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Critical Issues in Justice and Politics

Discussing the present – Influencing the future

Department of Political Science & Criminal Justice

Southern Utah University

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Editorial Office

Department of Political Science and Criminal Justice
Southern Utah University
351 University Blvd., GC406
Cedar City, UT 84720

Phone: 435-586-5429
Fax: 435-586-1925
University Webpage: http://www.suu.edu/
Department Webpage: http://www.suu.edu/hss/polscj/
Journal Webpage: http://www.suu.edu/hss/polscj/CIJP.htm

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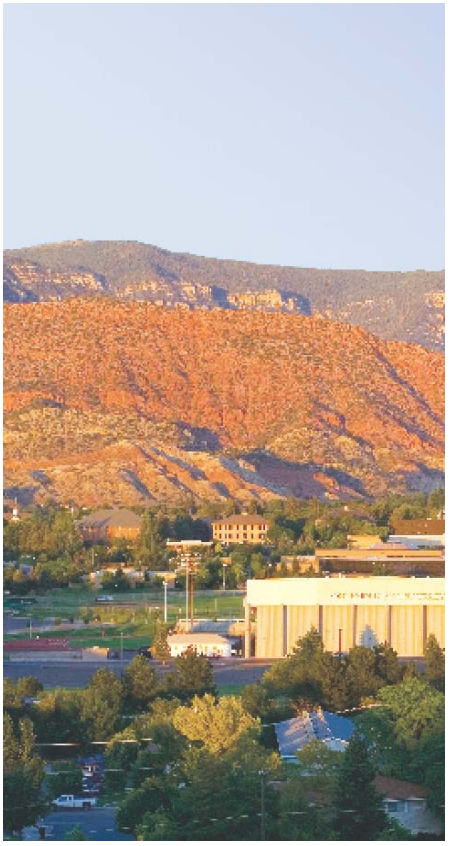

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College Education as a State-Wide Licensing Requirement: An Analysis of the Minnesota Model 30 Years Later

Susan M. Hilal
Metropolitan State University

Timothy E. Erickson
Metropolitan State University

The following study contributes to the growing body of literature regarding police education. A previous education study of Minnesota officers was conducted by the Minnesota Board of Peace Officer Standards and Training in 1990. In May of 2008, using a list of all full-time licensed municipal and county Minnesota peace officers (N=9,386), Hilal and Erickson replicated a majority of the 1990 study by distributing a self-administered survey to a random sample population of 1,099 officers, with a response rate of 57% (N=627). The purpose was to answer four main research questions involving educational levels of peace officers, perceived agency support for education, perceptions of officers regarding the four-year degree requirement for licensure, and the employment of female and minority officers. Comparisons of the 2008 data to the 1990 data are made. Results indicate that current Minnesota peace officers have increased their level of education and attendance at all levels of higher education, perceptions of agency support remain mixed, current support for a four-year degree requirement has decreased, and female or minority officers continue to be employed as peace officers at increasing numbers.

Introduction

The sources that have called for higher educational standards for peace officers in the United States have been many and varied, ranging from the individual proponents of police professionalism in the early 20th century, to national studies commissioned to review the failure of law enforcement agencies to effectively control crime and provide peacekeeping services over the ensuing decades. Academics joined the discussion as early police studies and criminal

Dr. Susan Hilal is an Assistant Professor in the School of Law Enforcement and Criminal Justice at Metropolitan State University in St. Paul, MN. Her areas of research interest include police education and volunteerism. Prior to working at Metropolitan State University she was an Assistant Professor at the University of Wisconsin-Platteville. She earned her PhD in Sociology from South Dakota State University in Brookings, SD, a MS in Criminal Justice from St. Cloud State University in St. Cloud, MN and her BA in Criminal Justice from the University of St. Thomas in St. Paul, MN.

Timothy Erickson is an Assistant Professor in the School of Law Enforcement and Criminal Justice at Metropolitan State University in St. Paul, MN. He teaches a variety of courses in both law enforcement and criminal justice and serves as the coordinator of the online major completion program designed for licensed Minnesota peace officers. His research interests include peace officer education issues, the police socialization process and ethical issues in criminal justice. He is a former peace officer, patrol supervisor, criminal investigator and chief of police with 24 years of practitioner experience in both Minnesota and Arizona. He earned his graduate degrees at the University of Wisconsin, River Falls.

justice programs began to develop at major universities, prompting the use of research methods in analyzing law enforcement functions and policies, to include education and training standards. Despite this nearly century long examination of the relationship between education and law enforcement, few quantifiable analyses have been conducted to determine the current education level of peace officers, or effective ways to increase the level of education of individual officers.

Much of the discussion of peace officer education has focused on attempting to resolve a question that defies a simple empirical answer; that is, does increased education result in any observable, quantifiable difference in the quality of peace officer effectiveness? As those who have reviewed the research have observed, the answer to the question has often been confused, conflicting and rife with problems associated with the various research methodologies used to examine the issue. As a result, there has been little progress in the implementation of higher education requirements for law enforcement personnel at the local and state levels. There has, however, been one noticeable exception.

In 1977, the Minnesota legislature enacted legislation that created the first licensing system for peace officers in the United States. This legislation resulted in the creation of the Minnesota Board of Peace Officer Standards and Training (hereafter referred to as the Minnesota POST Board or cited as MN POST). Although many states have similar law enforcement agency certification boards that are often referred to as POST boards, the Minnesota POST Board was given both licensing authority (referred to as certification in most other states) and the authority to determine minimum education requirements for all newly licensed peace officers in Minnesota (MN POST, 1991). Subsequent to its creation, the Minnesota POST Board in 1978 identified a two-year college degree as the minimum education requirement for all new entry level officers, becoming the first state to mandate a college degree as the entry level hiring requirement. Officers hired before 1978 were "grandfathered" into the new licensing process.

While there are individual agencies in other states that have adopted both two-year and four-year degree requirements (see for instance Bowman, 2001; Carter, Sapp & Stevens, 1989; Police Association of College Education [PACE], 2008; Travis, 1995), to date no other state has followed Minnesota's lead in requiring a post-secondary degree for entry level licensing or certification. There may be many reasons for this fact, and the research literature suggests that opponents of post-secondary requirements for law enforcement often cite the disparate impact that these minimum education requirements will have on recruitment of new officers, especially women and candidates of color (Decker & Huckabee, 2002; Kim & Mengistu, 1994; Williams, 1992). In addition, there has been considerable debate as to whether post-secondary education results in

producing more effective peace officers than the traditional police academy. The history of policing is of course rife with both insularity in terms of training and education of officers as well as antipathy toward higher education, often escalating to anti-intellectual or anti-educational levels.

Despite ongoing concerns about raising educational standards for peace officers, during Minnesota's 1990 legislative session two state representatives introduced initial legislation that would have raised the requirement for entry level peace officers in Minnesota to a four-year degree after January 4, 1994. This legislation was subsequently amended (most likely in part due to the concerns listed above) to provide for a study of the Minnesota peace officer education system, resulting in the publication of the 1991 Minnesota POST Board study. As part of this study, the legislation requested that the POST Board report back to the legislature to provide recommendations relative to the issue of requiring the four-year degree as a minimum education requirement for officers. One of the outcomes of the study was the following, clearly lukewarm support of the four year degree in their report to the legislature: "The [Minnesota] POST Board supports in principle, the attainment of a baccalaureate degree by all peace officers who aspire to this goal, but does not support mandating a baccalaureate degree as a prerequisite for licensing" (MN POST, 1991, p.1, Suggested Implementation Strategies).

In addition to other implementation strategies, the Minnesota POST study provided the first documentation of baseline data describing the education level of Minnesota peace officers. Published fourteen years after the initial legislation establishing the Minnesota POST Board, it provides an early evaluation of the effect of the two-year degree licensing requirement on peace officer education levels, attitudes toward higher education and future educational aspirations. This previous study and its baseline data served as a replication model for development of the survey used in the current study, and for comparison purposes in observing quantifiable changes that have occurred since the initial licensing process began.

In 2008, the authors of the current research distributed a survey to a probability sample of 1,099 local and county Minnesota peace officers. This sample population represented approximately 12% of all local and county full-time Minnesota officers (the Minnesota POST Board database indicates a total of 9,386 local and county officers). The 2008 survey replicated many of the items used in the 1990 study and introduced several additional items. The data collected in the 2008 survey was then compared to the baseline data collected in the 1990 Minnesota POST study. The authors of the current study attempted to answer four main research questions that will be discussed more fully in the

methodology section, but focused on the observable effect of the Minnesota's two-year degree requirement eighteen years after the first study was conducted.

The following section will more fully examine the literature and research relevant to the role of higher education in policing. As discussed previously, while there are few answers regarding the quantifiable effect that higher education has on peace officer effectiveness, the debate has informed much of the previous research in this area.

Review of Literature

Research regarding the role of higher education in peace officer preparation can be found in both historical literature and contemporary research. Most discussions of the origin of the higher education movement in law enforcement begin with an examination of the influence of August Vollmer and his protégé, O.W. Wilson. Vollmer (1932) is well-known for his role and participation in the drafting of the reports of the Wickersham Commission. These reports appear to be the first governmental initiative calling for increased education of the police with advocacy of college preparation. However, Vollmer's aggressive efforts to professionalize policing began much earlier when he was the chief of police in Berkeley, California and later when he was associated with the University of California-Berkeley and assisted in the establishment of the first school of criminology (Carte & Carte, 1975; Douthit, 1975; Vollmer, 1933). Vollmer was later to become one of the founders and the president emeritus of the American Society of Criminology (Morris, 1975), and he played a primary role in the development of the first police school in a post-secondary education institution at San Jose State College (MacQuarrie, 1935).

One cannot mention Vollmer without also discussing the influence of O.W. Wilson in the professional movement. Although Wilson has primarily been associated with the professionalization of police administration, Hoover (2005) suggests that his contributions go far beyond this accomplishment and his association with police education and police science are exemplified by his commitment to "an open-minded, scientific approach to assessing what works in policing" (p. 8). Wilson is most often identified with his seminal text *Police Administration*, often referred to as the "bible" of police administration during the professional movement in law enforcement. Both Vollmer and Wilson certainly must be considered the early pioneers in the advocacy for college education for peace officers and police managers.

The President's Commission on Law Enforcement and the Administration of Justice (1967a, 1967b) produced two publications, *The Challenge of Crime in a Free Society* and *Task Force Report: The Police*, that both suggested that one solution to improve the effectiveness of police would be to require

higher education for entry level peace officers. These reports prompted the direction of significant federal resources toward the criminal justice system, creating several agencies and mechanisms designed in part to train and educate the police, operationalized by the passage of the Omnibus Crime Control and Safe Streets Act of 1968. The Act initially created the Law Enforcement Assistance Administration (LEAA), which was later absorbed by the National Institute of Justice. It also established Law Enforcement Education Programs (LEEP) which provided funding to peace officers to attend or return to college to pursue higher education. The historic result of the Commission reports has been the development of massive funding for criminal justice research, much of which focused on police training and education. These funds in turn have arguably resulted in the formation of such professional organizations as the Police Executive Research Forum (PERF) in 1977, the Commission on Accreditation for Law Enforcement Agencies (CALEA) in 1979, and more recently the development of the Office of Community Oriented Policing (COPS).

In addition to the national initiatives, the Commission reports also prompted the development of many of the current state POST Boards. These boards often evolved from earlier iterations of state police training organizations – this was the case in Minnesota when the MN POST Board and its system of professional peace officer education was created in 1977. It replaced the pre-service training previously provided by the Minnesota Bureau of Criminal Apprehension. Currently these state organizations are members of the International Association of Directors of Law Enforcement Standards and Training (IADLEST). One of the stated missions of IADLEST is to assist police training organizations with the development of training standards. Similar to the Minnesota POST Board, IADLEST has also given lukewarm support for higher education of peace officers in its model minimum standard for education which states:

> State law or commission regulation should require immediately that all persons hired as police or corrections officers possess at a minimum a high school diploma, and should ultimately seek to phase in an entry-level requirement of a baccalaureate degree from a college or university accredited by a regional postsecondary accrediting body…. (IADLEST, 2008, standard 2.0.9)

As rationale for the increased standard of the postsecondary degree IADLEST suggested that as communities moved toward community policing (admittedly an assumption on the part of the organization), a college education becomes "increasingly desirable."

Additional proponents of higher education for police can be found in other professional organizations, and both public and private non-profit sectors, to include the American Civil Liberties Union, the National Association for the Advancement of Colored People, and the American Bar Association (see for instance, American Bar Association, 1980, standards 1-7.2. and 1-7.3). A more recent non-profit organization, the Police Association for College Education (PACE), was created and advances a mission of encouraging and facilitating a minimum education level of a four-year degree for officers (PACE, 2008), suggesting that this goal has been advocated by numerous national commissions, the federal courts as well as the organizations listed above.

It can be summarized that the research on police education has tended to investigate two broad themes; the role that formal education might play in impacting the attitudes and behavior of police officers, and the role of education in improving the performance of officers. While it might be assumed that there would be a correlation between these two foci, much of the research would suggest otherwise.

One issue operating in the discussion of these issues is fueled by the debate concerning the importance of "skills training" versus that of formal education relative to police officers. This debate has been a continuing one since the development of the first police school at San Jose College; at that time MacQuarrie (1935, p. 257) suggested that specific technical training was "the most important part of the…semi-professional program," allowing that "probably in the end a four-year program will be found advisable, as is now the case with teachers." This tension between training that is seen as the practical application of police skills, and the broad based liberal arts education that is implied in the baccalaureate degree, oftentimes results in viewing training and education as being two separate rather than integrated processes. In Minnesota, this tension plays out in the fact that the three largest law enforcement agencies in the state put new officers through an internal police academy of substantial length. This is despite the fact that these new officers have already earned a two-year or four-year degree, which has included both clinical skills and academic components of pre-service education, and have passed the state peace officer licensing examnation.

A second issue involves the research that has suggested that the police socialization process is so strong as to negate any advantage of formal higher education. Anecdotal reports are legend of the police academy instructors or field training officers who clearly express their derision for formal education by demanding that new officers forget what they learned prior to arriving at the destination that will teach them how things work in "the real world." It might be suggested that the situation in Minnesota regarding the police academies in the

three agencies described above is perhaps more a reaction to the perceived need to "socialize" new officers into these three departments, than an indication that the education received in the college or university institutions is somehow lacking. This "socialization" process most likely occurs in the remaining 641 Minnesota agencies through some kind of field training officer (FTO) experience.

In summary, despite the call for higher education for peace officers that has come from many venues, reaching this goal has proven to be elusive. The advancement to post-secondary minimum education requirements for officers has been thwarted by at least three issues: 1) conflicting findings in the research; 2) disagreement on the pedagogical issues; and 3) with the exception of Minnesota, a movement beyond the traditional police academy model has been virtually non-existent.

The following section will examine the influence of a higher education requirement as evidenced in the Minnesota experience. Because it is the only state model that goes beyond traditional academy training as the entry level education requirement, it has potential for informing future research regarding higher education for peace officers.

Methodology

A previous study of Minnesota officers was conducted by the Minnesota Board of Peace Officer Standards and Training (POST) in 1990. The 2008 survey replicates the 1990 study in order to answer four research questions:

1. Since 1990, has the minimum education requirement increased the composite education level of all Minnesota peace officers?
2. Since 1990, has the minimum education requirement increased the perceived level of support by Minnesota law enforcement agencies for higher education?
3. Since 1990, has the minimum education requirement increased the number of peace officers who would express more favorable agreement toward a four-year degree requirement as a minimum hiring requirement?
4. Since 1990, has the minimum education requirement had a detrimental effect on hiring either female officers and/or officers of color in Minnesota?

