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Theory to Practice as an Application of Temporal Crime Theory: The 2010 SWACJ Presidential Address

David R. Montague

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Good afternoon, and welcome to the Southwestern Association of Criminal Justice (SWACJ) business meeting. I call this meeting to order and would like to follow the order listed in the program please. I must say that it is amazing to see the people in this room who are dedicated to addressing criminal justice in terms of theory to practice, which is our theme for this year's conference. Already during this conference, we have had some outstanding presentations which embody our theme. We have also had some outstanding roundtables as well, with only more great things to come tomorrow.

When I look back on this year, a lot of different realities have transpired, not only in our country, but in our southwest region as well. We have had serious economic issues; we have had serious environmental issues. We have even had issues dealing with technology in terms of not only how it is used, but debate over appropriate use; RFID technology and even FaceBook are clear examples.

Our region of the United States consists of Arizona, Arkansas, Colorado, New Mexico, Oklahoma, and Texas. In this last year we have seen Arkansas deal with a significant increase in teens abusing prescription medication. In Colorado, we saw a diplomat cause an international incident for smoking in a plane's rest room and joking about trying to start a fire; all while on his way to visit a convicted terrorist connected to 9-11. In Texas we had an army psychiatrist accused of going on a shooting spree against his fellow soldiers.

Why bring this up? Our theme of theory to practice is not only something that is obviously "catchy", it is a perpetual goal I assert our society must be willing to be brave enough to embrace in order to better address these multidisciplinary criminal justice realities. In essence, I assert we as educators and practitioners, need to maximize this relationship of theory and practice; however, I also assert that this process needs to keep "time", that is a temporal perspective, in mind with respect to this relationship. As you look around this room right now, you see a group of highly-educated people who actually care about the world around us. Moreover, these same people have the distinction of currently and/or previously serving in some professional capacity impacting the criminal justice system. Simply said, our organization is important in that our scholarship is applied, not simply theoretical.

A perspective to focus societal attention on applying theory to practice is something I call "temporal crime theory." Briefly, this theory is designed to ask the most relevant stakeholders on various criminal justice issues, to make the assessment and adjustment actions needed to appropriately address these criminal justice issues. Numerous scholars have made assertions with respect to the temporal connection with crime; some dealing with crime-only and some dealing with other variables as well, e.g. location/environment. Polat (2007) for instance uses a time series model to forecast crime occurrences based on data from crime cluster patterns. Walker et al. (2001) applied temporal analyses to understand the geographic nexus to crime dealing with sex offenders and victims. Ratcliffe (2010) tells us that a traditional focus on



individuals is simply not enough in terms of addressing criminality; therefore society must value technologies, e.g. crime mapping, in order to better address how we not only understand crime, but address it.

As a supplement to these theoretical assertions, which I happen to agree with, I think our policymakers need to also consider "time" in the context of an approach to make the most of the important spatial realities connecting time to crime. Put another way, it seems that as valuable as this technology to understand crime is, we as criminal justice practitioners and educators must also work to gain the buy-in needed for society to invest the needed resources in making the most of what is understood.

When I think of society thirty years ago, I think of the movie *Hot Tub Time Machine*, in which some adults go back to the 1980s and are faced with the possibility of changing the future based on their knowledge of the past (MGM Studios, 2010). Am I trying to have some fun with this topic? I actually am, but inasmuch as I am willing to approach presenting information in a different manner, policy makers dealing with crime issues need to be approached in a way that helps them appreciate why more strategic emphasis of resources is needed. Please also understand that I certainly do not assert our field has never focused diligently to urge policy makers to formulate crime policy which makes more appropriate use of said technology. A clear example of scholarship to illustrate this point is Clarke's (1980) work on situational crime prevention which has had significant impact on the "respect" society gives toward crimes geographically around schools (Montague, 2007). Finally in terms of connection to what I will next describe as the assertions of temporal crime theory, I mention that political elasticity theory (Werlin, 1998) comes to mind as a vehicle to find a "common ground" for policy makers to not only discuss how to address crime, but how to facilitate discussion of resources in a way to focus on actually addressing the crime and not the "politics" associated with that process.

Toward this end, what I'm calling temporal crime theory's focus should be thought of in the context of how policy makers make decisions based on understanding about crime. The first assertion of temporal crime theory is that the past and the future are always relevant in addressing crime problems of the present. This assertion does not imply that the future informs the present, rather that knowledge of the past is crucial to understanding the present and how we consider our future on whatever crime issue is at hand. The second assertion of temporal crime theory is that in understanding a criminal justice issue, it is essential to understand the past of that issue in both broad and specific perspectives. Such understanding informs us about the present and the future. The third assertion of temporal crime theory is that it is not enough to simply have an idea about the future; significant effort must be made to address a crime issue with appropriate knowledge of the past and present in order to appropriately impact the future in the manner desired.

From a public policy perspective, this third assertion is the most problematic in that it requires all of the most relevant stakeholders to take a position which inevitably addresses two realities; "resources" and "ideology." Resources become an issue for most applied researchers and practitioners simply because resources always have limitations, e.g. funding, or physical capacity. Ideology becomes an issue simply because it is usually rare that most leaders, whether appointed or serving as elected functionaries, will agree on all dimensions of a crime problem. In other words, it is not common that those with the authority to make



recommendations and/or decisions dealing with regulations and laws, will see the scope and impact of these crime problems in the same manner as their counterparts.

In terms of how temporal crime theory manifests itself, the indicators supporting this theory abound. First, at present, one cannot absolutely predict the future. This reality is important to all criminal justice professionals and criminologists alike, in that unlike the natural sciences, the likelihood of certain behavior repeating even under the exact same conditions can be at best a prediction, rather than something considered to follow the scientific method. This relegation to a standard of empirical application, while limiting, is obviously still of great importance to society. In essence, it is still worthwhile to attempt to understand a reality to the best of our ability even if we cannot, at present, know with absolute certainty that the prediction is even highly probable let alone a certainty. Therefore, there must be some understanding as to how reasonably intelligent people can make reasonable efforts to avoid crime, based on knowledge.

Applying these assertions about temporal crime theory, the next step should be an examination of how this theory can be seen using various crimes we have data on as empirical testing. It is believed that given the issues we as applied researchers deal with, this theory might help reinforce the need to use appropriate assessment and action toward these very real public problems. As your outgoing president, I feel this level of effort to provide appropriate assessment and action toward public crime problems is not only necessary, but simply good fiscal and ethical aspects our society deserves.

I believe that SWACJ's outstanding new slate of officers along with the strong activities SWACJ has in place, is an appropriate way to help see temporal crime theory applied in our region. Toward that end, during this 2009 to 2010 year, our organization made it a priority to increase the visibility of SWACJ. Under the leadership of Dr. Claudia San Miguel working with Dr. Bill Stone, we saw an exponential increase in the amount of material on our website such that visitors and members could not only understand more about our organization, but also avoid any question about our activities. Applying temporal crime theory to this effort to inform our region, the SWACJ website could provide even more information dealing with our need to highlight faculty, student, and practitioner activities within our region, such as our annual Quiz Bowl, Student Paper Competition, or research and service projects of faculty. The importance of this is again simple, SWACJ is made up of people who come from what I like to call "the business," and our membership is dedicated toward making efforts to address crime and criminal justice education the best that they can be. Therefore, SWACJ is not only saying it has "something" to address the future needs of criminal justice faculty, practitioners, and students; rather, SWACJ has paid attention to our past in order to create useful tools for today, which have longevity and flexibility toward future needs that are broad. In essence, this increase in visibility not only provided more information, but sent a clear message to our members and visitors that SWACJ's website is a platform for staying informed. In some ways, a larger platform than some national level associations is needed. Surely, the increase in visibility will need to highlight other things, but one reality is that this platform is something that enabled a team of officers to be effective.

Additionally, this year, the executive board of SWACJ continued the new trend to hold free-access conference calls periodically. These calls proved important to make sure everyone had a chance to voice themselves as well as each matter of business being vetted in real-time.



Between this effort and the website, any short-range or long-range matters impacting our region were effectively addressed.

The other major effort this year by SWACJ which also connects to this theory, was led by Dr. George Eichenberg, who worked diligently to research the feasibility of an associate level of membership for secondary school students. This High School level of access was seen by SWACJ as important to not only continue mentoring college and graduate students, but to engender the values of our work in the criminal justice system at an even earlier age. So my hope is that temporal crime theory could be a bridge to connect the technologies we currently have that help us understand the connection of time and crime, with the political hardware and political software which shape the political realities making it difficult for appropriate efforts to be either formulated or modified in addressing crime. Therefore, it is hoped that our work temporally in the present, will not only have future impact in terms of the careers of these secondary school students, but show them the importance of making the appropriate effort(s) with stakeholders impacting criminal justice issues.

With these efforts up and running, I can only say that it has been an honor working with such an amazing team of officers and it has been a pleasure serving our southwest region of the United States this year as regional president under our parent organization the Academy of Criminal Justice Sciences.

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Note from the Guest Editor

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It has been a special privilege to be the guest editor for this conference edition of the journal. So many conference attendees sent their papers for consideration. It renews my faith that we are, as a region, being so active and producing such quality work. I didn't get to see many of these presentations at the conference so this was also a great opportunity to catch up.

The articles here represent the best works from our conference in Little Rock, including the final article by the winner of the student paper competition. There were many more which were not selected for this edition, most of which the reviewers and I have encouraged to revise and resubmit to the normal journal for consideration. Everything that was submitted was a quality piece. This made my job and the job of the reviewers more difficult, but more satisfying at the same time.

A special thanks to the many reviewers who have helped me in the selection process:

- Will Oliver
- Ray Kessler
- David Montague
- Lynn Greenwood
- Jeff Walker
- Rob Worley
- Camille Gibson
- Ed Garcia
- Claudia San Miguel
- John Kilburn
- Quint Thurman
- George Eichenberg
- Chip Burns
- Jim Golden
- Katy Eichenberg

Thanks to everyone in SWACJ for their participation and support. As you can see from this edition, the conferences are producing excellent work and I am proud to be a part of this organization.

Lorie Rubenser
Guest Editor, Southwest Journal of Criminal Justice

Note from the Editor

I would like to thank Lorie Rubenser for her hard work and diligence throughout this arduous process. The Journal experienced some administrative turnover and it delayed this issue a few months and I am heartily sorry for an inconvenience we caused her, the authors or the Association. I often tell friends that every issue we publish is like the birth of a new child. Well, we experienced some "complications" on this delivery but this baby is here and very healthy!

Roger Enriquez,
Editor

On Toiling in the Field: The Necessity of Doing and Rewarding Applied Research and Community Service in Criminal Justice

Philip W. Rhoades

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Abstract

The role of teacher-scholar for Criminal Justice educators reduces or eliminates the important and historical community service role of universities. The teacher-scholar-activist role by involving the discipline in service and applied research at the community level can lead us to make significant contributions in the fields of policy and practice. Examples from the southwest are given of the teacher-scholar-activist. This role may contribute to improved policy making, use of evidence based decision-making, program creation and expansion, and other improvements in local criminal justice policy and practice. This role should be integrated into the discipline and be rewarded in tenure, promotion, merit, and other evaluations of faculty. The activist role provides benefits to teaching, research, career development, and the advancement of the discipline.

Key Words: applied scholarship, public service, professor role, activism, policy

AN ALTERNATIVE THEME

The theme selected for the 2010 meeting of the Southwestern Association of Criminal Justice (SWACJ) was “Theory to practice: How Southwestern Educators Impact the Field of Criminal Justice.” As I first contemplated this theme, it seemed to call for an historical description of what has been the contribution of educators in the region to the academic discipline. Alternatively, it could have been a call for a description of what educators were presently doing to impact the field. Neither of these approaches was appealing. As I began to speculate upon the meaning of “field” and the implied issue of movement from “theory to practice,” I was reminded of themes and issues raised at a number of the meetings of the Academy of Criminal Justice Sciences (ACJS). Should consideration be made about impacts of educators upon their “field,” their discipline in academia, or should “field” be inclusive of the fields of policy and practice beyond the boundaries of our educational field? If we consider academia alone, we would consider how educators teach about theory and its application to practice to their students. We would consider how educators engage in scholarly endeavors

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within the academic field to share theory and its application with colleagues. However, when this limited conception of “field” is placed in operation within the discipline, it has a variety of negative consequences. We deny the existence of significant parts of the mission of universities and ignore or disparage much of the work performed by discipline faculty.

I chose to define the field in the theme broadly to include the academic’s role in the fields of policy and practice. These are fields that we ought to impact in our discipline. So, I chose to modify the meeting theme to “How Should Southwestern Educators Impact the Field of Criminal Justice?” To answer this question, I return to a much earlier work where I argued that the appropriate role for an educator is that of Teacher-Scholar-Activist (Rhoades, 1995). Burnett (2003, p. 135) suggests we ought “to define the academic role as one that integrates activism and research in response to one’s passion.” Engagement in public and professional service as a volunteer permits one to advocate from professional expertise within the fields of policy and practice, but volunteering is not enough for the professor. “The activist is one who advocates for social change and is more likely than the volunteer to take a leadership role or to take responsibility for the social movement’s activities” (Burnett, 2003, p. 141). Many in the Southwest perform this role. Many have a passion or are engaged as change agents in their community, but receive little recognition for it. I argue that as a discipline, we need to accept the activist role and integrate it not just in our actions, but in our expectations as found in university mission and goal statements and in policy concerning reward structures for faculty. I provide examples from my experience and my institution in support of this argument.

As I suggested in my earlier work, before us lies a broader field in which to toil. This field would permit and oblige us as individuals to become actively engaged in a more complete concept of the academic role. This teacher-scholar-activist concept retains public service within the role and extends the definition of scholarship to include that which reaches broader, more public audiences. This faculty role concept has been described as one of public scholarship (Cantor & Lavine, 2006; Colbeck & Wharton-Michael, 2006). The Concept of public scholarship views the three parts of the faculty role as an integrated whole infused with community involvement and civic engagement (Colbeck & Wharton-Michael, 2006, p. 17).

Working in this field and integrated role causes us to become advocates for the positions we discover in our own research or from the integration of the research of others. To toil there, we must be advocates, not internally with the members of the discipline, but externally to our neighborhoods, cities, states, and nation. This toil requires each of us to become activists in the use of our knowledge through applied scholarship and public service where ever the subject matters of the field are at issue. It requires us to ensure that our program’s missions and faculty reward policies support those that toil.

WHAT HATH OUR TOIL WROUGHT?

Perhaps, a place to start in consideration of Southwest impacts on the field or fields is in the context of the academic field. In response to the question about how Southwestern educators have impacted the field of criminal justice, I conclude that Southwestern educators have done nothing less than contribute to the development and maturation of an academic discipline. The discipline described here encompasses criminal justice, criminology, juvenile justice, and other conceptions of justice related education. Former ACJS President Clear (2001, p. 723) in his Presidential Address to the Academy concluded that the discipline had “come of age”

and was at that time an “established field.” later analyses reach the conclusion that “first-class citizenship has been won in the academic community” by the discipline (Foster, Magers, & Mullikin, 2007) and the it is a mature discipline (Walker & Raptopoulos, 2008, p. 273). A variety of Southwest faculty impacts can be observed that support these conclusions.

Southwestern educators have contributed to the development and expansion of academic criminal justice programs. Undergraduate, masters, and doctoral programs exist at institutions in the southwest region now where there were none in 1980. Programs have been expanded, assessed and reviewed, and modified as has been done in any other discipline at regional institutions. At my own institution I have participated in several revisions of our undergraduate program, led our program assessment process, participated in program reviews and long-range planning, and coordinated a graduate program in which our discipline participates. I have participated in the faculty searches that have increased our faculty 400% (1 to 5) and in the student recruitment efforts that have increased our enrolled majors more than 650% (45 to 343).

Southwestern criminal justice educational programs have educated large numbers of pre- and in-service professionals. Former ACJS President Finckenauer (2005) observed that “criminal justice has ...educated thousands and thousands of students...producing a better informed and educated citizenry [and] has helped create whole new professions.” Each of us in the region can at least roughly estimate the number of graduates from our programs that we have taught. I appear to be approaching the 2,000 mark. Over the years these graduate have achieved significant positions in the field of practice and in academia. Those of us with longer careers are likely to be able to point to students who have achieved high level supervisory positions in local, state, and national organizations. We have former students who are now colleagues in academia.

Southwestern educators have contributed to the literature of the field through scholarship published in the discipline’s journals. Most of us are likely to be able to document publication in traditional, peer-reviewed, academic journals. Books have been written and edited, new journals have been created (such as the Southwest’s), and a literature for the field has been formed. This formation of a body of scholarship for the discipline with venues in the discipline for its publication is part of the reason Clear (2001, p. 724) concluded that criminal justice had established itself. A decade of additional scholarly production with Southwestern contributions has occurred since Clear’s conclusion was made.

Southwestern educators have contributed to the development and maturity of the professional organizations of the discipline. It is largely from evidence of service to the profession at the national level that Walker and Raptopoulos (2008, p. 273) conclude that the discipline is a mature one. Southwestern educators have served as officers or committee members for state, regional, and national organizations or their sections/divisions. We have created the programs, done the local arrangements, chaired panels, presented papers, and served on roundtables for annual meetings. This service insures that annual meetings are attractive, lively, and serve their important function of the dissemination of ideas and information among peers. I as many others have served in some capacity at one or more level of organization in every year that I have been in the Southwest. This began as I attended my first Southwest meeting in 1982 and attended the associated meeting of the Texas Conference of College and University Criminal Justice Educators (as it was named then). I found myself

elected as a Trustee before I could blink, much less, speak. In every year since with only one exception, I have served in an elected capacity or on a committee for Texas associations, SWACJ, the ACJS, or the Police Section. This kind of service is common among criminal justice educators in the Southwest.

While program development, teaching and graduating students, engaging in traditional scholarship, and developing professional organizations contribute to the status of the academic discipline, they are an incomplete accounting of the impacts of educators in the broader field of the discipline. Analyses of only these dimensions contributes to a limiting of our understanding of the broader field and limits the adoption and reward of the full role of the academic professional.

THE PROBLEM OF THINKING THAT THE FIELD IS ONLY FOUND IN ACADEMIA

The image of professor, the career role of the academic, has been increasingly limited to that of scholar to the point that teaching is not as valued as research and publication in journals (Chenney, 1988, p. 10; Brookes & German, 1983, p. 20; Austin & Gamson, 1983, pp. 16-17). The “dominant view” uses “publication” as the measure by which a faculty member’s “scholarly productivity is measured” (Boyer, 1990, 2). Without “generally accepted standards for the measurement of teaching effectiveness faculty and their peers turn to counting publications (Brookes & German, 1983, pp. 19-20, 34). As in other disciplines, analysis of publication productivity in criminal justice has even become a method of measuring the quality of programs, contribution to the field, and success of careers (Sorensen, Patterson, & Widmayer, 1992; Thomas & Bronick, 1984; Jennings et al.. 2008; Rice et al.. 2008; Kleck, Wang, & Tark, 2007; Walker & Raptopoulos, 2008). The focus in the discipline’s literature on publication in peer reviewed journals contributes to the image that scholarship is equivalent to only publication in such venues. This limited view of scholarship has become the primary form of evaluation in various aspects of the reward structure for academics. Thus, in seeking acceptance and respectability as a discipline, we have focused too much on teaching and a narrow view of scholarship.

This narrowed concept of scholarship is that which Boyer (1990, pp. 17-21) terms the scholarship of discovery and of integration. These relate to research which discovers new knowledge or efforts to interpret or make connections or give new meaning pre-existing work. Several problems exist for the discipline if it uses this narrow concept of scholarship. First, a significant proportion of academics, ranging as low as 10% at research universities to as high as 87% at community colleges, do not publish in this form of scholarship (Boyer, 1990, pp. 127-128; Brookes and German, 1983, p. 34; Austin & Gamson, 1983, p. 21; Gerwerth & Bachand, 1993, p. 57; Wydmayer & Rabe, 1990). A difference in the number and frequency of scholarly products was recently noted among female criminal justice faculty related to their employment within universities at different Carnegie Classifications (Rice et al.. 2007, p. 379). Productivity declined as one went down the classifications. What occurs in the development of the teacher-scholar role image is an expectation of scholarship at all levels of institutions that may not be appropriate or possible at all levels. Work load demands for teaching and other workload functions differ among those levels. Adopting the teacher-scholar (only) role fails to account for the differences in the real work demands placed on the discipline’s faculty. This generates

a conflict among and a gap between role expectations, reward structures, and role performance which leaves many faculty demoralized, unrewarded, and seeking to leave the profession.

Second, this narrow concept of scholarship cannot be extended to all of the activities which professors may be called upon to perform as public service. Studies of faculty workloads indicate our “activities have always been divided between teaching and scholarship, with service activities more an afterthought (Austin & Gamson, 1983, p. 20). Academic careers are not based on public service (Unrue, 1990). Service tends to be within the bottom range of importance when criteria used in pre- and post-tenure are ranked (Licata, 1986, p. 50-53). Albeit, the recent work of Walker and Raptopoulos (2008, p. 273) both offered an example of the use of professional service to examine productivity and encouraged the completion of additional research in this area “of both faculty and institutional productivity.” Public service does not seem to influence the ranking of program quality (Mijares & Blackburn, 1990).

Thus, we have not remembered that the mission of higher education and our discipline is an integrated whole which includes public service. Therefore, we have developed bias against public service and either do not engage in it or do not publicly proclaim it when we engage. We have limited our concept of scholarship and created restrictive standards, as have others (Boyer, 1990, p. 2) far more than should be acceptable in higher education.

We may continue to toil only in our academic field; that of a narrow, limited, traditional role of the academic as teacher-scholar. This toil leads us to teaching our students and to researching and publishing for ourselves, for the discipline. Our scholarship becomes overspecialized, its significance is reduced, and it becomes irrelevant but for smaller and smaller audiences (Chenney, 1988, p. 9; Bohm, 1993, p. 529). Former ACJS President Lab (2004) expresses this concern well.

As experts in our field, we spend a great deal of time ‘preaching to the choir.’ We publish or work in a number of academic journals and forums, and we present our research at local, state, regional, and national/international meetings every year...But few of us try to take those ideas to members outside our academic or practitioner communities. What we do is write for each other. Most of us do not try to take our ideas and research to the politicians or the general public (p. 291).

My experience is both an example of Lab’s criticism and of the alternative to it. For example, this paper was presented at the SWACJ meeting to 10 colleagues. In comparison, on the day before that presentation, I presented the findings from an applied research project for the Corpus Christi Commission for Children and Youth to 53 executive directors, supervisors, staff and volunteers in government and non-profit agencies concerned with children. This presentation was an example of the scholarship of application. A further example is the segment of time that reflected the early public dissemination of data and reports from a juvenile delinquency strategic planning process. From 1999 through 2001, I made 8 paper presentations at regional and national professional/academic conferences. The audiences at these presentations varied from 5 to 30 persons and each could have received a printed copy of the paper behind the presentation. In the same time period, I made over 200 local presentations to audiences of between 30 and 300 politicians, program directors and staff, politically active citizens, teachers, government officials, and local funders. In this time, I distributed 11 reports from applied scholarship efforts.

The reports directly related to the delinquency prevention effort each received distribution in excess of several hundreds. A clear difference in potential impact of one professor’s scholarly effort on policy and practice may be seen from these examples.

As a discipline, we need to broaden our concept of scholarship to include not just the scholarship of discovery and the scholarship of integration, but also the scholarship of teaching and most importantly the scholarship of application (Boyer, 1990). This will assist us in recognizing and valuing all of the forms of scholarship in which criminal justice faculty engage.

If we accept the public service role and integrate it into our role image of the professor, the role will be complete and it will help us to fully serve our institutions and society. It is through public service and the scholarship of application that the professor’s role becomes that of teacher-scholar-activist/advocate. It is in the performance of public service and the completion of applied scholarship that we as a discipline can enter the fields of practice and policy.

THE TOIL IN THE FIELDS THAT IS NEEDED: PRACTICE AND POLICY

As a discipline, we must remember that the mission of higher education in American society has probably never been limited to teaching and scholarship. While the definition of service has varied, higher education has always had a three part mission: teaching, research/scholarship, and service (Boyer & Hechinger, 1981; Bok, 1982; Crosson, 1983). Over the past several decades, the demands from the private sector and government for more service have increased (Scott, 1990, p. 102). The fact of and the increased demand for this role can be justified in a variety of ways.

The public service role may flow from merely the mission any social organization has to be a part of its society (Scott, 1990, p. 106) or more specifically, as a reciprocal duty in return for the public support (funding) that institutions of higher education receive (Bok, 1982, p. 64-65). The latter encourages Bok (1982, p. 65) to argue that the service orientation of institutions should be so strong as to remove their walls. Customary practice may lead to a perpetuation of public service. Services provided in the past may have caused “communities and cities ... to regard colleges and universities as vital resources in the search for solutions to their problems” (Unrue, 1990, p. 124) resulting in continuing need and demand.

Public service has been a role of higher education for over three hundred years as it has been involved in assisting major national change, providing significant social criticism (Boyer & Hechinger, 1981, pp. 9, 18) or addressing contemporary public policy problems (Monat, 1990, pp. 98-99). Because higher education and society are interdependent, it is essential that higher education become “more energetically engaged in the pressing issues of our time” through public service (Boyer, 1990, p. 76). The criminal justice discipline has been called to the public service mission repeatedly by our leadership.

Robert Bohm (1993), in his Presidential Address to the Academy of Criminal Justice Sciences (ACJS), argued that the Academy should become involved in and exert influence on policy issues at the national level. Bohm (1993, p. 529) wrote that we “have not done a good job of educating the public, politicians, and many criminal justice officials about crime and justice.” His recommended remedy for this failure is to legislate policy statements from the Academy as a whole. Similar opinions and calls for the Academy to engage in policy statements, for it to

intentionally inform policy, or for its members to engage in such policy actions have come from former ACJS Presidents Vito (199, p. 15), Merlo (2000, pp. 657, 659), Clear (2001, p. 725), and Lab (2004, p. 691). However, it is unlikely that the Academy will answer these calls to action. The selection of issues and ultimately which position on those issues the Academy should take remain major stumbling blocks for organizational action. Current ACJS President Marquart (2010) indicates that the “ACJS has chosen not to promote specific substantive legislation or policy prescriptions.” It may be that it is not as a single professional unit that we can and should address policy. It may be that this is an individual mission for each of us within our role as teacher-scholar-activist.

Bohm (1993) argued for organizational policy statements at the national level from a belief that this will be more effective than individual efforts at local levels. Conversely, I can see no hope for creating national policy statements unless we thousands of individuals accept advocacy and activism as vital parts of our own individual professional roles. It is in action that we may find value. Indeed, we are reminded by Clear (2001, p. 725) that “the study of criminal justice lacks meaning insofar as it is divorced from action.” Vito (1999, p. 14) had earlier indicated that “to be serious about producing the best knowledge we can, and to transmit this knowledge to our students and practitioners in the criminal justice and government communities” was the “way to achieve meaning.” “Knowledge does little good without dissemination... We can do no good in isolation. We must do a better job of bringing our research to the people who can use it most” (Vito, 1999, p. 13). These people are in our communities operating programs, creating policy, and making decisions. If we become advocates and activists, the total effect of our individual efforts could far exceed that of a broad, general policy pronouncement from the Academy. We, individually, can have effect, toiling in the fields of policy and practice, but we must be in the right field. We must be fully engaged as advocates and activists where and when policy is created and implemented. To a large part, that is right where we live and work, in our communities, not the national level.

JUSTIFICATION FOR TOILING IN THE FIELDS OF POLICY AND PRACTICE

Three interrelated justifications exist for the discipline’s need to enter into the fields of policy and practice. These three justifications link to the teacher-scholar-activist role and flow from the interrelated components of that role.

We return to the earlier discussion and are reminded that “the responsibility of higher education institutions is to society at large... Universities are leaders that set the tone and direction for society, and faculty play a substantial role in this leadership (Cobb, 1990). Faculty are the instrument by which institutions perform service. Faculty need to help community organizations identify basic community needs, “play the role of impartial ‘experts,’ point out the credible within community politics, disseminate and “help in the interpretation of information” (Miller, 1985-1986), and “open new doors and avenues of thinking” (Scott, 1990, p. 112) for the public and for the system. Merlo (2000, p. 657) stated that “we have the opportunity to infuse the system with a new kind of thinking—thinking that is informed by research, by the evaluation of programs, and by an understanding of the complex social conditions.” Stated more forcefully, we do not have an opportunity, but an obligation to contribute to adult and

civic learning (Boyer and Hechinger, 1981, p. 43-50) which extends beyond the class room to individuals and groups in the community.

If universities must respond to local and state demands, so must their parts, i.e. programs of criminal justice, by tying program mission to institutional mission (Myers, 1994, p. 44). . Public service has been a fundamental part of criminal justice since its birth. Remington (1990, p. 15) includes as reasons for the formation of criminal justice, the need for universities to address “a wide variety of important public policy issues” and to become “involved with the field of criminal justice.” Further, he believes that these needs have increased since the early days of the discipline; that universities must discover and investigate alternative solutions for community problems (Remington, 1990, p. 19). Universities and programs can only engage in the public service mission and meet these needs through its workers, the faculty.

For faculty, Crosson (1983, p. 14) classifies public service into four parts: “service through ideas of value, service through social criticism, service through social problem solving, and service through social activism.” While we can share some ideas, provide some criticism, and assist in solving some problems through traditional scholarship, activism and advocacy are better means to these service ends. They are service through social activism. Through activism and advocacy, faculty can disseminate ideas, criticism, and solutions to problems directly, face-to-face with the users of such knowledge. We can engage with the public, with boards, commissions, councils, legislatures, practitioners, and politicians, and with the press actively and meaningfully to advocate policy positions. We can at the individual level give life to the public service mission of higher education. We can at the individual level affect policy on significant social issues. All of this can be done from a position of strength. We bring not only our own expertise to activism, but “the grounding provided by the university affiliation cannot be minimized. The university offers a location of credibility that” also offers “flexibility” and “resources” (Burnett, 2003, p. 142). Universities support and even require public service and the scholarship that connects to public service.

A significant methodology for the four types of public service described above is the scholarship of application which links scholarship and service in the professor role and provides additional justification for involvement in practice and policy. Applied scholarship strengthens the link between the activist and the university mission. The scholarship of application is scholarship which applies knowledge in helpful ways for individuals, institutions, and the problems of society, which connects theory to practice, and which informs the non-specialist through popular writing (Boyer, 1990, pp. 21-22, 35). The scholarship of application includes “activities that relate directly to the intellectual work of the professor and carried out through consultation, technical assistance, policy analysis, program evaluation, and the like” (Boyer, 1990, p. 36). It is an intellectual exercise involving the review and dissemination of knowledge within the professor’s expertise and, much of the time, results in a product which can undergo peer review. Such engagement in the field of action can lead to the creation of new knowledge while solving problems, thus both applying and contributing to knowledge (Boyer 1990, p. 23), perhaps more effectively than the scholarship of discovery.

