wanting to go to jail, he goes to a rehab, checks himself in, talks to the assessor and says, Look, I need you to, he says, they basically manipulated the assessment, so that he had this result of having a substance use disorder so that he could actually afford the treatment he needed. And yeah, I mean, it was all because of this sort of testing regimen. But the experience didn't make him think anything, like he was eventually moved to outpatient and he admitted, like, yeah, I still occasionally use cocaine, it just goes out of your system, it's fine. I go to treatment, my counselor there is great. But like, you know, I keep up appearances, basically and I submit my tests when I need to and that's where we are. And my probation officer is much happier now. But it really kind of goes to show you he had to really kind of reshape his life and take these big risks about getting into treatment just really to avoid a violation.

J

Jose Sanchez 59:22

Yeah, that's crazy. We like put down these sanctions and don't really think about, like these unintended consequences they might have, like, this dude had like, not a drug problem? And now he's like doing cocaine. So he could test clean. But you mentioned that he was threatened with revocation, which is like the last section of your paper. And so, just briefly, revocation occurs when someone violates one or more of the terms of their probation and they're brought back into court to face a judge and face the possibility of maybe going back to prison. That's kinda like the quick and dirty of what a revocation is. What were your findings with revocations?

Victoria Piehowski 1:00:07

Yeah. So I think that for many of our participants, revocation really undergirded the stress of probation. It was kind of a looming threat that made the experience really, really difficult. And when it came to substance use, it was, I think, that it was often used to coerce treatment, right? So it was kind of like, where the continuum comes together, almost, it was like two faces, in a sense. For a lot of people treatment and revocation were kind of always on the other side of one another. And so just kind of in the interest of time, I guess I'll talk about Randall. So

Randall is someone we profiled in depth, and he's a 39 year old, mixed race black man, who was found eligible through an assessment for this sort of high level of state resources and services because he suffered from some severe mental illnesses. So while he was on probation, he had this case manager who was helping him out. And he had his probation officer, who he thought, you know, he felt like he generally had a good relationship with. And, you know, one day he misses a meeting with his case manager. And at the same time, you know, and so shortly after their, that his probation officer shows up and does a surprise visit at his place where he's living. And during that, PO does a search and drugs are found; small amount of drugs. Randall says, I was actually just gonna sell them. I know, I shouldn't have had them. Right. But, you know, it wasn't. He emphasized it was a small amount. Well, he was sent to jail for that. And then his probation officer said, you can get out of jail if you go to drug treatment. And Randall refused for a while because he kept saying, I really don't have a drug problem, like, and he stayed in jail for months. He had this standoff with his probation officer about it. And so he ultimately went to drug treatment, by the way, because that was the way to get out of jail. So that's what I mean, kind of this, this other face. But in this case, again, revocation is a space where substance use or even just having substances on your person, right gets sort of misrecognized again, and treatment gets used in tandem with revocation to coerce people's behaviors. And I think we were really struck in that instance, that like the support he was offered through the states really did work in tandem with law enforcement there, right. We can't show it. But like, it seems that the fact that his PO decided to do surprise visits shortly after he missed this case management meeting, you know, is concerning. It speaks to those those kinds of surveillance nodes that these support pieces play.

Jose Sanchez 1:03:02

Okay, so, last question about your paper. And just briefly, given everything that we've discussed, what would be some policy and practice implications that maybe come out of your work?

Victoria Piehowski 1:03:14

Yeah, so I think this is the hard one, but broadly rethinking the criminal justice system as a sort of gateway or gatekeeper to treatment and services. Ideally, we build a more just society where these things are, healthcare is much more widely available, and you don't have to get arrested to get into it. And you don't have to, like feign an addiction to get housing or accept this idea of addiction, just to get housing. So there's a bigger broader question here of like the placement of health care. But I think there are specific things jurisdictions can do, too. And one is drug testing itself as an indicator of compliance with probation, right. As you noticed, and as we noticed, in our sample, certainly some people who were ordered testing, identified as having drug use issues, but some people their case had nothing to do with substance use whatsoever, right? Drug testing was just like another mechanism to kind of get them disciplined. And it just seems like it's got a lot of unintended consequences. And it's a very, and if criminal justice workers could appreciate just how intrusive it is, to be asking someone to give their bodily fluids at a moment's notice and all the hassle that goes with that. I think that could be really, that alone could help.