Because Minnesota adopted the two-year degree requirement in 1978, the two-year formal education requirement was in place at the time of both studies. Data is not available pre-implementation of the two-year degree requirement,

therefore the 2008 study examines the changes in the last 18 years relative to the research questions. For the 2008 study, a self-administered survey was sent to a random sample of full-time Minnesota peace officers. A list of all licensed, full-time officers working in city or county law enforcement agencies in May of 2008 was obtained from the Minnesota POST Board (N= 9,386). Using a random number generator 1,103 officers were selected to receive the police education survey. The surveys were sent via postal mail to officers at their agencies, four surveys were returned undeliverable, leaving a final sample size of 1,099. A total of 627 surveys were returned, for a response rate of 57%.

In the 1990 POST Board study, there were two parts to the data collection. The first part consisted of a self-administered survey to a random sample of 1,500 full time officers (20% of the total population of officers, N= 7,501) in October 1990. This survey resulted in a response of 915 completed surveys, or 61%. The second part consisted of a self-administered survey sent to 366 officers who were licensed for the first time during 1989; a total of 170 surveys (47%) were returned and analyzed.

It should be noted that data analysis is limited in that the only information that is available from the two 1990 POST Board studies is that which was provided in printed summary reports. Therefore, what is presented here is the 1990 data compared to similar data from the 2008 survey, and findings are presented as frequency counts and bivariate analysis of the 1990 and 2008 data sets.

Analysis

Question 1: Since 1990 has the minimum education requirement increased the composite education level of all Minnesota peace officers?

The education level of officers was operationalized via an ordinal measure of seven possible responses relative to their education level, asking respondents to identify this level at two points: 1) educational level when first hired; and 2) education level at the time of response to the survey. As illustrated in Table 1, there has been an increase since 1990 in the education level of police officers. The 2008 study shows that 48.9% of officers have at least a bachelor's degree or higher, compared to 29.4% in 1990. There were very few officers (24, representing 3.9%) who had less than a two year degree in 2008 compared to 260 (28.5%) in the 1990 survey. In both 1990 and 2008, a small percentage of officers indicated they had earned some graduate credit or a graduate degree when first hired. These percentages increased fairly dramatically for both groups at the time of survey administration, from 2.6% to 11.6% for respondents of the 2008 survey, and from 2.5% to 8.6% for 1990 respondents.

Table 1 - Educational Levels of Peace Officers

	2008		1990	
Degree	**When Hired**	**Now**	**When Hired**	**Now**
High School Diploma/GED	22 (3.5%)	8 (1.3%)	178 (19.5%)	71 (7.8%)
Some college credit	31 (4.9%)	16 (2.6%)	211 (23.1%)	189 (20.7%)
Two year degree (AA, AS, or AAS)	271 (43.2%)	193 (31.0%)	233 (25.5%)	194 (21.2%)
Some college credit past the two year	63 (10.0%)	101 (16.2%)	102 (11.1%)	190 (20.8%)
Bachelor Degree	224 (35.7%)	216 (34.7%)	160 (17.5%)	167 (18.3%)
Some graduate credits	11 (1.8%)	42 (6.8%)	19 (2.1%)	73 (8.0%)
Graduate degree	5 (0.8%)	46 (7.4%)	4 (.04%)	28 (3.1%)
Total*	**627**	**622**	**915**	**915**

*The 1990 column total percentages do not add to 100% because the 1990 survey included a category for "some high school."

Question 2: Since 1990 has the minimum education requirement increased the perceived level of support by an agency for higher education?

In order to answer question two, there are six different comparisons that are examined. The comparisons are divided into three categories: 1) overall agency support for officers continuing their college education; 2) perceived department incentives/accommodations for officers to pursue higher education; and 3) bivariate analyses of officer rank and their perceptions of agency support for higher education.

Overall Agency Support

The first comparison, as presented in Table 2a, shows the officer's perceptions of his/her department's overall support for college education. This was operationalized by asking respondents to describe their overall agency's support for college education using an ordinal level five point Likert scale. As illustrated, the perception of agency support has increased approximately 6% in the last 18 years; 46.2% of officers in 2008 and 40.4% in 1990 believed their agencies were supportive or very supportive. This is compared to 17.7% in 2008 and 20.5% in 1990 who felt their agencies were unsupportive or very unsupportive. A fairly large proportion of officers in both surveys (36% in 2008 and 39.2% in 1990) were neutral in their response to this item.

Table 2a - Agency Support for College Education

Level of Support	2008	1990
Very supportive	95 (15.4%)	93 (10.4%)
Supportive	190 (30.8%)	269 (30.0%)
Neutral	222 (36.0%)	352 (39.2%)

Table 2a (continued)

Level of Support	2008	1990
Unsupportive	74 (12.0%)	121 (13.5%)
Very unsupportive	35 (5.7%)	63 (7.0%)
Total	**616**	**898**

Perceived Department Incentives and Accommodations

Tuition assistance, shift adjustments, and pay incentives were used as measures to indicate department support for education. These measures were operationalized via a "yes," "no," or "not sure" response category. As Table 2b shows, in 2008 slightly more than half (52.1%) of respondents identified that their agencies were providing tuition reimbursements, compared to 37.1% in the 1990 survey.

Table 2b - Department Offers Tuition Assistance

Department offers tuition reimbursement	2008	1990
Yes	323 (52.1%)	328 (37.1%)
No	235 (37.9%)	555 (62.9%)
Not sure	62 (10.0%)	NI
Total	**620**	**883**

"NI" = the survey did not include the response category

Relative to shift adjustment, Table 2c shows that fewer officers (24.2%) in 2008 identify that their agency will permit shift adjustments to attend classes compared to 30.6% in the 1990 survey.

Table 2c - Department Offers Shift Adjustment

Permit shift adjustment	2008	1990
Yes	150 (24.2%)	270 (30.6%)
No	349 (56.2%)	613 (69.4%)
Not sure	122 (19.6%)	NI
Total	**621**	**883**

"NI" = the survey did not include the response category

Lastly, Table 2d shows that a majority of respondents (78% in 2008 and 80.8% in 1990) do not believe that increasing their level of higher education will result in a commensurate pay raise or other monetary incentive.

Table 2d - Raise/Pay Incentive

Receive a raise/Pay incentive	2008	1990
Yes	89 (14.3%)	170 (19.2%)
No	486 (78.0%)	717 (80.8%)
Not sure*	48 (7.7%)	NI
Total	**623**	**897**

"NI" = the survey did not include the response category.

Bivariate Analyses of Rank and Perceived Agency Support

Two bivariate analyses are presented in relationship to rank and perceived agency support for higher education. The variable measuring agency support in the 1990 survey was collapsed into three response categories (supportive, neutral, and unsupportive) therefore the 2008 data were collapsed similarly. Rank was also collapsed in the 1990 study to 3 categories (patrol, front line supervisors, and administrators), and again the 2008 study replicated this process, but added another category ("other"). Patrol officers include the position of a patrol officer, crime prevention officer, school resource officer, or detective/investigator. Front line supervisors were represented by the sergeant rank, and administrators include the ranks of lieutenant, captain/commander, and chief/sheriff.

When examining the first bivariate relationship between the perception of agency support for education and the rank of the officer respondent, as presented in Table 2e, in the 1990 survey this relationship was statistically significant (p=.00). The 2008 survey results however suggested that this relationship was not significant, therefore, at present time an officer's rank does not predict perceptions of agency support for higher education.

Table 2e - Agency Support by Rank

	Rank						
	Patrol		Front Line		Administrators		Other*
	2008	1990	2008	1990	2008	1990	2008
Supportive	179 (44.5%)	196 (33.8%)	46 (45.1%)	71 (48.6%)	42 (54.5%)	94 (56.0%)	18 (51.4%)
Neutral	147 (36.6%)	244 (42.1%)	34 (33.3%)	50 (34.2%)	29 (37.7%)	56 (33.3%)	12 (34.3%)
Unsupportive	76 (18.9%)	140 (24.1%)	22 (21.6%)	25 (17.1%)	6 (7.8%)	18 (10.7%)	5 (14.2%)

2008 Chi square=7.65, p=2.65
1990 Chi square=41.3, p=.00
*There was no "other" category in the 1990 study.

A second way this relationship was analyzed was by examining the bivariate relationship between rank and the perception that the department would allow shift adjustment for educational reasons. As illustrated in Table 2f, the bivariate relationship between the position the officer holds and perceptions of allowing shift adjustment to attend class is statistically significant in both surveys (p=.00 in 2008 and p=.01 in 1990). Thus in both surveys, the rank of the respondent influences his/her perception of whether the department will provide shift adjustment to attend class.

Table 2f - Adjustment To Shift By Position

	Patrol		Front Line		Administrators		Other**
	2008	**1990**	**2008**	**1990**	**2008**	**1990**	**2008**
Yes	81(19.9%)	154(27.1%)	30(29.4%)	52(36.4%)	28(35.9%)	62 (36.9%)	11(32.4%)
No	224(55.0%)	415(72.9%)	62(60.8%)	91(63.6%)	44(56.4%)	106 (63.1%)	19(59.9%)
Not sure	102(25.1%)	NI	10(9.8%)	NI	6(7.7%)	NI	4(11.8%)

2008 data: Chi-square=27.974, p=.00
1990 data: Chi-square=8.7, p=.01
"NI" = the survey did not include the response category. In 1990 there was no "other" category.

Question 3: Since 1990 has the minimum education requirement increased the number of peace officers who would express support for a four-year degree as the minimum requirement for hire?

In order to answer this question, three items were included in both the 1990 and 2008 surveys. The first item measures the respondent's agreement to the following statement: "I believe a four-year degree should be the minimum requirement to enter law enforcement in Minnesota." Response to this item again used an ordinal level five point Likert scale. As illustrated in Table 3a, the support for a four-year degree as the minimum education requirement to enter law enforcement has declined fairly significantly. In 2008, 30.7% of officers agreed this should be the requirement compared to 40.6% in 1990. In 2008, 53.5% disagreed compared to 50% in 1990 with the remaining officers being neutral on their perception.

Table 3a - Agreement With The Statement: "I Believe A Four-Year Degree Should Be The Minimum Requirement To Enter Law Enforcement In MN"

Belief 4-Year Degree Should Be The Minimum Education To Enter Law Enforcement	2008	1990*
Strongly agree	102(16.4%)	37(21.8%)
Agree	89(14.3%)	32(18.8%)
Neutral/No opinion	98(15.8%)	16(9.4%)

Table 3a (continued)

Belief 4-Year Degree Should Be The Minimum Education To Enter Law Enforcement	2008	1990*
Disagree	182(29.3%)	48(28.2%)
Strongly disagree	150(24.2%)	37(21.8%)
Total	**621**	**170**

The second item examines the agreement level of officers to the statement: "If a four-year degree had been the minimum entry requirement for a law enforcement career in Minnesota, I would still have chosen to enter through the Minnesota system." Response categories were again collected using an ordinal level five point Likert scale. Interestingly, despite the apparent decreasing level of support for the four-year degree in the previous table, responses to this item, shown in Table 3b, indicate that 70.5% of officers in 2008 felt that if the four-year degree had been the minimum educational requirement to enter a career in law enforcement in Minnesota, they still would have chosen to enter through the Minnesota system, a fairly significant increase over the 57.5% of officers in the 1990 survey.

Table 3b. - Agreement With The Statement: "If A Four-Year Degree Had Been The Minimum Entry Requirement For A Law Enforcement Career In MN, I Would Still Have Chosen To Enter Through The MN System"

Agreement With 4 Year Requirement Would Still Work In MN	2008	1990*
Strongly agree	232 (37.5%)	52 (30.6%)
Agree	204 (33.0%)	46 (27.5%)
Neutral/No opinion	54 (8.7%)	28 (16.5%)
Disagree	70 (11.3%)	31 (18.2%)
Strongly disagree	59 (9.5%)	12 (7.1%)
Total	**619**	**170**

*The 1990 survey was followed-up with a "new officer survey." Data for this table was pulled only from this new officer survey which only included police officers who were licensed for the first time during 1989, therefore the "N" value is much smaller.

The third item measured the bivariate relationship between years of experience in law enforcement and agreement with the statement regarding whether they would have still chosen a career in law enforcement if the four-year degree had been an entry level requirement. The variable, years of experience, was initially operationalized in the surveys by a six choice response category; the researchers collapsed these responses into two experience categories: 1-11 years

and 12 or more years of experience. Agreement with the statement was operationalized in the 1990 study with a three point Likert type agreement scale. The 2008 study used a five-point Likert scale; therefore, the researchers collapsed 2008 responses into the three-point Likert scale for comparison purposes. The relationship between years of experience and agreement that the respondent would have chosen Minnesota law enforcement, even given a four-year degree requirement, was statistically significant both in 2008 (p=.003) and in 1990 (p=.00). Therefore, the number of years employed in law enforcement influences an officer's perception on whether they would have still entered a career in law enforcement if the four-year degree requirement existed in Minnesota. Officers with fewer years of service show a slightly higher agreement than those with more years of service, but at both levels of experience, agreement is significantly stronger in the 2008 survey results than 1990.

Table 3c - Still Chosen Career in Law Enforcement with 4 Year Requirement by Years of Experience

	1-11 years		12+ years	
	2008	**1990**	**2008**	**1990**
Agree	221 (74.7%)	203 (57.2%)	214 (66.5%)	172 (31.2%)
Neutral	30 (10.1%)	39 (11.0%)	24 (7.5%)	96 (17.4%)
Disagree	45 (15.2%)	113 (31.8%)	84 (26.1%)	284 (51.4%)

2008 Chi square=11.49, p=.003
1990 Chi square=63.1, p=.00

Question 4: Since 1990 has the minimum education requirement had a detrimental effect on hiring either female officers and/or officers of color?

The comparisons provided in Table 4, clearly illustrate that the educational requirement has not had a detrimental effect on the hiring of women or officers of color in Minnesota. For comparison purposes, race in both studies was collapsed into two categories: white and non-white. The data would suggest that, albeit small increases, there are more females (an increase of almost 10% since 1990) and non-white officers (an increase of 3% since 1990) that responded to the 2008 survey.

Table 4 - Race and Gender of Officers

	2008	**1990**
Race	93.2% White	96.2% White
Gender	86.4% Male	95% Male

Discussion and Conclusion

The research on education as it relates to peace officers is not new, but continues to remain an important avenue of inquiry. This study adds to the existing literature by providing a unique analysis of the effects of one state's implementation of a two-year degree requirement. Results are generalizable to the population of all full-time peace officers employed at a city or county agency in Minnesota. Since 1990 the highest level of education achieved has increased amongst Minnesota peace officers, therefore the POST Board requirements continued to have a positive effect in raising the formal education levels of its peace officers. The data presented would suggest that Minnesota peace officers have been increasing their attendance and completing degree programs at all levels of post-secondary education. Less than 4% of all officers in the 2008 survey identified having less than a two-year college degree, compared to 28% in 1990.[1] The number of officers who have earned two-year degrees increased from 21% in the 1990 survey to 31% in 2008. Nearly half of the respondents to the 2008 survey indicated they had earned a baccalaureate degree or higher, and slightly over 7% had earned graduate degrees.

In a national study, Hickman and Reeves (2006) conducted a study of police departments as their unit of analysis. They found that only 9% of all local agencies require a two-year degree for employment and only 1% of agencies require a four-year degree. While there are individual agencies in other states that have adopted both two-year and four-year degree requirements, to date no other state has followed Minnesota's lead in requiring a post-secondary degree for entry level licensing or certification. It can be concluded that Minnesota peace officers have considerably more formal education compared to officers nationally.