The barriers to communication with the public and outside agencies which have been placed by our means of engagement in the scholarship of discovery can be crossed by the scholarship of application. Monat (1990, pp. 87, 99) describes faculty as boundary spanners; individuals whose “roles and responsibilities” have been “extended and enlarged beyond the

conventional boundaries of the campus.” Technical assistance, applied research, evaluation research, review of proposals, products, or services, consulting, and advising flow from one’s disciplinary expertise. Vito’s (1999) discussion of applied research and its dissemination to policy makers is an excellent example of this in our discipline. Applied research is research and leads to research (Monat, 1990, p. 87-91). By spanning the boundary between our discipline and society, engagement in the scholarship of application affords opportunities for the scholarship of discovery, informs our teaching, and improves our integration of knowledge. It contributes to the integration of the four forms of scholarship. Further, the scholarship of application helps to integrate the three roles of the professor (teaching-scholarship-service) and permits a varied image of those roles that is more in keeping with practice.

As institutions of higher education and faculty reclaim the public service mission and engage in the scholarship of application they support and enhance the teaching role of the professor. Over the past decade or more, higher education has reclaimed public service under the themes of civic engagement (Cole et al., 2003) and service learning. Civic engagement is supported by service learning, active learning, and/or experiential learning that are carried out in the community (see Rosner-Salazar, 2003; Hirschinger-Blank & Markowitz, 2006; D’Agostino, 2010; Swords & Kiely, 2010; Annette, 2005; Deeley, 2010). Opportunities to provide the environment for significant, positive student learning outcomes are found within service learning (Rosner-Salazar, 2003, pp. 66-68; Hirschinger-Blank & Markowitz, 2006). Those opportunities for civic engagement can only be found if the faculty is engaged in civic affairs themselves through public service and applied scholarship.

Further, the development of a discipline is an interactive and intergenerational process. By teaching and mentoring students in civic engagement, we prepare the next generations of the discipline’s professionals. “Quality faculty serve as role models for the students and standard bearers to uphold the intellect and integrity of the discipline and profession they represent” (Cobb, 1990; Scott, 1990, p. 116). We do a disservice to future generations in criminal justice if we model an incomplete role, if we fail to be engaged in our community. We create a role without integrity. For criminal justice to progress and thrive as a discipline, we must choose to integrate public service and applied scholarship into our concepts of the discipline’s and professor’s roles. We can begin this integration by expanding our concept of scholarship. Criminal justice must not be found lacking. Rather, we can lay claim to some of the most important issues of today’s society and can provide leadership in public service, civic engagement, and service learning for our institutions and other disciplines.

TOILING IN THE BROADER FIELD HAS ITS REWARDS FOR THE DISCIPLINE

Many benefits may flow from the discipline’s work in the broader field through full acceptance of the full faculty role. “An integrated professional model of faculty work that fosters public scholarship would benefit faculty, students, and communities inside and outside the university” (Colbeck & Wharton-Michael, 2006, p. 24).

Benefits to Teaching

The integrated professor role provides benefits to our teaching mission from the other parts of the role. Durham (1992) noted that by “broadening contributions to university educational goals” criminal justice can “solidify” and “extend and expand the present useful contributions it is already making.” He argued this is done by helping students acquire the understanding and skills needed to be effective citizens (civic engagement/public service). Integrating public service and applied scholarship into our role images directly contributes to these important teaching goals. The professor’s role component of teaching becomes more directly connected with those of scholarship and service.

Public service and the scholarship of application permit the academic to become a more informed teacher. We will be encouraged by public service to remain current in our knowledge and will find placement opportunities for our students (Monat, 1990, p. 89). Myers (1994, p. 45) observes that interaction between higher education and agencies “is productive because it allows the program to learn more about the agencies and their needs; at the same time, it allows the agencies to learn from the academic’s knowledge.”

My immersion in the local community through activism is an example of these direct benefits to teaching. Within weeks of my arrival at my institution, I began to be invited to become involved in local boards and committees and to provide assistance to local agencies. Over time, this community engagement developed an extensive social network for me (see Ballard, Klein, & Dean, 2007) that has directly contributed to my effectiveness as a teacher. Through my community engagement and the social network that has developed I gain

- knowledge about local practice, organization, funding needs, gaps in service, agency cooperation, and more,
- examples of practical application for classroom use,
- data for undergraduate student research,
- willing guest speakers,
- knowledge of the preparation of students transferring from community colleges,
- available individual applied experience placements and sites for group service learning activities and civic engagement,
- employee expectations about the preparation of our graduates, and
- knowledge about career opportunities for graduates.

All of this is more difficult to obtain for the un-engaged professor. It is readily available for a professor engaged actively in the community in service and applied scholarship and as Burnett (2003, p. 148) states research that grows out of committed activism enlivens the classroom.”

Also, my community engagement requires me to be an up-to-date source of information. It requires me to be a teacher within the community of practice and contribute to the life-long-learning of professionals. The professor while serving on boards, commissions, and committees is sought out for the knowledge that one has or has access to. Many professors in the Southwest live in a community where they may be the only expert available in their part of the discipline. They are not the big fish in the pond, but the only fish in the pond. They are the only expert that the community can seek out for advice that lives in the community. This reality functions to provide direct access to community policy makers and program planners.

I have provided researched presentations and essays, lists of references, and technical advice on a wide variety of topics including: crime statistics, community policing, crime analysis, curfews, gun control, corporal punishment, bullying, and child abuse, juvenile delinquency, and crime prevention. This teaching in the community directly permits the academic to inform policy makers, encourage evidence based decision making, and advocate for less punitive and more preventive policy and programs. It has permitted me to help to write the actual policy, plans, and programs in the community. At the same time, my understanding of my discipline has improved and I have gained information of direct use within my classes.

Benefits to Research and Scholarship

Involvement in public service leads one to discover research opportunities (Monat, 1990, p. 89). As noted above, one develops social networks that can later be beneficial for research and scholarship purposes (Ballard, Klein, & Dean, 2007, p. 291). Social networks become the source for research access to agencies or funding.

My recent career is an example of this. In my second year at my university, I became involved in the creation of a non-profit advocacy group to prevent child abuse. My role as a board member included the provision of data, analysis, research findings from the literature, and participation in writing the group's master plan. The group chose to engage in a planning process to prevent crime sponsored by the city which led to the creation of a Commission for Children and Youth. I became a non-voting, appointed advisor to the Commission. My role as the source of data, research information and policy ideas continued. My teaching of professional expanded. The Commission became a primary cause of the city, the county, and non-profit organizations forming a comprehensive planning process to prevent juvenile delinquency. After 15 years in the community and active involvement in public service, research opportunities began and multiplied. The planning process needed systematic data collection and analysis of that data within a theoretical construct. I was asked to take on this task.

From 1998 to 2006, my involvement in the delinquency planning process led to more than \$400,000 in grants and contracts to provide data and analysis to the community. More than a dozen applied scholarly works have been produced as well as academic conference papers, journal articles, and student involvement in both service learning and research. A spin off from this project was my writing of grants finally totaling over 1.4 million dollars for an after-school mentoring project which also resulted in local applied research, conference papers, a scholarly publication, and extensive involvement of students in service learning and research scholarship. Because of my involvement with the data collection and analysis process for the Commission and the comprehensive planning process, persons in the social network asked me to engage in a variety of other, funded program evaluations.

Beginning about the same time as the delinquency planning process, individuals within the social network of the original child abuse prevention non-profit asked that I join with two faculty from Nursing to assist a fledgling Safe Communities Coalition targeted toward the prevention of the causes of traumatic injury and death. We were asked to write a grant to support the coalition through the university. I have started the twelfth year of funding for that project which supports the coalition and provides public education activities concerning safe driving. This public service/applied research activity has now exceeded \$850,000 in funding. It has provided the coalition with data, analysis, research summaries, strategic planning assistance, and public

education products. Students have been involved in service learning, public education activities, and research scholarship. I have engaged in applied research scholarship, conference papers, and am drafting the more formal scholarly product. This Safe Communities Project is both an example of the positive effects on research and scholarship of engaging in service and applied scholarship and of the full integration of our three-part role.

Benefits to Faculty

The broadening of our concept of scholarship, active engagement in the public service role, and realization that variety in career paths are all an enriching qualities for the discipline must follow from the acceptance of the public service mission. These, in turn, will produce a more integrated, but varied teaching-scholarship-service role in our practice. We will come to see "it all as one fabric--scholar, teacher, activist., inseparable, one dependent upon and enriched by the other (Haiman, 1983, p. 87). This should open our reward structures, i.e. tenure, promotion, and merit (Scott, 1990, p. 107), to those among us who have been doing excellent, but unrecognized, unrewarded work. We will experience an improvement in faculty morale, greater retention of quality faculty, and less burnout. More of us may begin to enjoy what we do. We will discover that public service activities contribute to our scholarship and teaching providing opportunities for faculty development (Schuster, 1990).

I have experienced these benefits. My institution has systematically rewarded faculty for participation in public service and applied scholarship. My tenure and promotions have been essentially based on these as have other rewards. In a university faculty of about 300, only 11 have been awarded the title of Regents Professor through nomination by the University and approval by the Board of Regents of the A&M System between 1997 and 2009. Of those, 5 have been from my college, 3 from my department and 2 from the Criminal Justice program (a faculty of 3 at the time). That recognition of me and my colleague was based on teaching and scholarship only in part. The award has been primarily one for exceptional university, professional, and community service. The recognition is a confirmation that the teacher-scholar-activist role can be successfully adopted in developing a criminal justice career.

Benefits to the Discipline at Our Institutions and Beyond

We should recognize the "dynamic relationship [which] exists between the development of individual faculty, the development of their careers, and the overall well-being of institutions of higher education" (Brookes & German, 1983, p. 3). Vitality of a discipline or an institution occurs "when there is a match between. . . mission and the faculty members' goals" (Bland & Schmitz, 1990:46). At my institution a strategic plan (Momentum 2015, 2005) has been adopted to move the institution forward in a cycle of growth which began with an earlier planning process about twenty years ago. This strategic plan sets the stage for the integration of my goals, my discipline's goals, and the goals of the university.

Momentum 2015 has three unifying themes: Excellence, Engagement, and Expansion. It is in Engagement that the connections for public service and applied research are most strong. An imperative statement under Engagement states that the university "will recruit, mentor and retain a diverse workforce... These diverse leaders will address the intellectual, cultural, social, environmental and economic needs of regional, national and international communities" (Momentum 2015, 2005, p. 11). To achieve this Imperative it is recognized that a redesign was

needed in “faculty and staff evaluation, reward and performance management practices so that merit, tenure and promotion decisions value excellence, engagement, and leadership as well as learning and discovery” (p. 12). Here, the role of the professor and the reward system for professors are tied to engagement, even leadership in engagement, in the region the university serves. What is this engagement expectation?

To achieve the Imperative: “Live, Learn and Work Together to Promote a Vibrant Coastal Bend Community” the steps required include:

- Create a University culture that recognizes, supports and rewards community engagement and channels the economic, social, and intellectual capital necessary to develop and sustain community engagement initiatives;
- Integrate academic and community initiatives across colleges and programs;
- Communicate, demonstrate, and celebrate the value and benefits of diverse partnerships between the University and the community; [and]
- Stimulate processes that create a sense of ownership in joint ventures between university and community stakeholders (p. 14).

The task then becomes for me the professor to integrate into my teaching, scholarship, and service connections to the university’s strategic plan. The Safe Communities Project noted above is a good example. It has supported and sustained the university’s involvement with a county wide multidisciplinary coalition for eleven years and it has involved students and faculty from several colleges and a variety of disciplines. It is a joint venture with the Texas Department of Transportation (TxDOT) and coalition partners. The Project provides exhibits at health and safety fairs sponsored by partners, presentations to community groups, and distributes driving safety literature to individuals and in bulk to community partners for their use. The presentations and driving safety literature are researched and designed by students, edited by me, and approved by TxDOT. Each item distributed (70,000 items yearly) carries the University’s logo and serves as an advertisement about its share of ownership in this community engagement.

As a funded project, it supports the University’s Excellence and Expansion themes. I have used it for civic engagement projects for students in several classes, student organizations, and individual volunteers. Its research component provides data to the Coalition and its members for evidence based planning and decision making. It has resulted in products in both the scholarship of discovery and the scholarship of application for me and for students. Both safety presentations and data based presentations are made to the public and to classes in other disciplines at the University. Finally, the Project has just received a regional award in the week of the Southwest’s meeting. In attendance at the awards luncheon were three Deans and a Vice President of the University. The explanation of how this Project fits Momentum 2015 was made obvious to these officials. Similar connections and recognition has been made with others of my past and present projects. As a result of these public service/civic engagement, scholarship of application, and teaching activities, I and my discipline come to be perceived as good citizens of the university.

To generalize, the acceptance of the public service mission and applied research, integration of these into our images of the discipline’s and professor’s roles, and practice of them through activism and advocacy gain significant benefits for us. The discipline becomes more fully integrated into higher education and our individual colleges, departments or programs

become more fully integrated into our institutions. We gain greater acceptance, credibility, and legitimacy through this integration. We gain justification for our involvement in policy issues. As a result, we are in a more powerful position from which to advance policy analysis or policy positions.

INSURING BENEFIT TO THOSE WHO TOIL

While these benefits are possible, they must be institutionalized within the university’s reward structure. As stated in Momentum 2015 above, if tasks are placed for faculty in the strategic plan that lead to community engagement and applied scholarship, the mechanisms for rewarding faculty must support performance of those tasks. “Faculty members’ perceptions of how their institutions define and evaluate roles are likely to affect the ways they do their work” (Colbeck & Wharton-Michael, 2006, p. 23). The image of the professor role as teacher-scholar-activist and engagement in public scholarship must be integrated into policies that affect the potential rewards for faculty for them to be reflected in faculty behavior. Engagement in service and applied scholarship must be recognized and rewarded by policy.

The encouragement to engage in service and applied scholarship expressed here is not offered as a substitute for traditional scholarship. The value of traditional scholarship is not questioned, only our image of it as the only valued scholarship. Professors need to be scholars in the traditional sense so as to be “abreast of the profession, knowing the literature in one’s field, and skillfully communicating such information to students” (Boyer, 1987, p. 131). “But, it is unrealistic... to expect all faculty members, regardless of their interests, to engage in research and to publish on a regular timetable” (Boyer, 1990, p. 27). “It is also important to recognize that research and learning need not always involve publication” (Chenney, 1988, p. 11). Indeed, the preferences and work patterns of professors indicate a broader, richer, varied image of scholarship and the professor’s role exists (Austin & Gamson, 1983, p. 23; Boyer, 1987, p. 127).

We must remember that our image of scholarship and our image of the professor’s role are social constructions (Bland & Schmitz, 1990, p. 51). We need to be concerned with the very important and valid reasons that variety exists in practice. We need to take the “responsibility for giving scholarship a richer, more vital meaning (Boyer, 1990, p. 78-79) to allow for these varied role concepts. Cantor and Lavine (2006) note that “[w]e must take public scholarship seriously and frame broader and more-flexible definitions of scholarship, research, and creative work. We must think boldly about what we define as knowledge, what we regard as interesting, and whom we call ‘scholars.’ The future demands it.” We have created the definitions we impose in institutional policy as criteria for faculty evaluation and reward structures. We can recreate them.

Greene, Bynum, and Webb (1984) found two paradigms for the professor’s role operating in criminal justice. One focused on teaching, field practice, and applied research and the other on research and scholarship. Recently, not only were these two paradigms found, but also a third which appeared to be an integration of the original two (Sorensen, Widmayer, & Scarpitti, 1994). Even more recently, Castellano and Schafer (2005) described four unique roles functioning in criminal justice. These were based on different views of the purpose of criminal justice education. Each of these roles is likely to have a different image of the kind of

scholarship appropriate for criminal justice educators. Thus, the discipline needs an image of scholarship which is capable of supporting this richer variety of images for the professor's role.

Offered here as an example of the acceptance and integration of the broader image of scholarship and the integration of public service into the professor's role are excerpts from the policies for promotion and tenure in use at Texas A&M University—Corpus Christi (Appendix A) and its College of Liberal Arts (Appendix B). These are the sections of the policies that Faculty Personnel Advisory Committees, Chairs, Deans, and the Provost use in defining scholarly activity and service found within the wording of the criteria for promotion and tenure and in consideration for merit pay. The promotion and tenure process involves the review of the faculty member's record by elected tenured faculty committees who advise the Dean. Recommendations are then channeled up through the Provost and President to the Board of Regents. The university level policy has the approval of that Board of Regents.

As may be seen, the university level policy (Appendix A) combines the four types of scholarship into three: discovery, integration and teaching, and application. The latter recognizes scholarship that "brings learning and knowledge to bear upon the solution of practical problems." It notes that the products for the professor may be "derived from consultation, technical assistance, policy analysis, and program evaluation" (paragraph 3.2.3). The public service role is supported in that the university "encourages community service in areas related to coastal and urban issues" and "recognizes the emerging role of the institution in business and industrial development, work force development, and community, educational, and social development" (paragraph 4.2). All of these are consistent with the strategic plan Momentum 2015's requirement that faculty promotion, tenure, and merit procedures value engagement as described above.

For the level of the College of Liberal Arts (Appendix B), the policy contains the same three types of scholarship. Each has a longer list of forms for the different types. These reflect the experience of the faculty at the time the policy was written. None of the lists are considered to be complete as other kinds of scholarly products may exist. The scholarship of Application section is described as bringing "learning and knowledge to bear upon the solution of practical problems" and that "such work should be for groups outside the institution or beyond normal classroom responsibilities" (c. Application). The products of the scholarship of application may be submitted for peer review internally or externally, but it is sufficient if that external review or selection comes from the field of practice. For example, an evaluation report for an agency may need to be approved by the agency's board of directors prior to its acceptance by the agency and release of the professor from contractual duties. Alternatively, if an agency returns to the same professor for additional applied work, it is accepted as a sign of the peer acceptance and selection of that body of work.

The College policy is also more detailed in providing lists of kinds of service to the institution, the profession and the community. While community service "must relate to one's academic field or else be clearly approved by the University" this is broadly interpreted (C. Community Service). Given the commitment to engagement across a large spectrum of issues found in Momentum 2015, it is difficult to find public/community service that does not fit either one's discipline or the University's mission.

The College of Liberal Arts criteria for promotion (and tenure) require participation in both scholarly activities and community service. For promotion to associate professor, the candidate

must "have demonstrated a pattern of engagement and productivity in scholarly/creative activities" that has been peer-evaluated and documented. For promotion to full professor the candidate must "have a continued pattern of recognized achievements in scholarly/creative activities by professional peers" that is "a consistent, on-going set of acts, behavior, or other observable evidence" (College of Liberal Arts, 2006). In both sections of the policy, the reviewers attention is called to the definitions and descriptions found in earlier parts of the policy as found in Appendix B. The College criteria for promotion to associate professor in the area of service indicate that the candidate must "have participated in professional and/or community service." At the promotion to full professor evaluation, the candidate must "demonstrate their leadership in service" to the University, the profession or the community (College of Liberal Arts, 2006).

These policies appear to function to support a variety of definitions of the teacher-scholar-service role in a college with 19 disciplines across the humanities, arts, and social sciences. They have been applied, at least in the personnel advisory committee on which I serve, consistently with the Momentum 2015 strategic plan. In my case, earlier versions of these policies resulted in early promotion to associate, early tenure, promotion to full and usually, an annual award of merit pay. My community activism and applied scholarship have been cited positively in all of these decisions. While the policies offered here are not perfect, they are an example of how the teacher-scholar-activist role can be successfully integrated in to reward structures for faculty. They do not just permit, but encourage the activist role found within the University's mission. In doing this, they encourage faculty to get out into the fields of practice and policy.

INVITATIONS TO TOIL

We stand now at the gates of the discipline's several fields. From here, we can stay in our traditional academic field past maturity as a discipline to social insignificance, social isolation, and scholarship for scholarship's sake. We can pass by the significant social and political problems of our society. We may remain detached and neutral in our institutions safe from the tensions, disorder, and struggle of policy debate, community problem solving, and application of knowledge. By our choice, we may permit our society to by-pass us to seek the help of others on its way to confronting the issues of the twenty-first century.

Or, we can choose to enter the broader field, leading our discipline and higher education forward into the twenty-first century vigorously engaged in the full mission our society demands of us. We can choose to toil in the fields which grant to criminal justice the opportunity for leadership in the provision of public service though teaching, scholarship, activism, and advocacy. Rather than being a discipline occasionally criticized for not fitting traditional roles, we can become an exemplary model of the academic discipline of the future. We can be the discipline that accepts in its images and operationalizes in its members' behavior the full teacher-scholar-public servant role. We can be the discipline that seeks out participation in community problem solving, policy analysis, and policy creation.

My earlier call to activism/advocacy updated and printed here was not the first for our discipline and it will not be the last. We can accept any of the invitations that have been made. Vito (1999, p. 14) asked us to muster our passion and expertise "to produce policies and practices that reduce harm and make the world a better place" to "transmit knowledge not only to each other but also to the broader society" and "to provide information that can serve as the basis for policy—policy that is effective, policy that produces a just result." Merlo (2000, p. 659)

expressed the hope that criminal justice faculty “will take an activist role in the development of criminal justice policy.” Lab’s (2004, p. 692) hope was “that those of us in criminal justice (academics and practitioners alike) will begin to challenge what is happening and become active in criminal justice policymaking and debate.”

To open the gates of these fields and become the discipline of the future, we must review the mission statements of our respective institutions and insure that the level and nature of public service and public scholarship which is found in them is reflected in our program’s mission, goals, and plans. We must integrate public service through activism and advocacy and broad definitions of scholarship into our faculty job descriptions, annual review, promotion, tenure, and merit policies, and recognitions of outstanding performance. We must integrate these same expectations into our teaching and mentoring of the future generations of our discipline. Most importantly, we must each embrace activism and advocacy and enter the discipline’s fields ourselves. I invite you to toil with me in these fields. I invite you to become an activist and advocate or at least a participating public scholar. I can guarantee that while the toil will be hard and dirty, we will enjoy the work and it will have meaning.

APPENDIX A

University Rules

12.01.99.C1.04 Descriptions of Teaching, Scholarship, and Service

3.2 Scholarship at Texas A&M University-Corpus Christi consists of three separate, yet interconnected elements: Scholarship of Discovery, Scholarship of Integration and Teaching, and Scholarship of Application.

3.2.1 THE SCHOLARSHIP OF DISCOVERY. The scholarship of discovery involves the search for new knowledge in the discipline and for a richer understanding of the academic field. Creative achievements in the fine arts are considered enterprises of discovery. Productivity may be documented in the form of scholarly books, articles, oral presentations of research, artistic productions, and performances.

3.2.2 SCHOLARSHIP OF INTEGRATION AND TEACHING. The scholarship of integration emphasizes fitting one’s own research -- or the research of others -- into larger intellectual patterns. It involves making connections across the disciplines, placing the discipline in a larger context, illuminating data or concepts in a revealing way, and evaluating new pedagogical approaches. In addition to the more traditional forums for scholarship, such as academic writing, productivity may take the form of a textbook, multimedia production, writing that makes one’s field accessible to a wider audience, cross-curricular innovations, and interdisciplinary instructional achievements.

3.2.3 SCHOLARSHIP OF APPLICATION. The scholarship of application brings learning and knowledge to bear upon the solution of practical problems. It flows directly from one’s

professional expertise. Encompassing activities that relate directly to the intellectual work of the faculty member, productivity may take the form of publications and presentations derived from consultation, technical assistance, policy analysis, and program evaluation.

4. SERVICE

4.1 Service encompasses a variety of professionally related activities through which members of the faculty employ their academic expertise for the benefit of the university, the community, and the profession. Texas A&M University-Corpus Christi places primary emphasis on service to the university and its mission. A faculty member provides service to the university through active participation and leadership in college and university committees, councils, special projects, or duties for which the faculty member is held accountable.

4.2 As a comprehensive urban university located on the South Texas Gulf coast, Texas A&M University-Corpus Christi also encourages community service in areas related to coastal and urban issues. It also recognizes the emerging role of the institution in business and industrial development, work force development, and community, educational, and social development. For the purposes of evaluation, however, activities must relate to one’s academic field or else be clearly approved by the university.

4.3 The university encourages participation and leadership in professional activities and associations. A professional activity may be considered service when it does not include peer review. Service of all types may be documented by certificates of recognition, letters of appreciation, official minutes, newsletters, products of projects, and other tangible evidence of service rendered.

APPENDIX B

College of Liberal Arts

II.D. TENURE AND PROMOTION RULES AND PROCEDURES

II.D.6.2. Scholarly/Creative Activity

Scholarly/creative activity consists of academic work (productivity which can be documented in the form of research, writing, speaking, artistic production or performance, or in some other appropriate form) that results in expanding the body of knowledge and understanding of the candidate’s academic field. The candidate must demonstrate why any such scholarly/creative activity that falls outside the candidate’s discipline should merit consideration. Scholarly/creative activity may be achieved singly or in collaboration with others. Such work must result in some clear, externally peer reviewed or peer selected product, and must have involved work that is non-routine, novel, creative, imaginative, ingenious, or original (though not necessarily all of these). It should occur in addition to one’s normal teaching assignment. Scholarly/creative activity includes academic work (as defined above) in any of three separate, yet interconnected forms: Discovery and Creation, Integration and Teaching, and Application.

a. Discovery and Creation

The scholarship of discovery and creation involves the search for new knowledge in the discipline and for a richer understanding of the academic field. Products of the scholarship of discovery and creation must be externally peer reviewed or selected, and candidates are reminded that the quality of such activities must be demonstrated. A non-exhaustive list of activities includes the following:

1. publications;
2. manuscripts submitted for publication;
3. work in progress;
4. oral convention presentations (e.g. panelist, respondent -- a substantive presentation, not just moderator of panel);
5. art exhibitions;
6. music compositions, performances, and conducting;
7. theatrical performance, direction, design, scripts, and script adaptations;
8. public exhibition of films, tapes directed or produced or otherwise created.

b. Integration and Teaching

The scholarship of integration and teaching emphasizes fitting one's own research or creative activities, or the similar work of others, into larger intellectual patterns for an external audience. It involves making connections across the disciplines, placing the discipline in a larger context, illuminating data or concepts in a revealing way, and evaluating new pedagogical approaches. Such materials must be externally reviewed or selected, and candidates are reminded that the quality of such activities must be demonstrated. In addition to the more traditional forums for scholarship, such as academic writing, a non-exhaustive list of productivity includes the following:

1. textbooks or parts of textbooks;
2. published writing that makes one's field accessible to a wider audience, e.g. editorials or articles in popular press;
3. interdisciplinary achievements that advance pedagogy in a manner appropriate to the institutional mission;
4. other instructional materials that advance pedagogy in a manner appropriate to one's discipline and/or the institutional mission.

c. Application

The scholarship of application brings learning and knowledge to bear upon the solution of practical problems. Such scholarship, which must be externally reviewed or selected, flows directly from one's professional expertise and would result in a publication, presentation, or other tangible product amenable to peer review. Typically, such work should be for groups outside the institution or beyond normal classroom responsibilities. Candidates are reminded that the quality of such activities must be demonstrated. A non-exhaustive list of activities that relate directly to the intellectual work of the faculty member includes the following:

1. consultation;
2. technical assistance;
3. policy analysis;
4. external program evaluation;
5. applied or clinical research and assessment and treatment of clinical cases;
6. grant writing;
7. clinics or workshops (presentations, master classes, etc.).

The quality of scholarly/creative activities must be demonstrable in the judgment of the FPAC and those reviewing the candidate's file. Types of documentation appropriate to substantiating quality in scholarly/creative activity include, but are not limited to:

1. recorded recognition by colleagues and professional peers;
2. publishing in refereed and recognized professional journals and presses;
3. invited publications, performances or exhibitions;
4. reviews of performances, books, exhibitions, compositions, applied research;
5. successful grant applications which clearly relate to scholarly/creative activities (as described above);
6. awards based on professional expertise.

The candidate is responsible for providing documented evidence that the products of any scholarly/creative activity have met the above standards, and must ensure that those reviewing the file can clearly discern a pattern of engagement in such activity during the period under consideration. Each candidate must include in the evaluative portfolio a written yearly breakdown of scholarly/creative activity, as reported in the annual Faculty Activity Report. This written breakdown should point those reviewing the candidacy to the relevant supporting documents in the evaluative portfolio.

If sufficient documentation is not available to assist the FPAC in assessing the quality of scholarly/creative activities, then outside experts in the candidate's field may be consulted. These outside experts will be selected only after previous consultation with the candidate and appropriate disciplinary faculty.

II.D.6.3. Service

Service encompasses a variety of professionally related activities through which members of the faculty employ their academic expertise for the benefit of the University, the community, and the profession.

A. University and College Service

In the area of service, the College and University place primary emphasis on service to the University and its mission. A faculty member provides service to the University through active participation and leadership in Department/Discipline, College and University activities. Examples of these activities include, but are not limited to:

1. service as an elected Senator or appointment to a University council or committee;
2. service as an elected or appointed member of a College or Department/Discipline

committee;

3. internal program evaluation;
4. completion of a special project for the University, College, or Department/Discipline;
5. lead author/editor of a major curriculum addition or revision;
6. service on a board, council or committee outside the University by appointment as the University's or College's representative;
7. completion of an institutional research project;
8. grant writing for institutional development;
9. student recruitment;
10. other service to the Department/Discipline.

B. Professional Service

The University and the College encourage professional service in support of the institution's mission. These activities must relate to one's academic field or else be clearly approved by the University. Examples of these activities include, but are not limited to:

1. officer or board member of a professional organization;
2. conference organizer;
3. editor of journal or newsletter;
4. moderator of panel at academic conference;
5. committee membership for a professional association;
6. peer review of professional papers, manuscripts, performances, exhibitions, and presentations.

C. Community Service

The University and the College also encourage community service in support of the institution's mission. These activities must relate to one's academic field or else be clearly approved by the University. Examples of these activities include, but are not limited to:

1. serving as an officer or board member of a community organization;
2. giving volunteer assistance to a community organization or project through provision of advice, grant writing, or other application of one's professional expertise;
3. conducting workshops, giving talks or demonstrations locally (may be creative or even expand knowledge, but usually there is no academic peer review to substantiate it);
4. serving on a committee for a local professional association or community organization;
5. judging local competitions;
6. visiting local schools in some professional capacity.

The above definitions and measures will be used in interpreting expectations for each faculty rank as described in the sections on promotion from one rank to another.

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A Statutory Hearsay Exemption for Elderly Victims' Statements: Cases of Infant Law Mortality?

David B. Perkins

Texas State University—San Marcos

Abstract

A few state jurisdictions, in the interests of effective prosecution of criminals and protection of elderly victims, have created statutory exemptions or exceptions from the hearsay rule for certain pre-trial victims' statements. Because such laws raise Confrontation Clause issues, this paper attempts to provide an update regarding these legislative initiatives and to survey whether these laws have survived constitutional challenges raised during their infancies.

Key Words: hearsay rule, statutory exemptions or exceptions to hearsay rule, elderly witnesses, 6th Amendment Confrontation Clause

INTRODUCTION

This author's interest in issues related to elderly witnesses began quite simply with studies of research regarding the relative reliability of the elderly in terms of delivering effective courtroom testimony. A 6th Amendment "Confrontation Clause" work was not initially envisioned. It was, however, anticipated that if literature, case law, etc., was somewhat scarce regarding elderly witnesses, one approach would be to analogize elderly witness issues to those involving children. This approach proved to be useful, because there really is comparatively little literature on elderly witnesses when compared to that in existence regarding children.