Victoria Piehowski 1:04:37

So to their credit, Hennepin County has actually begun to really question this themselves. I'd like to like, say it was our paper that changed them. Our like research. And in one announcement, they cited our research, but I actually think that also and perhaps more importantly, was the pandemic. So at the onset of the pandemic, as I'm sure it happened in other jurisdictions, Hennepin County began to think like, are we going to ask someone to get on public transportation during this massive pandemic to do these things? That's, you know, again, to their credit, they saw the issues with doing that. And so they're reevaluating completely that practice. And I think more jurisdictions can do that.

Victoria Piehowski 1:05:22

And then I'll just kind of go back to the the idea of jail sanctions as a way to encourage treatment compliance. Like, again, I'm so excited for your next podcast to drop because I think like, it'll probably speak to this much more coherently than I can. But jail is it's own thing and it is destabilizing in and of itself, right. And so to kind of pair that with treatment, I think is undermining the larger goals of these offices.

Jose Sanchez 1:05:53

Right. So yeah, so that episode actually dropped before yours. So I was gonna get like a quick spoiler alert, but people will probably have already listened to it when this comes out. So they'll know. But so, you know, just if you have a few more minutes, we have like a last question, and this is about your dissertation, which you mentioned at the top of the episode, which, if I remember correctly, was the veterans courts?



Victoria Piehowski 1:06:17 Yeah.



Jose Sanchez 1:06:18

So maybe you could spend like a minute or two telling us more about what it is you're doing? That sounds pretty interesting, actually.

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Victoria Piehowski 1:06:25

Yeah. So I'm really looking at the establishment and expansion of veteran's treatment courts in Minnesota, and basically how it happens. So the way I think veteran's treatment courts are kind of interesting within this larger treatment court setting is that, at least in Minnesota, they've worked really hard to admit veterans with violent cases into treatment courts. And so we have this dynamic of like, understanding violent crime is treatable, which is a little less common, right? Typically, violent crime is punished much more punitively, even as we've sort of questioned this model of mass incarceration, and there's been some moves to limit for instance, drug sentences,]sentences for violent crime have actually just either stayed the same or gone up, right. So I thought that made me kind of curious about what's going on and

made me curious to understand it politically, right. And so I do a couple of things here. I did ethnographic observation in Hennepin County before the pandemic, for 18 months just in their court, kind of seeing how the court operated itself. But I also there was a big sort of Bill that went through the legislature in Minnesota and was eventually passed. So I did ethnographic observation at Bill committee hearings and Bill lunch events. And basically the whole lead up. That was during the pandemic, when like legislative activity was all on YouTube, right? So it was an opportunity to see these things being debated that way, and just place this process of passing this bill. And so this Bill was interesting, because it kind of standardized this VTC diversion process across the state--veteran's treatment court--process across the state. And so what I found and what I'm kind of developing now is that, yes, this is a court for veterans and people really care particularly about veterans as a population, but that they simultaneously that it wasn't sort of enough that they were veterans, and that what is actually happening here is criminal justice actors are thinking about trauma, and how do we think about trauma as a predecessor to violent crime? And what does that mean for these spaces? And how do we build reform on this idea of these notions of what trauma is? And so it's kind of this larger question of like, how do court actors deal with, like science in a sense, like, medical expertise that is itself like, up in the air and evolving, right? And how do they operationalize that within these spaces as they're trying to like build reform and change things?

Jose Sanchez 1:08:59

That sounds like quite the undertaking. super interesting. So I'll be looking forward to your work there. That's all the questions we have for you today. Thank you so much for joining us today. This episode was a little unique in some ways. Thank you so much. Is there anything that you would like to plug anything we should be on the lookout for?

Victoria Piehowski 1:09:18

I don't think. I mean, I checked out my work. This paper I talked about today is in Law and Social Inquiry, as you mentioned. So check that out. I have a Twitter, it's not great. But yeah, I would say Oh, this will this will be too late. I was gonna say like, check out your local elections for District Attorney, but it's gonna this is gonna drop later. So nevermind.

Jose Sanchez 1:09:42 That's all right.

Victoria Piehowski 1:09:43

Yeah. So I would just say no, you can check out my stuff. I'm not super accessible, but I am on Twitter. So.



Jose Sanchez 1:09:50

Perfect. And we'll put your handle in the description. Again, thank you so much for joining us.

we appreciate it. It was run taiking to you.



Victoria Piehowski 1:09:57

It was a lot of fun. I really enjoyed it as well. Thank you.



Jenn Tostlebe 1:10:00

Hey, thanks for listening.



Jose Sanchez 1:10:01

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Jenn Tostlebe 1:10:11

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Jose Sanchez 1:10:22

Or email us at thecrimacademy@gmail.com.



Jenn Tostlebe 1:10:27 See you next time!