The findings on peace officers perceptions of agency support yielded mixed results. There was little difference in how officer's perceived the level of support of education by their agencies in 1990 compared to 2008. Approximately 46.2% of officers in 2008 and 40.4% in 1990 believed that their agency was supportive of higher education. This perception of overall support was not dependent on an officer's rank in the department in 2008, but in 1990 rank did have a statistically significant relationship.

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[1] Regarding the 4% in the 2008 data, it should be noted that Minnesota "grandfathered" officers without a two-year degree hired prior to 1978 into the licensing system, therefore in 2008 it is likely many of these officers have retired or left the profession than was the case in 1990. The 4% also could include officers who enter Minnesota law enforcement through lateral transfer from other states.

When asked about specific actions police agencies have taken to demonstrate support, there were several differences in the two studies. In 2008, 52.1% of respondents indicated that they had the option of tuition reimbursement, compared to 37% in the 1990 survey. In 2008, if tuition reimbursement was granted, approximately 75% of respondents indicated that the subject matter was restricted to certain courses. This information was not gathered in the 1990 survey.

In terms of permitting shift adjustment, in 2008 fewer Minnesota peace officers (24.2%) identified shift adjustment as an option available in their agencies compared to 1990 respondents (30.6%). One of the reasons for this may be the greater availability of taking classes through a variety of delivery mechanisms, and the growth of online learning opportunities. It should be noted, however, that perceived permissibility of shift adjustment is associated with the rank of the officer. Both in 2008 and in 1990, there was a statistically significant relationship between these two variables, with supervisors and administrators perceiving stronger agency support for shift variations for educational purposes.

The final indicator examined was whether an officer believed there were pay incentives for increased educational achievement. The vast majority of peace officers in 1990 (80.8%) and 2008 (78%) believed that there was not a monetary incentive associated with obtaining a higher level of education. A question related to this issue in both the 2008 and 1990 surveys was directed to those officers who did not plan to continue their formal education. Although the response categories were slightly different in the two studies, in 2008 the most common reasons identified for not continuing formal education, in order of frequency, were: 1) the respondent already had the degree they wanted; 2) there was no department incentive (raise, promotion); 3) lack of financial resources; and 4) no time to take college classes. In 1990 these reasons in order of frequency were: 1) respondent did not have time to take college courses; 2) lack of financial resources; 3) respondent did not believe he/she needed more education; and 4) there was no department incentive to continue education.

Relative to respondent's perceptions regarding a four-year degree as a minimum entry-level education requirement, the findings are interesting. Specifically, when asked if the four-year degree should be the minimum requirement in 2008, 30.6% of officers agreed this should be the requirement compared to 40.6% in 1990. In 2008, 52.9% disagreed compared to 50% in 1990. While this would seem to indicate that fewer officers today believe the four-year degree should be a minimum requirement, individually they are earning four-year degrees at a clearly increasing rate since 1990. When asked if the four-year degree was a minimum requirement if they would still enter law enforcement in the Minnesota system, 70.5% (in the 2008 survey) and 57.8% (in

1990) answered affirmatively. This agreement, however, does depend on the years of service; officers with more service were less likely to agree with this statement compared to those with shorter lengths of service. This relationship was found to be statistically significant in both 1990 and 2008. In summary, despite whether they think the four-year degree is important, a majority of police officers in 2008 and in 1990 would still get their four-year degree if it was necessary in order to be a peace officer.

One of the reasons that has been discussed in the literature (see Decker & Huckabee, 2002) for not increasing the educational requirements for initial hire as a law enforcement officer is that fewer women and persons of color will apply. In their review of national data, Hickman and Reeves (2006) found that women represented 11.4% of full-time peace officers. In the 2008 survey of Minnesota peace officers, women represented 13.6% of officer respondents, compared to 5% in 1990. In summary demographic data, the Minnesota POST Board lists 12.7% of the full-time officers as being female. It appears that both the most recent survey and POST Board data suggest that Minnesota has slightly more female officers than the national level data, despite the higher educational requirements. Therefore, it can be concluded the educational requirements have not had a detrimental effect on the hiring of women officers during the period studied.

Relative to officers of color, at the national level approximately 23% of officers were identified as being from racial or ethnic minorities (Hickman & Reeves, 2006). State level data is not collected by the Minnesota POST Board as it relates to race and ethnicity of officers (interestingly the State of Minnesota does not allow the collection of this data by the Board). In examining state level citizen data in 2007, Minnesota's population was listed as being 14% non-white or Latino, compared to 34% at the national level (Minnesota State Demographic Center, 2008). In the 2008 peace officer survey, 6.8% of respondent officers identified themselves as non-white, however this nearly doubles the non-white respondents to the 1990 survey (3.8%). The research literature suggests that there are a number of possible reasons for the dearth of people of color in the law enforcement profession, ranging from self-selection (or non-selection) to the career field, to issues associated with culture, racism, and other systemic factors, which extend beyond the purview of this research. While many of these issues have not been satisfactorily addressed, the Minnesota survey data show a percentage increase in respondents of color from the 1990 to the 2008 survey.

There are several limitations to the current study. First, the 2008 survey of Minnesota peace officers did not examine the education level of officers assigned to state agencies. The two largest state agencies in Minnesota that employ licensed peace officers are the Minnesota State Patrol and the Minnesota

Department of Natural Resources (according to Minnesota POST data, the total number of employees in these two agencies is approximately 830 full-time officers). Second, the current survey did not include part-time peace officers. Although the POST Board no longer licenses new part-time officers, and their number decreases yearly, there remain 296 part-time peace officers in the state. Finally, the current study did not fully explore the issue of agency tuition reimbursement policies; further analysis of these policies might provide further explanation for officer decision-making in either continuing or not continuing their formal education.

The study of the role of higher education in policing will undoubtedly continue. Because Minnesota continues to be the only state that requires a post-secondary degree for entry-level licensing, it is difficult to compare the Minnesota experience with other states at this time. However, it seems that a further avenue of research might be to replicate the Minnesota study in other states, and to compare the current education level of those state's officers with that of Minnesota officers. This comparison might identify whether the Minnesota experience of increasing levels of formal education of peace officers is a direct result of the post-secondary degree requirement or merely a reflection of a possible increase of education level of peace officers nationally.

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The Justice of 'Just Desserts:' An Examination of the Crossroads Correctional Center

Angela G. Dunlap
University of Central Missouri

Dennis Hill
University of Central Missouri

The Crossroads Correctional Center is a maximum security male facility located in Cameron, Missouri. The facility is relatively new, having opened in March 1997 with an operational capacity of 1,500 inmates. One of the more notable aspects of this facility is that it was the first Missouri prison to install a lethal perimeter electric fence, thus adding an innovative dimension of security that seeks to prevent inmate escapes. But does this facility serve as a model of progressive penology or is it just one among numerous other correctional facilities housing criminal offenders who are receiving their "just desserts?" This paper examines the apparent contradictions between Missouri's applied just desserts model of sentencing and the state's restorative justice movement, in an effort to draw attention to the realities of and the unintended consequences associated with applying the justice model to criminal offenders sentenced to long terms in one of Missouri's maximum security facilities.

Introduction

Greek philosopher Aristotle perceived justice in quantifiable terms whereby there exists a kind of "mean" between what is just and what is unjust. In order to distinguish between the just and unjust, Aristotle explains that "justice is therefore a sort of proportion; for proportion is not a property of numerical quantity only, but of quantity in general, proportion being equality of ratios..." (Aristotle, 1959 version). Therefore, proportional justice in Aristotelian terms

Angela G. Dunlap is an assistant professor of Criminal Justice at the University of Central Missouri. She earned a bachelor's degree in Public Administration from the University of Mississippi, a Master's degree in English from Mississippi College, and received her doctorate degree in Administration of Justice from the University of Southern Mississippi. Her research interests include integrating literature and critical writing into the criminal justice curriculum, and social justice issues as they relate to the impact of race, class, and gender on public policy. Direct all correspondence to: Angela G. Dunlap, Assistant Professor, Department of Criminal Justice, University of Central Missouri, 301 A-2 Humphreys Building, Warrensburg, MO, 64093. E-mail: Dunlap@ucmo.edu.

Dennis E. Hill is a master's student in criminal justice and graduate assistant for the Criminal Justice department at the University of Central Missouri. His research interests include the fields of law enforcement, corrections, and international criminal justice systems. His recent work focuses on the reentry of offenders in Missouri and restorative justice initiatives.

means that it makes no difference whether a good man has defrauded a bad man or a bad one a good one, nor whether it is a good or a bad man that has committed adultery; the law looks only at the nature of the damage, treating the parties as equal, and merely asking whether one has done and the other suffered injustice, whether one inflicted and the other has sustained damage. Hence, the unjust being here the unequal, the judge endeavors to equalize it: inasmuch as when one man has received and the other has inflicted a blow, or one has killed and the other been killed, the line representing the suffering and doing of the deed is divided into unequal parts, but the judge endeavors to make them equal by the penalty or loss he imposes, taking away the gain. (Aristotle, 1959 version).

Aristotle calls for evaluating unjust acts only in terms of the inequality imposed on the one who has suffered at the hands of the unjust person. Thus, the law should necessarily maintain a neutral position between the parties involved and should seek the best way to restore the balance lost from the injustice. What is important to achieve is the mean (i.e. "justice"), which stands between what is gained and what is lost. In the modern context, this "mean" Aristotle references serves as the essence of the just desserts model.

The just desserts philosophy of punishment has been the preferred sentencing model in Missouri since 1995. This no-nonsense approach reflects society's desire to punish offenders harshly by means of stricter, and longer, prison sentences. For the most serious offenders, this means life in prison without the possibility of parole or the death penalty. Unfortunately, these punitive measures have led to increased prison overcrowding and discipline problems, exacerbated by the reduction of prison programs and personnel shortage due in part to budget cuts. A clear example of the unforeseen consequences resulting from the just desserts model is the Crossroads Correctional Center in Cameron, Missouri.

The purpose of this study is to examine the penological practices of one correctional facility in Missouri within the general context of past state correctional philosophies and, by extension, within the specific context of the just desserts model currently adopted and applied by state legislatures and correctional officials in Missouri. Our goal is two-fold: to point out the dichotomy of the state's progressive-minded efforts toward restorative justice and re-entry initiatives in an era of just desserts, and to draw attention to the realities and the unintended consequences associated with applying the just desserts model to criminal offenders sentenced to long terms in one of Missouri's maximum security facilities.

The Present Study

A number of criminal justice texts contain essentially similar definitions of the just desserts model, but the authors have elected to limit the references to a couple that adequately serve the purposes of this study. The justice model, aka "just desserts," is generally understood to refer to a contemporary concept of punishment based on the notion that those who violate a society's established rules and norms deserve to be punished by the criminal justice system, and the recommended punishment should be proportional to the crime committed – hence, criminal offenders receive their "just desserts." The concept of retribution, situated at the center of the just desserts model, views punishment as "deserved, justified, and even required by the offender's behavior" (Schmalleger, 2008, p. 311). The most common form of punishment is imprisonment or the death penalty in extreme cases. Like Missouri, many states have followed this "get tough" approach to criminal sentencing. However, whether or not these punitive measures are really effective is beside the point because the goal of retribution is not deterrence, but satisfaction that the offender will be held accountable for his or her criminal behavior (Schmalleger, 2008).

The retribution/just desserts model is actually an outgrowth of the "law and order" policy strategies introduced during the Reagan/Bush administration (Blomberg & Lucken, 2000). In a manner similar to Aristotle's principles, the just desserts notion of proportion "rested on the idea that penal sanctions should be calibrated according to the reprehensibleness of the crime" (p. 175). Hand in hand with retribution, incapacitation carried the promise that criminal offenders would be deterred from future offending if the applied punishments were, in classical utilitarian terms, swift and certain. Thus, according to Blomberg and Lucken, the appeal of the retributive and incapacitation approaches rested on the certainty that all traces of failed rehabilitation policies would be removed as both strategies "did not require an understanding of the causes of crime or the delicate balances involved in the cost/benefit calculations of mankind" (p. 175). Rather, the main goal was "to interrupt the criminal career of the offender" (p. 175). In an effort to "interrupt" criminal offending, initiatives such as the "war on drugs" and popular reforms such as mandatory minimums, determinate sentencing, and habitual offender statutes were enacted. The unfortunate result of these measures has largely been the expansion of existing correctional facilities or the addition of new institutions. For example, the Crossroads Correctional Center serves as one of the latest additions to Missouri's Department of Corrections.

Crossroads Correctional Facility

From its inception in the spring of 1997, the Crossroads maximum-security correctional facility opened in the early stages of the just desserts era of

punishment in Missouri as the third maximum security facility in the state. Notably, the Crossroads Center has the distinction of being the first "design-build" project undertaken by the Department of Corrections (Shreiber & Moeller, 2004, p. 304). Instead of the traditional method in which a year-long design phase is completed prior to construction, the design-build method allows correctional officials to specify predetermined needs at the outset for the teams of designers, architects, and contractors involved. For Crossroads, department officials specified the number of cells, security level, and program needs. The 1500-inmate-capacity all-male facility sits on 75 acres and houses its own plant for industrial office furniture manufacturing. Boasting "cutting edge" security measures, the Crossroads Correctional Center serves as the first department facility that features a high-voltage, lethal perimeter fence (Schreiber & Moeller, 2004).

However, at a time of heightened concern and concentrated efforts in Missouri toward restorative justice and re-entry initiatives, the penological practices of the Crossroads correctional facility are more consistent with the just desserts model of justice because of its classification. As a maximum-security facility housing inmates with little to no chance of re-entry, are we, as an enlightened and informed society, content to focus our efforts only on those inmates who will be released at the expense of those who will not be extended the same opportunity?

In order to observe any notable patterns in the evolution of Missouri's correctional practices, the next section outlines the history of Missouri corrections followed by the Methodology, Discussion, and Conclusion sections. Our intent is to illustrate how Missouri correctional officials followed predictable reactionary measures in response to various intersecting demands including a persistent and growing inmate population, societal discontent with crime rates, and longer prison sentences due to legislative acts. The state's response to increased crime and recidivism rates reflects evolving national standards of penology, so Missouri's correctional practices and problems were not unique. However, the almost inevitable result of Missouri's correctional approach has led to a dichotomous relationship between a progressive movement toward treatment alternatives and the just desserts brand of corrections.

History of Missouri Corrections

Like many correctional facilities in other states, the facilities in Missouri have run the gamut of penological practices beginning with the familiar Old Testament notion of "an eye for an eye" to the classical school practice of deterrence, to adoption of the Auburn system, and finally to rehabilitative efforts currently referred to as restorative justice. Correctional officials today face many

of the same issues that have been in place since the first prisons were established. As the prison population has steadily increased, state policy makers and prison officials have adopted various strategies to cope with the increasing reality of criminal offenses and offenders. Unfortunately, for the most part, the most common correctional approaches have been recycled and reapplied without any real proven track record of success.

Following the standard practice of "reinventing the wheel" regarding the purpose of punishment, Missouri's correctional facilities emerged in phases that more or less followed national penological practices of a given time period, and likewise paralleled historical movements generally recognized by correctional scholars (Rothman, 2008; Schmalleger, 2007; Blomberg & Lucken, 2000; McKelvey, 1977). These phases/eras reflect societal values and political ideologies of the day and range from Penitentiary, Mass Prison, Reformatory, Industrial, Punitive, Treatment, Community-Based, and Warehousing eras, to the current retributive-centered Just Desserts era – basically a reinvention of the ancient "an eye for an eye" expression resulting from the conservative movement to "get tough" on crime combined with the collective rejection of rehabilitation ideals (Schmalleger, 2007; Schreiber & Moeller, 2004).