While not fact specific to the topic of this paper, some researchers have certainly called the parallels between young and old people to attention in the sense of criminal victimization itself. As Nina Kohn has put it, "As is the case with child maltreatment, conditions that trigger elder mistreatment are often external to the victim and social in nature. Ageist attitudes foster mistreatment because the perpetrator is less likely to see the victim as valuable, and therefore less likely to control his or her harmful impulses."¹ Kohn concludes that while most states have passed elderly related criminal liability statutes that generally track those for children, legal scholars have still not drawn upon the similarities in victimization in terms of policies and legal procedures related to the elderly to the extent they should.² However, from this point on this paper will depart from further discussion of "criminalization" policy and substantive criminal law related to the elderly and will address elderly policy issues from a criminal procedure viewpoint, and more specifically from a rules of admissible evidence perspective.

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It is one thing to have a person, elderly or otherwise, appear in court, testify under oath, be subjected to cross examination concerning his or her reliability and or credibility, and to allow the fact finder to assess the value of that testimony. But, from a fair trial standpoint, it is quite another to allow a witness to make statements concerning the guilt of an accused in an ex parte or extrajudicial process, and then have these out of court statements tendered into evidence a later trial. And yet, upon many occasions, this form of evidence submission is precisely what has been allowed in a criminal courtroom. This occurrence has become of particular significance, both from policy and volume of events standpoints, within the context of trials where an accused has allegedly victimized a child. But, as America ages faster than ever before, there are likewise ever increasing opportunities for elderly witnesses to correspondingly arise in criminal cases.

Upwards of forty states have passed criminal procedure/evidence statutes designed to recognize the difficulties inherent when a child testifies, including as Professor Robert Mosteller puts it, "deficits in capabilities of quite young children, possible inability to understand the oath, trauma involved in testifying, and reticence or refusals to testify."³ While these laws may vary somewhat from state to state, the policy initiative to protect children from further victimization by attendance during the trial process itself is largely present in all. Also present, of course, is the very pragmatic policy objective of securing convictions and punishments for guilty child abusers. Under these statutory schemes, protection of the young ranges from the use of video taped child testimony, to live testimony through one-way glass, to insertion of a physical screening device between the child and the defendant in the courtroom, to introduction through video tape or adult witnesses of outright prior hearsay statements made by the child. Should elderly witnesses, particularly those who are also victims of crime, whose appearance for trial may present some of the same or similar testimonial difficulties, be afforded similar evidentiary rule treatment and protection as children?⁴ A few states have answered this inquiry in the affirmative, and have enacted a separate form of hearsay exception for application to some elderly witness statements concerning at least some forms of crimes. To date the list of such jurisdictions appears to have included Florida, California, Illinois, Delaware, and Oregon. Other states without such statutes have at times used other both traditional and modern hearsay exceptions to accomplish the same result.⁵

THE SIXTH AMENDMENT CONFRONTATION CLAUSE

In all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him."⁶ According to Carol Chase, the Confrontation Clause was not hotly debated at the time of passage of the Bill of Rights, nor for over a century thereafter.⁷ Eventually, a number of protective aspects of the Clause emerged through Supreme Court cases, but the two features of primary significance in the context of this paper are the defendant's right to face-to-face confrontation (compelling the witnesses to testify in the defendant's presence) together with the defendant's right to cross examine an adverse witness.

The literature is abundant in describing the value to a criminal defendant inherent in the above two rights. Face-to-face accusation is said to help thwart cowardly, behind the back untruths by allowing jurors the chance to observe the demeanor of both witness and defendant simultaneously as testimony comes forth, the relative demeanors themselves serving as a lie detection mechanism. Until 2004, the general view of U.S. Supreme Court jurisprudence

was probably that this tool may not be absolutely necessary in every case, but the exceptions should be rare and exist only to further an important competing public policy.⁸ For example, in *Maryland v. Craig*⁹ the Court indeed ruled that a defendant's face-to-face confrontation right was not absolute on grounds of the competing public policy in favor of protecting sexually molested children from the trauma of testifying in the presence of their accused attackers. Thus, *Maryland v. Craig* was later said to be of great significance in that it could serve to shield victims of crime from further harm.¹⁰ A balancing was still required, however, in that the child testimony had to be subjected to other tests by the judge that provided adequate indicia of witness reliability. This required balancing notwithstanding, Justice Scalia dissented in *Craig*, and for reasons discussed later herein his dissent might now be viewed as prophetic indeed.

Beyond the value of personal confrontation in itself, the additional right of cross-examination at trial allows the defendant to call attention to specific deficiencies in a witness's testimony, such as personal inability to perceive events accurately, or once again a lack of honesty. Cross-examination has therefore been referred to as "the greatest legal engine ever invented for the discovery of truth."¹¹ Indeed, one of the classic arguments against admissibility of hearsay evidence is that it cannot be subjected to the rigors of cross-examination. Are there sufficient justifications then for denying a defendant his various "legal engines" in cases where a key prosecution witness is either relatively young or relatively old?

For many years, the answer to the above question laid, at least in part, in common law and statutory exceptions to the hearsay rule that have long been recognized. Such exceptions at times apply to all witnesses, regardless of age, and are said to be "firmly rooted" in the law. These exceptions, now codified for the most part in the Federal Rules of Evidence as well as in state evidence statutes, have recognized certain forms of witness statements that while made outside the present trial proceedings nonetheless tend to contain indicia of trustworthiness sufficiently strong that personal confrontation and cross examination by the defendant at trial would likely accomplish little. Therefore, the necessity for the use of these exceptional statements, either because the witness is unavailable for trial, or to further the cause of justice, has until recently often trumped the Confrontation Clause.¹² On the other hand, some newer hearsay exceptions not deemed firmly rooted in prior law, such as those recently and specifically created to shield child and elderly witnesses, had come under close scrutiny by the courts even before the U.S. Supreme Court's 2004 decision in *Crawford v. Washington*.¹³

The Court decisively altered the landscape of Confrontation Clause analysis in *Crawford* by casting aside a long standing premise that the Confrontation Clause was often subservient to exceptions to the hearsay rule. More will be said herein about that case and some of its progeny to date. But for the sake of lending a bit of historical perspective to the subject of this paper, let's first consider a couple of pre-*Crawford* examples of elderly tinged confrontation law, one from a case source and one from a statutory source.

TRUMPING THE CONFRONTATION CLAUSE

Lost Memory and the case of *U.S. vs. Owens*¹⁴

While *U.S. v. Owens* does not actually involve a witness who would likely fit into the elderly category, the case perhaps serves as an example of a potential difficulty that defendants may experience when testimonial evidence in the form of a prior statement is offered against them, and the witness, due to mental infirmities and/or loss of memory not uncommonly

suffered by older persons, has forgotten factual details between the time the statement is given and the time of trial. *Owens* may reasonably be viewed then as a strongly analogous legal precedent for application in true elderly scenarios.

In April of 1982, federal correctional officer John Foster was beaten by inmate, James Joseph Owens. Among other injuries, Foster received a skull fracture leaving his memory impaired concerning many details of the attack. However, prior to his release from the hospital, he was at least able to identify Owens as his assailant and to recall some arguably vital bits of what had occurred in a statement given to an F.B.I. agent.¹⁵ At Owens' subsequent trial, Foster again had recall problems. He did, however, remember identifying Owens in his prior statement and so testified at trial. The government then offered the prior out of court statement to the F.B.I. agent into evidence to enlarge its body of evidence against Owens. The prior statement was admitted by the trial court, and Owens was convicted. Eventually taken up by the U.S. Supreme Court, the issue became whether admission of Ford's prior statement constituted reversible error.¹⁶

Although physically present at the trial, due to his memory loss Foster was in a practical sense largely "unavailable" as a witness for direct examination by the state. The difficulty for the defendant was that Foster was likewise unavailable for cross examination in any meaningful sense for the very same reason. One can well imagine the frustration of defense counsel when many questions put to a critical government witness regarding details of the crime itself or the prior identification process result in a response of "I'm sorry, but I just don't recall." The defense attorney is left with the futility of the questioning and the reality that the "witness" that counsel really needs to cross examine is the one that previously identified the defendant, but because of his memory loss no longer inhabits the body (and mind) of the person currently on the witness stand.

Writing for the majority in *Owens*, Justice Scalia cited *Delaware v. Feusterer*¹⁷ for the premise that when a government witness is present at trial, is sworn in, and is subjected to face-to-face confrontation with the accused, as well as cross examination by defense counsel, there is never a "guarantee that a witness called by the prosecution will give testimony unmarred by forgetfulness, confusion, or evasion."¹⁸ Scalia asserted that the confrontation clause only expresses a *preference (emphasis added)* for face-to-face testimony, and a corresponding "opportunity" for effective cross-examination.¹⁹ In short, there is never a requirement that cross-examination be completely successful, so long as the witness is present and the *opportunity* "to bring out bias, lack of care and attentiveness, poor eyesight, and even the very fact of bad memory" is present.²⁰ The majority thus viewed the situation as merely one of the weight to be given the prior statement and not one of its admissibility.

As a further argument for admissibility of prior statements (only) "identifying an accused," Scalia cited Federal Rule of Evidence 801(d) (1) (C) as an additional hearsay exception specifically applicable to lost memories. Scalia's verbiage in use of the term exception in this regard is perhaps unfortunate. For Rule 801 (d) (1) (C) is in reality better-described and understood to be an exemption from the hearsay rule. Why is this so? The answer to that question lies in two parts. First, the witness was in fact placed on the stand and therefore was technically both confronted and subjected to cross examination. Second, and probably of greater significance, the specific form of statement that he made was by the wording of Rule

801 (d) (1) (C) not defined to be hearsay at all. Hence, the exemption as opposed to exception notion ought to prevail.²¹

Such technical distinctions between exceptions and exemptions aside, so long as the prosecution witness is simply called to the stand at trial, Scalia apparently saw no need for any further exploration by the trial judge regarding the reliability of his or her prior, pre-trial statement. In effect this meant that once on the witness stand, if a prior statement of the witness fell within either a statutorily identified hearsay exception or statutorily identified exemption, then its reliability, at least for the limited purpose of admissibility, could be inferred by the Courts.²² That position would seem extremely deferential to the legislative branch and its rule making powers. And as some writers (including Justice Brennan in dissent) have pointed out, that stance may be of questionable merit. It also appears to be at odds with the later robust disinclination by Scalia and other members of the Court to defer to legislatively enacted hearsay exceptions that diminish the protective powers of the Confrontation Clause as was evidenced by the *Crawford* decision.

Brennan's dissent in *Owens* concluded that the Confrontation Clause offers more protection than the mere procedural opportunity for cross-examination by simply putting the declarant on the witness stand. The Clause, in Brennan's view, must offer opportunity for "effective" and "meaningful" cross-examination, which is a practical impossibility when there was the degree of memory loss he apparently believed was present in the Owens case.²³ The views of Claire Seltz were representative of additional criticism leveled at the Owens decision by her assertion that "the Court's reasoning was erroneous based upon the legislative history behind the Federal Rules of Evidence (including Rule 801 (d) (1) (c)), and a misapplication of prior case law."²² She has contended, like Justice Brennan, that the Court had failed to recognize the real substance of the confrontation clause on the facts of the case and had opted at the time to support an empty procedural shell of protection.²⁴

The above criticisms notwithstanding, *Owens* would strongly suggest that an elderly witness, suffering from memory loss occurring between the time of his or her original statement and the trial date, can have that prior hearsay evidence admitted by physically taking the stand at trial and enduring whatever cross-examination might (or might not) result. Left unanswered by *Owens* was the precise level or degree of memory loss that might be so intolerable so as to preclude admissibility. *Owens* was a "partial memory loss" fact situation. While there were details that Ford could not remember, there also were some that he could. Therefore, there were at least some indicators of the prior statement's reliability both at trial, and more importantly, within the statement itself. If cases move further along the continuum toward more and more significant memory loss, might outcomes change? Justice Scalia seemingly would feel not, or at least not at the time that *Owens* was decided.

What potential relationship exists between *Owens* and the Court's more recent decisions applying the Confrontation Clause, specifically the *Crawford* case? *Crawford*, like *Owens*, was authored by Scalia. At a minimum, he signaled in *Owens* the presumed critical nature of face-to-face confrontation of witnesses, even if he offered no actual relief to the defendant in that exact case. Couple his opinion with Brennan's dissent, further stressing the need for an effective opportunity for cross examination, and one could speculate that *Owens* was a forerunner of a massive shift in the direction of the Court, perhaps somewhat difficult to detect in *Owens* itself, but later culminating in *Crawford*.

An Elderly Witness Statute and the Case of *Conner vs. Florida*²⁶

Conner v. Florida is much more directly in factual point, as it involves a person well advanced in years speaking in the capacities of both victim and witness. While it does not deal with a lost memory situation like the previous example, it might very well have done so had the witness survived until the time of trial. It also provides a highly specific look at the type of legislation specifically aimed at addressing admissibility of statements made by the elderly prior to trial, whether they are physically present to be called as a witness during the trial, or are physically unavailable for trial, or otherwise deemed “legally unavailable.”

As previously stated, Florida and other states have passed legislation creating a special exception designed to allow introduction of elderly out-of-court hearsay statements.²⁷ Since any such a statute, by virtue of its relatively recent passage, does not qualify as a traditional, firmly rooted exception, hearsay sought to be introduced under it does not hold traditional reliability status. In this sense, such a statute resembles the residual or so-called “catch-all” hearsay exception now found in Rule 807, Federal Rules of Evidence. In both of these forms of hearsay exceptions reside statements that are deemed sufficiently trustworthy for admission due to particularized, case specific indicia of their reliability.

While recognition of specific factors giving credence to such statements has largely been left for trial judges to determine, in modern statutory schemes the legislative branch may attempt to actually identify and list potential reliability factors within the statutory language itself. This approach to legislative drafting has been employed frequently in the passage of special child hearsay exception statutes, and so it is again understandable how those laws have become templates for the later elderly (and disabled persons) versions. Just such a statutory “scheme” was the subject of the *Conner* decision, and “the court reviewed the constitutionality of the state hearsay exception for elderly or disabled adults, Florida Statutes, Sec. 90.803 (24) (1995)”²⁸

Conner was charged with burglary of a dwelling, armed robbery, and armed kidnapping of an 84 year old man who lived alone. Among other definitional criteria to establish qualification as an elderly person under the law, the statute sets a minimum age of at least sixty, and also requires that the person suffer from the infirmities of aging. Next, the person’s ability to provide adequately for personal care must also be impaired. The victim in *Conner* suffered from some memory, hearing, and vision losses, but he was able to give a police statement shortly after the crime, followed by a second sworn statement two weeks later. With additional help from an informant, the police arrested Conner. Unfortunately, the victim died prior to trial and the prosecution resorted to the Florida statute to successfully introduce the victim’s police statements.²⁹ Conner was convicted.

In setting the conviction aside, the Florida Supreme Court held the Florida statute unconstitutional and in violation of the Confrontation Clause. The state argued that prior precedent involving the Florida child hearsay exception law³⁰ and similarities between it and the elderly law should have produced a different outcome. Indeed, the Court had previously held the child version to be constitutional, and the elderly statute had been rather specifically modeled or patterned after it. Professor Charles Ehrhardt has observed that while the Conner court found the Florida elderly statute “facially violative of the Due Process and Confrontation Clauses...Conner is difficult to understand in light of the court’s earlier decision upholding a similar challenge to an almost identical child hearsay statute.”³¹ Professor Ehrhardt further

analyzed Conner by observing that the Florida Supreme Court distinguished its *Conner* ruling from its prior child hearsay opinions³² because the trial courts in the child hearsay cases made fact findings concerning the reliability of the child statements above and beyond “the specific checklists” for reliability found in the child statute. The Florida Supreme Court recognized that while a similar checklist was present in the elderly version of the law, unlike child witness cases, the Court was for some unspecified reason unable to articulate any additional reliability factors for application in cases involving *elderly* witnesses.³³ One may be left to wonder whether the Florida Supreme Court was saying that the problem in *Conner* was only the lack of a sufficient *record* that the trial court found *additional* indicia of reliability beyond use of the statutory checklist; or that the Supreme Court Justices deemed themselves the only “true sentinels” in Florida capable of sufficiently enlarging upon factors that might eventually suffice or be emblematic of requisite reliability.

The moral of the Florida Supreme Court dichotomy may have been that in drafting either child or elderly witness statutes, the more specific and *numerous* the indicia of reliability that can be identified and stated in the statutory language, the stronger such a statute will be when attacked on grounds of due process and confrontation. Most other existing statutes for child and elderly witnesses, like the Florida statutes, provide at least some checklist of reliability factors. They also normally provide that such a listing is “non-exclusive,” thus giving the trial judge discretionary leeway to hear other indicia of trustworthiness. It is possible that the Florida Supreme Court was concerned with abuses of judicial discretion and inconsistent trial holdings on admissibility from one case to another under such an open-ended approach to the testing of statement reliability. In short, the court may have been saying that without even greater specific guidance from the legislature, or at a minimum from the prior precedents of the appellate courts, trial judges should not be left to their own devices.

At the time Conner was decided, the Florida Supreme Court may or may not have been at odds with the U.S. Supreme Court on the point of use of “pat standards” for assessing reliability. Justice O’Conner, writing for the majority in *Idaho v. Wright*,³⁴ rejected a requirement that prior statements falling in the category of *residuary* hearsay must be assessed by “a fixed set of procedural prerequisites to (their) admission at trial.”³⁵ While a legislative (or appellate court) checklist approach was not specifically rejected by O’Conner in *Wright*, that opinion seemed to allow trial judges considerably more latitude. Wright thus appeared more in keeping with the approach in favor of admissibility of evidence generally reflected in the Federal Rules of Evidence.³⁶ *(Author’s note: The *Wright* case, however, does reject the use of extraneous evidence corroborating commission of the crime as indicia of the prior statement’s reliability. According to O’Conner, the indicia of reliability must relate *directly to the making of the statement itself*). And by the way, back in its day the U.S. Supreme Court denied certiorari in *Conner*.³⁷ In retrospect, the question might be raised as to whether the Court’s rejection of *Conner* was simply an exercise of New Federalism, or did it also signal the infinitely greater shift toward protection under the Confrontation Clause that was to follow in *Crawford*.

CRAWFORD V. WASHINGTON

“In March 2004, the United States Supreme Court dramatically changed the rules regarding the use of the Confrontation Clause in criminal cases. The starting point for grasping the breadth

of *Crawford* is that...hearsay statements that might have been admitted under *Ohio v. Roberts*³⁸ and the Rules of Evidence are no longer admissible...if they were “testimonial.”³⁹ “Whereas *Roberts* and its progeny were built on the notion that the Confrontation Clause generally was an evidentiary rule designed to ensure the reliability of hearsay statements...after *Crawford* the Clause means what it says - it requires an opportunity for confrontation by cross-examination, irrespective of the reliability of the hearsay statement, (at least where the statement is ‘testimonial’ in nature).”⁴⁰ The case “revolutionized Confrontation Clause jurisprudence.”⁴¹

The defendant in *Crawford* was convicted of aggravated assault for stabbing a man. Crawford claimed self-defense. However, his wife also spoke with police and gave a statement that conflicted with her husband’s account, although she herself was accused of being a co-conspirator in the assault. At trial Crawford was able to successfully preclude her live testimony under the Washington spousal privilege statute. But over Crawford’s objection, her prior statement to the police was introduced as a declaration against her own penal interest as co-conspirator. Under *Ohio v. Roberts* such a prior statement arguably would be admissible because *Roberts* held that the Confrontation Clause was not violated if (1) the statement fell within a firmly rooted hearsay exception (declaration against penal interest), or (2) if the statement bears particularized guarantees of trustworthiness (the residuary or catchall exception).

However, in *Crawford* the U.S. Supreme Court unanimously held that *Roberts* was not faithful to the historic principles of the Confrontation Clause.⁴² The *Roberts* standards were also described as being “inherently unpredictable.”⁴³ The court observed that application of the *Roberts* standards in *Crawford*’s own journey through the lower courts made it “one of those rare cases in which the result below is so improbable that it reveals a fundamental failure of the U.S. Supreme Court to interpret the Constitution in a way that secures its intended constraint on judicial discretion.”⁴⁴

Crawford v. Washington is a paper unto itself. That paper has been frequently written already. But, the nuances of the case continue to be tackled and worked out in countless criminal cases throughout the country each day. In a very understated nutshell, *Crawford*’s holding boiled down to this. “Testimonial statements” of a declarant are *not* admissible unless: (1) the prosecution calls the declarant as a witness, thus giving the accused the present opportunity for cross-examination *(Authors’ note – this is consistent with *U.S. v. Owens* and *California v. Green*), and (2) the declarant is now unavailable, (but) the accused has had a prior opportunity to cross-examine him.”⁴⁵

The central issue left for later refinement following *Crawford* was just how far the category of so-called “testimonial statements” extends. The answer was largely left open in Justice Scalia’s opinion, the language at one point being: “Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a formal trial; and to police interrogations.”⁴⁶ As Professor Richard Friedman of the University of Michigan School of Law later remarked, “So much for the core. The boundaries of the category will have to be marked by future cases.”⁴⁷ Indeed, Professor Friedman’s article on *Crawford* contained in the 2004 summer edition of the ABA journal, *Criminal Justice*, is a preeminent early discussion of *Crawford*, its goals, remaining uncertainties, and matters of prior law it arguably left unchanged.

Within that same work, Professor Friedman specifically addressed the potential impact of the case concerning future admissibility of prior statements made by children. He basically concluded that the question becomes “the level of obligation and responsibility we are willing to

put on the shoulders of children” in the sense that what really defines the confrontation right is the obligation of any accuser to confront the accused.⁴⁸ The same question similarly arises with regard to our nation’s elder witnesses (as well as other types of witnesses, such as the mentally challenged, who are not uncommonly deemed appropriate persons for special protection).

CURRENT PERSPECTIVES

This author’s current research efforts disclose that cases involving domestic disturbances and abused children as the witnesses in question continue to provide the greater body of commentary within the literature and case law, and by analogy may provide guidance on the future of confrontation by defendants of the elderly. For example, there is a strong body of work found in the publications of a group of scholars, who in 2007 participated in a symposium on the impact of both *Crawford* and its most prominent prodigy case, *Davis v. Washington*,⁴⁹ and how those two cases interact in the tension existing between child victimization and the Confrontation Clause.⁵⁰

Crawford itself arose within the context of “a tape recorded statement obtained from a criminal suspect (a co-participant in the crime) who was in police custody and who was being interrogated by known government agents using what the Court termed *structured* questioning.”⁵¹ Apparently structured questioning is deemed in this factual background to be police interrogation with a specific view toward later prosecution of any person incriminated by the statement. The Court therefore found such a statement to be testimonial in nature (essentially the substantive equivalent of trial testimony) and therefore, absent confrontation and cross examination, inadmissible against the fellow co-participant.⁵²

In *Davis*, a domestic violence case two years later, the issue was admissibility of incriminating statements made by an adult victim during the course of a 911 emergency call, and while the emergency was still in progress. The Court found these particular statements to be non-testimonial, because the primary objective at the time they were made was a resolution of the emergency and not the gathering of evidence for later prosecution purposes. These statements were juxtaposed against those in a companion case in which police responded to a domestic violence call, but arrived after the event had been concluded. Therefore, the emergency arguably had vanished, and the primary utility of the incriminating statements was for later prosecution purposes as opposed to resolving an ongoing conflict and protecting victims from imminent harm. In this situation, the statements were deemed testimonial and not admissible during a later trial.

While *Davis* potentially answered some important questions within the context of domestic disturbance cases, it clearly left even more to be resolved. As a practical matter of experience, most child abuse and elder abuse reports do not initially arrive wrapped in a clear, true, and convenient *bow of emergency* that fosters later admissibility under a *Davis* like approach. Therefore, “distinguishing testimonial from non-testimonial statements is more difficult in such cases than in domestic violence cases, because the government usually does not question the complainant during the pendency of the emergency.”⁵³ “And, while neither *Crawford* or *Davis* specifically address the testimony of children (or the elderly), several oblique references appeared to discount the wholesale rendering of child (or elderly) statements as

non-testimonial,”⁵⁴ as have subsequent decisions in the lower courts. So, Professor Mosteller has aptly observed:

“We now definitely know that testimonial statements include affidavits; prior testimony; confessions; station-house police interrogations; and non-emergency, official-investigative statements taken by the police re-garding past criminal events in the field. We know relatively little about what other statements are covered by the concept, and an enormous number of important coverage and analytical points remain unresolved. . . . These remaining issues include: (1) Whose intent or perspective matters – the child (or elderly) witness or the questioner? If it is the child (or elderly) witness’s perspective, how is that perspective to be examined, subjectively or objectively? . . . from the perspective of the objective person or the objective person of the age and circumstances of the child (or elderly person? (2) Can statements to private parties be treated as testimonial in any situation, and if so, under what circumstances? (3) When should statements to government officials who are not police officers be treated as testimonial? (4) Must statements be made for an explicitly criminal justice purpose in order to be excluded, and if so, must that purpose be a sole, a primary, or an important purpose?”⁵⁵

As Lininger was to express things, “Professor Mosteller (had) very thoroughly canvassed the lower court’s interpretations of “testimonial” after *Crawford*. . . .”⁵⁶ However, there (were) still enough inconsistencies remaining to mark continued need for future clarifications by the high court.⁵⁷

In commentary made some two years later on the subject of today’s confrontation clause, G. Michael Fenner offered “(that) neither the identity of the out of court declarant nor the identity of the in court declarant is currently the per se determining factor regarding the definition of testimonial statements, and that the question is not who made the hearsay statement or who heard or read the statement, but rather why or for what primary purpose was the statement made.”⁵⁸ In short, “was the primary purpose of the hearsay statement to develop evidence for use at trial, or was it some other purpose altogether?”⁵⁹ Citing numerous lower court cases that have developed, Fenner thus seemed to conclude that the testimonial decision is all about context and required a thorough review of the totality of the circumstances surrounding the giving and receiving of the statement, on a case by case basis.

Since *Crawford*’s appearance, any so-called movement or legislative initiatives within the several states aimed directly at creating special hearsay exceptions for elderly witnesses appear to have become discouraged. . . nay, make that abandoned altogether. This development (or perhaps non-development) would seem natural and understandable given *Crawford*’s new confrontation test.

Writing on the subject of whether a special hearsay exception for elderly or disabled adults can now withstand constitutional challenge, Teresa Watson has recently surveyed the various existing state exception examples and their treatment in the lower courts following *Crawford*.⁶⁰ In fact, one does not even have to go looking for *Crawford* imposed dispositions in relation to the elderly hearsay exemption in the State of Florida; for as previously noted, the Florida Supreme Court had already ruled the Florida statute unconstitutional in the *Conner* decision prior to *Crawford* itself.

According to Watson, the California elderly hearsay exception has been successfully challenged in the California court system, while the statutes existing in Delaware and Oregon have not yet been officially subjected to such challenges.⁶¹ Other post *Crawford* commentary on the Illinois legislation authored by Ralph Ruebner and Timothy Seahill offers that while the Illinois elderly hearsay exception “contains the same (constitutional) infirmities with respect to *Crawford* as those contained in the state’s child hearsay exception. . . . the ultimate effect of *Crawford* on this section will depend on the formulation of what is a testimonial statement.”⁶²

The above statement by Ruebner and Brown induces this writer to return briefly to Watson’s observation of successful challenge to the California statute. The California case in question appears to be *People v. Pirwani*.⁶³ In *Pirwani*, the California intermediate level court of appeals declared the California elderly hearsay exception unconstitutional, both facially and as applied to the defendant in the case, citing *Crawford* as the binding authority. Interestingly, the state’s attorney general had concurred with the defense in the facial challenge to the statute. That concurrence was probably influenced by one of the specific requirements for elderly hearsay admissibility contained in the language of the California statute, that requirement being the preparation by police of a video recording of the statement. Although the California Supreme Court eventually reversed the lower court’s decision on other grounds, one key to the intermediate court of appeals decision was its view that a police generated recording of a statement, such as the type mandated under the California statute, is by its very nature “testimonial,” and therefore inadmissible without defense ability to confront the declarant.

The point exemplified by the above observations of the *Pirwani* case is to again negate any existing notion that all prior statements by the elderly will never be admissible. The California statute’s police video requirement makes it understandably more vulnerable. But, other elderly statutes are not so “scheme tainted” by their express language. Statements will be admissible if the witness either testifies at the trial, or if the defendant has had the prior opportunity to confront and cross examine the witness as and when the prior statements were delivered. The prior statements, even if not previously confronted or cross examined by the defendant, may likewise be admitted if the statements are not deemed to be “testimonial” in nature under the original or currently still evolving guidelines of the Supreme Court and/or the lower courts. And yet another potential avenue of admissibility may fall under the so-called “Doctrine of Forfeiture.” More is about to be said about this doctrine. It is a theory of evidence that one might loosely describe as the “last stand for admissibility of testimonial statements” in the absence of actual physical confrontation by the defendant. However, even this last gasp will likely be seen as problematic under a recent U. S. Supreme Court precedent.

THE DOCTRINE OF FORFEITURE IN AMERICAN JURISPRUDENCE

In *Reynolds v. United States*,⁶⁴ the Supreme Court first addressed the rule of forfeiture by wrongdoing. In doing so it explored English common law cases dating back to the year 1666, as well as one American case from the State of Georgia arising in 1856. Its conclusion in *Reynolds* was that the rule of forfeiture by wrongdoing was well established, and it further grounded its finding on matters of fairness and the need to insure the legitimacy of the judicial system. It was, in short, a decision based upon time honored considerations of equity. “The Court refined the general maxim of “no one shall be permitted to take advantage of his own

wrong into a constitutional maxim: The constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts.”⁶⁵

The relevance of this rule lies in its potential application in cases where a witness, such as a child or elderly person, gives a hearsay statement that may be viewed as testimonial under *Crawford-Davis* analysis, but due to the actions of the accused, either directly or indirectly, the declarant is unable to testify at the later trial. Under this scenario, the accused may never be afforded the opportunity to confront the declarant face to face or to cross examine the testimony in any forum. But, if those realities in fact exist because of the accused's own wrongdoing, the question becomes whether in equity he should still be entitled to hide behind the Confrontation Clause? Put another way, has he forfeited his right to complain of his inability to confront the witness? In *Reynolds* the Supreme Court basically concluded that as a part of American common law the forfeiture doctrine may trump the Sixth Amendment right to confrontation. “Twelve states and the federal courts, (Federal Rule of Evidence 804(b)(6), have a codified version of forfeiture by wrongdoing; therefore, thirty-three jurisdictions have by either legislative action or common law rule adopted at least some form of the forfeiture doctrine.”⁶⁶ Finally, and perhaps of greatest significance, “the Supreme Court reintroduced forfeiture by wrongdoing to the constitutional spotlight in the *Crawford* and *Davis* opinions themselves and reminded American lawyers that the confrontation right may be equitably extinguished through forfeiture by wrongdoing.”⁶⁷

Both Professors Lininger and Raeder have spoken to the issue of forfeiture within the context of child witness cases. To once again draw upon the parallels that may be offered in cases involving the elderly, and to at least generalize their observations toward the latter group might be helpful. Both of them agree with other commentators on the premise that if forfeiture is applied too broadly, the Confrontation Clause is too easily wiped away. It is simply inappropriate for testimonial hearsay to be *routinely* (emphasis added) allowed just because some slight argument can be made that a witness is unavailable to testify due to some behavior by the accused.⁶⁸ Lininger states that “fixing the parameters of the type of behavior that ought to trigger application of forfeiture is critical, but also problematic,” and he further suggests a standard whereby “the doctrine is extended into situations in which the accused commits wrongful conduct that foreseeably and proximately causes the absence of the victim at trial.”⁶⁹

A standard of this sort obviously focuses analysis of behavior on specific action by the accused and a related result (absent witness). But, it also focuses as well on the mental state of the accused. Use by Lininger of the “foreseeable” and “proximate cause” language rings of classical negligence as found in tort law standards. Applying a quasi-negligence-like standard would likely allow for larger numbers of forfeiture cases to occur, because it may indeed be reasonably foreseeable to a person who has victimized another, particularly a child or elderly victim, that the victim can subsequently be intimidated, frightened, or traumatized to the point of inability to take the witness stand at trial. In fact, the accused may well have known or intended to accomplish just such a result through simultaneous or subsequent warnings or threats leveled at the victim.