The Penitentiary Era (1790 to 1825)

The late eighteenth century was indeed a time of drastic change in the newly formed republic of the United States. Not only was our national government in search of an identity and organization, but these officials were in search of a national standard for its prison system as well. The first official state jail constructed in the United States was the Walnut Street Jail. Originally, the jail served as a county jail in 1773 and was then converted into a state prison and adapted to give effect to what came to be known as the Pennsylvania System of Prison Discipline (Banks, 2005; Colvin, 1997). Of course, the two systems emerging in the latter part of the century were the Auburn and Pennsylvania systems. Known as the penitentiary era because of the emergence of the two systems, the late eighteenth century was a time when many states turned to prisons as a means of housing their criminal offenders. The penal practices of the Auburn system remained influential and were adopted by the state penitentiary in Missouri well into the twentieth century (Schreiber & Moeller, 2004).

The Mass Prison Era (1825 to 1876)

Mid- to late-nineteenth century saw a boom in the construction of correctional institutions as a reflection of the growing population in the United States and in response to the "law and order" sentiment of the general public.

The Missouri State Penitentiary in Jefferson City opened in March 1836, and its operations clearly reflected the characteristics of the Auburn system of corrections, typical of most prisons erected in this era. Inmates were required to live in single cells and were not allowed to communicate verbally unless the nature of their work necessitated brief exchanges. Despite the progression toward a more humane alternative to corporal punishment, strategies used to discipline difficult inmates were physically and mentally brutal. Typical methods of punishment for uncooperative inmates included the whip or lash, but Missouri set a particularly harsh standard, employing such devices as the rings and cat-o'-nine-tails, or psychological measures such as water cure and isolation in the hole. In time, however, the inmate population steadily grew to the point where single cells were not available and the practice of forced silence became necessarily obsolete. (Schmallager, 2007; Schreiber & Moeller, 2004; McKelvey, 1977).

The Reformatory Era (1876 to 1890)

Acknowledging the ever-growing prison population, the Missouri legislature appropriated $90,000 toward the expansion of the current state prison in Jefferson City (Schreiber & Moeller, 2004). However, by 1880, the prison held 1,200 inmates, and these inmates were crowded into 500 cells. The prison population swelled to 2,300 before 236 small "congregate rooms" were added in 1898 (McKelvey, 1977, p. 179). During this era, the correctional arm of criminal justice extended to much younger criminal offenders due to a rise in truancy and delinquency among juveniles, both male and female. The result was the development of the State Industrial Home for Girls (1888) and the Reform School for Boys (1889), which later became known as the Training School for Boys (1903). The girls' home emphasized learning domestic skills, such as cooking, laundry, and sewing, while the boys' home provided spiritual guidance, education, and job skills (Schreiber & Moeller, 2004).

The Industrial Era (1890 to 1935)

The close of the nineteenth century marks a time period of monumental change in the United States – both economically and socially. For instance, the post Civil War years left the infrastructure of this country decimated and polarized on many political and social issues and ideologies. Of course, the southern states suffered the most, given that those areas are rural, populated by a substantial number of the poorest Americans, and also heavily populated by newly freed slaves. If, as the saying goes, desperate times call for desperate measures, then it stands to reason that criminal activity emerges most notably when the conditions are favorable to encourage such behavior. Crime and

poverty go hand-in-hand and many states saw a significant increase in the crime rate in the years following the Civil War. The southern states made extensive use of inmate labor to replace the slaves who were freed during the war (Schmalleger, 2007). Of the six systems emerging during this time period – public accounts, lease, contract labor, state-use, and public works – Missouri subscribed to five of them, in whole or in part, to varying degrees, and in response to public opinion (Schreiber & Moeller, 2004).

The practice of contract labor thrived in the Missouri State Prison, to such an extent that entrepreneurs travelled to Jefferson City from the cities of St. Louis, Chicago, and New York, to set up shop within the penitentiary and generate huge profits. In reality, though, the only advantage the contract system afforded the prison was the assurance of hard labor instead of "aimless idleness" characteristic of other reform prisons (as cited in McKelvey, 1977, p. 255). Businesses housed within the prison walls include Houchin's Star Company, Economy Stay Company, the Number 1 Shoe Factory, and the J.S. Sullivan Saddle Tree Company, just to name a few (Schreiber & Moeller, 2004). These industries and others generated enormous profits until the passage of the Hawes-Cooper Act of 1929 which, due to union influence, required that prison-made goods transported to any state conform to regulations mandated by that state, and the Ashurst-Sumners Act of 1935, which effectively put an end to the Industrial era (Schmalleger, 2007; Schreiber & Moeller, 2004; McKelvey, 1977).

The Punitive Era (1935 to 1945)

Known as a "lackluster time in American corrections," the punitive era was so-named due to the harsh conditions of confinement imposed on inmates whose labor opportunities were severely limited in the years following the Industrial era (Schmalleger, 2007, p. 492). Like other surrounding states, Missouri at this time faced overcrowding problems in their penitentiaries, but the state housed more inmates – 5,100 in 1935 – than any other prison in the United States (Schreiber & Moeller, 2004). From a penological perspective, Missouri applied the precepts of the Reformatory Era, as evidenced by the 1939-40 state manual which emphasized the need for a rehabilitation program to return inmates who were "physically, mentally and morally better than they were when they entered [the prison system]" (Schreiber & Moeller, 2004, p. 159). In an effort to return inmates back to society as improved citizens, Governor Stark devised an informal system of segregating inmates based on an evaluation of their individual case histories of mental and physical illness, and/or other related conditions. This system later came to be known as classification, and Missouri's first informal system was introduced at the Intermediate Reformatory in Algoa (Schreiber & Moeller, 2004).

Before the Hawes-Cooper Act became effective in 1934, Missouri prison authorities had already turned their attention toward another form of inmate labor – farming. Considered a practical response to the loss of industrial jobs for inmates, farming kept the expanding inmate population busy while also allowing them to play a significant role in feeding themselves. Although these farms were established prior to this era, they continued to prosper as a means of inmate labor and generating revenue. In 1938, in addition to the three main farms already in existence, a new farm was established in the northwest area of Jefferson City that housed 600 minimum security inmates dedicated to those nearing the end of their sentences. Known as Church Farm, this latest addition produced garden vegetables, corn, wheat, and alfalfa hay, and in 1943, the state purchased 450 additional acres to initiate a dairy operation. Like the other farms, Church Farm proved to be a profitable venture, bringing in $114,970 during the 1943-44 year (Schreiber & Moeller, 2004).

The Treatment Era (1945-1967)

On a national level, this time period ushered in feelings of hope and renewal as the country looked ahead toward a booming economy and thriving workforce in the years following World War II. The emerging fields of social and behavioral sciences and their emphasis on explaining criminal behavior eventually led to a shift in treatment considerations of the prisoner and his or her environment. Sociological research of the prison environment prior to World War II was motivated by humanitarian and utilitarian concerns regarding the methods of prisoner rehabilitation. However, post WWII research interests emphasized the social climate of prison, specifically the socialization patterns in the prison environment whereby inmates adopt values and norms and adapt to their life behind the walls – a process that culminates in the creation of an inmate subculture (Blomberg & Lucken, 2000).

Paralleling this new interest in the prison environment was the ongoing rise in prison populations nationwide. Missouri continued to experience its own growing pains, and with the gradual decline of contract labor industry, a restless inmate population created an environment that was ripe for disturbances, disorder, and violence. Racial conflicts also surfaced during this time period, contributing to the already existing social tension. Inmates voiced complaints about food and the lack of adequate medical treatment, but those complaints were unfortunately ignored, resulting in the outbreak of a deadly riot at the state prison in Jefferson City on September 22, 1954 (Schreiber & Moeller, 2004). The riot proved to be costly in lives and quite costly in dollars, due to the extensive damage to several buildings burned by the rioting inmates. When order was finally restored in the prison, four inmates were dead, fifty others

injured, and four officers were injured. On the positive side, no prisoner successfully escaped during the "Great Riot" (Schreiber & Moeller, 2004).

A number of notable reforms were introduced in the months following the riot and a few subsequent, but less dramatic, skirmishes took place that fall. These reforms consisted of new and improved menus, better health care, educational opportunities and vocational training. The most notable reform measure, though, was the state legislature creating a department of corrections with authority over probation and parole in addition to all state penal institutions (Schreiber & Moeller, 2004; McKelvey, 1977).

The Community-Based Corrections Era (1967-1980)

This era began at the height of a struggle for civil rights for minorities that coincided with ongoing concerns with prison conditions and overcrowding. The rehabilitation movement proved inadequate in the treatment of inmates, and criminological research supported the notion that crime and delinquency were the products of societal influences far beyond the grasp of probation officers, correctional counselors, and psychiatrists (Blomberg and Lucken, 2000). Further, the turbulent decade of the 1960s served as the ideal time to point out that the criminal justice system does more harm than good. Applying the precepts of labeling theory, criminologists argued that the criminal justice system's intrusive processes stigmatized offenders and created more crime than it prevented. The movement toward community-based corrections emphasized non-prison sanctions such as deinstitutionalization, diversion, and decarceration, on the premise that rehabilitation stands a better chance of occurring on the outside world rather than inside a correctional facility (Schmalleger, 2007). Thus, dealing with offenders, both adult and juvenile, in ways that diverted them from prison became the order of the day (Blomberg and Lucken, 2000).

To reflect this penological shift, Missouri greatly expanded its probation and parole services and gradually increased staff from 82 officers in 1964 to 464 in 1977. In 1979, newly passed legislation dramatically affected the state probation and parole board and its operations. An increase in misdemeanant cases assigned to the board's staff necessitated a change which limited the board assignments to Class A misdemeanors only. In addition, the new law created a conditional release program where inmates could be released under the supervision of the board once they had reached a certain point in their sentence. During this era alone, the state opened twenty-two probation and parole district offices, ranging in location from Kansas City to Moberly (Schreiber & Moeller, 2004).

The Warehousing Era (1980 to 1995)

The warehousing era reflects a time period where once again the penological pendulum has shifted to reflect societal discontent with the recidivism of offenders assigned to community release programs and the increasing occurrence of serious crimes. For example, on a national level, the prison population tripled during this fifteen-year period, from approximately 330,000 to almost 1.5 million federal and state inmates incarcerated (Bureau of Justice Statistics). As the name suggests, the term "warehousing" refers to a correctional strategy that seeks to keep offenders off the street, and thus "warehoused," in an effort to prevent future crime. This approach is a response to the harsh criticism and perceived failure of rehabilitation, which by this time had been abandoned and replaced by the "nothing works" doctrine (Schmalleger, 2007, p. 495). The "nothing works" approach unfortunately led to more punitive sentencing measures such as mandatory minimum sentencing, truth-in-sentencing requirements, and the well-known "three strikes" laws (Schmalleger, 2007, p. 495).

Missouri responded to the increasing prison population by expanding existing facilities and building new ones. In this period alone, Missouri built four new prisons, expanded the capacity and operations of four facilities, established a reception and diagnostic center, opened four treatment centers and two community release centers. One of the new prisons, the Eastern Correctional Center, was initially designed to house 512 men at the custody four (medium) level, and was the first prison built near an urban area – located in Pacific, Missouri, just thirty-five miles southwest of St. Louis. Another facility, Western Missouri Correctional Center, opened in Cameron in 1988 as an all male, 1975 bed, medium-security prison. The following year, construction began on yet another site for a prison in Mineral Point. This new maximum security prison, the Potosi Correctional Center, opened in 1989 with a capacity of 820 beds. Notably, this facility followed the Missouri State Penitentiary as the second maximum security prison in the state's history, and would serve as the home to death row inmates and those serving life-without-parole sentences. Also noteworthy, in 1987, a bill was introduced in the Missouri legislature proposing the implementation of lethal injection as an alternative to the gas chamber as a method of execution. The bill was signed into law on June 2, 1988, by Governor John Ashcroft, and the first execution by lethal injection took place in 1989 at the Missouri State Penitentiary (Schreiber & Moeller, 2004).

Methodology

Much research exists which examines various penological practices and sentencing guidelines outside the state of Missouri, but only a minimum of

scholarly attention has been devoted entirely to correctional practices within the state. For this reason, the present study seeks to contribute to the existing larger body of work by focusing specifically on past and present correctional practices in Missouri, with particular attention on the Crossroads Correctional facility as our model that exemplifies current correctional perspectives – the just desserts model. Our paper is an initial, exploratory case study intended to serve as the starting point of a future broader research project that will examine penological practices of other correctional facilities in Missouri. For the current study, an interview conducted with former Crossroads Superintendent Mike Kemna serves as a guide to examine the just desserts model in practice and to highlight the contradictions between the Missouri system's "get tough" policies and community centered restorative justice/re-entry initiatives.

The authors acknowledge the limitations inherent in a study that involves a single interview with one prison official and our focus on one correctional facility. To reiterate our earlier point, this study serves as a platform to begin a dialogue to identify possible contradictions in the system which may, in turn, expose weaknesses that need to be addressed. Likewise, our decision to limit the scope of the research to one of the newest maximum security facilities in Missouri serves to compare that institution's correctional management practices to just desserts philosophy, with an eye toward offering policy alternatives that are more consistent with the state's ongoing progressive interests.

The final analysis will offer insight into the aftermath of the just desserts policy and recommends a fresh evaluation of our penal goals and perspectives with a call for change in the way maximum security institutions and, by extension, their resident inmates, are perceived and managed.

Discussion

Numerous criminal justice studies have examined the "get tough" approach characteristic of the just desserts correctional model (Griffin, 2006; Banks, 2005; Tewksbury & DeMichele, 2003; Blomberg & Lucken, 2000). As previously mentioned, just desserts refers to the retributive nature of a punishment philosophy relying on a relationship of exchange – i.e. in Aristotelian terms, it is a matter of proportion – punishment dispensed as a result of the act committed. However, for maximum security facilities, the resident offenders receive the most severe punishment allowable – longest sentences, strict confinement, or the death penalty – because their offenses carry the maximum punishment set by statute. This contemporary perspective of corrections emphasizes individual responsibility and clearly distinguishes custody from treatment. Thus, if rehabilitation and reform are the goals of

punishment for offenders serving less time, what is the goal of a maximum-security facility?

Just Desserts in Missouri (1995 to present)

In many ways, the justice model (aka "just desserts") is a return to the original purpose of incarceration: punishment (Schmalleger, 2007). During the mid- to late-1990s, as societal focus shifted toward a no-nonsense approach to sentencing and incarceration, a booming economy provided the necessary funding to build additional prisons and expand existing facilities. For example, between 1997 and 2004, essentially the beginning of the so-named just desserts era to the more recent past, Missouri added four new prisons to the Department of Corrections, established two treatment centers, three Reception, Diagnostic, and Correctional centers, and in 2004, closed the antiquated Missouri State penitentiary and relocated to a site eight miles east of Jefferson City under the new name of Jefferson City Correctional Center (Schreiber & Moeller, 2004).

Of the four new prisons added in the just desserts era, three are classified as all male, maximum-security facilities. The opening of the Crossroads Correctional Center (CRCC) coincided with heightened popularity of the new, more punitive, sentencing guidelines that reflect the "get tough" approach of the justice model, particularly "truth-in-sentencing" restrictions and the "three strikes" laws. Accordingly, for the inmates at Crossroads Correctional Center, changes in sentencing guidelines have contributed to the development of "a very unique culture" (Kemna, personal interview, March, 2007). The population of CRCC consists of roughly 42% serving some type of life sentence, another 42% are serving very long-term sentences and the remaining group (approximately 15%) is serving short-term sentences but their behavior has earned them a bed within the structure of a maximum security prison. Because maximum security facilities are designed with long-term incarceration in mind, "[p]ost release preparation is not on our agenda" (Kemna, personal interview). The rationale is simple – inmates are not subject to rehabilitation programs and other re-entry initiatives because they are serving life sentences, many without the possibility of parole, so the underlying assumption and expectation is that they will remain in the facility. As former Superintendant Mike Kemna points out, "Why give an offender false hope? If an inmate is serving a life-without-parole sentence, or arrives at our gate with a 300 year sentence with an 85% mandate, there is no reason to lead him to believe he needs to prepare himself for release when statutorily, it is not legally possible" (personal interview).

"Getting Tough" on the Grounds of Crossroads

Considering that maximum security inmates will serve long-term prison sentences, how, then, do you manage this type of population when their daily reality is limited to confinement behind prison walls? One possibility is to offer programs within the correctional setting that mirror life on the outside designed to give inmates a sense of "normalcy" despite the contradiction imposed by their confinement. Take education for example. In the free world, acquiring an education is a fundamental right of citizens and our society places a high value on learning. This value is carried over into the prison setting, where inmates are typically allowed to participate in a GED (General Equivalency Diploma) program or some other literacy centered program. However, the GED program once in place at Crossroads has been discontinued due to budget cuts (Kemna, personal interview). In an environment where re-entry is not an option, and financial constraints are routine, someone has to decide where to trim the budget, and these decisions are based on what is essential to operate a prison and what is not. Unfortunately for the residents at Crossroads, an education program for life sentence inmates is not considered essential. Although the availability of such programs is not universal and is sometimes subject to controversy due to tax-payer costs, the rationale for offering the GED program or similar opportunities to all types of inmates, despite the length of their sentence, is grounded in the principle that attitudes and behavior can be altered – that is, corrected. (Messemer & Valentine, 2004; Gordon & Weldon, 2003; Traverse, 2000).

Affording opportunities for maximum-security inmates must be done with careful scrutiny and in moderation. As a matter of management practice, Mike Kemna exercised discretionary caution when considering what programs would be offered at Crossroads. At the time of this writing, a few of the programs/activities provided at Crossroads include Alcoholics Anonymous, a veteran's organization, and a chess club. To meet the standards set by prison policy, any activity occurring within the facility must promote the quality of life afforded to inmates, but must not interfere with prison safety regulations (Kemna, personal interview). For every new activity or program considered at Crossroads, the following questions have to be addressed: 1) Will this give any inmate the opportunity to escape? 2) Will any staff get hurt or killed? 3) Will any inmate get hurt or killed? According to Kemna, "very few ideas pass that scrutiny" (personal interview).

In addition to inmate and staff safety, other considerations relating to programs and recreational activities involve the political controversy that sometimes influences, and hinders, decision-making. Kemna routinely deferred to community standards whenever a new activity or amenity was considered. For instance,

> "While some [members of the public] do not agree with inmates having television sets, for the most part this is an acceptable standard because all homes have at least one TV set. It is acceptable to provide basic cable service to the population because most citizens have at least the basic cable service. However, if thought is given to allowing premium channels such as HBO or the NFL Network, public complaints will surface. Serving hamburger is fine; serving steak is not." (Kemna, personal interview)

For Kemna and perhaps other prison administrators, the job requires continuous balancing between legitimate inmate needs and public acceptance and support. As to the objectives for offering certain programs and amenities, the bottom line is that they are directed toward the inmate's quality of life within the institution, not without. The main goal is to provide a sense of normalcy and cultural standard in proportion to the inmate's incarceration (Kemna, personal interview).

In addition to programs and recreational activities designed for institutional living, job opportunities extended to Crossroads inmates are also directed toward basic institutional needs. Post-release consideration does not factor into the decision-making of inmate job assignments. Like the rationale for the recreational programs, job opportunities are geared toward teaching the inmate to "appreciate the value of work and their contribution to the prison community" (Kemna, personal interview). Kemna places a high priority on a clean environment at Crossroads, explaining that, 1) meticulous attention to clean living quarters and program areas boosts morale among the correctional residents, and 2) the State taxpayers will support a well-maintained public compound and have the right to expect well-kept grounds and landscaping.

Standard practice at Crossroads is for every able inmate to have a job assignment. The goal is to keep each able inmate working for six hours per day. According to Kemna, most jobs pertain to food service, maintenance, janitorial, and some offenders work as clerks. These jobs pay a minimal stipend, but the industrial assignments pay better wages relative to offender wages. Facility industry includes processing toilet paper, industrial filters, and trash bags. Although some inmates complain that being assigned menial tasks does not prepare them for release, the goals of inmate job assignments are consistent with the reality of maximum security confinement. For example, according to Kemna, "our goal is not to provide the offender with a vocational or career trade. Our goal is to keep the offender busy; give him a job which he must report to each day, and provide products in support of ours and other state institutions" (personal interview).

Restorative Justice in Missouri

The restorative justice movement in Missouri was initially a grass roots effort founded by a group of women working in criminal justice ministries who were inspired to create advocacy programs for recently released female offenders. Their efforts led to the creation of the Center for Women in Transition, founded in 1997. The goal of this organization is to assist newly released female non-violent offenders with their re-entry transition and the re-establishment of healthy lives. To meet this goal, the program offers mentors who work with these women for a year to help them secure employment and re-connect with their families.

As an extension of this successful initial endeavor, the Center sponsored the Missouri Restorative Justice Initiative in March of 2005. The Missouri Restorative Justice Coalition is a group of stakeholders assembled to assist with the implementation of the 2005 Initiative, and their primary objectives involve educating Missourians about restorative justice and promoting these practices in the state. In the three years since the initiative was introduced, the following progress has been made: Fifteen juvenile courts are utilizing restorative justice principles and practices in the disposition of some of their cases; the Missouri Department of Corrections facilitates victim offender dialogue for severe violent crimes; the Division of Probation and Parole makes "Impact of Crime on Victims" classes available through all of its district offices; several school districts now implement restorative justice practices in their curricula and in response to disciplinary cases, and finally; several adult courts have implemented Victim Impact Panels and/or Victim/Offender Dialogue. The coalition is currently in the process of organizing a state-wide meeting of selected adult court stakeholders to promote the expansion of restorative justice principles and practices in other adult courts.

Missouri legislatures recognized the importance of the restorative justice movement, and their interest in alleviating prison overcrowding combined with including victims or other affected parties in criminal proceedings has been expressed by statute. For example, the legislature enacted a statutory measure that authorized the Director of the Department of Corrections to establish restorative justice programs within the department's correctional centers. Section 217.777.1 RSMo. authorizes the Missouri Department of Corrections "to administer a community corrections program to encourage the establishment of local sentencing initiatives" (Missouri Sentencing Advisory Commission). Listed among the goals for this initiative include: 1) promote the accountability of offenders to crime victims, local communities, and the state; 2) increase the use of restitution; 3) reduce costs of treatment, punishment, and supervision of offenders, and; 4) improve public confidence in the criminal justice system by

involving the public in the development of community-based sentencing options for eligible offenders (Missouri Sentencing Advisory Commission).

However, the statutory provisions guiding the community corrections program did not provide enough alternative sentencing options and did not provide an opportunity for direct involvement of the victim or the community to participate in the process for a particular crime that affects them. Thus, in Section 217.440 RSMo., the Missouri legislature authorized the Director of the Department of Corrections to establish a program of restorative justice that expands upon the previous statutory authority governing community corrections (Missouri Sentencing Advisory Commission). Going one step beyond the statutory direction, the leadership in Missouri directed department heads and commissions to explore alternatives to the traditional model in the areas of alternative sentences, work release, home-based incarceration, and probation and parole options. Some of the models that have been considered and/or implemented in the state include: 1) Victim-Offender Mediation; 2) Community Reparative Boards; 3) Family Group Counseling, and; 4) Circle Sentencing (Missouri Sentencing Advisory Commission). Of course, the degree to which some or all of these models have been implemented depends on various jurisdictional needs and priorities, the willingness of key individuals and groups to participate in the process, and available resources. The bottom line here is that a significant change has taken place in the sentencing priorities in Missouri for certain offender classifications. In theory, it would seem as though the state's residents are calling for a major shift in overall penological goals and perspectives, but in practice the state is still divided in terms of how they sentence offenders.

Conclusion

The Missouri system has indeed evolved in the way the state has dealt with criminal offenders, mainly due to changes in public perception of criminal behavior at a given time period. As the historical account of Missouri prisons makes clear, the most consistent response to the growing inmate population in the state has traditionally been to expand existing correctional facilities and/or to build new prisons. One of the most daunting tasks facing correctional authorities in Missouri (and elsewhere) is to develop an effective method of dealing with serious criminal offenders while at the same time maintaining control over an inmate population whose increased numbers are due mostly to the punitive sentencing guidelines established by the justice model.

As research has shown us, the nature of prison (or jail) confinement produces an environment of total control, and inmates' responses to their harsh environment often times has ranged from moderately disruptive to outright

violent (Griffin, 2006; Welch, 2005; Rhodes, 2004; Barnes, 1972; Sykes, 1958). As many researchers have likewise argued, custody level and the correctional environment do have an impact on individual inmate behavior and the tendency for inmates to violate the rules of the institution (Camp, Gaes, Langan, & Saylor, 2003; Jiang & Fisher-Giorlando, 2002; Wooldredge, Griffin, & Pratt, 2001; Gendreau, Goggin, & Law, 1997). For serious offenders, however, a long-term sentence served in a maximum-security facility is the standard method of punishment practiced by the criminal justice system. Many of the most serious offenders receive a life sentence without the possibility of parole instead of the death penalty, which is a welcome alternative for death penalty opponents (Appleton & Grover, 2007). While the life without parole (LWOP) alternative may be preferred, stiffer sentencing guidelines have contributed to longer sentences served and an ever-growing prison population (Appleton & Grover, 2007; Welch, 2005; Tewksbury & Demichele, 2003; Blomberg & Lucken, 2000).

As a total institution, the maximum-security correctional facility strives to achieve social order within the institution, which is a "24-7" concern for prison authorities (Sykes, 1958). According to Sykes, this social order imposed on inmates serves as a blueprint to direct behavior. In the prison environment, social order is a means and a method of achieving goals to serve specific ends. In simple terms, the prison is an authorized instrument of the state designed to honor society's inclinations regarding criminal offenders. The difficulty, however, is that the daily operations of managing a prison complicate that relationship (Sykes, 1958). As Kemna makes clear, there are simply too many intersecting forces involved in prison administration that interfere with serving the ideal interests of justice, as the justice model, and by extension, retribution, purport to achieve.

Retribution does not take into account that a correctional facility exists to manage difficult, and often-times severely mentally ill people, and inmates present the distinct problem of involuntary incarceration, making them particularly problematic to control. In order to maintain peace and harmony in such facilities, the administration must allow certain privileges and activities to keep the group under control and parallel life in the free world. However, these activities require funding and human resources to maintain continuity, which begs the question "What happens if the money runs out?" The typical response: specific programs and activities are suspended temporarily or even indefinitely.

Too often, the general public does not understand the problems created by budget cuts and/or the political whims of a short-sighted legislature that lead to failed policy. Thus, the philosophy of retributive punishment, although sound in principle, does not in application consider the conflicting demands of

managing a large inmate population and the realities of maintaining a prison setting – when budgets are cut, programs and related resources may be the first to go (i.e. the GED program at Crossroads). In addition, other undesirable effects may consist of dietary changes to cut costs, and the reduction of staff. The unintended net effect of these budgetary cuts appears to be a form of double-sentencing, which clearly does not serve the interests of justice.

Researchers, practitioners, and policymakers need to develop a general consensus as to the purpose and mission of the maximum-security prison, and establish a shared vision as to how their stated goals can become a reality. The state of Missouri has established itself as a leader in progressive penology for adults and juveniles, but their correctional policies and priorities seemingly contrast between the justice model and restorative justice initiatives. At present, the state's correctional priorities are clearly directed toward restorative justice and newly emerging re-entry initiatives. Perhaps, quite logically, the principles of restorative justice cannot be realistically applied to maximum-security inmates. However, as Tewksbury & Demichele (2003) point out, "Our problems and shortcomings are rather clear, and they begin with a lack of shared vision, mission, and purpose. If we cannot know where we are going, how can we expect to know how to get there?" (p. 12). Missouri has taken several steps in the right direction, but without a clear vision and common goal for the entire correctional system and its resident inmates, regardless of custody level, how do we really know where we are going?

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The Rhetoric of a Liberal Judiciary

Michael Bogner
Chadron State College

Luke Perry
Southern Utah University

Partisan efforts to limit judicial discretion and the role of judges have intensified over the last decade. This was done through a rhetorical campaign designed to enhance scrutiny and oversight of "activist" or "liberal" judges. This research highlights these activities and examines the political motivations, the measure of public support and the difficulties in using general labels such as "liberal" when discussing the judiciary. The core of the paper summarizes research on criminal justice related rulings of "liberal" appointees. The authors conclude that this research consistently indicates that judicial rulings do not support the rhetoric of a "liberal" judiciary and recommend that a deeper understanding of liberalism be adopted when evaluating the judiciary, similar research is conducted at the state level and this evidence be used to refine criticism of the judiciary as a whole.

Introduction

Claims of judicial activism and denunciations of "liberal" judges have long been a staple of conservative groups (Byrd, 2000). Oldfather (2006) found in 2005 that a simple search of the Westlaw database produced 2,571 documents using the phrase "judicial activism" and 2,159 using the phrases "activist judge" or "activist judges." Unpopular decisions have subjected judges to personal attacks and occasionally to calls for impeachment and removal (LaForge, 2006). Former Chief Justice William H. Rehnquist remarked in his 2003 and 2004 year-end reports that "criticisms of judges has dramatically increased in recent years" and "the traditional interchange between the Congress and the Judiciary broke down" with "dramatic changes to the laws governing the federal sentencing process" (Rehnquist, 2003 & 2004). Pundits, special interest groups, the public and political leaders regularly call for restrictions on "liberal" judicial activities. Attacks from governmental and nongovernmental quarters label this "judicial usurpation" a "constitutional crisis" and call for conservatives to "raise the temperature of judicial politics" (George & Ponnuru, 1998).

Many conservatives have answered the call including politicians at every level of government and interest groups such as Focus on the Family, the Heritage Foundation and the Federalist Society for Law and Public Policy

Michael Bogner is Associate Professor of Justice Studies at Chadron State College.

Luke Perry is Assistant Professor of Political Science at Southern Utah University.

Studies. Judges in recent years were severely criticized for being too political, deciding cases based on personal agendas, ignoring moral values, being soft on criminals and deciding matters not properly before them. There have been increased efforts to overturn judicial decisions, to limit the jurisdiction of the courts, to constrain judges' sentencing discretion and to monitor judicial sentencing departures. These activities were evident in Congress, the executive branch, state governments, the private sector and the 2008 presidential campaign.

Former House Majority Leader Tom Delay was one prominent example of a member of Congress seeking to publicly erode the credibility of the courts and legislatively restrict judicial independence. Delay stated that federal judges were "responsible" for the death of Terri Schiavo and would "answer for their behavior" (Klein, 2005). Delay asked the House Judiciary Committee to examine the role of federal judges in the case and consider whether or not to impeach them. Similar rhetoric was adopted on the floor of House. Representative Louie Gohmert delivered a particularly scathing critique of the Supreme Court on March 10, 2005. Gohmert claimed the Court made judgments "based on their feelings of what is going on," had become "a witness, an investigator, a pollster, a wind gauge" that "denies the fundamental right of the parties to have due process," and boasts a membership "that have caused the system to be so out of whack that it flips its own ruling to and fro in a whimsical sort of destruction of civilized and constitutional jurisprudence (Gohmert, 2005)." The "disgustingly subjective and arbitrary process" that guides the Supreme Court led Gohmert (2005) to call on "devoted Americans to say and to pray in earnest, 'God save us from this Supreme Court,' and then remove those who have ceased being judges and have become the worst nightmares of our Founding Fathers."