But might there be other options for enlarging the parameters of forfeiture in the interest of doing justice for a victim? What about the notion of strict liability, with no mens rea requirement at all as applied specifically to the absence of the witness? Might the *results* of

my wrongdoing in originally victimizing the witness, either standing alone or coupled with *transferred intent* present in commission of the original crime be sufficient for forfeiture? Founded in equity, as it is, application of forfeiture rests in large part on decisions regarding appropriate standards of culpability and its appropriate application to the related elements of action and results.

“There has been an active debate among jurisdictions and the scholarly legal community regarding whether the wrongdoer must have had some kind of specific intent (relative to creating witness absence) in order for a forfeiture of confrontation rights to occur, and the federal rule, the rules in eleven states, and some common law rulings have required some kind of specific intent on the part of the wrongdoer for forfeiture of confrontation or hearsay objections.”⁷⁰

This specific question has recently come before the United State Supreme Court in *Giles v. California*.⁷¹ The case involved a murder conviction in which the defendant, Giles, shot and killed his ex-girlfriend outside the garage of his grandmother's house. No witness saw the shooting. At his trial, Giles claimed self defense. He testified that his former girlfriend was a jealous person and on the night in question had come to the location to challenge his relationship with another woman. He also testified that he knew that his “ex” had shot a man in the past, that he had seen her threaten people with a knife, that she had vandalized his home, and that earlier in the day she had threatened to kill both him and his new girlfriend. He further stated that that she charged at him, and he was afraid that she had something in her hand. However, subsequent investigation proved that the victim was not in fact carrying any type of weapon, and she had been shot six times.

In an effort to impeach Giles' testimony, prosecutors sought to introduce rebuttal evidence consisting of statements that the victim had made to a police officer responding to a domestic violence report about three weeks before the shooting. In these statements she told officers details of the disturbance and indicated that Giles had beaten and choked her, threatened her with a knife, and threatened to kill her. Over Giles objection, these statements were admitted by the trial judge under a specific California hearsay exception statute (Cal. Evid. Code Ann. Sec. 1370 (West Supp. 2008) permitting admission of hearsay describing the infliction or threat of physical injury on a declarant when the declarant is unavailable to testify at trial and the statements are deemed trustworthy. While his appeal was pending before the California Supreme Court, the United States Supreme Court decided *Crawford*.⁷²

At least two observations quickly come to mind, one regarding the nature of California statute, the other the descriptions of the statements and the event in which they were delivered. This California law would seem to be one which is specifically designed to aid the introduction of prior statements made by a protected class of victims (domestic violence) which is composed of persons who are often too intimidated or traumatized to testify later. The statute also contains at least some semblance of the *Ohio v. Roberts* standards for admissibility. In these respects it might be said to mirror many child and elderly hearsay statutes (although this California law does not contain any list of reliability factors for the trial judge to utilize). Another observation is that since the statements in question were clearly incriminating toward Giles, in the aftermath of *Crawford* they ought to be analyzed as to whether they were

testimonial or non-testimonial. The state apparently never disputed that the statements were testimonial, and the United States Supreme Court therefore did not address this point.⁷³

The California Supreme Court affirmed Giles conviction on the grounds that he had committed the murder for which he was on trial and that his intentional criminal act made the victim unavailable to testify. It reasoned that since both the *Crawford* and *Davis* opinions did not disturb the forfeiture doctrine, then it could be constitutionally applied in this case.⁷⁴ As previously stated, that notion of forfeiture has been hotly debated, for the effect of such a ruling would allow for the proverbial bootstrapping of the forfeiture doctrine solely on the basis of a factual determination of the defendant's guilt of the original crime.

The United States Supreme Court did not agree with the State of California regarding application of forfeiture by wrongdoing. The majority opinion, yet again authored by Justice Scalia, held that such an expanded theory of forfeiture is not an exception to the Sixth Amendment's Confrontation Clause, because such an expansion of the doctrine was not an exception established at the founding. Common law cases and treaties, according to the majority, indicated that the rule only applied when the defendant engaged in conduct specifically *designed* to prevent the witness from testifying. The word *designed* was viewed to mean specifically *intended* and *motivated* by that goal, objective, or purpose. Since the lower courts apparently engaged only in some form of transfer of the original intent to kill into preventing the witness from testifying, the conviction had to be vacated and the case remanded back for further decision on that point. Scalia also noted the specific intent requirement contained in Federal Rule 804 (b)(6), the federal codification of forfeiture doctrine as further authority for the outcome.

Justice Brennan's dissented at great length. Brennan's basic points of disagreement were both historically and linguistically based. At times he seems to deny any historical requirement of a culpable mental state for enforcement of forfeiture, making the theory almost strictly result oriented (as in strict liability). At other times he employs the old adage that by implication (and prior precedents) a person is presumed in law to have intended the obvious and natural consequences of his actions. Thus, if Giles knowingly killed the victim, he should be deemed to have intended for her to be unavailable as a witness at trial. Brennan, in short, says defendants cannot have it both ways. Issues of general intent, specific intent and motivation have proved confusing to legal scholars for a very long time. The opinions offered in *Giles* are humbly submitted as not adding much clarity to those greater debates. However, given the eventual majority holding, *Giles* would seem to make it considerably more difficult to apply the doctrine of forfeiture than perhaps previously thought.

CONCLUSION

It has been said that "it is a travesty of justice when perpetrators of crime against vulnerable members of society cannot be held accountable for their conduct due to the very vulnerabilities that make their victims targets."⁷⁵ In the past, hearsay exception statutes have often proved useful in coping with this perceived injustice by allowing the introduction of the prior un-confronted and/or cross-examined statements of such victims. In the aftermath of *Crawford v. Washington*, a decision in which the United State Supreme Court employed originalist analysis to dramatically alter the 6th Amendment landscape, hearsay exceptions in

general, and those specifically designed to protect the most vulnerable victims in particular, are in retreat. And, one great irony of *Crawford* is that in pouncing upon *Ohio v. Roberts* and related concerns for inconsistencies in outcomes that opinion may have fostered, by not giving further guidance on the parameters of "testimonial" statements, the Court arguably has substituted one source of inconsistent decision making with another. The doctrine of forfeiture has seemingly also been dealt a blow by the Court's recent decision in *Giles v. California*.

Also for ongoing future determination following *Crawford* is the constitutional acceptability before the United State Supreme Court of efforts to balance the competing interests involved. For example, what of the use of remote testimony relayed to the courtroom via closed-circuit television as was previously approved in *Maryland v. Craig*. Professor Lininger notes that Justice Scalia, the author and leader of *Crawford*'s pro-confrontation majority, dissented against the ruling in *Craig*. He further reports that lower court decisions so far seem to view *Craig* as a survivor of *Crawford*. However, given the long lapse of time between the two opinions and the earthshaking shift in the Court's view of confrontation during the interim, who is to say for sure? Lininger also addresses other middle ground balancing possibilities such as pre-trial cross examination and dialing down the intensity of the courtroom experience itself in the case of vulnerable witnesses through the use of "next friends" standing by the witness at trial and Judicial direction of attorneys during the questioning processes.⁷⁶

And just in case readers might envision (or at least hope for) the prospect of greater clarity in the future path of the Court and in its Confrontation Clause jurisprudence, please consider that some of the more recent cases argued before the Court have produced some truly curious bedfellows, drawn from both sides of the Court in forming seemingly unlikely majority and minority opinions.⁷⁷ Oh yes,...there is also the small matter of two brand new justices added to the mix. Labels can sometimes be deceiving, you know.

ENDNOTES

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2. Id, at p. 15, 2.
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5. Buhai, Sande L., and Gilliam, James W., Jr., "Honor Thy Mother and Thy Father: Symposium on the Legal Aspects of Elder Abuse", 36 *Loyola of Los Angeles Law Review*, No. 2, 565, p. 656 (2003).
6. See U.S. Constitution, Amendment VI, (1791).
7. Chase, Carol A., "The Five Faces of the Confrontation Clause," 40 *Houston Law Review* 1003, (2003).
8. Id. p. 1011, 1014. See also *Coy v. Iowa*, 487 U.S. 1012 (1988) holding that a screen placed between the defendant and two 13 year old witnesses did not provide sufficient

- confrontation capability for the defendant absent proof that these witnesses needed special protection.
9. *Maryland v. Craig*, 497 U.S. 836 (1990).
 10. Chase, *supra* note 7, p. 1017.
 11. *Id.*, p. 1020, citing *California v. Green* 399 U.S. 149, 158 (1970).
 12. See Federal Rules of Evidence, Rules 803 and 807. Note in particular subsections under Rule 803 that have “traditionally” been employed to allow admission of both child and elderly hearsay, particularly when declarants are also victims.
 13. *Crawford v. Washington*, 124 S.Ct. 1354 (2004).
 14. *U.S. v. Owens*, 108 S.Ct. 838 (1988).
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 16. *Id.* p. 869.
 17. *Delaware v. Feusterer*, 474 U.S. 15 (1985).
 18. *Id.* p. 21-22.
 19. Seltz, *supra* note 15, p. 872.
 20. Scalia in *Owens*, *supra* note 14, p 842; also Seltz, *Id.* p. 873.
 21. *Owens*, p. 844-45; Seltz, p. 870.
 22. *Owens*, p. 843.
 23. Brennan dissenting in *Owens*, p. 847; Seltz, p. 879.
 24. See Seltz generally, note 15 *supra* and conclusion, p. 897.
 25. *Id.* p. 897.
 26. *Conner v. State*, 748 So. 2nd 950 (1999).
 27. e.g., Florida Evidence Code, Sec. 90.803 (24); Delaware Code Annot., Sec. 3516; Deering’s California Evidence Code, Sec. 1380; Illinois Compiled Stat. Annot., Criminal Procedure Section 5/115-10.3; Oregon Revised Statutes, Section 40.460- Rule 803 (18a)(b).
 28. James, *supra* note 4, p. 309
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 31. Ehrhardt, Charles W., “When Children and the Elderly are Victims; Balancing the Rights of the Accused Against Those of the Victim,” 55 *U. of Miami L. Rev.* 645, p. 652.
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 33. *Id.*
 34. *Idaho v. Wright*, 497 U.S. 805 (1990).
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42. *Id.*, p. 711.
43. *Id.*, p. 713.
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56. Lininger, *supra* note 53, p. 1000.
57. See generally Mosteller, Part II of article under heading *Patterns and Issues in the Post-Crawford and the Post Davis Cases*, *supra* note 3, p. 944-996.
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66. *Id.*, p. 532-534.

67. *Id.*, p. 528-529.

68. See Lininger, *supra* note 53, p. 1006; Raeder, *supra* note 54, p. 1020.

69. *Id.*, Lininger.

70. See Moore, *supra* note 59, p. 539-546 for a thorough treatment of the culpability issue in the various jurisdictions both before and after *Crawford* and *Davis*.

71. *Giles v. California*, 128 S. Ct. 2678 (2008).

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77. For example, see the “lineup cards” in the recent case of *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). Scalia writing the majority opinion, joined by Stephens, Souter, Thomas, and Ginsburg. Kennedy writing the dissenting opinion, joined by Roberts, Breyer, and Alito.

BIOGRAPHICAL SKETCH

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Enhancing an Active Shooter School Emergency Plan Using Ambient Materials and School Resource Officers

William E. Stone
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Abstract

This study reports the results of an investigation into the current status of school safety plans and how school resource officers can be used to improve existing school safety plans. The author examines the history of assaultive violence in schools, the evolution of school emergency plans and school resource officer programs over the last fifty years. The results indicate that the plans are normally failing to utilize the knowledge of school resource officers about the ballistic resistance of common barriers and tactical considerations involved in school shooting responses. The authors propose a more active integration of school resource officers, specifically into the planning and implementation process for emergencies requiring a school lockdowns (shelter in place) response.

Key Words: school shootings, school emergency plans, ballistic resistance

INTRODUCTION: HISTORY OF SCHOOL EMERGENCY PLANS

The first documented school emergency plans dealt with fire threat. Starting as early as the 19th century, schools in the United States started planning for “fire drills” which were probably the first type of school emergency plans (Golway, 2002). While fire was the most common threat to schools, other types of emergencies such as natural disasters and attacks on students and staff have always been part of the American educational scene. Many of these early tragedies were much worse than any of our modern school shootings. For example, in Bath County, Michigan, a school bombing in 1927 killed almost three times as many victims as the Columbine High School Massacre. This incident was perpetrated by Andrew Kehoe, who carried out a series of bombings killing 45 (including himself) and injuring an additional 58. (Ellsworth, 1928). This would become a familiar pattern, many individuals that attack school

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settings do not plan on surviving the attack. Another and even greater school tragedy occurred in 1937 when a natural gas leak explosion killed almost 300 students and teachers, making it the deadliest school disaster in United States history (Smith, 1937). These two tragedies, even though largely forgotten, represent the extreme examples of school mass murder and school natural disasters in U.S. History. These events and many other lesser events are what caused a long standing interest in emergency planning to protect our children in schools (Heath et al., 2007).

Probably some of the most famous emergency plans or “disaster drills” were developed in the 1950s during the “Cold War”. In the early 1950s, the U.S. Federal Civil Defense Administration (FCDA) initiated an educational campaign on how to handle the threat of nuclear attack (Brown, 1988). These efforts, although later criticized and the object of ridicule, constituted a move beyond the infancy of school-based crisis prevention programs. Although the FCDA acknowledged that instant death would occur at ground zero, they argued that some protection was better than none. The duck and cover drills of the 1950s were developed to protect students against falling debris, radiation burns, and flash burns (Mauer, 1951). Although duck and cover drills for nuclear attacks are no longer practiced, similar drills are performed in school districts threatened by earthquakes and tornadoes. However, controversy continues as to whether the benefits of children and adolescents practicing certain drills outweigh the risks of increasing children’s anxiety and fear of potential disasters (Comoletti, 1999). Modern emergency planning is still trying to achieve a balance between decreasing risk in the event of a disaster and maintaining an environment, which promotes learning and does not cause undue anxiety. The fact that both of the authors still remember “duck and cover” drills is a testament to the fact that these early drills clearly had some psychological impact, even if its exact nature is difficult to determine. What we must credit these early duck & cover drills with, is that they are the first documented examples of “shelter in place” plans.

School emergency plans have evolved significantly from the early days of fire drills and duck and cover drills. Today’s emergency plans are multifaceted intricate documents that accommodate everything; natural disaster, terrorist attacks, fire threats, flu pandemics, disruptive students and dress codes. These plans are also driven by federal and state mandates that have a significant level of complexity. At the state level, California requires all public schools, K-12, to develop a comprehensive school safety plan (California. Education Code, 2009). This California mandate comes complete with an Senate Bill 187 Comprehensive School Safety Plan Process & Templates document, which is a 138 page formatting document explaining how to create “your” school plan (California, 2009). School administrators also need to be in compliance with the National Incident Management System (NIMS) standards (NIMS 2008). All K-12 schools receiving Federal preparedness monies through the U.S. Department of Education, the U.S. Department of Homeland Security, and/or the U.S. Department of Health and Human Services are required to support the implementation of NIMS. Established on March 1, 2004, by Homeland Security Presidential Directive, NIMS specifies the standardized methods all emergency responders should follow to plan, coordinate and carry out responses to a variety of incidents. The NIMS implementation standards go on for a total of thirty-two pages explaining emergency planning in a vocabulary which is very alien to most school administrators (NIMS, 2009). It is small wonder that many school administrators seem to suffer from “planning burnout” in the face of all these standards and requirements.

INCORPORATING “TARGETED VIOLENCE” PREVENTION INTO SCHOOL EMERGENCY PLANS

Attempts to deal with school violence in a new manner resulted from a major federal initiative, following the attack at Columbine High School in 1999. The Secret Service and The Department of Education initiated a study of the thinking, planning and other pre-attack behaviors engaged in by attackers who carried out school shootings. This study was largely responsible for adding the concept of “Targeted Violence” to the lexicon of school and law enforcement officials. The term targeted violence originated with an earlier federal project, the Secret Service’s 1992 Exceptional Case Study Project (ECSP). The focus of the ECSP study was an operational analysis of the thinking and behavior of those who have assassinated, attacked or tried to attack a national public official or public figure in the United States since 1949. The ECSP defined “targeted violence” as any incident of violence where a known or knowable attacker selects a particular target prior to their violent attack (Fein et al, 1995).

Central to the Safe School Initiative project, was the concept of preventing targeted violence through prediction. After careful review of the case histories of the 37 incidents of targeted school violence the Safe School Initiative developed 10 key findings. Those findings most relevant to the current discussion were: attackers did not threaten their targets directly prior to the attack; there is no accurate or useful profile of students who engaged in targeted school violence; and despite prompt law enforcement responses, most shooting incidents were stopped by means other than law enforcement intervention (United States Secret Service, 2004). The study also noted that while in many cases people other than the attackers knew about the threat, the information rarely gets to officials. These facts are effectively illustrated by the data presented in table 1. An examination of the selected severe shootings in table 1 will show that the shooters were; students, ex-students, non-students, varied in ages & ethnicity, and chose to end their own lives as alternative to capture.

Taken together, the findings from the Safe School Initiative suggest that some future attacks may be preventable and recommended the use of a threat assessment approach as a promising strategy for preventing a school-based (United States Secret Service, 2004). While threat assessment shows some promise, it is basically, the concept of carefully investigating and evaluating every possible threat. Since targeted school violence is in reality, a very rare event, efforts to predict it are hampered by what researchers call a high false positive rate. In effect, of the thousands or hundreds of thousands of possible threats made or detected every year, only two or three will be real. While there is no accurate way to calculate the false positive rate, since there is no reliable recording of “threats or perceived threats”, it is reasonable to assume that the false positive rate is very high on predicting targeted violence. Responding to a large number of false positive threats would consume enormous resources and be very disruptive to the educational environment. While threat assessment as a strategy cannot be dismissed, it clearly does not represent “the” solution to school shootings.

Recognizing that school safety needed a broad spectrum approach, other groups entered the discussion with recommendations. Specifically, the National Consortium of School Violence Prevention Researchers and Practitioners (NCSVPRP) would recommend a balanced approach including physical safety, educational practices, and programs that support the social, emotional, and behavioral needs of students. The NCSVPRP consortium would also caution against over reliance on any one specific approach including even physical security measures

(NCSVPRP, 2006). Their cautions about dependence on physical security are reasonable, since targeted violence is often carefully planned and the assailant is frequently capable of carefully assessing the school security measures before an attack and considering methods to overcome them (Caster, 2008).

TABLE 1. SELECTED EXAMPLES OF RECENT SCHOOL SHOOTINGS		
Date	Country	Description
March 1996	Britain	In Dunblane, Scotland a gunman burst into a primary school and shot dead 16 children and their teacher before killing himself.
April 20, 1999	United States	Columbine High School, Eric Harris and Dylan Klebold killed 12 fellow students and a teacher before killing themselves
February 2002	Germany	In Freising, Bavaria, a former student thrown out of trade school, shot and killed three people before killing himself
April 26, 2002	Germany	In Erfurt, 19-year-old Robert Steinhauser opened fire after he said he was not going to take a math test. He killed 16 before killing himself.
September 13, 2006	Canada	In Montreal, at Dawson College, Gill Kimveer, 25, went on a shooting spree wounding 19 and killing 1 before he killed himself.
November 20, 2006	Germany	In Emsdetten, an 18-year-old former pupil opened fire at the Scholl school, 11 people were wounded before he killed himself.
April 16, 2007	United States	In Blacksburg, Virginia Tech student Seung-Hui Cho shot and killed 32 people before he killed himself.
November 7, 2007	Finland	In Pekka, Eric Auvinen shot and killed six fellow students, the school nurse and the principal before killing himself.
September 23, 2008	Finland	In Kauhajoki, Seinajoki University student Matti Saari shot and killed nine other students and one male staff member before killing himself.
March 11, 2009	Germany	In Winnenden, 11 people were killed and several injured at the Albertville-Realschule secondary school before the gunman then killed himself.

Source: Stone and Spencer, (2010) *Using Textbooks as Ballistic Shields in School Emergency Plans*, The International Journal of Police Science & Management 12(4) November 2010

While other groups may have a more positive view of physical security, there is no escaping the fact the physical security has some significant limitations. Schools by their nature are public, high traffic environments, so any physical security measures must be adjusted to accommodate those conditions. Physical security must be designed to be reasonably low cost and user friendly if schools are expected to actually implement them. One example of a relatively low cost physical security devise is to install a “panic button in every classroom that would alert the

school administration in the event of an emergency (Lynne, 2007). Other common physical security improvements would be actions like upgrading locks and doorframes to make them more resistant to intrusions. Like threat assessment, physical security devices can only represent one part of the plan to reduce targeted violence in schools. All of this additional material about targeted violence, physical security and student support programming was also implemented into school districts’ emergency plans, again contributing to the “planning burnout” effect. School administrators find themselves trying to analyze an almost infinite number of threats, decide which represent the greatest threat, install physical security to counter those threats and implement psychological support programming for unidentified disorders with almost no additional budget.

EVOLUTION OF SCHOOL RESOURCE/SAFETY OFFICERS

One of the more positive developments of concerns about school safety, was the introduction of school resource/safety officers. The School Resource Officer or “SRO” concept is not a new development in American law enforcement. The first known SRO program began in the Flint, Michigan in the 1950’s (POST, 2001). Since its inception in the 1950s, the SRO concept has grown geometrically. The placement of sworn peace officers in the schools is now commonplace throughout the country. By the late 1960s the school resource officer concept was being widely recognized (United States Department of Justice, 1999).

Today there are over 9,000 SRO’s in the United States and the National Association of School Resource Officers, which offers a wide range of training and technical support for school safety professionals, represents them (NASRO, 2009). As a result of the integrated planning concepts presented through NIMS and the Safe School Initiative, police departments and specifically SRO’s, have had at least some ability to contribute to the evolution of school emergency plans, especially as they relate to school shooting incidents (Atkinson, 2001).

Another benefit derived from the SRO, is increased communication on a tactical level with local law enforcement. Historically, when police had to respond to a school shooting they knew very little about the physical layout of the school. Today with SRO’s there are officers on hand that know the buildings and school procedures.

Police agencies have also changed their tactics in response to the growing concerns about school shootings. The most common change was the evolution of a tactical plan known as the QUAD (Quick Action Deployment). The philosophy is that once officers are at the scene and they determine that violence was actually occurring, they would enter the building with a minimum of four officers. The mission was to locate and stop the active shooter(s). QUAD, also called “Active Shooter Response”, became the preferred philosophy and tactic utilized when faced with an active shooter situation (Dorn, 2000). This rapid deployment philosophy represented a significant change from the previous tactic of securing the perimeter and assembling a tactical team before any action was taken. While QUAD has not been empirically tested, because of obvious research complications, the change seems logical in light of the recognition that “targeted violence” perpetrators frequently do not anticipate surviving the attack. Still, it must be cautioned, that while a QUAD approach reduces the time from event to police response, an active shooter may still have a significant amount of time before they can be neutralized by police intervention. The amount of damage that an active shooter can do in a very limited time was clearly demonstrated at Virginia Tech.

LOCKDOWNS AND THE MODERN SCHOOL EMERGENCY PLAN

It would seem that schools emergency plans to deal with targeted violence have evolved to the point that there should be little way that they can be improved. However, a brief examination of several actual school plans did show that there was room for improvement. In 2004, the Brookline Schools Readiness Project examined the plans of eight school districts. School personnel from these districts contributed their most current emergency response manuals, several of which were created directly from the U. S. Department of Education monograph, *Practical Information on Crisis Planning*. When carefully reviewed for such attributes as, specificity of instructions for response to particular emergency situations, and clarity, practicality, and usability of the plans several concerns were noted (Danielson & Shannon, 2009). Of these concerns, the lack of practicality and the lack of specific lockdown plans were of the greatest concern, since school lockdowns are the most common response to a shooting situation and they are the obvious complement to the police implementation of QUAD tactics. Lockdown plans also need to be practiced through a regular system of lockdown drills (Lynne, 2007). A number of states have recently mandated that schools conduct lockdown drills at least once a year.

In considering what else can be done to improve current lockdown plans, the authors realized that any suggestions would have to be “cost effective” and politically acceptable to parents, teachers and school administrators. Some suggestions made in the past such as arming teachers were simply not politically acceptable, even if the implementation problems could be overcome (McLelland & Frenkil, 2009). Cost factors are also very important, considering the fact that school shootings are very tragic, but also very rare events (Brooks et al., 2000). School systems cannot afford to divert significant resources away from educational priorities to accommodate threats that are very unlikely to occur. The authors would also be reluctant to suggest more general planning, since planning in the public schools has already gotten to the mind numbing stage. Current plans are already so long and bureaucratic, after all the federal and state guidelines have been accommodated, that the goal of improving school safety seems to have been lost in the goal of planning. This left the authors to consider what items or resources are already in place in public schools that can be adapted to improve student safety during a school shooting situation.

REVISING A SCHOOL ACTIVE SHOOTER EMERGENCY PLAN

What the authors would propose is that School Resource Officers be tasked with proposing revisions to school emergency lockdown plans to make them more practical and improve their effectiveness. As previously discussed, SROs have a skill set that is significantly different from those of teachers or educational administrators. The specific skills of interest are:

- Physical security – most officers are trained to do simple security/crime prevention audits which include knowledge of locks, door and doorframe construction, and general knowledge of physical barriers to entry.
- Firearms capabilities – most officers are trained in both the use of firearms and defensive tactics associated with firearms (what you can shelter behind) and therefore understand the penetration capabilities of common firearms.

- Assault tactics – most officers are taught the basics of the police assault techniques that would be employed in trying to intervene in a school shooting event and they understand what the tactical response time would be in their area.
- School’s physical construction – officers, specifically SROs, work in the school every day and they are familiar with the construction of the points of entry, walls, doors and windows for the specific schools in which they work.
- School’s physical floor plan – officers, specifically SROs, are familiar with the schools floor plan, knowledge that can be used to help coordinate a QUAD assault to neutralize a school shooter.
- Student type and load – SROs would know which wings of classrooms house students of different types and to some extent their ability to evacuate if it is necessary to abandon the lockdown status.

The authors propose that the basic lockdown plan could be revised through a simple procedure utilizing the skill sets of the SROs. The SRO would examine each classroom and first consider the fixed ballistic resistant barriers available. This would be primarily brick or solid concrete walls. Over twenty years ago the FBI conducted extensive tests on bullet penetration. The testing was conducted to develop standards for ammunition used by law enforcement agencies. In addition, to the development of standards, the tests produced significant insight into the penetration capabilities of modern firearms. While a wide range of firearms have been used in school shootings the most commonly used cartridge is the 9 mm Parabellum (see table 2)

The 1990 FBI tests established that a common 9mm cartridge could penetrate an average of 29 inches of ballistic gelatin, a substance designed to simulate human tissue. Under their standards, 12 inches of penetration was considered the minimum to produce a fatal or incapacitating wound. What was even more revealing, is that this same cartridge could first penetrate two sheets of gypsum wallboard spaced 3.5 inches apart (simulated interior wall) and then still penetrate an average of 27 inches of ballistic gelatin. A barrier of ¾ inch plywood also proved to have minimal ballistic resistance leaving an average penetration of 28 inches in gelatin (FBI 1990). In effect, common interior walls, especially those of “portable or temporary” classrooms simply are not effective barriers to common firearms. Sheltering in place behind these walls obstructs the vision of the assailant but provides minimal real safety. This would also need to be considered when tactical (QUAD) entry by the police is being attempted. Students sheltering in place behind non-ballistic resistant barriers would be in danger from police gunfire as well as the gunfire of the assailant.

SRO would also be tasked with considering the ballistic resistance of wall attachments and interior furnishings as well. Surprisingly, some items like books can significantly contribute to ballistic resistance. The same 9mm that can penetrate ¾ inch plywood and then 28 inches of ballistic gelatin can be stopped by a common 2 inch thick textbook (Stone & Spencer 2010). The area behind a bookcase on a common interior wall may represent the only “safe area” in a classroom. The SRO would be tasked with considering all these factors in identifying and marking the “safe area” in each classroom.

The SROs’ knowledge of physical security would be used to examine the construction of the doors and door frames for each classroom. Ideally, the classroom door should have a

TABLE 2. CARTRIDGES USED IN SCHOOL SHOOTINGS					
Rifles/Carbines		Handguns		Shotguns	
Cartridge	Events	Cartridge	Events	Cartridge	Events
7.62X39mm	7	9mm Parabellum	19	12 gauge	9
.22 Rimfire	5	.22 Rimfire	10		
9mm Parabellum	4	.38 Special	8		
.30-06 US	3	.380 ACP	5		
.30-30 Win.	1	.45 ACP	3		
.30 US Carbine	1	.25 ACP	2		
.223 Rem. 5.56mm	1	.44 Rem. Mag.	2		
		.40 S&W	2		
		.357 Mag.	1		
		.32 Auto	1		

Note: The number of cartridges exceeds the number of events because some shooters used several weapons. Source: Stone and Spencer, (2010) *Using Textbooks as Ballistic Shields in School Emergency Plans*, The International Journal of Police Science & Management 12(4) November 2010

significant ability to resist forced entry if a room is to be used for a shelter in place plan. The unfortunate fact is, that because of such factors as wall construction, door construction and line of sight considerations some classrooms may not have an effective “safe area” and simply may not be suitable for shelter in place tactics.

The authors would suggest that each year the SRO be tasked with visiting each classroom and identify its “safe area” and discuss with the teacher any special considerations the room might present. Annual visits would be required because ballistic resistant interior furnishings may have been relocated since the last review of the safe area.

In addition to their role in examining and improving physical classroom security, we would also suggest the SROs be formally integrated in to any tactical response to an active shooter event. All school emergency plans must contain point of contact lists for emergency events (NIMS 2008). Typically, the police would be instructed to interface with the school principle or superintendent. While this would allow the police to get some tactical information about the school layout and events, the school official will not normally be familiar with police tactics like a QUAD assault. If the SRO is inserted into this linkage to coordinate the police tactical efforts you achieve the advantage of having a contact that understands: the layout of the school; the nature of the students involved; physical construction of the environment; police tactical practices and who normally already has a radio communication link with officers arriving at the school.