Such criticisms were not unique to the House, nor were these criticisms mere rhetoric. Former Pennsylvania Senator Rick Santorum, for example, castigated "liberal" judges at Justice Sunday III in 2006, an evangelical protest organized by conservative interest groups in opposition to the federal judiciary, for "destroying traditional morality, creating a new moral code and prohibiting any dissent" (New Jersey Record, 2006). Recent Congresses attempted to provide oversight of the courts, restrict what issues courts can rule on and restrict the manner in which courts decide cases. In 2005, for example, House Judiciary Committee Chairman James Sensenbrenner led an investigation into whether Congress needed "to create an office of inspector general for the federal judiciary" (Hodak, 2005). The 108th Congress proposed legislation to bar federal courts from hearing constitutional challenges to the Pledge of Allegiance. The 109th Congress proposed legislation to prohibit international law from being taken into account when interpreting the Constitution as was done when the Supreme Court struck down the death penalty for minors.

John Ashcroft, Alberto Gonzalez, and Karl Rove are three examples of powerful members of the executive branch who adopted the rhetoric of a "liberal" judiciary. Former Attorney Generals Ashcroft and Gonzales ordered U.S. Attorneys to monitor judicial activity and to report judges who handed down criminal sentences that the government felt were not harsh enough. Ashcroft and Gonzales claimed such actions were pursuant with the Feeney Amendment to the Protect Act enacted in 2003 (Manson, 2005). In July of 2004, Ashcroft issued a memorandum to all federal prosecutors outlining the Department of Justice's policies with respect to downward departures (Allenbaugh, 2003). The memo stated that prosecutors should not acquiesce to departures except in rare occurrences. When judges imposed downward departures over prosecutors' objections, the memo required prosecutors to report departures to the Department of Justice. The House and Senate Judiciary committees also received reports on which judges were granting defendants' requests for downward departures from the federal sentencing guidelines. In January of 2007 Gonzales publicly warned federal judges not to meddle in certain affairs. Gonzales told the American Enterprise Institute that federal judges were not equipped to make decisions regarding actions the president takes in the name of preserving national security (Gonzales, 2007). Karl Rove, the former Deputy White House Chief of Staff, denounced "liberal judges" for engaging in "judicial imperialism" and promised reform of a federal judiciary that was "fundamentally out of touch" with mainstream America (Chen, 2005). Rove criticized the U.S. Supreme Court for ruling that the national consensus prohibited the imposition of the death penalty on murderers who committed their crimes under age 18, the Massachusetts Supreme Court for upholding same-sex marriage and the 9th U.S. Circuit Court of Appeals in San Francisco for ruling in 2002 that the phrase "under God" in the pledge of allegiance was unconstitutional.

There are numerous examples of efforts at the state level to limit the activities of "liberal" judges. Three prominent examples include South Dakota's Amendment E, Colorado's Amendment 40, and Oregon's Ballot Measure 40. Amendment E, otherwise known as the J.A.I.L. Amendment or Jail for Judges Amendment, sought to make South Dakota judges civil and criminally liable for the "deliberate disregard of material facts" as well as "blocking a lawful conclusion of a case." Presumably, any judicial decision granting or denying a motion for summary judgment would have qualified. The initiative called for an amendment to the state constitution that created a special grand jury to judge issues of law and fact in complaints against South Dakota judges with the authority to remove judges from office and to refer judges for criminal prosecution. Amendment E was defeated by voters in 2006. Colorado's

Amendment 40 sought to limit state Supreme Court judges and appellate court judges to ten years of service. The campaign chair of proponent group Limit the Judges argued that the amendment was necessary to "protect against judges getting a God complex" and to curb a disturbing pattern of judges "acting as if they were legislators and going beyond their responsibility of interpreting the law" (Heidelberg, 2006). Amendment 40 was defeated by voters in 2006. Five of seven sitting judges could have been replaced if the measure had passed. Ballot Measure 40 in Oregon unsuccessfully attempted to require state Supreme Court and appellate court judges be elected by district. Supporters argued the measure would make judges more accountable to the people and better represent various areas of the state. The measure was defeated in 2006.

The rhetoric of a "liberal" judiciary was evident in the private sector as well. These currents run particularly strong with conservative interest groups such as Focus on Family and the Heritage Foundation. Bruce Hausknecht, judicial analyst for Focus on Family, uses the organization's website to explain how over the past 60 years the Supreme Court has shifted from its constitutional mandate to legislate from the bench. Urged on by liberal special interest groups the Court created privacy rights "out of thin air" and "mandated new social policies" including the right to abortion and the right to homosexual sex. Such activism by "unelected and unaccountable judges" runs counter to the intentions of the Founding Fathers. The one way to reverse "this unconstitutional and ungodly trend" is through appointing people with a judicial philosophy closer to the Founders. According to Hausknecht, liberals are "justifiably afraid of attempting such extreme social change through the legislative process" and "unabashedly oppose any change in the judicial juggernaut they have created to bypass the will of the majority" (Hausknecht, 2008). This echoes the sentiments of founder James Dobson who stated in one of his monthly letters from August of 2002 that the "liberal judiciary" was "running amok in this land" because "liberal judges" were seizing every opportunity to eliminate all references to God in American public life via judicial precedent.

Those inclined to dismiss Focus on Family as part of the far right political spectrum should consider that Dobson's internationally syndicated radio programs are broadcast over 3,000 facilities in the United States and over 4,000 facilities in 160 other countries, which according to Dobson, reach 225 million people each day. Dobson has also written 36 books, one of which, *Dare to Discipline,* resides in the White House Library. Considering recent tensions between political conservatives, such as George Will and Christine Todd Whitman, and religious conservatives, such as white evangelicals, one might expect divergence among these groups regarding attitudes toward the judiciary. This is not the case. Edwin Meese, a former Attorney General and a former

presidential adviser to Reagan, currently serves as the Chair of the Heritage Foundation's Center for Legal and Judicial Studies. In 1997 Meese articulated his views on the judiciary in the private sector and before Congress. Meese argued that "the federal judiciary has strayed far beyond its proper functions," so much so, that "in no other democracy in the world do unelected judges decide as many vital political issues as they do in America." Federal judges have exceeded their proper role of interpretation and in doing so, betrayed the Constitution and produced poor public policy. This has "desecrated the principle of self-government" and left the Supreme Court as the self-appointed "arbiter of the nation's moral values" (Meese, 1997).

The rhetoric of a "liberal" judiciary was also evident in the 2008 presidential campaign. The Federalist Society asked each presidential candidate to discuss the kinds of judge he or she would appoint if elected president. Republican nominee John McCain stated that "one of the greatest threats to our liberty and the Constitutional framework that safeguards our freedoms are willful judges who usurp the role of the people and their representatives and legislate from the bench." McCain maintained that if elected he would "nominate judges who understand that their role is to faithfully apply the law as written, not impose their opinions through judicial fiat" (Federalist Society, 2008). According to McCain this has been his view for some time reflected in his "consistent opposition to the agenda of liberal judicial activists who have usurped the role of state legislatures in such matters as dealing with abortion and the definition of marriage."

These sentiments were echoed in the statements of McCain's top rivals in the Republican primary. Mike Huckabee shared McCain's view that "one of the greatest ongoing threats to our constitutional republic is the ever-increasing politicization of the federal judiciary" and "flatly reject(ed)" the notion of a "living" constitution. Mitt Romney claimed that "too many of our country's most important issues are being decided by unelected judges." In turn, America needs "men and women who will adhere to the Constitution and the rule of law" because "our nation simply cannot afford judges who legislate from the bench and who are willing to depart from the Constitution to advance a narrow agenda" (The Federalist Society, 2008).

The rhetoric of a "liberal" judiciary was clearly evident at different levels and branches of government, including powerful positions in both the legislative and executive branches. This rhetoric and related concerns were also prevalent in a number of state referendums, the viewpoints of socially conservative and politically conservative interest groups and the campaigns of recent conservative presidential candidates. This development raises the following questions: 1) Why

did conservatives adopt the rhetoric of a "liberal" judiciary? 2) How does this rhetoric fit with public attitudes?

Explanations of the Criticisms and Name-Calling

There are several potential explanations of why conservatives label the federal judiciary as "liberal." Electoral politics certainly plays a role. Political parties and interest groups understand the role of federal judges in shaping issues such as civil rights, reproductive rights, environmental protections, consumer protections, labor regulation and economic regulation. Judges get lumped together with liberal political opposition when judicial decisions do not fit with conservative policy preferences. This helps conservatives solidify their base, mobilize voters and raise money. These efforts also help connect a historical pillar of conservative political thought, the desire to limit the power of the federal government, with contemporary backlash against undesirable policy changes. This connection is particularly useful when considering inconsistencies in the Republican platform. Republicans theoretically advocate a more limited role for the federal government, but the federal deficit grew to historically high levels under each of the last two-term Republican presidents, Ronald Reagan and George W. Bush. This was in sharp contrast to the projected surplus created under Bill Clinton, the last two-term Democratic president. Blaming another branch or party for the extension of the federal government in broad language limits evaluation and criticism surrounding the shortcomings of your party.

Some argue that elected officials actually promote judicial power to safely resolve difficult policy issues in order to shield themselves from criticism. Pushing politically divisive issues to the federal judiciary enables political leaders to overcome weaknesses in their partisan coalitions, avoid making decisions on matters that cross partisan lines, and engage in credit claiming (Graber, 2006). Graber explains how "Rehnquist court decisions limiting the scope of national power under the 14th Amendment enabled Republican legislative officials to express public sympathy for rape victims, religious minorities, and the disabled, while minimizing Republican political accountability for the judicial decisions declaring those legislative efforts unconstitutional." Politicians could safely tell their constituents "(w)e tried . . . but the courts wouldn't let us," knowing that their actions were constitutionally suspect all along.

Institutional control also contributes to the rhetoric of a "liberal" judiciary. Republican power at the national level grew tremendously with the Republican Revolution of 1994, where the party displaced the historical control of Congress by Democrats. This trend was enhanced by the 2000 election when Republicans regained the presidency in dramatic fashion, an institution

Republicans dominated since Vietnam, as America elected the son of the previous Republican president. Republican dominance of the executive and legislative branches left the remaining branch, the judiciary, the only unelected branch, particularly ripe for criticism even though the majority of federal judges were nominated by Republicans.

Case volume is an issue as well. Courts deal with more cases than ever before. Oldfather (2006) notes how federal courts of appeals in 2003 faced more than fifteen times as many cases than 1960. State level appeals per judge grew by 450% over the same time span (Oldfather, 2006). Growing caseloads and pressures to keep pace with dockets is significant in several ways. Judges are less involved in screening cases, fewer cases receive oral arguments and fewer parties have the opportunity to participate in oral arguments. It is more difficult for judges to act as direct participants throughout the decision-making and opinion generation process. There are more memorandum and order opinions, while judges have less opportunity to focus exclusively on each case for a fixed period of time. Oldfather (2006) argues that this volume issue and related procedural changes increases the distance between a judge and his or her work. Courts are less likely to satisfy their adjudicative duty and more likely to overlook difficult or troubling claims. In contrast to "liberal" or "activist" labels, Oldfather (2006) suggests that "judicial inactivism," bureaucratization," or "impersonalization" are more appropriate.

A final factor to consider is that courts decide cases over which reasonable people disagree. Regardless of how cases are decided, someone is going to be angry (Neil, 2005). Some cases draw criticism because they create new legal standards or because of the way they interpret and apply existing law. Many of the cases that cause consternation are the hot-button constitutional issues of the day. According to Theodore Olson, former U.S. solicitor general, courts are not just deciding cases. They are deciding rights such as freedom of religion, rights to privacy, and property rights. "At that level, there's not just a losing party, there's a losing point of view" (as cited in Neil, 2005). The judicial branch's very power to decide these issues and to bring about the "loss of a point of view" on isolated issues is a source of wrath. In turn, labels like "liberal" and "activist" become code words for "I don't like that decision" and the judges who decide these cases become the targets of name-calling and generalizations, often by issue-driven interest groups.

Though insightful, these explanations do not address a deeper question regarding the rhetoric of a "liberal" judiciary when considering its role in our popular government. Does the public support or agree with these labels and calls for greater judicial oversight commonly adopted by conservatives? "Government by judiciary" is a traditional warning from those who seek to limit the authority

of the courts (Schauer, 2006). Implicit in this warning is the belief that much of the task of governance and policymaking was commandeered by the judiciary. The Supreme Court and the unelected federal judiciary are most frequently the objects of worries about judicial activism. Schauer's (2006) research directly challenges the claims that the country was or is in jeopardy because of the actions of the federal judiciary. According to Schauer a "vast majority of the publicly salient decisions are being made by the people themselves or by institutions more responsive to popular control" than the courts (Schauer, 2006, p.53).

Schauer (2006) uses polling data and a study of the news media studies to ascertain what issues are viewed as particularly important to Americans. Specifically, Schauer cites Quarterly Harris Poll data from 2001 to 2006 which demonstrated a fairly consistent list of issues that people cared about most as gathered in open-ended responses to the question of what are the most important issues facing the country and its government. These issues included Iraq, the economy, healthcare, gas prices, education, social security, terrorism, and taxes. This data was consistent with Gallup's Most Important Problem data for the same time period. Schauer examined media coverage as a second measure of the public's consciousness. A one year review of front-page stories from the *The New York Times, The Lost Angeles Times,* and *USA Today* found that issues of race, sexual orientation, abortion, gender, and religion garnered a low amount of attention. Instead, the public agenda focused on Iraq, terrorism, gas prices, healthcare, immigration reform, social security, corporate scandals, bird flu, the minimum wage and nuclear capabilities of countries such as Iran and North Korea.

This is significant in two ways. First, while homosexual rights, abortion, the role of religion in society and the death penalty are highly important and polarizing issues, they have been far less important to the public than critics of the judiciary assume. Secondly, whether measured in terms of public opinion data or media studies, issues dominating the public's consciousness did not fit well with the issues being addressed by the federal judiciary. Schauer (2006) surveyed the Supreme Court's docket in an attempt to determine if the Court's agenda overlapped with the public's agenda. Very few of the public's major issues came anywhere close the purview of the judiciary. The data suggested that the public is very concerned about Iraq, for example, but the wisdom, legality, or conduct of the conflict does not constitute a significant part of the Court's work. Furthermore, the Court did not deal with fuel prices, the minimum wage, income taxes, the estate tax, social security, inflation, interest rates, bird flu, or nuclear threats and dealt just minimally with healthcare, employment, and education.

An examination of the Supreme Court's 2005 Term provided another interesting contrast between public issues and the judiciary's work. As in most of the Court's recent history, its output in the 2005 Term led with issues of criminal law and procedure. This category encompassed 31 of the 82 cases the Court decided with opinions and on the merits. Some of these cases were significant to criminal procedure and these issues plainly connect the public's concern with crime. Smith (2003) submits that the Court's attention to criminal justice is a predictable consequence of Congress "federalizing" more crimes, the expansion of federal law enforcement agencies and subsequent increases in investigations prosecutorial decisions. Interestingly, however, issues of crime and violence were not appreciably salient for the public in the past decade (Schauer, 2006). Once again there was distance between what the public is concerned about and what the judiciary actually does.

There are clearly several explanations of why conservatives adopt the rhetoric of a "liberal" judiciary even though recent empirical research challenges the claim that the judiciary constitutes a significant threat to American governance. Even if the threat level is not as high as some conservatives suggest this does not necessarily mean that "liberal" is an inappropriate label for federal courts and judges.