Since the new QUAD tactics are designed to provide a much more rapid response to an active shooter situation, the old practice of setting up a command post and assessing the situation is an obsolete practice. If we expect effective police intervention, response speed is critical. In some jurisdictions, it might even be possible to specifically train the SROs in QUAD assault tactics and integrate them into the actual assault process. To improve the SRO interface with

the emergency plan response would require cooperation both from the school administration and local police officials. School administrators must agree to release some degree of control and police administrators would need to accept an enhanced tactical role for the SRO. This would also logically include sending the SROs to active shooter intervention training when possible. The active shooter plan should always include a backup plan to follow in the event of the loss of the SRO. As a number of groups (NCSVPRP 2006) have correctly concluded, school shooters frequently plan their attacks carefully to neutralize physical security and part of that plan could be the neutralization of the onsite SRO.

CONCLUSIONS

The authors recognize that there are still many unaddressed questions about safety considerations in a school emergency plan to deal with an active shooter situation. The discussion presented in this article is designed start a dialog between the critical parties involved in effective school emergency planning. School emergency plans will always have limitations. Plans that attempt to address every possible consideration rapidly become overly cumbersome and unrealistic to implement. Most current school plans do address evaluating the physical security of the school environment. Unfortunately, schools are frequently instructed to assess their buildings security using the same standards as military bases and embassies. They are ask to consider the distance between their ram proof barriers and the building, then requiring an approach drive to have two 90 degree turns to prevent vehicles from attaining speed near a building entrance (FEMA 2003). Yes, it possible that an assault on a school could include a car bomb, it actually did in the 1927 Bath school bombing, but as a practical matter, it is very unlikely to occur again. School shootings are, unfortunately, much more common and effectively addressing them in your plan is of much greater importance. The authors have attempted to contribute to the school emergency planning process with minimal real additional cost and in a practical manner as the Danielson & Shannon, research suggested. There will always be critics with the “what if” questions, such as, “what if the assailant has a high powered rifle instead of a 9mm”. Currently the only answer to these questions is that we simply don’t have the ability or the data to effectively plan for everything and that we must first focus on the more common threats.

One facet that deserves additional research would be scientifically determining the actual ballistic resistance of common school construction techniques. While the original 1990 FBI ballistic data makes a significant contribution to planning capabilities, their barrier resistance tests were not specifically designed to simulate school environments. They were testing from the standpoint of what will police commonly encounter that they might need to shoot through, auto class interior walls, etc. Obviously, testing the ballistics resistance of actual common school construction would significantly add to our knowledge.

There is significant variation in school construction throughout the nation and older schools are constructed differently than more modern schools. However, it would be possible to identify the most common types of wall and door construction and test their ability to resist forced entry and their ballistic resistance. This information would allow school emergency plans to deal with active shooters to take another step forward.

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Twelve Proof: Examining the Reasons 12 States Refuse to Allow Sobriety Checkpoints

Thomas White

University of Texas-Pan American

INTRODUCTION

Twenty years have elapsed since the United States Supreme Court condoned the use of sobriety checkpoints in *Michigan Department of State Police v. Sitz* (1990) to combat the growing problem of impaired driving in the United States. The decision came as no real surprise as the Supreme Court had earlier intimated that non-discretionary roadblocks might satisfy the 4th Amendment when it invalidated the use of random stops to check license and registration in *Delaware v. Prouse* (1979). A survey published by the Governors' Highway Safety Association ("GHSA") in 2009 indicated only twelve states—Alaska, Idaho, Iowa, Michigan, Minnesota, Montana, Oregon, Rhode Island, Texas, Washington, Wisconsin and Wyoming—refuse to permit the use of sobriety checkpoints within their borders (GHSA 2009). While only 12 officially do not allow sobriety checkpoints, a recent article observed that other states obstruct their effectiveness with state requirements not contemplated in *Sitz* (Bodnar 2008, 149-53).

The reasons asserted by the twelve vary but basically fall into 4 categories. The first and largest group consists of states that use independent state grounds to find roadblocks unconstitutional, largely because they fail to require individualized suspicion. The second category also involves state law, albeit statutory law. Many states disapprove of sobriety checkpoints because state statutes require some level of suspicion or because the state's existing roadblock statutes do not contemplate detecting intoxicated drivers among the purposes delineated in the statute. A third group do not disapprove of sobriety roadblocks but refuse to implement such programs until their state legislature provides appropriate guidelines and controls. The remaining category consists of only the state of Alaska which is included among those identified in the survey but whose constitution, statutes and published court opinions do not articulate why checkpoints are impermissible. Although Montana is grouped with the states lacking legislation, the legitimacy of sobriety checkpoints is unclear there as well.

This paper explores the constitutionality of sobriety checkpoints and why twelve states have chosen not to utilize them. Part I analyzes the Supreme Court's reasoning in *Sitz* and the cases preceding *Sitz* that addressed the constitutionality of roadblocks and suspicionless stops. Part II examines the legal and policy reasons asserted by the states choosing not to employ them. The latter was accomplished by conducting numerous searches in WestLaw and public data bases to acquire cases, statutes, legislative history and legal commentary addressing the states' asserted rationales. Additional information was obtained by email correspondence with affected groups such as state's attorney generals and prosecutors, state departments of transportation, and state trial lawyers associations. This section will also examine how law enforcement, the courts and the legislature in at least 3 of the twelve have attempted to circumvent the prohibition with

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other measures. The paper will conclude with some thoughts on the Supreme Court's future suspicionless roadblock jurisprudence and how state law may provide a counterbalance.

THE UNITED STATES SUPREME COURT, SUSPICIONLESS SEARCHES & THE 4TH AMENDMENT

The U.S. Supreme Court's checkpoint jurisprudence is a natural continuation of the limitations on 4th Amendment protections the Court premised on the concept of "reasonableness," beginning in the 1960's with *Terry v. Ohio* (1967) and *Katz v. United States* (1968). *Terry* allowed brief detentions and investigations based on a level of suspicion less than "probable cause" but still requiring individualized "reasonable suspicion." *Katz* focused 4th Amendment protections on the individual's "reasonable expectation of privacy."

The Court first entertained the idea of suspicionless vehicle searches to address a pressing law enforcement concern in *United States v. Brignoni-Ponce* (1975). There, the Court refused to legitimate random stops by roving Border Patrol agents to check for evidence of citizenship or immigration status without individualized suspicion sufficient to satisfy 4th amendment requirements. While the Court recognized the importance of protecting the nation's borders, it declined to do away with the necessity of individualized reasonable suspicion or probable cause that a suspect was engaged in criminal activity.

However, one year later in *United States v. Martinez-Fuerte* (1976), the Court authorized the use of fixed checkpoints by Border Patrol agents for the same purpose. Noting the difficulties experienced by the United States in preventing illegal immigration, the Court employed a balancing test under which it concluded the government's interest was great while the intrusion on individual liberty was minimal. The Court therefore found that fixed immigration checkpoints for the purpose of determining citizenship or immigration status did not violate the 4th Amendment even though performed without individualized suspicion in light of how ineffective alternative procedures had proven.

The next significant case addressing suspicionless stops occurred in 1979 when the Supreme Court decided *Delaware v. Prouse*. In *Prouse*, marijuana was discovered in the defendant's possession when his car was stopped randomly for a check of his license and registration. By all accounts there was nothing physically wrong with the vehicle or with the manner in which Prouse was driving leaving no individualized suspicion to justify the stop. The Court held in *Prouse* there could be no random suspicionless stops. Significantly for the Court's later decision in *Sitz*, the Court intimated that less intrusive measures such as non-discretionary checkpoints might pass constitutional muster.

Fourteen years after *Martinez-Fuerte* and 11 years after the suggestive language in *Prouse*, the Court legitimated the use of sobriety checkpoints in *Michigan Department of State Police v. Sitz* (1990), the topic of this paper. In *Sitz*, the Court relied heavily on the notion of suspicionless checkpoints which it first validated in *Martinez-Fuerte* and upon the 3 prong balancing test the Court established in *Brown v. Texas* (1979) for determining how substantial governmental interests were in relation to individual liberty. The prongs consist of:

- 1) the gravity of the public concerns served by the seizure,
- 2) the degree to which the seizure advances the public interest, and

- 3) the severity of the interference with individual liberty.

The Court concluded the magnitude of the problem of impaired driving in the United States satisfied the first prong.

Numerous articles and other authorities have chronicled the nationwide crisis the United States faces in terms of accidents caused by those who operate vehicles while impaired and the financial toll the deaths, injuries and property damage take on the country (*see e.g.* Bodnar 2008, 141; English 453-54, fn. 6). An April 2008 survey by the Substance Abuse and Mental Health Services Administration, Office of Applied Studies ("SA&MHSA") included a substantial number of self-reported instances of driving while intoxicated, much of it occurring in states without sobriety checkpoints (SA&MHSA 2008).

Writing for the majority in *Sitz*, Chief Justice Rehnquist noted:

No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion. The anecdotal is confirmed by the statistical. Drunk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage . . . The increasing slaughter on our highways . . . now reaches the astounding figures only heard of on the battlefield.

In an earlier, oft-quoted opinion in *South Dakota v. Neville* (1983), the Supreme Court merely stated "[t]he carnage caused by drunk drivers is well documented and needs no detailed recitation here."

That the states that chose not to implement sobriety checkpoints have a compelling interest in policing intoxicated drivers is not at issue. Wisconsin has the highest rate of drunken driving in the nation according to the SA&MHSA study with 26.4% of persons 18 and older admitting to having driven while under the influence of alcohol (SA&MHSA 2008). Minnesota is third with 23.9% (SA&MHSA 2008). The *Houston Chronicle*, in an article that touts alcohol-related traffic fatalities in Houston as "pandemic," reports Harris County has the highest rate of alcohol-related traffic fatalities in the nation (Pinkerton 2009).

The majority opinion in *Sitz* did not consider the third prong of intrusions on individual liberty a major obstacle in its analysis, likening it to that of an immigration checkpoint stop. As will be addressed in the section concerning legitimacy under state constitutions, many of the state courts that chose to invalidate sobriety checkpoints on state constitutional grounds took umbrage with the Supreme Court's characterization of intrusions on individual liberty at a sobriety checkpoint as "minimal."

A major point of contention in the *Sitz* opinion and elsewhere concerns the second prong. Much dispute exists concerning how effective sobriety checkpoints ultimately are and whether the true purpose is detection or deterrence (*see* Lolito 2010, 747-48; English 1998, 471-77; Sheldon 1993, 81). Chief Justice Rehnquist, writing for the majority, ultimately concluded that even if detection rates were low, the second prong of the *Brown* test was satisfied as long as the

decision whether to implement sobriety checkpoints and the methods utilized in conducting them was made by politically accountable actors.

Two other cases addressing suspicionless checkpoints bear mentioning before moving on to examine the reasons twelve states reject the use of sobriety checkpoints. In 2000 in *City of Indianapolis v Edmond*, in what may have appeared to be the next logical sequence in the Supreme Court's evolving roadblock jurisprudence, the Court invalidated checkpoints for general crime and drug interdiction despite an acknowledged drug problem in the area and checkpoints conducted in conformity with the dictates of *Sitz*. Writing for the Court, Justice O'Connor noted the 4th Amendment requirement that searches and seizures be reasonable before holding that the primary purpose of the roadblock in Edmond was interdicting illegal substances. O'Connor observed the Court "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing."

More recently in *Illinois v. Lidster* (2004), the Court sustained a DUI conviction obtained after the intoxicated driver was detected at an investigative checkpoint conducted to interview citizens and gather evidence related to a hit and run homicide. While the use of roadblocks to apprehend fleeing felons has long been a staple of police work (Kanovitz 2010, § 3.10A), there were no exigent circumstances in *Lidster* as the incident under investigation occurred a week prior. Some commentators saw the Court's allowance of checkpoints for this purpose as an unwarranted intrusion on constitutional requirements under the balancing test the Court established in *Brown* (see Dery and Meehan 2004, 126-29; but see Nicklesburg 2005, 861-63).

"TWELVE PROOF"—STATES DECLINING TO USE SUSPICIONLESS SOBRIETY CHECKPOINTS

The 12 states that abstain from utilizing suspicionless sobriety checkpoints do so for a variety of reasons. The largest cohort find independent state constitutional grounds protecting citizens from suspicionless stops with a lesser number of states having statutes that deal with, or fail to deal with, checkpoints and roadblocks. Texas is unique in its interpretation that *Sitz* requires legislative action although other state courts have intimated they might be more favorably disposed to the concept of sobriety checkpoints if procedures were specified by their legislatures. Finally, the reason Alaska does not allow sobriety checkpoints is unclear although it is readily apparent Alaska does not use them. The various groups of states will be treated in inverse order in the interest of clarity ending with the state constitutional arguments. The section will also address how law enforcement in three states, with court approval in at least one, employ other measures to detect intoxicated or impaired drivers.

A. Alaska—Are Checkpoints Really Prohibited?

Although the GHSA lists Alaska among the states not allowing sobriety checkpoints (GHSA 2009), numerous searches utilizing WestLaw failed to turn up any published cases, statutes or constitutional authority addressing the issue. An inquiry to the Alaska Trial Lawyers Association produced unanimous agreement such checkpoints were not allowed in Alaska, but a reference only to a 1980 case, *Lacy v. State of Alaska*. In *Lacy*, the Supreme Court of Alaska sustained a sexual assault conviction when the defendant was detained at a roadblock on the only road leading down from the hill where the defendant's car had become mired. The

victims, who were also stranded, provided police a description of the defendant. In response to the defendant's argument that the roadblock violated the search and seizure provisions and right to privacy provisions of the Alaska Constitution's Bill of Rights, Article I, §§ 14 and 22, the Alaska Supreme Court held:

It is our view that roadblocks can properly be established when a serious crime has been committed for purposes of investigation or apprehension of a suspect where exigent circumstances exist and where the roadblock is reasonable in light of the particular circumstances of the case . . . But, while the roadblock tactic as compared to the typical stop and frisk situation, requires more evidence that a crime has occurred, by its very nature it requires less evidence that any particular vehicle stopped is occupied by the perpetrator of that crime. Indeed, there need be no suspicion at all with regard to any particular vehicle, except that which exists by virtue of it being in the locale of the roadblock. This means, however, that the placement of the roadblock must itself be reasonable; that is, there "must be some reasonable relation between the commission of the crime and the establishment and location of the roadblock."

The case was cited to the author for the proposition that roadblocks can only be used under Alaska law where a crime is known to have occurred. The opinion in *Lacy* resulted in an internal legal bulletin being issued by the Anchorage Police Department entitled "Warrantless Seizure of Person and Evidence by Roadblock" stressing the non-random nature of the stop addressed by the Court's opinion (Available at www.dps.alaska.gov/apsc/docs/bulletins/LB032.pdf).

An article in the *Alaska Law Review* written after *Sitz* speculated that, although Alaska provided broader constitutional guarantees, the Alaska Supreme Court would find sobriety checkpoints the least intrusive and most effective method of dealing with the problem of intoxicated drivers or that the court might possibly sustain their usage as an administrative search (Crosby 1991, 228-229, 237-38, 241-45). Although the Alaska Supreme Court has yet to address the issue, the response received by the author from the sources canvassed by the Alaska Trial Lawyers' Association does not seem to bear out the article's prediction. Those who responded were unanimous concerning the state's condemnation of sobriety checkpoints with at least one citing the court's opinion in *Lacy*.

The only Alaska state court to expressly address the issue of sobriety checkpoints was a state district court in an unpublished opinion which has little precedential value. The Third Judicial District Court in Anchorage held in 1992 in *State v. Mann* that a roadblock diverting all north bound traffic pursuant to a checkpoint program was unconstitutional under the Alaska Constitution. The prosecution relied heavily upon *Sitz* and the law review article predicting favorable treatment of roadblocks after *Sitz*. State District Judge William H. Fuld recognized that the checkpoint resembled the one approved in *Sitz* but found sobriety checkpoints violated the sections of the Alaska Constitution relating to search and seizure and the right to privacy.

In sustaining the defendant's motion to suppress evidence of intoxication, the trial court referenced the number of state supreme court cases holding that Alaska citizens enjoy greater protection against unreasonable searches and a greater right to privacy than what is guaranteed by the federal constitution. The trial court then noted Alaska's "long history of requiring reasonable suspicion to stop a motorist" as well as the state's failure to demonstrate the

effectiveness of sobriety checkpoints or whether other, less intrusive, more effective measures such as roving patrols based on reasonable suspicion were available. Notably, the court did not cite *Lacy* in its opinion.

In 1994, both the Alaska State House of Representatives and Senate introduced legislation entitled “Sobriety Checkpoints” at the behest of the governor (Alaska HB 444 and SB 278, respectively). State records indicate that the house held no committee hearings and the senate appears to have held only one or two without generating any minutes. Both bills appear to have died in committee. If Judge Fuld’s interpretation of the Alaska Constitution is correct, the measure would probably have been unconstitutional in any event. In 2010 the Alaska legislature passed a checkpoint and roadblock statute for the purpose of traffic control in the event of a national emergency or terrorist attack (A.S. § 26.20.100). Whether this statute is constitutional or its passage affects prior assessments of the legitimacy of roadblocks under Alaska law remains to be seen. For now, it appears to be the general consensus that sobriety checkpoints are not permitted in the nation’s largest state.

B. States Awaiting a Legislative Plan

1. Montana.

Although the sections of the Montana Code of Criminal Procedure dealing with roadblocks are somewhat unclear on the issue, Section 46-5-510 of the code requires that, before Montana law enforcement may establish a roadblock, there must be a written plan designed by supervisory officers of an agency that (1) ensures motor vehicle safety, (2) minimizes motorist inconvenience, and (3) prevents arbitrary selection of vehicles by providing a schedule for the vehicles stopped. While the statute seems to envision some sort of roadblock authority, it was promulgated in 1991 when the pre-existing statutes dealing with roadblocks (§§ 46-5-501 to 505) were repealed and 4 other sections immediately prior to § 46-5-510 were reserved for expansion. The 1991 “Chapter Commission Comments” reflect the repeals, reservation and enactment resulted from a Montana Supreme Court determination that roadblocks “would be better suited to adoption by the Legislature” and that “[t]he Commission recognized that any [statutory] exceptions to the warrant requirement might stifle [the law of search and seizure’s] evolutionary process.” Consequently, “[n]o attempt to define or list all of the exceptions has been made [by the commission].” Much like the Texas legislature which is discussed in the next section, the Montana legislature has not passed any statutes addressing sobriety checkpoints in the intervening 19 years.

Even though no Montana state court has addressed the propriety of sobriety checkpoints, the Governors’ Highway Safety Association 2009 survey lists Montana as a state prohibiting sobriety checkpoints stating the “[s]tatute only permits safety spotchecks.” By contrast one of the authorities relied upon by the GHSA, the Insurance Institute for Highway Safety (“IIHS”) reports sobriety checkpoints are “[a]uthorized by statute” but the only checkpoints that have been conducted are “safety spot checks” and the statute “does not specifically refer to sobriety checkpoints” (IIHS, Highway Loss Data Institute 1996-2010).

Part of the confusion may stem from the fact that Montana, like Alaska, explicitly grants a constitutional right to privacy in addition to the traditional guarantees against unreasonable search and seizure. A casenote written for the *Montana Law Review* referred to the Montana Constitution as “trumpet[ing] its citizens’ heightened right to privacy by explicitly providing

for a right to privacy in its Constitution” necessitating that the state supreme court “must strike a balance between legitimate law enforcement and the provisions of Article II, section 10 [the right to privacy provisions] of the Montana Constitution” (Perkins 2007, 472). The casenote maintains that a symbiotic relationship exists between the state constitutional right to privacy and its search and seizure protections. Though parroting the ‘general reasonable expectation of privacy that society is prepared to recognize’ standard first advanced by the U.S. Supreme Court in *Katz v. United States* (1967), the author maintains the Montana Supreme Court often cites the state’s “heightened right to privacy” and is reluctant to “approve of law enforcement tools and tactics widely accepted and used in states throughout the United States” (Perkins 2007, 473). Although the references in the article are to cases addressing aspects of search and seizure law other than checkpoints, the Montana Supreme Court’s historical rulings and the state constitution’s free standing right to privacy provisions would seem to lend strong support to GHSA’s assertion that Montana would not recognize the legitimacy of sobriety checkpoints, even if the state legislature were to address the issue.

2. Texas.

In *State of Texas v. Holt* (1994), the highest criminal court in Texas, the Court of Criminal Appeals, held that before any state could constitutionally implement a sobriety checkpoint program under the 4th Amendment and the Supreme Court’s decision in *Sitz*, a statewide governing body, *i.e.* the legislature, had to expressly authorize and implement the program. The court based its decision on language in *Sitz* that emphasized sobriety checkpoint decisions should be left to “politically accountable officials” and “the choice among reasonable alternatives remains with government officials who have a unique understanding of, and responsibility for, the public resources necessary to effectuate such roadblocks.” Based on the language of *Sitz*, the Texas court found it inescapable that

it is inappropriate to determine whether any alternative is constitutional until a politically accountable governing body at the State level has authorized these roadblocks. . . . We believe that the Supreme Court implicitly makes it a requirement that for any DWI checkpoint program to pass constitutional muster, it must at a basic minimum be authorized by a statewide policy emanating from a politically accountable governing body.”

The Texas legislature has struggled with the Court of Criminal Appeals requirement, introducing legislation in every session since 2003. Most recently, proposed legislation in 2009 passed the Texas Senate (SB 298) that would have allowed sobriety checkpoints only in populous areas on roadways known for alcohol related problems which would be video and audio recorded. In support of the bill, its sponsor, State Senator John Carona, cited the fact that Texas leads the nation in alcohol-related traffic fatalities. State Senator Juan “Chuy” Hinojosa responded “[y]ou’re stopping and harassing people, innocent people who are not drunk and have not been drinking alcohol” (Elliott 2009). The largest county in Senator Hinojosa’s district, Hidalgo County, has a DUI arrest rate above the state and national average but the rate of alcohol-related traffic fatalities is significantly lower than both. (www.drinkinganddriving.org/rcounty-data/default.aspx?state=tx&county=hidalgo). The bill was never passed in the Texas House of Representatives so Texas remains without appropriate legislation to initiate

sobriety checkpoints under *Holt*. A recent *Dallas Morning News* article reported the same bill will be reintroduced in the next legislative session (Mason 2010).

3. *Other Jurisdictions Also Mentioning Appropriate Legislation.*

As previously discussed, both the Alaska State House of Representatives and Senate unsuccessfully introduced legislation in 1994 which would have established sobriety checkpoints. Two other states identified in the survey might possibly allow sobriety checkpoints with appropriate legislation.

The Idaho Supreme Court intimated it might permit sobriety checkpoints if the legislature passed appropriate legislation. In *State of Idaho v. Henderson* (1988), a case that expressly held sobriety checkpoints impermissible on state constitutional and statutory grounds, the court stated it was not ruling on the legitimacy of such roadblocks if the state legislature passed laws establishing them.

Although not sanctioned by the courts, the Oregon legislature attempted to address the Oregon Supreme Court's reluctance to allow sobriety checkpoints for the purpose of gathering evidence for a criminal prosecution (discussed later) by introducing legislation that would have permitted sobriety checkpoints in a non-penal, administrative search setting. The legislation was never passed (Farmer 1991, 302-03) and it is unclear how the Oregon Supreme Court would have treated it if it had. In *State of Oregon v. Tourtillot* (1980), the Oregon Supreme Court recognized in another context the possibility of conducting administrative searches authorized by "responsible lawmakers" and carried out pursuant to administrative regulations.

C. *State Statutes that Prohibit or Do Not Permit Sobriety Checkpoints*

1. *Statutes Prohibiting Suspicionless Checkpoints—Idaho, Wisconsin & Wyoming.*

State statutes in Idaho, Wisconsin and Wyoming all prohibit roadblocks or checkpoints in the absence of individualized suspicion a person has engaged in criminal activity. Section 19-621 of the Idaho Code of Criminal Procedure limits the authority to establish roadblocks to "the purpose of apprehending persons reasonably believed by such officers to be wanted for violation of the laws of this state, of any other state, or of the United States, and using such highways or streets." Section 349.02(2) of the Wisconsin Statutes expressly forbids law enforcement officers from stopping or inspecting a vehicle without "reasonable cause to believe that a violation of a statute or ordinance" has been committed. Section 7-17-102 of the Wyoming Statutes limits the use of roadblocks to circumstances where they are used "for the purpose of apprehending persons reasonably believed by the officers to be wanted for violation of the laws of this or any other state, or of the United States, and who are using any highway within the state." As each statute requires individualized suspicion of a violation of the law, roadblocks for the purpose of detecting intoxicated drivers do not fall within the ambit of the statutory authority.

In *State of Idaho v. Henderson* (1988), a case involving the apprehension of the defendant at a sobriety checkpoint, the Idaho Supreme Court held "[t]he legislature has determined that suspicion of criminal wrongdoing is a condition precedent for authority to establish a roadblock" which the court found lacking in the case of sobriety checkpoints. The court also observed that the Idaho legislature had previously expressed its disapproval of roadblocks in a 1984 legislative report requiring probable cause before blood alcohol could be tested. The Idaho Supreme Court went on to find sobriety checkpoints had not been shown to be effective

based on the testimony of the officers in charge and such checkpoints also violated the Idaho Constitution (discussed in the next section).

To date, there are no Wisconsin (Wiseman and Tobin 2010, § 19.19) or Wyoming court cases interpreting the statutes but both contain unequivocal wording. The Governors' Highway Safety Association merely states in its comment section pertaining to Wisconsin that sobriety checkpoints are "[p]rohibited by statute" and for Wyoming they are "[p]rohibited by interpretation of roadblock statute" (GHSA 2009), although it is unclear to whose interpretation the Association is referring as no appellate court has interpreted the statute. The Insurance Institute for Highway Safety makes similar entries (IIHS 2010).

2. *Statutes Lacking Specific Statutory Authorization--Iowa.*

It is a fundamental tenet of statutory construction that penal statutes should be narrowly construed to protect the rights of citizens (LaFave and Scott 1986, §2.2(d)). The Iowa roadblock statute does not mention checking for intoxicated drivers as one of the permissible uses of roadblocks under Iowa law. Section 321K.1 of the Iowa Code only authorizes law enforcement agencies to conduct roadblocks for the purposes of checking license and registration as well as required safety equipment. However, as will be discussed in a separate section, neither the Iowa Court of Appeals or the Iowa Supreme Court have been adverse to allowing law enforcement to set up permissible checkpoints with the intention of checking for impaired drivers, even if detecting impaired motorists is their primary motive.

D. *Independent State Constitutional Protections—Idaho, Michigan, Minnesota, Oregon, Rhode Island, & Washington,*

Half of the 12 states found prohibitions against sobriety checkpoints under their state constitutions. Even before the Supreme Court's decision in *Sitz*, several anticipated the Court's validation of sobriety checkpoints in light of the Court's language in its opinion in *Prouse* and made preemptory strikes on state constitutional grounds. Others addressed the issue after *Sitz* finding state law provided greater protections than those afforded under federal law. Of the six states invalidating sobriety checkpoints on non-constitutional grounds, only the Iowa Supreme Court expressly declared in *State v. Loyd* (1995) that sobriety checkpoints would not violate the state constitution because state constitutional protections were co-extensive with those under federal law. It is therefore unclear whether sobriety checkpoints would violate the constitutions of Alaska, Montana, Texas, Wisconsin or Wyoming. The Texas Court of Criminal Appeals in its decision in *State of Texas v. Holt* (1994) expressly refused to address whether sobriety checkpoints would violate the state constitution as unnecessary to its decision.

Under American federalism, where federal constitutional guarantees have been applied to the states under the doctrine of selective incorporation, states are free to grant greater protections to their own citizens under state constitutions (see *Pruneyard Shopping Center v. Robins* (1980); Kanovitz 2010, § 1.13). Most of the states prohibiting sobriety checkpoints on state constitutional grounds have search and seizure protections similar or identical to the 4th Amendment.

1. *Idaho.*

The Idaho Supreme Court took arguably the most pejorative view of roadblocks declaring them violative of the Idaho roadblock statute as well as the state constitution, not to mention ineffective based on the record before the court. In *State of Idaho v. Henderson* (1988), a

case decided two years before the Supreme Court's decision in *Sitz*, the court observed that "[p]erhaps the most important attribute of our way of life in Idaho is individual liberty. . . police treat you as a criminal only if your actions correspond. Such is not the case with roadblocks." Consequently the Idaho Supreme Court determined that sobriety checkpoints violated Art. 1, § 17 of the Idaho Constitution which is not dissimilar to the 4th Amendment. The court held "where police lack express legislative authority, particularized suspicion of criminal wrongdoing and prior judicial approval, roadblocks established to apprehend drunk drivers cannot withstand constitutional scrutiny." Although the court toyed with the idea of an authoritative plan created by the legislature, it correctly forewent the analysis as unnecessary to its decision since no such legislation existed. Although the case was decided in 1988, no legislation creating such a plan has since been enacted.

2. Michigan.

One of the ironies of the U.S. Supreme Court's holding in *Sitz* is that when the case was remanded back to state court for further proceedings, both the Court of Appeals and the Michigan Supreme Court held sobriety checkpoints violated the state constitution. The initial reconsideration by the Michigan Court of Appeals in *Sitz v. Department of State Police* (1992) relied heavily on federal law before checkpoint cases such as *Martinez-Fuerte* and *Sitz* as well as Michigan case law which the court found did not permit warrantless stops but, rather, revealed "Michigan's longstanding adherence to the principle that an officer may not indiscriminately stop an automobile absent some reasonable grounds of suspicion that criminal activity is afoot (citations omitted)." While the court of appeals recognized the problems associated with intoxicated drivers, it held "we do not believe the proposed elimination of the rights of Michigan citizens to be free from suspicionless seizure a proper response to the problem."

In a lengthy opinion that relied heavily on the U.S. Supremacy Clause and delved into the responsibilities of the court under the state constitution, the Michigan Supreme Court also held in *Sitz v. Department of State Police* (1993) that sobriety checkpoints violate the Art. 1, § 11 of the Michigan Constitution. The Court concluded that a review of cases, including many Prohibition Era cases, interpreting the precursor to the current Michigan constitutional provisions "discloses no support for the proposition that the police may engage in warrantless, suspicionless seizures of automobiles" and that the requirement "that 'reasonable grounds' are required by the Michigan Constitution before the seizure or search of an automobile may occur, remains unmodified by precedent."

3. Minnesota.

The Minnesota Supreme Court also determined that sobriety checkpoints violated the state constitutional search and seizure provisions, Art. 1, § 10 of the Minnesota Bill of Rights, in two license suspension cases decided in 1994—*Ascher v. Commissioner of Public Safety* and *Gray v. Commissioner of Public Safety*. In *Ascher*, the court characterized the issue as one of whether the state had carried its burden of justifying stopping a large number of motorists "in the hopes of discovering that some of them are alcohol-impaired." The roadblocks at issue complied with the logistic requirements of *Sitz* but the court, nonetheless, found the roadblocks violated the state constitution. The Minnesota Supreme Court was critical of the U.S. Supreme Court's decision in *Sitz*, agreeing with a commentator that the *Sitz* majority's application of the 3 prong balancing test to approve sobriety checkpoints "represents a 'radical departure' from

the way the test has been and should be applied, with the result that for Fourth Amendment purposes police, in effect, are allowed to decide the reasonableness of their own conduct." The Minnesota Supreme Court also characterized the reasoning in *Sitz* as being "reductional" in determining no violation of the 4th Amendment so long as all cars are stopped without individualized suspicion. The court observed it had "long held [the state constitution] generally requires the police to have an objective individualized articulable suspicion of criminal wrongdoing *before* subjecting a driver to an investigative stop" ancillary to holding the state had not met its burden of "articulating a persuasive reason for departure from the general requirement of individualized suspicion." In doing so, the Minnesota Supreme Court arguably left open the issue for later consideration should the state be able to carry the burden.