American Liberalism and Jurisprudence

In the context of Criminal Justice classifications of "liberal" or "conservative" are commonly modeled on the criteria adopted by the Supreme Court Judicial Data Base (Smith, 2003). Liberal decisions are pro-person accused or convicted of a crime, pro-civil liberties or civil rights claimant, pro-indigent and anti-government in due process and privacy. Conservative decisions favor the government's interests in prosecuting and punishing offenders over the recognition or expansion of individual rights. These definitions are helpful, but would be enhanced by taking into account the larger political, social and economic dimensions of liberalism as understood through the lens of American political thought. The historical roots of liberalism date back to 17th century European political philosophers, such as Thomas Hobbes and John Locke, who sought to liberate citizens from government oppression by placing limits on the powers of absolute monarchies, the typical form of Western governance at the time. Economic liberals, such as Adam Smith, argued that minimal government intervention in the economy would promote innovation to the benefit of all society by allowing innovation to be naturally rewarded with profit. These ideas were highly influential in the creation of the United States. American liberalism has experienced several modifications and reinterpretations from the Founding to today.

Building on Locke, Thomas Jefferson wrote in the Declaration of Independence that Americans were entitled to the natural rights of life, liberty, the pursuit of happiness and rebellion if any of the three previous rights were violated. Slavery ran counter to these universal conceptions and related tensions were violently resolved in the Civil War, which many consider to be America's second founding. Lincoln inserted a pivotal correction to America's priorities in the Gettysburg Address (1863) stating that America will experience a new birth of freedom in which our nation conceived in liberty will henceforth be dedicated to the proposition that all men are created equal. This redirected the mission of the Declaration toward greater equality where previously our nation was dedicated to expanding freedom. Lincoln is currently recognized as the founder of a conservative Republican Party even though he and Congressional representatives, known as Radical Republicans, fundamentally reinterpreted the American experience.

American liberalism underwent several periods of change after the Civil War. Towards the end of the 19th century, Social Darwinists sought to apply the theory of evolution to political, economic and social realms. "Survival of the fittest" was used to explain and justify societal inequalities that received little attention in classic liberalism. This gave way to a new wave of predominant liberal thinking early in the 20th century that was much more critical of government inaction in the face massive economic inequality as a result of industrialization. Progressive presidents, such Theodore Roosevelt and Woodrow Wilson, sought to use the national government to make industry more accountable to the collective good by creating a "new nationalism" and a "new freedom." In doing so, Roosevelt and Wilson embraced "use of the central government as a necessity in the increasingly complex modern world" (Dolbeare and Cummings, 2004, pp.422). This provided the theoretical foundation for the New Deal, a second significant reinterpretation of the American experience.

Whereas the Civil War established the supremacy of the federal government over state governments, the economic consequences of the Industrial Revolution began to shift societal attitudes toward viewing the federal government as a potential means of positive change. America at large rejected the hands-off approach of Herbert Hoover and looked to the federal government for immediate help in the depths of the Great Depression. The New Deal became the single greatest expansion of federal and presidential power in American history. Rather than creating a new term to describe the new relationship between state and society, Franklin Roosevelt instead redefined the very meaning of liberalism. In the famous Commonwealth Club Address (1932) Roosevelt explained how the creation of a strong national government was necessary to free individuals from the dominance of private financial interests. Roosevelt claimed

the task of government was to create a new economic order. With the profound political and economic changes surrounding the Great Depression the remaining elements of classic liberalism were dead. A mixed economy, a mix of socialism and capitalism, became the norm throughout America and Western Europe.

In contrast to Roosevelt's fundamental reinterpretation of liberalism, the postwar emphasis of American liberalism was ideological continuity, rather than variance. With the ideology of fascism defeated, liberal political thinkers sought to fortify the American experience against the growing ideological threat of Communism. The struggle for Civil Rights and the fallout from Vietnam influenced the creation of several major social movements in the 1960s, which produced yet another period of significant political change. This turbulence was the source for the New Left, centered on the student activism of the Port Huron Statement (1962), John F. Kennedy as a symbol of change for young Americans, and Martin Luther King, who offered a dream of racial equality through civil disobedience. The turbulence of the 1960's was also the source of the New Right, which centered on controlling dissent and restoring traditional values, led by Barry Goldwater, Richard Nixon, and Ronald Reagan. These cleavages from the 1930s and 1960s continue to divide contemporary American politics and help inform and antagonize the rhetoric of a "liberal" judiciary.

The historical core of liberating individuals from government oppression remains in liberalism today, but the role of government in this process has shifted from a belief that greater government involvement in society was antithetical to the expansion of individual freedom to the belief that greater government involvement in society is essential to the expansion of individual freedom. This redefinition of American liberalism was the product of new challenges surrounding race relations and mass inequality. Many contemporary conservatives view this current form of liberalism as an illogical and incoherent ideology that endangers the status quo and jeopardizes the protection of traditional political principles and societal norms. Judicial activists are commonly understood as "liberal" judges who see the Constitution as a living and changing document while judges who practice judicial restraint are "conservatives" who believe in a narrow interpretation of the Constitution by adhering to the original text (Wilson, 2006). Judicial critics in particular often use "liberal" interchangeably with "activist" and accuse activist judges of finding nonexistent constitutional rights to strike down policies of elected officials.

Some take exception to this. Wilson (2006) argues that if a central tenet of the judicial restraint school is the need to respect the policy-making powers of democratically elected legislative bodies, history tell us that "conservative" justices and courts have often worn the mantle of judicial activism. Graber (2006) puts forth the *Lochner Court* and the *New Deal Court* as past examples

and the *Rehnquist Court* as a recent example. According to Graber (2006), the *Rehnquist Court* struck down federal laws at unprecedented levels and found new First Amendment, Tenth Amendment, Commerce Clause, and state sovereignty limitations on federal power. Conservative Justices on the Court encouraged conservative activism and called for new constitutional limitations on government grounded in the Second Amendment, the Public Use Clause, the Necessary and Proper Clause, and the Spending Clause (Graber, 2006). In turn, the "conservative generation that called on liberal Justices to exercise judicial restraint is rapidly being replaced by a younger generation of scholars who are as eager to employ judicial power on behalf of conservative causes as the previous generations of liberals was to employ judicial power on behalf of liberal causes (Graber, 2006, pp.683-684)."

Numerous scholars have sought to determine whether judicial voting behavior can be characterized as "liberal" or "conservative." These studies were primarily conducted at the federal level. Robert Carp and his colleagues (Carp, Manning, & Stidham, 2004) analyzed more than 70,000 U.S. District Court cases from more than 1,700 judges over a 75 year span using a liberal-conservative dimension involving civil rights and liberties, labor and economic regulation and criminal justice. In 2001, Carp and his colleagues sought to compare general liberal-conservative voting propensities of Clinton judges to the appointees of six other modern chief executives. In the realm of civil rights and civil liberties Carp (2001) labeled judges "liberal" if they extend civil rights and civil liberties in contrast to "conservative" judges who limited these rights and liberties. In the realm of labor and economic regulation judges were labeled "liberal" if they "favored the claims of the economic underdog" in contrast to "conservative" judges who sided "with the legal arguments of business." In the realm of criminal justice, judges were labeled "liberal" if they were "more sympathetic to the motions made by criminal defendants" in contrast to "conservative" judges who believed that the government had acted properly.

Carp's (2001) review of voting patterns in Clinton's judicial appointees found that 44 percent of the decisions cast by Clinton's District Court appointees were liberal. This score was well below the 52 percent score of judges selected by Lyndon Johnson and Jimmy Carter and more in line with the average liberalism score of the Republican cohort, 39 percent. In the realm of criminal justice, 33 percent of Clinton's trial court judges favored the motions of criminal defendants. This was only two percentage points more liberal than the scores of judges appointed by H.W. Bush (Carp, 2001). George W. Bush's judicial appointees were among the most conservative in recent history when it comes to cases involving civil rights and civil liberties. Bush's appointees delivered liberal decisions 28 percent of the time in cases involving civil rights and civil liberties

compared to Reagan's appointees at 32 percent, H.W. Bush's appointees at 32 percent, and Clinton's appointees at 42 percent (Carp, 2004). When considering other categories such as criminal justice, labor regulation and economic regulation Bush and his GOP predecessors scored relatively similar. Likewise, there was little difference between Bush and Clinton judges in terms of economic, criminal, and labor law (Carp, 2004). Similar to Carp, Haire used a liberal-conservative dimension involving civil rights and civil liberties, labor and economic regulation and criminal justice to examine judicial voting in the U.S. Courts of Appeals from 1993 to 1999. While Clinton appointees to the Courts of Appeal offered more support of the liberal position in the realm of civil rights, Clinton judges regularly joined panel majorities of judges selected by Republican presidents (Haire, 2001). Haire concludes that Clinton appointees to these courts should be characterized as moderate when compared to judges appointed by other presidents.

No one denies that officials in each administration establish judicial selection procedures that are generally consistent with their president's views concerning court appointments (Goldman, 2001). Likewise, one would be foolhardy to deny that judicial appointments are intended to advance a policy agenda or that the confirmation process can be turned into an obstacle course fueled by partisan and ideological divisions (Goldman, 2001). Still, the rhetoric of a "liberal" judiciary does not fit well with the research of Carp, Manning, Stidham and Haire that empirically evaluated voting records of federal judges across parties and time. In turn, rulings by "liberal" appointees do not confirm the characterization that these judges are zealots who regularly find new rights buried in the text of the Constitution. While Clinton appointees certainly produced "liberal" decisions, the number of these cases was limited (Carp, 2001). The voting records of these appointees would more accurately be characterized as centrist or moderate than vehemently criticized as extraordinarily liberal or consistently liberal.

Conclusion

Over the past decade the label of "liberal" was employed by conservatives at all levels of government, conservative interest groups and Republican presidential candidates to describe the conduct of the federal judiciary. The increasingly critical nature of this label raised concerns regarding the long tradition of judicial independence in American politics and justice. This research examined the nature and validity of the "liberal" label as employed. There are several explanations why the term "liberal" was used by conservatives to describe the federal judiciary: 1) frustration regarding unwelcome decisions in high profile cases; 2) fear regarding the erosion of traditional social norms; 3)

helped mobilize the Republican Party base; 4) enabled conservative political leaders to overcome weaknesses in their party coalitions; 5) helped obfuscate electoral responsibility for failed policies and unrealized policy preferences; 6) institutional conflict emanating from historically unprecedented Republican control of the legislative branch from 1994 to 2006 and reasserted dominance of the executive branch beginning in 2000; and 7) genuine disagreement over the role of government in American society.

Past studies that evaluated "liberal" and "conservative" voting patterns were summarized. Related findings did not support the rhetoric of a "liberal" judiciary, nor did studies indicate that the perceived dangers related to such criticisms resonated with the primary political concerns of mainstream America. Liberalism scores of Clinton judges were less liberal than previous Democratic appointees and comparable to Republican appointees. As a result, the federal judiciary deserves to be recast in a new vernacular that should remain critical, as is necessary in any form of limited government, but sheds the inaccurate "liberal" label and dire forecast regarding the future of American jurisprudence and governance.

Future work on this topic would be enhanced by greater incorporation of American history and political thought in developing "liberal" and "conservative" measures of judicial behavior which are overly simplistic as currently constructed. Furthermore, most studies of the "liberal" judiciary and efforts to restrict judicial independence are focused on the federal government while the most pronounced and creative efforts to limit or abolish judicial independence are found at the state level. Through further research and communication the proper balance between judicial criticism and the protection of judicial independence can be established in a manner that promotes greater understanding of political and judicial developments. This is superior to the current rhetoric that fuels misunderstanding and antagonizes misperceptions already heightened by the new mediums of the communication age. The importance of this undertaking supersedes potential partisan gains on either side of the aisle and points to a significant practical role for academia: empirically evaluating important aspects of the common political and judicial parlance of our times to enhance the validity of contemporary discourse.

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Legislative Opinions Concerning Terrorism Response Funding and Likelihood of Attack: The Case of Texas

James J. Vardalis
Shannon N. Waters
Tarleton State University

Law enforcement funding, training, and equipment for terrorism prevention and response continues to be obtained through budgets approved and submitted to local governments by local agencies. However, recent substantial increases in financial support have emerged by way of requests to state government agencies. State representatives have a critical role in locating, supporting, and endorsing the funding of proposals for terrorism related issues. Little is known about state representatives' opinions regarding terrorism threats and related concerns. Based on a survey of the 150 Texas state representatives in 2009, the authors were able to extract some important findings on this subject. The opinions obtained included how important legislators felt it was to locate funding for terrorism related issues for local law enforcement and how likely legislators felt a terrorist attack or event was in Texas. Based on the evidence collected and analyzed, a number of important findings are discussed.

Introduction - Defining Terrorism

As a result of extensive research and discussions with local elected officials and local law enforcement personnel regarding the topic of terrorism, it is obvious the term "terrorism" is without question, ambiguous at best. This ambiguity may provide an obstacle for understanding the strategies of law enforcement and therefore impede the search for funding and application of prevention measures.

Prior to the terrorist attacks of 9/11, the role of police was traditionally one of law and order maintenance. The community policing model was just emerging as the preferred choice of service delivery and police were struggling to adapt and train their personnel for the transformation. The concept of preparing and reacting to a commercial aircraft being used as a weapon of mass destruction or an anthrax exposure in an enclosed office complex was unthinkable among even the most progressive law enforcement agencies.

Comprehending this new social threat is difficult for Americans. A reasonable and consistent reaction to attempting to understand and identify the innumerable facets and components associated with this complicated issue has been to create a uniform working definition. A concrete definition of terrorism is

Dr. James J. Vardalis is an Associate Professor and Director of the Criminal Justice Program at Tarleton State University in Stephenville, Texas.

Ms. Shannon N. Waters is a Teaching Assistant at Tarleton State University. She will graduate with her Masters Degree in Criminal Justice in May, 2010 and will then pursue her Ph.D.

still elusive and differs among geographical areas and agencies throughout the country. Despite the national and international focus on terrorism since the events of September 11, 2001, there has been no consensus on a universally accepted definition of terrorism. According to the U.S. Department of State, terrorism is "premeditated, politically motivated violence perpetrated against noncombatant targets by sub-national groups or clandestine agents, usually intended to influence an audience (U.S. Department of State, 2002). According to the FBI, domestic terrorism refers to "activities that involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state; appear to be intended to intimidate or coerce a civilian population; to influence the policy of a government by mass destruction, assassination, or kidnapping; and occur primarily within the territorial jurisdiction of the United States" (18 U.S.C. 2331 (5)). Furthermore, the FBI has a separate definition for international terrorism: "violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state. These acts appear to be intended to intimidate or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of a government by mass destruction, assassination or kidnapping and occur primarily outside the territorial jurisdiction of the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum" (18 U.S.C. 2331 (5)).

With no consensus on the precise nature of what constitutes a terrorist act, it is difficult for local law enforcement and state legislators to ascertain what terrorism preparedness is and to determine what type of training and funding should be obtained to combat potential terrorist activities (Pelfrey, 2007). As most federal funds are first allocated to state agencies to allocate to local agencies, it is important to understand the opinions of state legislators in regards to the importance of obtaining funding for terrorism prevention and reaction measures.

Review of Related Literature - Population of Study

Legislative authority in Texas is exercised by the Senate and the House of Representatives. The House of Representatives is the lower house of the Texas Legislature and is comprised of 150 members. Each member is elected for a two year term. There are no term limits for Representatives. The Legislature meets in odd numbered years. Regular sessions are convened on the second Tuesday in January at 12:00 p.m. Regular sessions may not exceed 140 days, but special sessions may be called for legislation the governor deems critically important to

conducting state affairs. These sessions cannot last more than 30 days and may only pass laws on subjects submitted by the governor. Demographically, the current 81st session is 50.7% Republican and 49.3% Democratic. In terms of gender, males are the majority with 78%, while females constitute 22% of the legislators. The current Speaker of the House is Joe Straus, a Republican, and the Speaker Pro Tempore is Craig Eiland, a Democrat.