4. Oregon.

The Oregon Supreme Court addressed sobriety checkpoints in three cases decided in a single day in 1987. Although the cases were pre-*Sitz*, the court held in each case that suspicionless sobriety checkpoints violated the Oregon Constitution. In *State of Oregon v. Boyanovsky* and *State of Oregon v. Anderson*, the Oregon Supreme Court distinguished sobriety checkpoints from the possibility the court had recognized 7 years earlier in *Tourtillot* of conducting administrative searches authorized by "responsible lawmakers" and carried out pursuant to administrative regulations. The court characterized the sobriety checkpoint at issue in *Boyanovsky* and *Anderson* as being used to gather evidence for the defendants' criminal prosecutions and held "[b]efore government officials can embark on a search or seizure for evidence to be used for this purpose, they must have individualized suspicion of wrongdoing." In *Boyanovsky* the court went on to make explicit findings under the Oregon Constitution:

Defendant was seized when his vehicle was stopped. His vehicle is, like other possessions, an "effect" in which he is entitled to be "secure * * * against unreasonable search, or seizure." Or. Const. Art. I, § 9. His person and documents were searched and the evidence obtained was used to convict him of a crime. These acts occurred in the absence of any belief that he had committed an offense. The officers did not comply with the constitutional standards for searches and seizures. Or. Const. Art. I, § 9. The evidence must be suppressed.

The Oregon Supreme Court also made findings in a civil case for injunctive relief and monetary damages in *Nelson v. Lane County* (1987). Although the court went to greater lengths to dispose of the civil claim, the resolution of the constitutionality for criminal prosecution purposes remained the same—"seizures or searches for evidence to be used in a criminal prosecution, conducted without a warrant or suspicion of wrongdoing violate Article I, section 9, of the Oregon Constitution." The following year, the Oregon Supreme Court reaffirmed its holdings in an appeal of a license revocation resulting from a defendant's failure to take a breath test after avoiding a sobriety checkpoint in *Pooler v. Department of Motor Vehicles* (1988).

5. Rhode Island.

A year prior to the *Sitz* decision, the Rhode Island Supreme Court held that sobriety checkpoints violated the state's constitution in *Pimental v. Department of Transportation* (1989). The holding stemmed from a motorist's refusal to subject to breath analysis at a checkpoint in violation of the state's implied consent law. The defendant's refusal resulted

in license suspension proceedings in which the defendant sought to have evidence obtained as a result of the stop suppressed as violative of Art. 1, § 6 of the Rhode Island Constitution. Correctly presaging the *dicta* in *Delaware v. Prouse* would result in a finding legitimating sobriety checkpoints under the 4th Amendment, the Rhode Island Supreme Court observed the federal constitution provides only minimal levels of protection which states are free to exceed. Although the language of Art. 1, § 6 of the Rhode Island Constitution is very similar to the 4th Amendment, the court noted the Rhode Island Bill of Rights was preceded by a preamble declaring “the maintenance and preservation of the ‘rights and principles hereinafter mentioned’ shall be the ‘paramount obligation’ of the executive, legislative, and judicial branches of the government.” In holding the checkpoint unconstitutional, the court stated

It is illogical to permit law enforcement officers to stop fifty or a hundred vehicles on the speculative chance that one or two may be driven by a person who has violated the law in regard to intoxication. We therefore hold that roadblocks or checkpoints, established to apprehend persons violating the law against driving under the influence of intoxicating beverages or drugs, operate without probable cause or reasonable suspicion and violate the Rhode Island Constitution.

While the court agreed the state had a compelling interest in preventing drunk driving, it could not condone subordinating state constitutional guarantees in the interest of efficient law enforcement which it found created a dangerous precedent for when rights could be forfeited in the name of enforcing more serious laws. In a similar vein, the court rebuffed the state’s argument that checkpoints provided a deterrent to driving while intoxicated by observing that, even if the state could demonstrate deterrence, it comes at too high a price to “diminish the rights of all to secure the punishment of a few.” In a parting shot at states that had approved sobriety checkpoints, the court pointed out “the founders of this colony, and later this state, valued freedom and liberty above all other interests of society” and the state constitution requires its citizens to be free of “unreasonable searches and seizures of this type.” (For a very straightforward analysis of the *Pimental* decision, see Durning 1989).

6. *Washington*.

Well prior to *Sitz*, the Supreme Court of the State of Washington invalidated a sobriety checkpoint initiated by the City of Seattle during the 1983-84 holiday season. In that case, a driver charged with a criminal offense and an inconvenienced motorist filed actions on behalf of state citizens similarly situated alleging that the checkpoint program was invalid under both the 4th Amendment and the Washington state constitution. The trial court held for the citizens but the court of appeals reversed in *Fury v. Seattle* (1986). The Supreme Court then reversed the court of appeals in *Mesiani v. Seattle* (1988) expressly addressing the checkpoint issue on state constitutional grounds before stating its opinion that the checkpoint also violated the 4th Amendment.

In *Mesiani*, the Washington Supreme Court noted that the textual language of Art. 1, § 7 of the state constitution provides greater protection of individual privacy interests than the federal constitution since it protects against warrantless searches and seizures “with no express limitations.” Art. 1, § 7 provides:

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

The court noted the checkpoint was a “seizure” under the Washington Constitution requiring the city to show “authority of law” or one of the narrowly recognized warrant exceptions under state law which the court found the city failed to do.

The court flatly rejected the city’s argument that the city’s interest in the legal operation of vehicles outweighs any privacy interest under the state constitution, stating “the City’s position is without support in either our cases or the language or logic of our constitution. From the earliest days of the automobile in this state, this court has acknowledged the privacy interest of individuals and objects in automobiles.” The court then approvingly cited that part of the Supreme Court’s opinion in *Prouse* holding a person does not lose all reasonable expectation of privacy merely by entering a vehicle. In response to the city’s argument that a sobriety checkpoint more resembled a warrantless search previously recognized by a state court of appeals, the Washington Supreme Court noted that the warrantless search approved by the court of appeals was limited to situations in which reliable information indicated a serious felony had recently been committed and was “far different from an inference from statistics that there are inebriated drivers in the area.”

Finally, the court held the city failed to satisfy the 3 prong test under *Brown v. Texas* (1979) because it improperly aggregated the societal interests in preventing intoxicated driving against the minimal intrusion on the privacy interests in being subjected to the checkpoint. The court noted a more appropriate comparison would be “the cumulated interests invaded.” The court also held checkpoints to determine sobriety were “highly intrusive” in smelling motorist’s breath and looking for open containers and evidence of dexterity and observed the city had failed to examine whether less intrusive means would not satisfy the city’s interest.

7. *Other States*.

Because the Texas Court of Criminal Appeals held that legislative action was required by *Sitz* before a state could legitimately operate sobriety checkpoints, it expressly declined to rule on the issue of whether such checkpoints were permissible under the Texas Constitution. Given Texas strong history of protection of the rights of the suspect, it is likely the court may find the checkpoints unconstitutional on state grounds. As previously noted, strong arguments can be made that the Alaska and Montana Constitutions also prohibit the use of sobriety checkpoints on state grounds although the appellate courts of those states have made no definitive statement. Because the Wisconsin and Wyoming legislatures expressly limit checkpoints to instances in which reasonable suspicion of wrongdoing exists, there is no guarantee the state courts would not find future legislative authorization of sobriety checkpoints as violative of either state constitution. The Idaho Supreme Court did so in its multifaceted opinion in *State of Idaho v. Henderson* (1988) finding sobriety checkpoints not authorized by statute or under the Idaho constitution. Of the 12, only the Iowa Supreme Court expressly ruled that sobriety checkpoints would not violate its state constitution in *Loyd v. State of Iowa* (1995).

PRETEXT STOPS & OTHER CHECKPOINTS

Stops for legitimate reasons to investigate other conduct of a more insidious nature such as drug possession, smuggling, and driving while impaired have long been a favorite tactic of law enforcement. The U.S. Supreme Court held in *Whren v. United States* in 1996 that, so long as the underlying stop is lawful, the officer's true motivation for making it is irrelevant. Of course, the officer must still have reasonable suspicion or probable cause to investigate other activity. The most recent Supreme Court case dealing with checkpoints, *Illinois v. Lidster* (2004), involved the apprehension of an impaired driver at a checkpoint created for another purpose.

A 2009 article reported the success of "saturation stops" to detect evidence of impaired driving in Wisconsin. The article dealt with police efforts to curtail intoxicated driving by setting up roadblock-*esque* locations "[w]ith bright, LED 'OWI ['Operating While Intoxicated'] Task Force' signs, flares, and wearing reflective vests, officers watch every passing car and if they spot any violation—speeding, taillight out, etc.—they pull drivers over and check for sobriety" (Furseth and Knoop 2009, 2). The authors correctly note that these saturation patrols are not checkpoints because vehicles are only stopped if officers have individualized suspicion (Furseth and Knoop 2009, 3). Whether Wisconsin courts will accept this violation of the spirit if not the letter of the law remains to be seen.

Iowa also does not permit sobriety checkpoints but only because checking for intoxicated drivers is not among the litany of approved purposes in the state's roadblock statute. The statute, Section 321K.1 of the Iowa Code, does permit suspicionless stops for license, registration and safety equipment. The Iowa courts appear to have little problem with using these stops as a subterfuge to ferret out impaired driving, even if the primary purpose of the stop is to detect evidence of intoxication.

In *State of Iowa v. Riley* (1985), the Iowa Court of Appeals affirmed a motorist's conviction for operating a motor vehicle while intoxicated despite the defendant's contention that the roadblock was just a ruse to catch drunk drivers. The court held the underlying motivation of law enforcement was unimportant as long as the roadblock was conducted for a lawful statutory purpose and noted that the government's interest in catching drunk drivers was perhaps more important than detecting invalid license and registration. The court observed "we cannot hold that a state interest of equal or greater importance is illegitimate and makes an otherwise valid roadblock unconstitutional." Ten years later, the Iowa Supreme Court addressed the argument the roadblock statute did not permit roadblocks to detect intoxicated drivers in *State of Iowa v. Day* (1995). Predictably, the court held that as long as the roadblock was conducted for a legitimate purpose under the statute, detection of drunk drivers would be incidental to law enforcement's primary goal and officers would be derelict in their duty if they were to ignore other violations of law.

The Texas legislature was tasked in 1994 by the state's highest criminal court with passing legislation before the court would consider the constitutionality of sobriety checkpoints which it has since failed to do. However, it had little problem with defining Border Patrol and other federal agents at fixed immigration checkpoints and roving Border Patrol agents in the field as "special investigators" under Texas law. Although the statute expressly provides they are not "peace officers" under Texas law, it authorizes them to detain drivers suspected of intoxication

offenses under state law until the offenders can be transferred to Texas state authorities (Art. 2.122(c) Tex. Code Crim. Pro.).

Additionally, in *State of Texas v. Luxon* (2007) a mid-level Texas appellate court affirmed the trial court's granting of a motion to suppress evidence of intoxication where the defendant was detected at a roadblock to check licensure, but only because the roadblock was established without any departmental or supervisory position authorization and without any guidance from a supervisory office. The court observed "the operation of the roadblock presented a serious risk of abuse of the field officers' discretion and thereby intruded greatly on [the defendant's] Fourth Amendment interest in being free from arbitrary and oppressive searches." Presumably, either or both courts would have found the evidence admissible had law enforcement not exercised "unfettered discretion."

For states that allow checkpoints and roadblocks for other purposes such as checking license and registration or safety equipment or that have federally mandated checkpoints within their borders, the implications are clear—an impaired driver passing through such a facility can be apprehended ancillary to the designated purpose of the roadblock (*but see* Holland 2006, 306-07). In fact, law enforcement would be remiss in failing to do so. The methods employed in Wisconsin and ostensibly in Iowa are more problematic as they represent a direct attempt to skirt state statutory and constitutional protections, but would appear to be valid pretext stops under *Whren*.

CONCLUSION

Cases like *Martinez-Fuerte*, *Sitz* and *Lister* may indicate to some a lessening of the rights the Founders intended by incorporating guarantees against unreasonable searches and seizure in the 4th Amendment and the requirement of individualized suspicion enunciated in numerous Supreme Court opinions. Perhaps, the Rhode Island Supreme Court is correct in asserting that permitting roadblocks based on policing interests rather than exigent circumstances establishes a dangerous precedent that might lead to a reassessment of cases such as *Edmond* should drug trafficking and gang violence continue to worsen in the United States, which it likely will. If so, the issue begins with *Martinez-Fuerte* and not *Sitz* and may actually extend back to checkpoints for inspecting driver's licenses, vehicle registration and vehicle equipment safety. By not requiring individualized suspicion, each is an example of an expansion of law enforcement authority under the 4th Amendment to address a pressing governmental concern. Given the state of the nation in 1791 when the 4th Amendment was ratified and the problems encountered by state and federal law enforcement agents after the first decade of the 21st Century, it remains to be seen what suspicionless stops will come to be regarded as "reasonable" under 4th Amendment jurisprudence. As this paper demonstrates, states are not bound by such interpretations of what is "reasonable" and may provide their citizens greater protections where appropriate.

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Maricopa Revisited: Findings from a Probationary Offender Study

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Abstract

A survey was administered to a non-probabilistic sample of 267 offenders at a large probation office in Texas to assess levels of client satisfaction. Also embedded in the survey, however, were questions to assess fidelity to the principles of evidence-based practices (EBP) for a department that has revamped its service delivery in that direction. The following issues are also addressed in the article: the absence of a sampling frame, the use of a “check-all-that-apply” checklist, and the related, unidimensional nature of certain binary variables. The findings regarding client satisfaction are comparable to a previous study, but the embedded instrument lends itself to an aspect of program evaluation.

INTRODUCTION

The use of offender surveys to rate staff compliance with departmental goals and objectives is often overlooked as a source of valid information. In 2007, the Maricopa County (AZ) Adult Probation Department administered a convenience survey to its probationers “to establish a baseline of satisfaction rate” (Cherkos, Ferguson, & Cook, 2008, p. 55). The results of that survey indicated a high level of satisfaction for a department that had been revamping its policies and procedures since 2004 in the direction of evidence-based practices (EBP). Along similar lines, a large probation department in Texas had also been working in the direction of EBP since 2005, and when the authors were asked to administer the same survey to their probationers, they saw an opportunity to engage in an aspect of program evaluation by modifying the original survey instrument. This study analyzes data from the survey to assess staff compliance with the principles of EBP.

The literature on EBP indicates that correctional programs should target higher-risk offenders and should address dynamic risk factors that affect recidivism. The authors embedded certain EBP indicators within the client satisfaction survey of Maricopa County and administered this modified instrument at probationer reporting sites. The research hypothesis was that a larger percentage of higher-risk offenders should have EBP issues addressed than that of their low-risk counterparts. The hypothesis is based upon some of the principles of EBP as well as the

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reality of limited time resources available to staff during monthly reports. The null hypothesis is that EBP topics would be discussed to offenders across the board, with equal percentages of low-risk and higher-risk offenders being exposed to EBP topics.

The source of the data is a sample of 267 offenders from a population of 12,500 offenders who were receiving direct supervision in late 2009. The embedded EBP questions elicited feedback from this sample regarding the topics addressed in monthly office visits. Of these topics, some can be identified as pertaining to specific risk factors associated with recidivism. These risk factors have been identified in the “what works” research literature that seeks to discover the principles of effective correctional programs, and the literature is part of a larger trend of the application of EBP in professional settings.

Background of EBP

When Martinson (2006) published his assessment of treatment interventions in 1974, the public had witnessed a decade of explosive crime rates, rioting in major cities, and even major disturbances in prisons. His report seemed to confirm the suspicions of some criminal justice professionals and policy makers that rehabilitation in any form did not work. One of the results of his publication was the turn in sentencing and correctional practices to the just deserts model of punishment. But the 1970s and 1980s were also times of conservative reaction not necessarily associated with the “nothing works” issue. Because of certain international political and economic events, American citizens felt threatened and found psychological solace in some type of “retreat” (Williams & McShane, 2004, pp. 235-236). Concurrent with these events, however, some researchers resolved to discover what *did* work and so began their quest to identify the principles of effective correctional intervention. This quest mirrored, to some extent, the articles, books, and seminars in business management along the lines of “best practices,” but the mission was more closely aligned with the EBP model being developed in medicine (Trinder, 2000b; Reynolds, 2000).

In the 1970s, Archie Cochrane had promoted the use of randomized controlled trials and meta-analyses in medical research, and, due largely to his efforts, the medical community began to move in the direction of EBP (Reynolds, 2000). By the mid 1980s, Carol Garrett was pioneering the use of meta-analysis in correctional studies, and within a few years this new statistical technique was being used by other researchers to discover what worked in correctional intervention. Yet fairly recently (and to some extent even today), some practitioners were not practicing their profession in accordance with research findings. For example, in the medical profession, it was difficult for doctors to keep up with the latest research once they graduated from medical school. Instead, they relied on anecdotal evidence, personal experiences, the opinions of experts, and advice from drug companies (Reynolds, 2000). And in correctional agencies, a large number of practitioners were ignoring scientific research, prompting some criminologists to charge them with practicing “correctional quackery” (Latessa, Cullen, & Gendreau, 2002; Flores, Russell, Latessa, & Travis, 2005).

By the end of the 20th century, the public trust in professionals had suffered. Data was more available through the use of computer technology. People were more educated and informed, and they were questioning professional judgments. There were concerns with managing risk, and critiques were being made of what it means to be a professional. Along these lines, the government was becoming more concerned with notions of accountability (Trinder, 2000; Davies, Nutley, &

Smith, 2000). Over the past 20 years, the amount of EBP research has been voluminous. Notions of evidence pertain to findings that are scientifically derived and open to public inspection, but it could also pertain to non-ambiguity in interpretation, that there is a consensus of understanding of what the basic findings are. To become EBP, the findings must be put into practice, and EBP has emerged to bridge the gap between research and practice, the prime concern being to choose among several effective courses of action (Davies, Nutley, & Smith, 2000). EBP research not only guides programs, but evaluates them, its goal being to hold administrators and policy makers accountable for agency or professional results (MacKenzie, 2000). Thus a part of EBP is having regularly scheduled evaluations by specialized department staff to assess not only program goals but also the agency’s fidelity to program characteristics.

The key principles of EBP in corrections include the use of validated risk assessment instruments and the classification of offenders based upon risk. Higher-risk offenders should be targeted with more intensive services and interventions based upon EBP; conversely, research findings indicate that low-risk offenders require minimal or no services. The best treatment practices should incorporate cognitive-behavioral and social learning therapies, which may include modeling, reinforcement, problem-solving techniques, relationship practices, and motivational interviewing. The use of punishment and threats of punishment is generally not effective in reducing recidivism (Nutley & Davies, 2000; Dowden & Andrews, 2000; Andrews, 2006; Latessa, Cullen, & Gendreau, 2002; MacKenzie, 2000; Andrews & Dowden, 2007).

Meta-analyses have identified the major risk factors that contribute to crime and recidivism. For an attribute to be considered a risk factor, it must be connected in some way to antisocial behavior (Flores, Russell, Latessa, & Travis, 2005). The most important risk factors are referred to as the “Central Eight” (Andrews, Bonta, & Wormith, 2006, pp. 10-11.). Risk factors are of two types. *Static* risk factors are those which cannot change, such as past criminal history or past drug use; however, *dynamic* risk factors, also known as criminogenic needs, are mutable. A primary principle of EBP is that intervention programs must target the criminogenic needs of higher-risk offenders in order to be effective in reducing recidivism (Andrews, 2006; Ferguson, 2004; Latessa, Cullen, & Gendreau, 2002; MacKenzie, 2000; Andrews & Dowden, 2007; Dowden & Andrews, 2000; Flores, Russell, Latessa, & Travis, 2005; Gendreau, Little, & Goggin, 1996; Andrews, Bonta, & Wormith, 2006).

The best risk factor that predicts recidivism is one’s criminal history, yet this factor cannot be changed by intervention. The remaining risk factors in the Central Eight, which now become the “Central Seven,” are dynamic in nature and can be the focus of interventions. The Central Seven are as follows: antisocial personality pattern, antisocial cognition, antisocial associates, dysfunctional family issues, problems with employment, antisocial leisure activities, and substance abuse (Andrews, Bonta, & Wormith, 2006, pp. 10-11; Andrews, 2000; Ferguson, 2004; Latessa, Cullen, & Gendreau, 2002; Andrews & Dowden, 2007; Flores, Russell, Latessa, & Travis, 2005). Historically, there had been some controversy over the utility of dynamic risk factors in explaining crime, although the disputes are somewhat dated and may not be a recurring theme today. For example, a number of researchers have identified an antisocial personality pattern as a major risk factor in explaining crime (e.g., Gendreau, Little, & Goggin, 1996; Listwan, Van Voorhis, & Ritchey, 2007), yet in the recent past, the importance of individual differences, such as personality styles, was dismissed by some theorists. In a popular text on criminology, for example, one could read that personality diagnosis was just a “fancy label” that did not contribute to a researcher’s understanding of the causes of crime (Vold, Bernard, & Snipes, 2002, p. 80). In

the most recent edition of this text (Bernard, Snipes, & Gerould, 2010, p. 81), these remarks have been excised, perhaps due to the findings of meta-analyses in support of personality traits as a dynamic risk factor.

Motivational Interviewing (MI), as devised by Miller and Rollnick (2002) is a directive, client-centered intervention that seeks to elicit change from a client by increasing the perceived discrepancy between the status quo and the goals of a client and then resolving such discrepancy and ambivalence in the direction of positive change. MI was first used in connection with alcohol and chemical abuse therapy but is now used in a variety of treatment contexts and symptoms and is complimentary to other treatment methods. One in particular is its pairing with The Transtheoretical Model (TTM) of stages of change (DiClemente & Velasquez, 2002; Velasquez & Von Sternberg, 2008). Research findings support the efficacious nature of MI as an intervention, and it has been identified as an EBP (Burke, Arkowitz, & Dunn, 2002; Ginsburg, Mann, Rotgers, & Weekes, 2002; Latessa, Cullen, & Gendreau, 2002; Clark, 2005; Clark, Walters, Gingerich, & Meltzer, 2006; Rubak, Sandboek, Lauritzen, & Christensen, 2006).

Background of the Offender Survey

In late 2009, the authors worked with a team to administer the survey to offenders at the three main reporting sites. They assumed that the Central Seven (dynamic) risk factors for recidivism were being addressed by probation staff in some way with their probationers. It is true that some of the issues pertaining to personality and attitudes might best be addressed in clinical contexts; however, it is the task of probation officers to monitor the progress of their probationers as well as to apply EBP in their special relationships with them. Therefore, the issues of criminal personality patterns and cognition should appropriately be addressed by officers to some degree.¹ An eighth item was appended to the Central Seven, viz., Motivational Interviewing (MI). The probation officers at this department had been trained in, and were directed to use, MI in their dealings with offenders as part of their mission to promote EBP.

If probation staff were, in fact, complying with the principles of EBP as expressed in the research literature, then these eight items should be addressed during monthly offender meetings. If the offenders reported that such topics were indeed being addressed or practiced, then this could indicate that the probation staff was in compliance with its new mission. The research also entailed an analysis of reports and documents from the department, personal interviews with certain key staff members, and attendance at annual staff meetings.

METHOD

This research assesses some aspects of program integrity to introduce EBP. EBP research is grounded in the positivist tradition of criminology and specifically finds empirical support in the social learning paradigm of Akers (Akers & Sellers, 2009; Andrews, Bonta, & Wormith, 2006) and self-control theory (Gottfredson and Hirschi, 2009; Miller, Schreck, & Tewksbury, 2008, pp. 160-165).

Toward the end of 2009, the survey team administered questionnaires to offenders at the three main reporting sites. In this jurisdiction, offenders are assigned by probation staff to specific reporting sites, and they are required to report at least once monthly to their officers if they are being supervised according to higher levels of risk. (Low-risk offenders report less often.) A large number of offenders report on Wednesdays. The survey team sampled three

Wednesdays within a thirty-day period and administered the survey at one of the three locations on each of the three days. The team was aware of exit doors at each site, and these doors were monitored for the appearance of offenders (after their office visits) who were then approached by members of the team. The response rate was about 60%.

The instrument itself included 37 items, one of which was contingent (item 4b). In addition, three other items of information were recorded or identified by the survey team on each instrument. Thus a possibility of 40 variables is available from each instrument (see survey instrument in Appendix A), several of which are EBP indicators. Of these indicators, some are in the form of evaluations, wherein the offender makes judgments regarding certain statements presented, such as “My officer talks with me about what I think may have led to my past behavior and what I think puts me most at risk” (item 13a). The response categories include strongly agree, agree, disagree, and strongly disagree (or a variation thereof). The remaining EBP indicators, and those of interest to the present study, are binary in response categories, entailing “yes” or “no” responses to a checklist of topics regularly discussed in office visits. These EBP items are found in Question Number 15 (see Appendix A). The items and related EBP concepts are displayed in Table 1.

TABLE 1. CHECKLIST AND RELATED EBP CONCEPTS	
Items (Indicators)	Concepts
Friends I hang out with	Antisocial Associates
What I do in my free time	Antisocial Leisure Activities
Being responsible	Antisocial Personality Pattern
My beliefs and values	Antisocial Cognition
Coping with problems	Antisocial Personality Pattern
What stage of change I am in	Motivational Interviewing
Family issues	Dysfunctional Family Issues
Alcohol/Drug Use	Substance Abuse
Employment	Problems with Employment

Also of significant importance is Question Number 2 that identifies the offender’s level of supervision, i.e., level of risk. Level of supervision constitutes the independent variable in the present study, prompting the probation officer to discuss certain topics (the dependent variables). If a probation officer interviews an offender who has been classified as higher risk for recidivism, then he will choose to discuss topics that conform to the principles of EBP. If the probation officer interviews a low-risk offender, however, then he is at greater liberty to discuss topics of a traditional nature. These elementary relationships are crosstabulated for comparison. For each EBP variable, a larger percentage of higher-risk offenders should recall these topics being discussed than the percentage of low-risk offenders. In fact, the EBP literature points out that addressing EBP issues with low-risk offenders is a waste of resources and sometimes is counterproductive.

The authors took steps to counteract some of the threats to reliability. Survey team members were selected after they successfully completed the requirements for a course in research methods. The individual members then received training in several aspects of survey research. They were well familiar with the survey instrument and the meaning of each variable. They

underwent training in how to approach respondents, how to communicate, and how to present themselves, including dress and non-verbal communication. At least two Spanish-speaking team members were present during survey efforts, and at times team members were required to read the questions on the survey instrument (English as well as Spanish). The authors supervised team members while they administered the questionnaires and noted any problems that should be addressed in end-of-the-day debriefing sessions.

FINDINGS

The results are displayed in 2x2 tables (“no” responses are omitted) for comparison, with risk level identified as the independent variable in columns, and EBP topics identified as the dependent variables in rows. The differences in proportions, expressed in percentages, are exhibited in the final column, as HR-LR (see Table 2).

TABLE 2. PERCENTAGES OF OFFENDERS WITH EBP TOPICS DISCUSSED BY RISK LEVEL					
EBP Topics	Higher Risk (HR)*		Low Risk (LR)*		HR-LR
	<i>f</i>	%	<i>f</i>	%	
Friends I hang out with	94	38.8%	5	20.0%	+18.8%
What I do in my free time	118	48.8%	5	20.0%	+28.8%
Being responsible	143	59.1%	8	32.0%	+27.1%
My beliefs and values	56	23.1%	2	8.0%	+15.1%
Coping with problems	100	41.3%	5	20.0%	+21.3%
What state of change I am in	74	30.6%	3	12.0%	+18.6%
Family issues	107	44.2%	7	28.0%	+16.2%
Alcohol/Drug Use	146	60.3%	11	44.0%	+16.3%
Employment	147	60.7%	11	44.0%	+16.7%

*Higher Risk, *n* = 242; Low Risk, *n* = 25

The difference in percentages between higher-risk and low-risk offenders having EBP topics addressed in monthly office visits varies from roughly 15%-29%, the differences favoring the higher-risk group and lending support to the research hypothesis. The smallest percentage difference was on the topic of “my beliefs and values,” an indicator of antisocial cognition, whereas the largest difference was on the topic of “what I do in my free time,” an indicator of antisocial leisure activities. The topics being addressed the most were “employment,” “alcohol/drug use,” and “being responsible,” indicators of problems with employment, substance abuse, and antisocial personality pattern.

DISCUSSION

This study explored the possibility of detecting causal connections between categorical or nominal variables using a non-probabilistic sample of offenders at a large probation department. This department, like a few others in the US, is undergoing sweeping organizational changes in order to incorporate evidence-based practices. Due to the nature of the target population and confidentiality or privacy concerns, a sampling frame was unavailable. Kalton would characterize the sample as a convenience sample, providing the apt example of “patients of

a given doctor.” The problem with such non-random samples, of course, is the researcher’s inability to test for significance in differences and his reliance on subjective assessment (Kalton, 1983, p. 90). Without a random sample, the researcher has no inkling of the likelihood that a human subject will be selected from the larger population. Dillman et al. (2009, pp. 52, 353-380) offer guidelines on how to tailor surveys when no sampling frames are available, and these guidelines should be considered by researchers who wish to survey offender populations. The rationale for the present study lies in its ability to probe for possible correlations. Thus any conclusions reached regarding the data cannot be based upon tests of statistical significance. Fisher’s Exact Test, which makes no assumptions regarding size of groups, would have been ideal as a test for differences in categorical data, but it does assume a normal distribution of variables. Without a random sample, drawn from a sampling frame of all probationers, no estimations are possible regarding sampling error. Following Kalton (Kalton, 1983, p. 90), however, subjective assessments are possible. Thus the crosstabulation table lends support to the hypothesis that a group of higher-risk offenders would have EBP topics addressed to a larger extent than a group of low risk offenders. If the authors were dealing with a probability sample, however, they could test, according to some degree of risk (e.g., *p* < .05), whether the differences in proportions were statistically significant, i.e., were probably a result of the risk classification and not a result of chance. This type of research, wherein offenders are surveyed to provide data regarding program evaluation, should be explored further, and efforts to work with a probability sample, based upon a random sample drawn from a sampling frame, should be pursued as well.

In regard to the data at hand, one might question why “yes” responses from the higher-risk group were not higher. Percentages of those reporting that EBP topics were addressed in meetings ranged roughly from 23% to 60%. If a probationer is assessed as a higher-risk offender, should not all of the “Central Eight” topics or practices be addressed at monthly meetings between an offender and his probation officer? Some reflection should indicate that the answer might possibly be appropriate for some offenders but not necessarily for others. In the diagnostic phase of working with an offender at the beginning of his probation or presentence term, the diagnostician develops an individualized supervision plan, based upon the specific risks of the individual offender. An offender may have a problem with anger control but not drug use, and therefore drug use would not typically be addressed at meetings. Overall, however, the higher-risk group should have dynamic risk factors identified in individualized supervision plans that must be addressed, according to the principles of EBP, and that is what one observes in the differences in proportions that result from crosstabulating risk groups with EBP topics. Whether these differences are statistically significant cannot be addressed in the present study.

In the present case, the administration of the probation department wished to replicate a “customer satisfaction survey” that was recently administered in another large probation department undergoing similar organizational innovations. In an examination of the official statistics of both departments, the authors were particularly impressed with the drop in recidivism rates since the inception of these organizational changes. An administrator would surely be interested in organizational effectiveness in regard to recidivism and other aspects of organizational work, as well as the favorable economical impact that such changes may have brought. Whether these drops in recidivism are due to EBP or some other factors cannot be explored by using the questionnaire of the present study. Yet the impressions of the “clients” or “customers” may be deemed of value or interest to probation administrators and staff. In the present case, questions were inserted or modified that might indicate compliance with EBP

principles. The result was a questionnaire that was relatively long, lending itself to moderately high levels of non-response. The indicators were, with the exception of one variable, unidimensional, thus jeopardizing content validity and inviting measurement error. The checklist, conforming to a “check-all-that-apply” format (Dillman, Smyth, & Christian, 2009, p.131) was not ideal and may have contributed to non-response as well. (The preferred format would be “forced-choice.”) These issues could be addressed in future research, along with the preferred use of sampling frames. Although not explored in the present study, several of the evaluation-type questions in the form of ordinal-level data tap into or indicate several dimensions of certain variables, promoting the notion of content validity. Although not derived from a probability sample, they may yield findings of some value, and these results will be explored in a future paper.

One should be aware of the unequal marginals between the two comparison groups. Out of 267 respondents who completed the survey, only 25 of them (9%) were classified as low-risk offenders. This problem may be irreconcilable except for much larger samples, although the problem of unequal proportions may still remain. Classification systems in Texas conform to a basic, three-tier system of low, medium, and high-risk offenders. Being based on validated risk assessment instruments, these levels could be modified to form “natural dichotomies” that have meaning for corrections practitioners. The EBP literature separates the efficacious supervision of offenders along two poles: low and high risk offenders. Thus the researcher in Texas (and possibly in other states) must collapse the high and medium risk offenders into a “higher risk” category, resulting in unequal marginals. Another contributing factor in convenience sampling is that low-risk offenders report less often than higher risk offenders, and thus a certain percentage of low-risk offenders are absent from sites of survey research. In the present case, for example, low-risk offenders visit their probation officers once every three months. This difference in reporting requirements impacts the number of questionnaires that can be completed by low-risk respondents.

Concluding comments focus on what is unique about the present study, and a comparison with the survey done in Maricopa County may be instructive. That survey reported an 82% response rate, compared to about 60% in the present study. Maricopa gathered 468 questionnaires to the 267 of the present study. The Maricopa team was members of the Planning and Research Unit which is associated with the Maricopa County Adult Probation Department, and they administered surveys to eight reporting sites, whereas the present team was composed of professors and students at a university who visited three reporting sites. The respondents in Maricopa County were shown a signed letter from the chief probation officer, whereas in the present study the chief probation officer was absent from the scene. There may be issues to consider regarding the independent nature of the present research effort and how it affects the reliability and validity of the responses. All offenders in this study were approached after they had reported to their probation officers and were outside the building. All members of the present survey team were dressed in marked T-shirts and adorned with name badges that identified them as representatives of a university, not the probation department. Due to the inherent power differentials between probation officers and offenders, independent surveys teams may be perceived as less threatening or compelling. What is intriguing are the comparable results from the “customer satisfaction” portion of the surveys in both jurisdictions. All of these scores, measured on ordinal scales, produced satisfaction levels in the 80th and 90th percentiles. But the main difference between the two studies pertains to how one measures aspects of EBP. In the Maricopa study, the impressive satisfaction levels from the survey were interpreted as evidence

that the probation department was indeed participating in the EBP model, and this may, in fact, be the case. But the unique contribution of the present study may be the suggestion of a tighter, less tenuous, connection between survey results and the practice of EBP.

APPENDIX A

Probation Department Client Services Survey*

Please take a few minutes to answer these questions. Your responses will help a research team to rate the quality of services at the probation office. Your participation is voluntary. If you choose to participate, then your responses will be **strictly confidential**. Please initial in the blank that you have decided: _____ **TO** _____ **NOT TO** participate in this study. Thanks for your help!

Please check or blacken the small circle for each question to indicate your answer.

1. What type of probation are you on?
 - ☐ Regular
 - ☐ Specialized (Gang, Youthful, Sex Offender, Mental Health – see PO multiple times each month, including regular home or work visits)
2. How often are you scheduled to report to your probation officer?
 - ☐ One or more times per month
 - ☐ Every three months
3. How long have you been on probation?
 - ☐ Less than 6 months
 - ☐ 6-12 months
 - ☐ 1-2 years
 - ☐ 2-3 years
 - ☐ More than 3 years
- 4a. Since being placed on probation, how many probation officers have been assigned to supervise you? (*Do not count the “officer of the day” who sees you when your assigned PO is out that day.*)
 - ☐ 1
 - ☐ 2
 - ☐ 3
 - ☐ 4
 - ☐ 5 or More

- 4b. If more than 1, were any of these changes difficult for you?
- ☐ Yes
 - ☐ No
5. When visiting my probation officer, the wait time in the lobby is usually reasonable.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
6. The receptionist greets me in a pleasant and professional manner.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
7. I would prefer for my probation officer to spend:
- ☐ More time with me during our visits
 - ☐ Less time with me during our visits
 - ☐ I'm satisfied with how much time I spend with my PO during our visits
8. My probation officer treats me with respect.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
9. My probation officer listens to me.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
10. My probation officer works with me to help me complete probation successfully.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree

11. My probation officer lets me know how I am doing on probation.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
12. I feel my officer's response was fair when I have been unable to complete conditions of probation, had positive UAs, or had other violations of the conditions of probation.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
- 13a. My officer talks with me about what I think may have led to my past behavior and what I think puts me most at risk.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
- 13b. My officer works with me to help me make better decisions.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
14. I understand what is expected of me and the responsibilities of my officer if I do not follow my conditions.
- ☐ Strongly agree
 - ☐ Agree
 - ☐ Disagree
 - ☐ Strongly disagree
15. Please check any subjects that your probation officer usually discusses with you during a typical visit. (check as many as apply)
- ☐ Friends I hang out with
 - ☐ What I do in my free time
 - ☐ Being responsible
 - ☐ My beliefs and values
 - ☐ Coping with problems

- o What stage of change I am in
- o Family Issues
- o What I do when I get angry
- o Alcohol / Drug Use
- o Drug Testing
- o Treatment Attendance
- o Employment
- o Education
- o Residence
- o Health
- o Mental Health
- o Payments
- o Community Restitution Hours
- o Other: _____

16. How else could your probation officer help you while on probation?

17. Please give an overall rating of your experience with the adult probation department.

- o Very Satisfied
- o Satisfied
- o Dissatisfied
- o Very dissatisfied

*This questionnaire has been modified from the original instrument used in the recent offender survey in Maricopa County (Cherkos, Ferguson, & Cook, 2008).

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ENDNOTE

1. Typically, the amount of time involved in a regularly scheduled office visit, as well as the topics that may be addressed in such a visit, are limited resources. Having limited resources at his disposal, the officer must prioritize his agenda to include topics pertaining to EBP and then to address non-EBP issues as time permits. Thus we hypothesized that most topics discussed during office visits with the higher-risk population would pertain to EBP, and the specific EBP topics that were chosen would tend to be those that have the greatest impact on recidivism. This procedure, however, would not be applied to encounters with low-risk offenders, inasmuch as such efforts are unnecessary.

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Does Missing the Maturity Gap Predict Drug Abstinence Among Adolescents?: An Analysis of Moffitt's Developmental Taxonomy

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Abstract

Moffitt's developmental taxonomy (1993) has generated considerable empirical research over the past two decades, most of which has centered on life-course persistent and adolescence-limited offenders. In an effort to expand the literature, this study examined the taxonomy's maturity gap hypothesis which links this developmental event to deviance and delinquency. Using this theoretical framework, I tested Moffitt's hypothesis to determine if those who "miss" the maturity gap are more likely to abstain from the drug use. Using data drawn from the National Longitudinal Study for Adolescent Health (Add Health), and employing the Barnes and Beaver (2009) statistical model, this study assessed the likelihood of drug abstinence among male and female adolescents. Utilizing logistic regression, this analysis examined the impact of the maturity gap on drug abstinence while controlling for other known correlates of drug use (e.g., age, self-control). The findings partially supported the taxonomy, indicating that the maturity gap was significantly and negatively related to minor drug use abstinence for males, but not for females. Implications for Moffitt's theory and suggestions for future research are discussed.

Key Words: adolescent, delinquency, drug use, maturity gap

INTRODUCTION

There is perhaps no greater phenomenon in the field of criminological research than that of the curvilinear association between age and crime. Since the 1880s, countless scholars have sought to identify the underlying force that produces the curvilinear relationship between age and crime, where the rate of criminality drastically increases during the years of adolescence, peaks in early adulthood, and then falls thereafter (Stolzenberg and Alessio 2008; Barnes and Beaver, 2009). While numerous theories have been proffered to account for this relationship, Stolzenberg and Alessio (2008) assert that two predominant hypotheses have been distinguished in criminological research. The first theoretical argument suggests the importance of a single trait manifested in the individual that causes criminality. Within this theoretical framework, no other theory has been more cited than the self-control theory of Gottfredson and Hirshi (1990).

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Based on the assumption that the trait of self-control is shaped in early childhood, the theory asserts that low-self control is a byproduct of ineffective parenting that will remain with the individual throughout his life-course, making the individual more susceptible to involvement in deviance.

The second theoretical perspective used to explain the age crime curve focuses on the differences of social experiences and circumstances during one's development. For instance, association with delinquent peers during adolescence has been the basis for much criminological inquiry (Stolzenberg and Alessio 2008; Barnes and Beaver 2009; Burgess and Akers 1966; Clinard 1957; Eynon and Reckless 1961; Haynie 2002; Heimer 1997; Heimer and Matsueda 1994; Kreager 2004; Matsueda 1982; Parker and Auerhahn 1998; Reckless 1967; Shaw and McKay 1969; Warr 2002). In addition, lack of social bonds (Hirschi, 1969) and exposure to strain (Agnew, 1992) have also been studied as risk factors in delinquent involvement during adolescence.

Related to the second theoretical perspective, Moffitt's Developmental Taxonomy (1993) is one of the most prominent hypotheses in recent years to have been established by social theorists. Proffering three classifications of individuals, Moffitt's explanation centered primarily on two types of deviants: life-course persistent (LCP) offenders and adolescent-limited (AL) offenders. LCP offenders are believed to suffer from inherited neurological deficits that create antisocial behavior in early childhood that subsequently develops into criminality during adolescents and adulthood, an effect which is exasperated when placed in crime-prone environments. While damaged psyches are believed to block the ability to behave constructively for LCP offenders, the deviancy associated with AL offenders are presumed to be a healthy facet of adolescence. Deviance is described by Moffitt (1993) as no more than a mere adaptation by adolescents to cope with the intricate interlude between childhood and adulthood. Having reached full biological maturity, these adolescents are still denied access to the social sphere of adulthood. Thus, their biological and socially maturity are not consistent with one another in contemporary society. Rather, their social development, which involves all the benefits and responsibility of adulthood, lags far behind in comparison to their biological development - an occurrence termed the "maturity gap" by Moffitt (1993). In an effort to transcend this gap, adolescents will use deviance as a means to obtain the privileges of adulthood. However, once this gap is eliminated by way of normative age status, their deviance will subside as the behavior no longer serves as a coping mechanism for the adolescent.

Moffitt (1993) also provides a third typology of individuals, those that abstain from delinquency during the period of adolescence. This provides a complex query of sorts, for if delinquency is perceived as a normative behavioral approach to cope with the intricacies of adolescence as declared by Moffitt (1993), what motivates some adolescents to desist from minor forms of criminality that are so common during the difficult years of adolescence? Abstainers are, indeed, as much of a phenomenon as the adolescent limited offenders. The uniqueness of abstainers becomes increasing apparent upon reviewing the vast array of studies demonstrating that approximately 90% of adolescents will engage in at least one minor delinquent act during this transitional period (Piquero, Brezina, and Turner 2005) and that 80.5% will experiment with some form of illicit substance (Huang, DeJong, Towbin, Schneider 2009). Moffitt (1993) offered three explanations as to why some adolescents do not engage in delinquency: (1) structural barriers that obstruct them from learning about delinquency; (2) no maturity gap to act as catalyst for criminality; and (3) exclusion from social peer networks due

to unpleasing personal characteristics. While much research has examined the multifaceted behavior of adolescent criminality, such as the interrelationships among puberty, social autonomy, desire for autonomy, and delinquency, only two studies to date (Barnes and Beaver 2009; Piquero and Brezina 2001) have tested Moffitt's (1993) maturity gap thesis. In addition, criminological research has produced mixed findings related to adolescents who abstain from delinquency altogether.

Thus, in effort to address some of the inadequacies in the current criminological literature, the purpose of this study is to determine whether the maturity gap is able to predict drug abstinence among adolescents. More specifically, does missing the maturity gap predict abstinence from drug use among male and female adolescents? Using data drawn from the National Longitudinal Study for Adolescent Health (Add Health), and employing the Barnes and Beaver (2009) statistical model, this study assesses the likelihood of drug abstinence among male and female adolescents. Utilizing logistic regression, this study will examine the impact of the maturity gap on drug abstinence while controlling for other known correlates of drug use (e.g., age, self-control). The findings generated from this examination will benefit the criminological literature in three important ways. First, it will allow for better comprehension of the maturity gap hypothesis and adolescent abstinence. As mentioned previously, only two studies have directly examined the effects of the maturity gap and research on juvenile abstinence has provided mixed results. Second, this study will provide empirical validity for Moffitt's Developmental Taxonomy (1993). While Moffitt argued that missing the maturity gap is why certain adolescents refrain from delinquency (when the behavior is deemed a normative adaptation to the social status of young adults), no study has ever been conducted to directly test whether such a supposition is valid. Third, and perhaps the most important, if such an association is discovered among Moffitt's maturity gap hypothesis and abstinence among adolescents, these findings could help in preventing juvenile delinquency. For instance, if the hypothesis is true that adolescents engage in criminality to obtain some of the privileges and responsibilities of adulthood, perhaps prevention programs could be established to let youth engage in community projects that bestow some authoritative responsibility to these adolescents, thus granting some adult-like privileges which these youth so desperately seek during these formative years.

LITERATURE REVIEW

Moffitt's developmental taxonomy (1993) presented an explanation for the age-crime curve that is firmly rooted in criminological research. When official crime rates are plotted against age, this delineation depicts that the rates for both prevalence and incidence of offending appears highest during adolescence and drastically drops in adulthood. Moffitt hypothesized that this was due to two distinct categorizations of individuals that engage in criminality: life-course persistent offenders (LCP) and adolescent limited-offenders (AL) offenders. She also alluded to a third category: abstainers, the rare individuals who refrain from delinquency during adolescence. Numerous studies have supported Moffitt's Developmental Taxonomy by reporting differential correlates for LCP and AL offenders (Aguilar, Sroufe, Egeland, and Carson 2000; Arseneault, Tremblay, Boulerice, and Saucier 2002; Brennan, Hall, Br, Najman, and Williams 2003; Chun, Hill, Hawkins, Gilchrist, and Nagin 2002; Dean, Brame, and Piquero 1996; Donnellan, Ge, and Wenk 2000; Fergusson, Horwood, and Nagin 2000; Kjelsberg

1996; Kratzer and Hodgins 1999; Lahey, Loeber, Quay, Applegate, Shaffer, Waldman, Hark, McBurnett, Frick, Jensen, Dulcan, Cancino, and Bird 1998; Magnusson, af Klinberg, and Stattin 1994; Maughan, Pickles, and Rowe, Costello, and Angold 2001; Mazerolle, Brame, Paternoster, Piquero, and Dean 2000; McCabe, Hough, Wood, and Yea 2001; Nagin, Farrington, and Moffitt 1995; Nagin and Tremblay 1999; Nagin and Tremblay 2001; Patterson, Forgatch, Yoerger, and Stoolmiller 1998; Piquero 2000; Piquero and Brezina 2001; Raine, Moffitt, Caspi, Loeber, Stouthamer-Loeber, and Lynam 2005; Raine, Yaralian, Reynolds, Venables, and Mednick 2002; Roeder, Lynch, and Nagin 1999; Tibbetts and Piquero 1999; Tolan and Thomas 1995; Ruchin, Koposov, Vermeiren, and Schwah-Stone 2003; Wiegner and Capaldi 2003).

Life-Course Persistent Offenders

LCP offenders comprise the small group of offenders whose antisocial behavior remains relatively constant throughout their lifetime. Moffitt (1993) specified that predictors of LCP behavior should include health, gender, temperament, cognitive abilities, school achievement, personality traits, mental disorders, hyperactivity, family attachment bonds, child rearing practices, parent and sibling deviance, and socioeconomic status. While this group represents only a small fraction of offenders, they account for the majority of offenses committed. Problem behavior, while constant for the LCP offender, manifests itself based on new social opportunities that arise at different points in his/her physical and social development. Moffitt suggests that neuropsychological deficiencies that were caused by disruption in the ontogenesis of the fetal brain are partially responsible for the antisocial behavior exhibited by these individuals. And when coupled with criminogenic environments, this genetic predisposition to antisocial conduct is further exasperated, thus culminating in a pathological personality.

Studies have shown that mal-development in an infant nervous-system, coupled with social adversity and poor parenting, were all predictors of early onset violent behavior unique to the LCP path (Moffitt 2006; Patterson, De Garmo, and Knutson 2000; Arseneault, Tremblay, Boulerice, and Saucier 2002; Raine, Brennan, and Mednick 1994; Raine, Brennan, Mednick, and Mednick 1996). Raine, Lencz, Taylor, Hellige, Bihl, Lacasse, Lee, Ishikawa, and Colletti (2003) found that two nervous system abnormalities in relation to brain development, enlargement of the corpus callosum and abnormal corpus callosum connective function, were associated with antisocial personality disorders in adults. Similar studies have shown that risk characteristics predictive of LCP offenders, such as neurological abnormalities, delayed motor development, and uncontrolled temperament could be observed as early as three years of age (Moffitt 1996; Jeglum-Bartush, Lynam, Moffitt, and Silva 1997; Moffitt 1990; Moffitt and Caspi 2001; Moffitt Lynam and Silva 1994; Piquero 2001; Raine 2002; Gibson, Piquero, Tibbetts 2002; McGloin, Travis, Pratt, and Piquero 2006; Tibbetts and Piquero 1991; Turner, Hartman, and Bishop 2007; Neugebauer, Koek, and Susser 1999; Raine, Moffitt, Caspi, Loeber, Stouthamer-Loeber, and Lynam 2005).

Adolescent-Limited Offenders

AL offenders comprise the majority of offenders whose antisocial behavior is confined primarily to that of adolescence. Studies have found that adolescents often experience elevated internalizing symptoms and perceptions of stress by the age of sixteen which are consistent with the taxonomy's hypothesis that adolescents experience psychological distress during the maturity gap which motivates the adolescent to engage in antisocial behavior (Moffitt 1996; Zebrowitz,

Andreoletti, Collins, Lee, and Blumenthal 1998; Vaaranen 2001; Galambos, Barker, and Tilton-Weaver 2003 Aguilar, Sroufe, and Egeland, and Carlson 2000; Agnew 1992; Agnew 1984). Moffitt (1993) utilized the theory of "social mimicry" from the ethology sphere to explain how adolescents might mimic the antisocial behavior of life-course persistent youth in an effort to attain the maturity status that is associated with engaging in delinquency. Thus, the AC offender mimics the antisocial behavior of LCP offenders in an attempt to overcome the maturity gap.

Moffitt (1993) explains that the social maturity of youth in today's society is reached at a later age than in previous eras, even though youth have reached full biological maturity. While adolescents may have reached full physical development, today's society delays the positive aspects of adulthood, such as seeking employment, sexual experiences, establishing independence, and so on. Thus, these adolescents are caught in the maturity gap, where their biological maturity does not correlate to their social maturity. Due to this frustration experienced by teens, they begin to mimic the LCP offenders whose antisocial behavior such as drinking, having sex, and defying authority seem to overcome this gap and allow access to the privileges of adulthood. Thus, for adolescents to engage in adolescence-limited delinquent behavior they must have: motivation to do so, the desire to overcome the gap between biological and social maturity, access to role models for delinquent behavior, older peers, and reinforcement for such behavior, so that they feel older as a result (Galambos, 2003, p. 254). Once the privileges of adulthood are no longer prohibited, youth no longer need to mimic the antisocial behavior of the LCP offenders, thus demonstrating why AL offenders limit their delinquency to adolescence and then desist in later adulthood.

Puberty and the Maturity Gap

Numerous studies have examined the influence of pubertal development on antisocial behavior. Their findings indicated that pubertal development was positively associated with delinquent behavior, but more so for males. They determined that pubertal development significantly impacted an adolescent's association with delinquent peers and found that pubertal development intensifies certain individual characteristics, such as negative interactional skills, low-self control, and association with antisocial counterparts. (Beaver and Wright 2005; Felson and Haynie 2002).

Research exploring the association of pubertal timing and delinquency have shown that adolescents, specifically males, that physically matured early or late in comparison to their peers reported a wider range of delinquency, including higher levels of crime and school opposition behaviors, as compared to on-time maturers. (Williams and Dunlop 1999; Galambos, Barker, and Tilton-Weaver 2003). Barnes and Beaver (2009), utilizing data from the National Longitudinal Study of Adolescent Health, constructed the first direct measure of the maturity gap to predict minor forms of delinquency and drug use among male and female youth. Consistent with Moffitt's hypothesis that the maturity gap is the result of a disjuncture between biological maturity and social maturity, Banes and Beaver computed two new variables that were constructed by standardizing the biological maturity measures and the social maturity measures (parent permissiveness index was employed to measure social maturity) which was then followed by each respondent's standardized social maturity value being subtracted from their standardized biological maturity score, thus creating a direct measure of the maturity gap. Their findings were consistent with Moffitt's maturity gap hypothesis for male minor delinquency and male minor drug use. Their findings indicated male respondents with higher scores on the maturity gap scale reported more

involvement in minor delinquency and minor drug use. Moffitt's maturity gap thesis, however, was not supported with the female subsample.

Abstainers

If Moffitt's (1993) theory is, indeed, correct and delinquency is no more than a mere normative adaptational behavior for adolescents, then the existence of youth who abstain from antisocial behavior must be a truly rare phenomenon. Moffitt (1993) hypothesized that not engaging in delinquency is uncharacteristic for youth and abstention from such deviance was due to missing the maturity gap because of early access to adult roles or personal characteristics unappealing to other adolescents that causes them to be excluded from peer group activities. The rarity of adolescent abstainers has been confirmed by numerous studies demonstrating that approximately 90% of adolescents will engage in at least one minor delinquent act during this transitional period (Piquero, Brezina, and Turner, 2005) and that 80.5% will experiment with some form of illicit substance (Huang, DeJong, Towvin, Schneider 2009).

According to Moffitt's (1993) hypothesis, delinquency abstention is due to either 1) the fact that some young people fail to experience the maturity gap and therefore lack the motivation for experimenting with crime, or that 2) some individuals suffer from characteristics that make them unattractive to other teens and excludes them from entry into newly popular delinquent groups. Prior empirical research has identified abstainers as withdrawn youth who appeared to be relatively neurotic, nervous, shy, unresponsive, and generally (socially) maladjusted (Moffitt 2006; Nagin and Tremblay 1999; Shedler and Block 1990; Wiesner and Capaldi 2003; Farrington and West 1995; Allen, Wiesner, and Hawking 1989). More recent studies, however, have shown that there is a group of adolescent abstainers who refrain from delinquent behavior due to valid justifications. Huang, DeJong, Towvin, Schneider (2009) discovered that youth who abstain from alcohol use are often involved in religious groups, employed ten or more hours a week, and have close associations to adolescents who also abstain.

Studies find that abstention is a more common occurrence among female youth. This is believed to be associated with the increased likelihood that female youth will experience isolation and loneliness during adolescence. This may prohibit their acceptance into peer networks which lowers their probability of associating with delinquent peers and decreases their opportunity to be involved in delinquent behavior (Piquero, Brezina, and Turner, 2005; Wilsnack 2000). It has also been shown that Black youth are more likely to abstain from alcohol use in comparison to their White counterparts. Reasoning for such results is often centered upon two rationales: 1) Black youth have a higher probability of associating with religious groups, and 2) Black youth tend to have more family support and/or control than White youth (Watt and Rogers 2007).

Boutwell and Beaver (2008) findings suggested that abstainers, both male and female, have less contact with delinquent peers, have higher levels of self-control, and have significantly less DRD4 risk alleles, a dopamine receptor gene thought to be associated with the development of antisocial behavior. Isolating males within the sample specifically, less DRD2 risk alleles, (an additional dopamine receptor gene associated with the development of antisocial behavior), in conjunction with less DRD4 risk alleles, were found to be significantly associated with abstention. Results did not indicate, however, the effect of DRD2 was significant for abstention when applied to females.

Unfortunately, research that has examined the unique characteristics of adolescents who abstain from delinquency and drug use has produced mixed results. While Moffitt (1996) asserts that adolescents who abstain are socially isolated individuals or experience no maturity gap in comparison to their counterparts, this has yet to be confirmed or discounted. As much of a phenomenon as the age curve is in criminological research, abstainers are, indeed, a unique group among adolescents. Therefore, Moffitt (1996) emphasizes that the study of abstainers is crucial for the premise that AL delinquency is a normative adaptational behavior by adolescents. Sociometric studies should therefore examine whether abstention from delinquency and drug use is, indeed, correlated with missing the maturity gap or unpopularity and social isolation from peer social groups. Thus, this analysis seeks to fill the void in criminological research by examining whether missing the maturity gap is predictive of drug abstinence among adolescents.

The Current Study

Despite widespread attention to Moffitt's developmental taxonomy (1993), no statistical model has been able to fully examine the direct effects the maturity gap has on male and female delinquency. Utilizing data from the National Longitudinal Study of Adolescent Health, Barnes and Beaver (2009) constructed the first direct measure of the maturity gap by constructing two new variables, the male maturity gap variable and female maturity gap. These variables were computed by standardizing the male and female biological maturity scales to ensure equal weight is given, then subtracting the parent permissiveness index (this index was used to measure social maturity) from the male and female biological maturity scales. Utilizing negative binomial regression, Barnes and Beaver (2009) found that the maturity gap was a valid predictor of male delinquency and drug use but not female delinquency and drug use. Therefore, any analysis that focuses on the effects of the Moffitt's (1993) maturity gap hypothesis, should include a statistical model similar to the one employed by Barnes and Beaver (2009).

Overall, there has been no confirmation of the social characteristics for the rare adolescents who abstain from delinquency and drug use. Previous research has offered findings supporting Moffitt's (1993) supposition that abstainers are either socially isolated individuals excluded from social peer groups or experience no maturity gap to act as catalyst for delinquency (Wiesner and Capaldi 2003). Conversely, there have also been findings that contradict Moffitt's (1993) hypothesis and show abstainers are, in actuality, more well-adapted than their delinquent counterparts; this finding was consistent even when adolescents were within the maturity gap (Piquero, Brezina, and Turner 2005). However, due to conflicting results in prior research, the true characteristics of adolescents who abstain from delinquent and drug use remain to be revealed.

Thus, in effort to address some of the inadequacies in previous literature pertaining to the Moffitt (1993) Taxonomy, the current study, following the Barnes and Beaver's (2009) statistical approach, examines the direct effects the maturity gap has on male and female drug use abstinence. If Moffitt's (1993) theory is correct in that missing the maturity gap is positively associated with abstention from delinquency and drug use, then the presence of a maturity gap should be negatively related to abstention from delinquency and drug use. Thus, the current study explores two research questions: (1) does missing the maturity gap predict drug use abstinence among male adolescents; and (2) does missing the maturity predict drug use abstinence among female adolescents? Due to past literature demonstrating differential effects of the maturity gap for males and females concerning delinquency and drug use (Barnes and Beaver 2009), differential effects of puberty on male and female offending (Piquero and Brezina 2001), and differential

effects on puberty for male and female victimization (Haynie and Piquero 2006), separate models for males and females in the current study are estimated.

METHODOLOGY

Sample

The current study utilizes data drawn from the public use version of the first wave of the National Longitudinal Study of Adolescent Health (Add Health), a representative sample of United States adolescents enrolled in grades 7 through 12. The sample consists of 132 middle schools and high schools selected by stratified random techniques. More than 90,000 students attending these selected schools were administered a self-report questionnaire. From these respondents, a random subsample was then selected to participate in home-based interviews. The subsample for the home-based interviews consisted of 20,745 adolescents and 17,700 of their primary caregivers, which typically was the mother of the adolescent. The information garnered a detailed account of an adolescent’s personality traits, their social relationships, and their individualized and group behaviors.

Using the Barnes and Beaver (2009) statistical model, this analysis will examine whether missing the maturity gap will be predictive of drug abstinence among male and female adolescents. Descriptive statistics for all the scales in the model are included in Table 1 and a listing of the items constructing the scales is available in Appendix A.

Dependent Variables

Abstention from minor drug use. Replicating Barnes and Beaver (2009), the current study created a minor drug use scale by combining the variables from the wave I Add Health dataset to measure an adolescent’s cigarette, alcohol, and marijuana use. Since this analysis is predicting abstinence from drug use and not actually using drugs, responses were recode to 1 = abstainers and 0 = non-abstainers. Moffitt (1993) hypothesized that adolescents not caught in the maturity gap would be more likely to abstain from drug use.

Abstention from serious drug use. To construct the serious drug use scale for wave I, the current study utilizes the methodological approach of Barnes and Beaver (2009) and employs responses that reflected an adolescent’s use of cocaine, inhalants (glue or solvents), LSD, PCP, ecstasy, mushrooms, speed, ice, heroin, and prescription pills. Due to the focus of this analysis, the responses were recoded so that 1 = abstainers and 0 = non-abstainers. Barnes and Beaver (2009) asserted that although Moffitt did not directly theorize how the maturity gap would influence different levels of drug use for adolescents, her supposition that the maturity gap would yield minor forms of delinquent acts, and not serious forms of delinquent behavior, provides insight into how the taxonomy would predict the maturity gap’s influence on different levels of drug use. Following the reasoning of Moffitt, Barnes and Beaver (2009) stated that the hypothesis that the maturity gap would yield only minor drug use, not serious drug use among adolescents, is a mere logical extension of Moffitt’s developmental taxonomy. Therefore for this analysis, there should be no significant association between serious drug use and abstainers as Moffitt theorized the maturity gap is predictive of only minor and rebellious delinquency.

Abstention from drug use. The minor drug use scale and serious drug use scale are combined to create the drug use (ever) scale for the current study. Responses indicate whether an adolescent

ever used any type of drugs (minor or serious) in his/her lifetime. Because of the nature of this analysis, which seeks to determine whether missing the maturity gap is predictive of drug

TABLE 1. DESCRIPTIVE STATISTICS FOR ADD HEALTH STUDY VARIABLES				
Variables	Mean	SD	Minimum	Maximum
Dependent Variables				
Abstention From Minor Drug Use	.30	.46	.00	1.00
Abstention From Serious Drug Use	.87	.34	.00	1.00
Abstention From Drug Use	.30	.46	.00	1.00
Abstention From Drug Use During Past 30 Days	.65	.48	.00	1.00
Biosocial Variables				
Male Maturity Gap	-.007	1.26	-3.57	4.85
Female Maturity Gap	-.007	1.28	-4.16	5.24
Covariates				
Delinquent Peers	2.50	2.61	.00	9.00
Low Self-Control	6.32	3.14	1.00	20.00
Age	15.57	1.78	11	21
	Frequency		Percentage	
Controls				
Male	3,147		48	
Female	3,356		52	
White	4,294		66	
Black	1,916		25	

abstinence, responses were recoded so that 1 = abstainers and 0 = non-abstainers. In line with Moffitt’s (1993) hypothesis, missing the maturity gap should be predictive of abstinence from drug use among adolescents.

Abstention from drug use during the last 30 days. The drug use during the last 30 days scale measures if an adolescent used any forms of drugs (minor or serious) during the last 30 days from which the original survey was administered during the first wave of the Add Health survey. Responses were summed together to create the wave I drug use during the last 30 days scale, with higher values indicating more drug use during the last 30 days. The items were recoded to 1 = abstainers and 0 = non-abstainers. Moffitt’s (1993) theorized that abstinence from drug use among adolescents would be due to a lack of a maturity gap experienced by an adolescent.

Independent Variables

Biosocial variable-maturity gap. Earlier analyses examined the effects of the maturity gap on juvenile delinquency and drug use by constructing multiplicative interaction terms. However,

statistical interactions can have numerous methodological insufficiencies, such as the issue of collinearity, which is further exasperated when employing non-linear techniques (Barnes and Beaver 2009; McClelland Judd 1993; Ai and Norton 2003). Due to these methodological deficits inherent in previous studies, Barnes and Beaver (2009) constructed a direct measure of the maturity gap. Utilizing data from the National Longitudinal Study of Adolescent Health, Barnes and Beaver (2009) constructed the first direct measure of the maturity gap to predict delinquency and drug use among male and female youth. Consistent with Moffitt's hypothesis, the maturity gap is the result of a disjuncture between biological maturity and social maturity, therefore, they computed two new variables that were constructed by standardizing the biological maturity measures and the social maturity measures (parent permissiveness index was employed to measure social maturity) which was then followed by each respondent's standardized social maturity value being subtracted from their standardized biological maturity score. Maturity gap variables were created for males and females separately.

Biological maturity for males was calculated by summing an adolescent's responses to the following four questions related to his physical development: (1) self-description of hair under arms, (2) self-description of thickness of facial hair, (3) whether or not an adolescent's voice is lower than in grade school, and (4) overall physical development relative to other males of equivalent age status. Responses were coded so that higher values were reflective of greater biological maturity for males at wave I. Biological maturity for females was calculated by summing an adolescent's responses to the following four inquiries related to her physical development: (1) self-description of changing breast size, (2) self-description of changing curvaceous body; (3) whether or not an adolescent ever menstruated, and (4) overall physical development relative to other females of equivalent age status. Responses were coded so that higher values were reflective of greater biological maturity for females at wave I. Both biological maturity measures have been deemed valid measures of an adolescent's biological maturity by prior researchers (Barnes and Beaver 2009; Beaver and Wright 2000; Felson and Haynie 2002; Haynie 2003).

Social maturity for male and female adolescents was measured by utilizing the parental permissiveness index from the first wave of the Add Health data. The index was constructed by employing seven questions that measured the level of autonomy that the adolescent was given by their parents. Inquires explored the degree of autonomy by soliciting responses to specify if the adolescent was given the privilege to decide on particular elements in their personal lives. For instance, what time to be home on weekends, what to wear, how much television they could watch were some of the items. Responses were coded dichotomously, where 0 = no and 1 = yes. The items were summed together so that higher values indicated more social maturity.

The maturity gap variable for males and females was constructed by initially standardizing the male and female biological measures and the parental permissiveness index to ensure all measures were given equal weight. Then each adolescent's standardized social maturity value was subtracted from their standardized biological maturity score. Thus, the new variable created signified the wave I maturity gap values for males and females by subtracting the standardized wave I parental permissiveness index from the standardized wave I male and female biological indexes. Values of 0 for the maturity gap variable reflected that an adolescent's biological maturity and social maturity was equal illustrating the adolescent was not caught in that maturity gap. Values less than 0 for the maturity gap variable reflected that an adolescent's biological maturity was less than his/her social maturity indicating the adolescent was not caught in that maturity gap. Values greater than 0 for the maturity gap variable reflected that an adolescent's biological

maturity was greater than his/her social maturity indicating the adolescent was caught in that maturity gap.

Control Variables

Delinquent peers. This measure consists of inquires on how many of the respondents' three best friends smoke cigarettes at least once a month, drink alcohol at least once a month, and use marijuana at least once a month. Responses were coded as 0 = none, 1 = one, 2 = two, 3 = three. Higher values reflect more contacted with delinquent peers. Responses to these three items were summed to form the delinquent peers scale for wave I. The delinquent peers scale is consistent with scales used by previous researchers utilizing the Add Health data (Barnes and Beaver 2009; Beaver and Wright 2005; Bellair, Roscigno, and McNulty 2003).

Low self-control. Any statistical model within the criminological sphere should include a measure of self-control since any model which fails to include such a measure is likely to be misspecified (Pratt and Cullen 2000). Therefore, this study includes a five item scale equivalent to the ones constructed by Perrone, Sullivan, Pratt, Margaryan (2004) and Beaver (2008) in the model. The self-control scale is constructed by utilizing inquires that measured simple tasks, preference for physical activities, impulsivity, and self-centeredness dimensions of self control. Queries examined an adolescent's inability to keep his/her mind on what they were doing, trouble getting his/her homework done, difficulty paying attention to school, trouble getting along with his/her teachers, and whether he/she felt they were doing everything just about right. Barnes and Beaver (2009) conducted exploratory and confirmatory analysis to examine the psychometric properties of the scales and found that a single factor solution best explained the five items comprising the scale.

Demographics. Age and race were included in the statistical model as control variables in this analysis. Age is included as a continuous variable (measured in years) in the statistical model. Race was initially coded by Barnes and Beaver (2009) as a dichotomous variable, where 0 = non-white and 1 = White. However, for this analysis, race was recoded into two separate dichotomous variables: White, where 1 = White and 0 = non-White and Black, where 1 = Black and 0 = others. By doing this, the current study was able to estimate the likelihood of abstaining from drug use based on 1) being white versus some other race and 2) black versus some other race.

Plan of Analysis

The original study of Barnes and Beaver (2009) utilized negative binomial regression to examine the direct effects of the maturity gap on delinquency and drug use. Negative binomial regression was the preferred method for their analysis because the dependent variables were non-normally distributed. In addition, to account for the design features of the Add Health Survey, the negative binomial models were estimated using survey-correction methods in which observations were weighed by the inverse probability of selection into the sample and standard errors were adjusted by accounting for the clustering of observations within schools (Barnes and Beaver 2009). Due to the dichotomous nature of the dependent variable, the most appropriate method to utilize for the purposes of the current study is to employ estimations of the odds of abstention from drug use occurring when the maturity gap is or is not present. Therefore, the preferred method for this study is logistic regression to determine the effect of the wave I maturity gap on wave I drug use (i.e., whether or not a respondent abstained from drug use). Models are estimated separately for males and females in the sample and all models presented are multivariate, thus the

effects of the maturity gap are estimated after controlling for the effects of the other independent variables. Barnes and Beaver (2009) assert that since the maturity gap is a phenomenon that varies from year to year, the most appropriate way to examine the maturity gap is by calculating cross-sectional models where the maturity gap and the outcome measures are drawn from the same wave of data. While cross-sectional data can be viewed as a limitation in sociological research, due to Moffitt's (1993) theory which suggests that the relationship between missing the maturity gap and abstinence from drugs is actually contemporaneous- that is, happening at the same time with no temporal lag, it is not problematic that cross-sectional data are utilized for this analysis. Thus, the effects of the maturity gap should be relatively immediate and even though a youth may be caught in the maturity gap one year, it does not dictate that the youth will be caught in the maturity gap a year later (Barnes and Beaver 2009).

It is also of importance to reiterate that this analysis does not seek to calculate whether an adolescent caught in the maturity gap will engage in drug use, but rather to determine if missing the maturity gap will predict abstinence from drug use among adolescents. Since the maturity gap variable was created by Barnes and Beaver (2009) to measure the effects as the maturity gap grew larger, anything less than zero means that an adolescent's biological maturity was less than his/her social maturity, zero meant the adolescent's biological and social maturity were equal, and anything higher than zero meant the adolescent's biological maturity exceeded his/her social maturity. Thus, the maturity gap variable should be negatively correlated to abstinence from drug use for males and females if Moffitt's (1993) theory holds correct that adolescents will abstain from delinquency and drug use if they miss the maturity gap.

FINDINGS

Table 2 presents the results of zero-order correlations between the two biosocial variables (male and female maturity gap), the four control factors (delinquent peers, low self-control, age, and race), and the four classifications of abstinence from drug use (abstinence from minor drug use, abstinence from serious drug use, abstinence from overall drug use, and abstinence from drug use during the last 30 days). Consistent with Moffitt's (1993) thesis, the maturity gap variable was found to be significantly and negatively correlated with minor drug use abstinence ($r = -.047, p < .05$), as well as overall drug use abstinence for males ($r = -.044, p < .01$). However, no correlation was discovered between the male maturity gap and abstinence from serious drug use. Recall that Moffitt (1993) hypothesized that AL offenders caught in the maturity gap would engage, primarily, in minor forms of delinquency for these adolescents are merely trying to cope with difficulties associated with the disjuncture between their biological and social maturity and do not suffer the same neurological and behavioral complexities of LCP offenders that engage in more serious forms of criminality. And while Moffitt did not hypothesize how the maturity gap would influence serious versus minor drug use, Barnes and Beaver (2009) assert that it appears a logical extension of the theory to hypothesize that the maturity gap is predictive of minor but not serious forms of drug use. Therefore, these findings provide empirical support for this premise. A negative correlation was also discovered between the male maturity gap variable and abstinence from drug use during the last thirty days ($r = -.035, p < .01$).

In contrast to what Moffitt had theorized, the maturity gap variable was not found to be significantly correlated to any form of drug abstinence for females within the sample. While this contradicts Moffitt's assumption and prior research that puberty is associated with delinquency

and victimization among female adolescents (Schreck, Burek, Stewart, and Miller 2007; Galambos, Barker, and Tilton-Weaver 2003; Haynie 2003), the results are not entirely surprising. Past literature has shown that females are more likely to be abstainers compared to their male counterparts (Moffitt et al. 1996; Moffitt, Caspi, Rutter, and Silva 2001; Moffitt 2003, Thornberry and Krohn 2000; Barnes and Beaver 2009; Piquero, Brezina, and Turner 2005). Given the fact that females develop at a faster rate, on average, than males, perhaps females have learned to cope with difficulties associated with the maturity gap in a unique fashion. Thus, the effects of the maturity gap may be experienced by female adolescents in a similar manner to male adolescents but are handled differently, oftentimes not directly leading to delinquency or drug use.

All control variables (delinquent peers, low-self-control, age and race) were found to be significantly and negatively correlated with the four classifications of abstinence from drug use (abstinence from minor drug use, abstinence from serious drug use, abstinence from overall drug use, and abstinence from drug use during the last 30 days).

A series of logistic regression analyses were performed to independently analyze the predictors for each classification of abstinence from drug use (Tables 3 through 6). Models were separately examined for the male and female cohorts. The results of the logistic regression analyses of the maturity gap variable for the male and female models on minor drug use abstinence are presented in Table 3. Findings indicate that the maturity gap had a statistically significant and negative effect on minor drug use abstinence for males (O.R. = .919, $p < .05$). This analysis confirms that male adolescents with higher scores on the maturity gap scale reported less abstinence from minor drug use. The odds ratio in the analysis revealed that male respondents who scored high on the maturity gap scale were 92% less likely to abstain from minor drug use. Conversely, when the analysis isolated the biosocial variable from the control factors for the female model, no statistically significant effect was found. The measures of delinquent peers (O.R. = .588, $p < .01$), low-self control (O.R. = .886, $p < .01$), and age (O.R. = .896, $p < .01$) had statistically significant and negative effects on minor drug abstinence for males. Similarly, delinquent peers (O.R. = .565, $p < .01$), low-self control (O.R. = .852, $p < .01$), and age (O.R. = .858, $p < .01$) were also found significant for females. However, no significant effects were found for the dichotomous race variables and minor drug use abstinence for males or females.¹

Findings for the maturity gap variable for the male and female models on serious drug use abstinence are illustrated in Table 4. The analysis demonstrates that the biosocial variable produces no significant effect on serious drug use abstinence for the male and female cohorts. Conversely, delinquent peers (O.R. = 1.234, $p < .01$) and low self control (O.R. = .903, $p < .05$) were found to have statistically significant and negative effects on serious drug use abstinence for males. Delinquent peers (O.R. = .723, $p < .01$) and low self control (O.R. = .865, $p < .01$) were also found to be significant for the female serious drug use abstinence model. Age was not found to be significant in either model but race (Black) was found to positively associated with abstinence from serious drug use in the female cohort (O.R. = .238, $p < .01$) demonstrating that Black female adolescents are more likely to abstain from serious drug use compared to White female youth.

1. The models were also estimated controlling for Hispanic ethnicity to determine if Hispanic adolescents were more or less likely than other students to report abstinence. Of the eight models re-estimated, the Hispanic variable was found to be significant in only two of these models (minor drug use abstinence for the male model O.R. = .685, $p < .05$; any drug use abstinence for the male model O.R. = .693, $p < .05$).

TABLE 2. CORRELATION MATRIX AMONG INDEPENDENT AND DEPENDENT VARIABLES											
	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
(1)	1										
(2)	--	1									
(3)	-.045 *	-.145**	1								
(4)	-.110**	.026	.001	1							
(5)	.125**	-.014	-.015	-.743**	1						
(6)	.012	.007	.279**	-.108**	.111**	1					
(7)	.035	.023	.051**	-.046**	.030*	.310**	1				
(8)	-.047**	-.017	-.218**	.096**	-.092**	-.444**	-.256**	1			
(9)	-.022	.001	-.071**	.121**	-.098**	-.371**	-.219**	.227**	1		
(10)	-.044*	-.015	-.217**	.092**	-.089**	-.442**	-.258**	.990**	.253**	1	
(11)	-.035*	.004	-.195**	.119**	-.122**	-.574**	-.282**	.436**	.382**	.439**	1

Note 1: * = p< .05 ** = p<.01 **

Note 2: (1) Male maturity gap scale, (2) Female maturity gap scale, (3) Respondent's age, (4) Respondent's race (Black), (5) Respondent's race (White), (6) Delinquent peers scale, (7) Low self control scale, (8) Abstainers from minor drug use, (9) Abstainers from serious drug use, (10) Abstainers from drug use, (11) Abstainers from drug use during the last 30 days

The analysis for the maturity gap variable on overall drug use abstention for the male and female models is presented in Table 5. The findings illustrate that the maturity gap has a statistically significant and negative effect on overall drug use abstention for males (O.R. = .923, p < .05). Male adolescents scoring high on the maturity gap scale were 92% less likely to abstain from overall drug use. No statistically significant effect was found for females in the sample. Measures of delinquent peers (O.R. = .588, p < .01), low-self control (O.R. = .884, p < .01), and age (O.R. = .897, p < 01) were shown to have statistically significant negative effects on overall

TABLE 3. LOGISTIC REGRESSION PREDICTING ABSTENTION FROM MINOR DRUG USE FOR MALES AND FEMALES								
	Male Model				Female Model			
	B	SE	Wald	O.R.	B	SE	Wald	O.R.
Biosocial Variable								
Maturity Gap	-.084*	.038	4.86	.919	-.066	.035	3.49	.936
Control Variables								
Delinquent Peers	-.531**	.032	282.71	.588	-.571**	.031	331.67	.565
Low Self-Control	-.121**	.017	51.05	.886	-.160**	.018	81.22	.852
Age	-.110**	.028	14.86	.896	-.153**	.027	32.94	.858
White	-.169	.150	1.27	.844	-.204	.145	1.99	.815
Black	.272	.163	2.79	1.312	.100	.154	.420	1.11
Constant	2.52	.466	29.18	12.40	3.55	.441	64.85	34.74
-2 Log likelihood			2636.702				2892.239	
Cox & Snell R2			.237				.265	
Nagelkerke R ²			.339				.370	

Note 1: * = p< .05 ** = p<.01

drug use abstention for males. In addition, delinquent peers (O.R. =.563, p < .01), low self control (O.R. = .848, p < .01), and age (O.R. =.861, p < .01), were also found to be significant for females. However, no effects were found for either of the race variables.

Table 6 presents the findings from the models predicting drug abstention during the past thirty days. The results demonstrate that the maturity gap has a statistically significant and negative effect on drug use abstention during the past thirty days for the male cohort (O.R. = .924, p < .05). Male adolescents scoring high on the maturity gap scale were 92% less likely to abstain from drug use during the past thirty days. No effect was discovered at a statistically significant level for the female cohort. All control variables (delinquent peers - O.R. = .575, p < .01; low self control - O.R. = .898, p < .01) and demographic factors (age - O.R. = .939, p < .05; White - O.R. = .692, p < .05; Black - O.R. = .1.419, p < .05) had statistically significant negative effects on drug abstention during the last thirty days for the male cohort. And all control variables (delinquent peers - O.R. = .621, p < .01; low self control - O.R. = .861, p < .01) and demographic factors (age - O.R. = .887, p < .01; White - O.R. = .684, p < .05) had statistically significant negative effects on drug abstention during the last thirty days for the female cohort. Black female adolescents were,

TABLE 4. LOGISTIC REGRESSION PREDICTING ABSTENTION FROM SERIOUS DRUG USE FOR MALES AND FEMALES								
	Male Model				Female Model			
	B	SE	Wald	O.R.	B	SE	Wald	O.R.
Biosocial Variable								
Maturity Gap	-.057	.052	1.20	.944	-.017	.052	.113	1.01
Control Factors								
Delinquent Peers	-.386**	.025	229.58	1.234	.324**	.024	187.39	.723
Low Self-Control	-.102**	.019	27.60	.903	-.145**	.020	51.78	.865
Age	-.054	.041	1.77	1.056	.026	.039	.450	1.03
White	.210	.201	1.10	1.234	-.244	.197	1.52	.784
Black	1.645	.277	35.35	5.181	.869**	.255	11.60	2.38
Constant	2.88	.677	18.05	17.72	3.75	.655	32.75	42.40
-2 Log likelihood			1627.077					1741.645
Cox & Snell R2			.154					.128
Nagelkerke R2			.294					.252

Note 1: * = p< .05 ** = p<.01

TABLE 5. LOGISTIC REGRESSION PREDICTING ABSTENTION FROM ANY DRUG USE FOR MALES AND FEMALES								
	Male Model				Female Model			
	B	SE	Wald	O.R.	B	SE	Wald	O.R.
Biosocial Variable								
Maturity Gap	-.081*	.038	4.45	.923	-.058	.035	2.72	.943
Control Variables								
Delinquent Peers	-.530**	.032	278.52	.588	-.574**	.032	329.07	.563
Low Self-Control	-.124**	.017	52.89	.884	-.165**	.018	84.33	.848
Age	-.109**	.029	14.50	.897	-.150**	.027	31.56	.861
White	-.149	.151	.98	.852	-.218	.145	2.26	.804
Black	.297	.163	3.32	1.345	.070	.155	.202	1.072
Constant	2.47	.467	28.08	11.87	3.53	.442	63.73	33.94
-2 Log likelihood			2625.003					2876.989
Cox & Snell R2			.236					.264
Nagelkerke R2			.338					.370

Note 1: * = p< .05 ** = p<.01

TABLE 6. LOGISTIC REGRESSION PREDICTING ABSTENTION FROM DRUG USE DURING THE PAST 30 DAYS FOR MALES AND FEMALES								
	Male Model				Female Model			
	B	SE	Wald	O.R.	B	SE	Wald	O.R.
Biosocial Variable								
Maturity Gap	-.076*	.039	3.73	.924	-.015	.040	.141	.985
Control Factors								
Delinquent Peers	-.558**	.024	536.93	.573	-.477**	.022	490.01	.621
Low Self-Control	-.107**	.016	44.58	.898	-.149**	.017	76.38	.861
Age	-.063*	.031	4.09	.939	-.120**	.030	15.71	.887
White	-.369*	.163	5.13	.692	-.380**	1.55	6.03	.684
Black	-.350*	.183	3.68	1.419	.335*	.175	3.65	1.40
Constant	4.0	.522	58.54	54.45	5.27	.519	102.80	193.451
-2 Log likelihood			2533.105					2892.239
Cox & Snell R2			.341					.292
Nagelkerke R2			.466					.417

Note 1: * = p< .05 ** = p<.01

once again, shown to be more likely to abstain from any type drug use within the thirty day time period (O.R. =1.40, p. < .05).

CONCLUSION & DISCUSSION

The purpose of this analysis was to better comprehend the characteristics of the rare individuals who abstain from delinquency during the complex years of adolescents. If antisocial behavior is an adaptation or coping mechanism used by youth in an attempt to transcend a gap that prohibits social maturity, as proffered by Moffitt (1993), what can explain adolescents who abstain from delinquency and drug use altogether? Is the supposition presented by Moffitt (1993) that missing the maturity gap results in abstention? Little research has sought to examine the predictive strength of the maturity gap on adolescent abstainers, and only one study to date (Barnes and Beaver 2009) has directly measured the effects of the maturity gap. Thus, the goal of this research was to examine if youth who miss the maturity gap, meaning their biological maturity did not outweigh their social maturity, would be more likely to abstain from drug use.

Consistent with Moffitt’s (1993) hypothesis, findings from this analysis, indicated that the maturity gap variable was significantly and negatively related to minor drug use abstention for males, suggesting that if male adolescents are not embedded in the intricacies of the maturity gap, they are more likely to abstain from minor drug use. These effects were observed even when controlling for two of strongest predictors of delinquency and drug use: delinquent peers and low self-control (Barnes and Beaver 2009). Also consistent with Moffitt’s taxonomy, no association was discovered between the male maturity gap variable and serious drug use abstention. While

Moffitt (1993) did not offer a specific hypothesis of the effects of the maturity gap and various forms of drug use. Barnes and Beaver (2009) argue that the taxonomy's claim that the effects of the maturity gap will yield minor forms of delinquency but not serious forms of criminality can be applied to the drug use as a rational extension of the original theory. Consistent with Moffitt (1993), overall abstinence from drug use and abstinence from drug use during the last 30 days were both found to be negatively related to the maturity gap variable for males, suggesting that male adolescents missing the maturity gap are more likely to abstain.

Conversely, the analysis of the female cohort did not support Moffitt's (1993) hypothesis. No statistically significant association was found between the female maturity gap variable and any of the four dependent variables, abstinence from minor drug use, abstinence from serious drug use, abstinence from overall drug use, and abstinence from drug during the last 30 days. Barnes and Beaver (2009) found similar results in their study and extended a probable rationalization for such findings. They highlight how differential effects have been shown in previous research for pubertal development on male and female victimization and suggest that the lack of an association, positive or negative, between the maturity gap and delinquency and drug use may be due to the differential effects that puberty has on male and female offending. For instance, Haynie and Piquero (2006) found that the effect of puberty on victimization was stronger for males within their sample than females.

It is of importance to note some of the limitations inherent in this analysis. While the Barnes and Beaver (2009) statistical model did offer the first direct measure of the maturity gap, it failed to capture all items required to measure the maturity gap. For instance, the measure of parental permissiveness did not confine all elements of social maturity as defined by Moffitt (1993). Moffitt (1993:687) states that social autonomy for adolescents is repressed due to their inability to: "...work or get a driver's license before age 16, marry or vote before age 18 or buy alcohol before age 21, and they are admonished to delay having children and establishing their own private dwelling until their education is completed at age 22..." Thus, some elements of significance were not grasped fully by their statistical model. In addition, they also stress the perception of "felt" social maturity and actual social maturity. Moffitt (1993) emphasized the "felt" social maturity was more of a significant predictor to delinquency and drug use compared to actual social maturity. Therefore, social maturity is not necessarily how much autonomy an adolescent is granted but, rather, the perception of autonomy. Barnes and Beaver (2009), however, assert that since it was the adolescents themselves reporting on how much autonomy was granted to them in the parental permissiveness index, the degree of autonomy felt by these adolescents may have been indirectly seized by their model.

Another issue deals with the peer delinquency measure. Previous studies have stressed the importance of directly measuring peer delinquency as opposed to utilizing self-report measures of peer delinquency for adolescents' responses to peer behavior have been shown to be inflated and prone to projection effects (Haynie and Osgood 2005). However, employing self-reported measure of delinquent peers would likely inflate the effect of the delinquent peers measure in all of the models, which may cause an underestimation, not overestimation, of the true effects of the maturity gap on the outcome measures.

In addition, the Barnes and Beaver (2009) statistical model does not differentiate between LCP and AL offenders because the Add Health dataset is a school-based cohort of adolescents which previous studies have shown to contain a very low base-rate of LCP offenders (Barnes

and Beaver 2009; DeLisi 2001; DeLisi 2005). LCP offenders have a greater probability of being absent from school by way of suspension, skipping school, or expulsion and, thus, are likely to be excluded from school-based samples.

Additional research should replicate the findings of the current study with other samples that contain significant variation of LCP and AL offenders to better grasp the maturity gaps' effects on drug use and drug use abstinence. In addition, the same study could also be re-analyzed longitudinally to examine the effects of adolescent behavior as the maturity gap changes. Moffitt's (1993) theory suggests that the relationship between missing the maturity gap and abstinence from drugs is contemporaneous, happening at the same time with no temporal lag. Thus, the effects of the maturity gap should be relatively immediate and even though a youth may be caught in the maturity gap one year does dictate that the youth will be caught in the maturity gap a year later (Barnes and Beaver 2009). However, only one study has examined in longitudinal analysis whether such a hypothesis is true. The current analytic model could also be extended as a basis for future research to examine the maturity gap's effects on abstinence from other acts, such as sexual activity.

Overall, the findings from this analysis offer partial support for Moffitt's (1993) hypothesis of adolescent abstainers. Missing the maturity gap does appear to be a valid predictor of drug use abstinence for males. However, similar findings were not found for females in the sample as missing the maturity gap was not linked to female abstinence from drug use, a result inconsistent with Moffitt's (1993) taxonomy but parallel to other studies demonstrating the differential effects of pubertal development on males and females (Haynie and Piquero 2006). Future research should explore the differential effects the maturity gap has on male and female delinquency and drug use and, subsequently, the differential effects the maturity gap has on male and female abstinence in an effort to better comprehend what leads adolescents to delinquency and discover what causes some youth to abstain from such behavior to construct appropriate prevention and intervention programs for at-risk youth.

APPENDIX A. DESCRIPTION OF VARIABLES AND SCALES

Male Pubertal Development Scale

Scale created by summing the following four self-reported measures:

1. Self-description of hair under arms (1 = no hair at all; 2 = a little hair; 3 = not a lot, but it has grown; 4 = a lot of thick hair; 5 = lots, as much as a grown man)
2. Self-description of thickness of facial hair (1 = a few scattered hairs, not thick; 2 = a little thick, but lots of skin showing; 3 = thick, can't see much skin; 4 = very thick, like a grown man)
3. Voice lower than in grade school? (1 = about the same as grade school; 2 = a little lower than in grade school; 3 = somewhat lower than in grade school; 4 = a lot lower than in grade school; 5 = much lower, like a grown man)
4. Physical development in comparison with other boys your age (1 = younger than most; 2 = younger than some; 3 = about average; 4 = older than some; 5 = older than most)

Female Pubertal Development Scale

Scale created by summing the following four self-reported measures:

1. Self-description of changing breast size (1 = about the same size as grade school; 2 = a little bigger than grade school; 3 = somewhat bigger than grade school; 4 = a lot bigger than grade school; 5 = a whole lot bigger than grade school)
2. Self-description of changing breast curvaceous body (1 = about as curvy as grade school; 2 = a little more curvy than grade school; 3 = somewhat more curvy than grade school; 4 = a lot more curvy than grade school; 5 = a whole lot more curvy than grade school)
3. Ever menstruated? (0 = no; 1 = yes)
4. Physical development in comparison with other girls your age (1 = younger than most; 2 = younger than some; 3 = about average; 4 = older than some; 5 = older than most)

Parental Permissiveness Scale

Scale created by summing the following seven self-reported measures:

Do your parents let you make your own decisions about...

1. the time you must come home on weekend nights? (0 = no; 1 = yes)
2. the people you hang around with?
3. what you wear?
4. How much television you watch?
5. what time you go to bed on weeknights?
6. what you eat?

Minor Drug Use Scale

Scale created by summing the following items from Wave I:

1. Have you ever tried cigarette smoking, even just 1 or 2 puffs? (0 = no; 1 = yes)
2. Have you had a drink of beer, wine, or liquor - not just a sip or a taste of someone else's drink - more than 2 or 3 times in your life?(0 = no; 1 = yes)
3. How old were you when you tried marijuana for the first time? If you never tried marijuana, enter "0" (0 = never; 1 = have tried in past)

Serious Drug Use Scale

Scale created by summing the following items from Wave I:

1. How old were you when you tried any kind of cocaine - including powder, freebase, or crack cocaine - for the first time? If you never tried cocaine, enter "0." (0 = never; 1 = have tried in past)
2. How old were you when you tried inhalants, such as glue or solvents, for the first time? If you never tried inhalants, such as these, enter "0." (0 = never; 1 = have tried in past)
3. How old were you when you first tried any other type of illegal drug, such as LSD, PCP, ecstasy, mushrooms, speed, ice, heroin, or pills, without a doctor's prescription? If you never tried any other type of illegal drug, enter "0." (0 = never; 1 = have tried in past)

Delinquent Peers Scale

Scale created by summing the following three items:

1. Of your three best friends, how many smoke at least one cigarette a day? (0 = none; 1 = 1 friend; 2 = 2 friends; 3 = 3 friends)
2. Of your three best friends, how many drink alcohol at least once a month?
3. Of your three best friends, how many use marijuana at least once a month?

Low Self-Control Scale

Scale created by summing the following items:

1. You feel like you are doing everything just about right? (1 = strongly agree; 2 = agree; 3 = neither agree nor disagree; 4 = disagree; 5 = strongly disagree)
2. Do you have trouble getting along with your teachers? (0 = never; 1 = just a few times; 2 = about once a week; 3 = almost every day; 4 = every day)
3. Do you have trouble paying attention in school? (0 = never; 1 = just a few times; 2 = about once a week; 3 = almost every day; 4 = every day)
4. Do you have trouble keeping your mind focused? (0 = never or rarely; 1 = sometimes; 2 = a lot of the time; 3 = most of the time or all of the time)
5. Do you have trouble getting your work done? Do you have trouble getting along with your teachers? (0 = never; 1 = just a few times; 2 = about once a week; 3 = almost every day; 4 = every day)

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