The Texas Constitution sets out the legal requirements for eligibility to the House of Representatives. A House member must be a citizen of the United States, a qualified voter, a resident of Texas for two years prior to the election, a resident of their district for one year prior to the election, and at least twenty-one years old (Momayezi, Stouffer, Billeaux, Gutierrez, Miller, Millstone, Price, & Waters, 2008).

Although the Texas Legislature has no formal educational or professional requirements, people in the professional and business fields are most likely to become legislators in Texas. In 2005, 30% of the House seats were held by lawyers and business professionals held 24% of the seats. Currently legislators are paid annual salaries of $7,200 and receive a per diem for room and board expenses while in session (Momayezi et al., 2008). With so little pay and so much time allowed to devote to private business ventures, it could be suggested that decisions and opinions could be influenced by experiences and interests outside the political arena.

Attitudes of State Legislators

There has been little empirical evidence relating to legislative attitudes concerning the importance of obtaining funding for terrorism prevention and reaction measures and the likelihood of a terrorist event in Texas. This is due in part to the fact that most research has been directed to police chief, sheriffs, and state police, while little attention has been paid to legislators' opinions. The lack of empirical evidence may also be explained by historically low response rates by legislators to surveys. For example, the Becker and Mackelprang (1990) survey of Florida legislators resulted in a 10% response rate and the Tomas Rivera Policy Institute (2005) survey of California legislators resulted in a 26% response rate. Even studies that targeted chiefs of staff and legislative directors from legislators' offices have produced response rates as low as 8% (Petersgroup, 2006). Finally, the Kurtz (2008) study of response rates to email surveys produced the lowest response rates with only 6% returned.

There is considerable research indicating that legislators are at times inundated with interest groups seeking responses to survey questionnaires ranging from insurance issues to social services. This constant seeking of views of legislators may contribute to the consistently low response rate.

Funding for Terrorism Prevention/Reaction Measures

The Homeland Security Presidential Directive 5 acknowledges that the initial responsibility for responding to incidents of domestic terrorism will fall on state and local authorities (Bush, 2003). In recognition of the large role local police and sheriffs will play in the prevention of and response to terrorist events, the Homeland Security Appropriations Act of 2008 allocated $4.6 billion for first responder and port security grants for state and local public safety agencies (Committee on Appropriations, 2007). These grants can be used by local law enforcement agencies to reduce the vulnerability of high value targets and enhance interagency communications (The Police Chief, 2004). Between 2001 and 2006, the U.S. Department of Homeland Security Office of Grants and Training awarded more than $8.6 billion to local and state governments to prevent, prepare, and respond to terrorist incidents. This funding is generally granted to State Administrative Agencies, which may then sub-grant funding to local governments and nonprofit organizations. Discretionary awards may also be awarded to state and local governments (U.S. Department of Homeland Security, 2006). This funding is critical as adequate funding is the only way for agencies to implement a successful campaign against terrorists (Van Etten, 2004).

Terrorism Response Training

Despite the fact that there were 327 terrorist attacks carried out in the United States between 1980 and 1999, very little police training in the United States focused on terrorism and counter-terrorism techniques. However, since the attacks on the World Trade Center and Pentagon in 2001, terrorism prevention training has become an important responsibility for law enforcement offices (White and Escobar, 2008 & USDOJ). The immediate response to the terrorist attack on April 19, 1995, in Oklahoma City and the terrorist attacks on September 11, 2001, in New York City clearly illustrate that local law enforcement will have a major role as a first responder during a violent terrorist event or disaster.

Terrorism Response Equipment

It is imperative that law enforcement officers be appropriately equipped to respond to a terrorist incident. The bulk of funding available to local law enforcement agencies is obtainable through the State Domestic Preparedness Program. This funding program is designed to help prepare law enforcement agencies to respond to incidents of domestic terrorism and its availability is based on a statewide needs assessment. These grants are disseminated to first

responders through a state agency designated by the Governor (Office of Justice Programs, n.d.).

The majority of the billions of dollars that have been allocated to and spent by local agencies for terrorism prevention have gone towards equipment purchases such as cars, trailers, hazardous material suits, and communication equipment (Department of Homeland Security, 2005). Despite these expenditures, the majority of law enforcement personnel in the United States feel underequipped and underprepared. According to a national survey conducted by ALERT (2006), although 78% of departments have received grant funding to purchase equipment to respond to a terrorist attack, only 31% received training in the use of the equipment from the manufacturer. Conversely, some agencies have also reported receiving training in the operation of critical response equipment that they do not possess. The equipment most commonly purchased by law enforcement agencies for terrorism reaction/prevention measures includes gas masks and chemical protective clothing, but this equipment is rarely available in the patrol units. If equipment is to be utilized effectively, officers should receive training in the equipment's proper use and be available in patrol cars for use when an attack occurs (ALERT Foundation, 2006).

Likelihood of Attack

The terrorist attacks of 2001 led to major changes in the way law enforcement agencies train, operate, and interact with other agencies. There is a new realization that if terrorists can effectively strike large U.S. cities with well prepared law enforcement agencies, they can also successfully attack smaller, less prepared communities. While research suggests that foreign terrorist groups will plan attacks from outside this country and execute them here, there is little doubt that the training and equipment terrorists use to execute the mass damage and injury will be obtained in this country (Stern, 2003, Post, 2004 & Hoffman, 1998). The terrorist goals of creating public fear, gaining publicity, and reducing the public's sense of safety and security lend themselves to a coordinated series of attacks in the smaller towns and cities in the heart of the U.S. Because police departments in larger cities generally have more resources and higher levels of preparedness, they may no longer be a prime target for terrorist groups. Terrorist groups identify and exploit the vulnerabilities of a target and take the path of least resistance. Experience suggests that the majority of police officers lack specific knowledge and training in recognizing the signs of terrorist activities (Henry, 2002).

The external terrorist threat has been well documented by numerous information sources in this country. However, the domestic terrorist threat has been somewhat neglected by the media. Within the United States there are

several well armed groups of individuals that can be identified as having serious social and political conflicts with the current government and especially with law enforcement agencies. Their use of dramatic violent events to further their cause is a major part of their agenda to spread terroristic fear (Combating Domestic Terrorism, 1995, Maniscalco & Christen, 2002).

Texas appears to have the components and attractive targets to capture the attention of terrorists, including metropolitan centers with concentrated populations, suburban settings, agricultural products and fertilizer, mining equipment, and a vast expanse of border territory. The Oklahoma City terrorist attack appears particularly concerning to Texas because of the method and materials used to kill 168 people and injure over 800. Ammonium nitrate fertilizer, Tovex (water gel explosive), liquid nitromethane and blasting caps are materials used throughout Texas and the Southwest and are obtained without much difficulty. This means that Texas may be a likely target for terrorist cells as it may provide the entry, the escape and the materials the group is seeking due to its vast agricultural areas and geographical proximity to Mexico.

Purpose

The purpose of this study was to obtain the opinions of the 150 Texas State House of Representative members regarding funding for terrorism prevention/reaction measures, training, and response equipment, and their perceptions regarding the probability of a terrorist event in Texas. The results of this research may be significant in a variety of ways. First, this research will provide a baseline for further study across the United States. Second, the information obtained from this research can be compared with local law enforcement opinions to analyze possible similarities and differences in regard to terrorism-readiness funding issues. Finally, this study may prove useful for future budgeting for terrorism response by federal, state, and local agencies.

Methodology

The areas of focus in this research include the independent variables of Representatives' demographic characteristics and the dependent variables of Representatives' opinions regarding the importance of obtaining funding for terrorism related measures and the likelihood of terrorist events. The demographic characteristics of interest for this study included number of years served in the Texas House of Representatives, age range, highest level of education, party affiliation, and description of area of representation. The dependent variables measured Representatives' opinions of importance in finding funding for county law enforcement for terrorism prevention/reaction measures, terrorism response training, and terrorism response equipment. The

study also evaluated Representatives' opinions regarding the likelihood of a terrorist event in their area of representation and the state of Texas.

Data Collection

The current mail based survey was sent to all 150 members of the Texas House of Representatives. Based on our research, this format has the highest probability of obtaining the best response rate. Despite the fact that anonymity was promised to the legislators, preaddressed, stamped envelopes were included for return, and surveys were scheduled and sent out during the active period of the 81st legislative session, the response rate to this survey could be considered low. However, based on the previously mentioned research studies involving elected officials, the response rate for this study was better than average for State Representatives. Of the 150 total surveys mailed, 21% (n=32) were returned. Respondents represented differing numbers of years served in the Texas House of Representatives, age ranges, levels of education, party affiliation and areas of representation. The researchers believe that this sample is sufficient and varied enough to represent an adequate cross-section of the population of Texas House of Representative members.

This cross-sectional study was conducted using a 10-item survey instrument. All House members were informed that the survey was completely voluntary and anonymous. Although the researcher knew the identities of the recipients, no coding or identifying marks were included that would distinguish specific respondents upon return of the completed instrument. In a cover letter explaining the purpose of the research, respondents were asked not to place any identifying information on the instrument to further allow for anonymity. The researchers included a preaddressed, stamped envelope with the survey to allow for return to a central location with limited access to anyone not involved in the research. Researchers allowed five weeks for return of the instrument before analyzing the data collected. This time period was chosen to allow for a significant response rate.

The 10-item questionnaire was broken down into three distinct categories. The first section, demographics, included five checklist-type questions designed to determine respondents' number of years in the Texas House of Representatives, age range, level of education, party affiliation, and description of the area of representation. The second section, opinions related to terrorism funding, was designed to measure opinions regarding the importance of securing funding for county law enforcement for terrorism prevention/reaction measures, terrorism response training, and terrorism response equipment. This section was presented in a Likert format with responses ranging from "Very Important" to "Very Unimportant." The final section, likelihood of terrorist

event, was designed to measure Representatives' opinions regarding likelihood of a terrorist event in the Representatives' area of representation and in Texas. These questions were presented in a Forced Likert format with response choices ranging from "Very Likely" to "Very Unlikely."

Findings and Analysis

The demographics of the legislators were first considered. Legislators were asked to indicate age range, description of area of representation, and highest level of education. The mode for age range was 51-65 years old, for area of representation was rural, and for level of education was a Bachelors degree. None of these personal characteristics had any appreciable influence on legislators' opinions regarding funding for terrorism/prevention reaction measures or likelihood of terrorist event. Next, party affiliation and political tenure were examined.

Table 1

	Importance of Funding for Prevention/ Reaction	Importance of Funding for Training	Importance of Funding for Equipment	Likelihood of Attack in Area of Representation
Years in Texas House of Representatives				
Pearson Correlation	-.024	-.052	-.069	.032
Sig (2-tailed)	.898	.778	.708	.860
Age Range				
Pearson Correlation	-.012	-.049	-.036	.224
Sig (2-tailed)	.947	.791	.846	.217
Highest Level of Education	-.186	-.199	-.236	.149
Pearson Correlation	.308	.275	.194	.417
Sig (2-tailed)				
Party Affiliation				
Pearson Correlation	-.120	-.172	-.194	-.091
Sig (2-tailed)	.513	.347	.288	.619
Area of Representation				
Pearson Correlation	.295	.294	.262	.184
Sig (2-tailed)	.101	.103	.147	.312

* Correlation is significant at the 0.05 level (2-tailed)
** Correlation is significant at the 0.01 level (2-tailed)
N=32

Of the total respondents to the survey, 62.5% were Republican and 37.5% were Democrat. Compared to the current House makeup of 50.7% Republican and 49.3% Democrat, this questionnaire had more Republicans than Democrats respond. The most often occurring answer for the number of years served in the Texas House of Representatives was 6-9 years. Neither party nor number of years served in the Texas House of Representatives explained the variation in responses regarding terrorism prevention/reaction funding or the likelihood of a terrorist attack in Texas. Correlative analysis using the Pearson correlation showed all five areas to lack statistical significance at the .05 level.

Although not statistically significant, these findings are interesting. There is a general perception by the public that party affiliation is associated with liberal or conservative approaches to law enforcement and special issue funding measures. The same could be said for age and education level. Popular views indicate that as education level increases, conservatism decreases, conversely with age and liberalism. However, this was not the case in this research. Another expected relationship was the years spent (tenure) as Representative would affect their views of funding and likelihood of a terrorist attack. Again, this study could not identify a statistical significance when it comes to experience in the House. Although law enforcement agency size was not a variable in this research, area of representation (urban, suburban, rural) was utilized because there is considerable research to suggest that the concentration of population or agency employment numbers influence funding decisions, this does not appear to be the case in this study (O'Hanlon, 2003).

Table 2

	Party Affiliation
Area of Representation	
Pearson Correlation	.613**
Sig (2-tailed)	.000
Age Range	
Pearson Correlation	.594**
Sig (2-tailed)	.000
Likelihood of Attack in Texas	
Pearson Correlation	- .353*
Sig (2-tailed)	.048

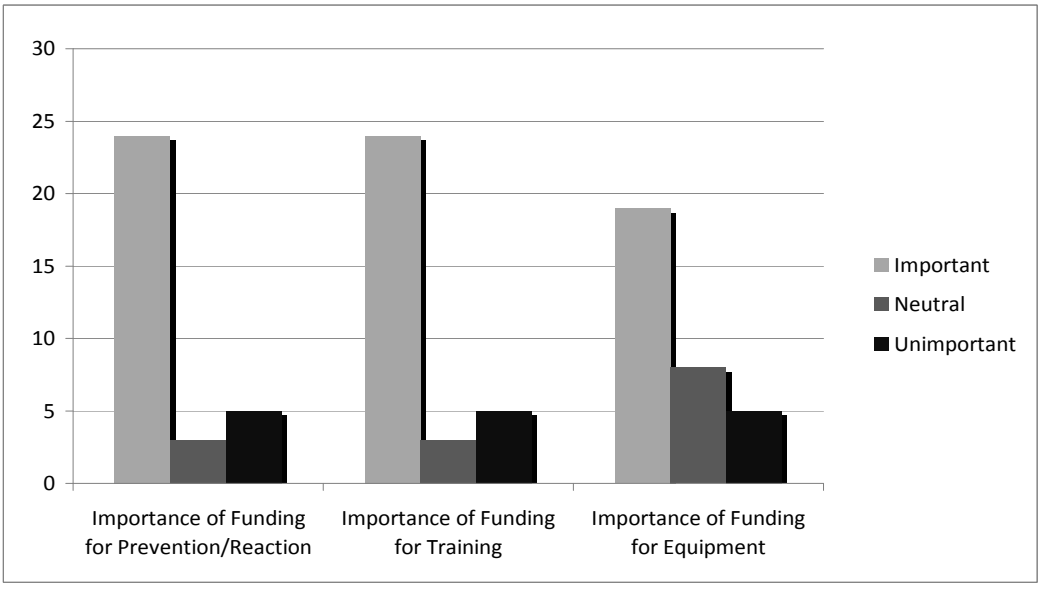
* Correlation is significant at the 0.05 level (2-tailed)
** Correlation is significant at the 0.01 level (2-tailed)
N=32

Though the focus of the study was central to opinions regarding funding and terrorism, as in most research, the data produces some expected and unexpected findings. Table 2 indicates the areas of correlation that are significant from this research. The first area deals with description of area of representation. Representatives were requested to identify a description of their district by selecting urban, suburban, semi-rural, or rural. Republican Representatives were most likely to be associated with rural districts; Democrats with urban districts. The recent presidential election may explain this with the overwhelming support of the Democratic party by younger voters.

The second area of interest deals with age. The data suggests a strong correlation between age and party. The older the Representative, the more likely they were to be Republican, and the younger the Representative, the more likely they were to be a Democrat. This is difficult to explain because there were no significant correlations between years in office and party affiliation.

Finally, the most interesting finding is the relationship between opinions regarding likelihood of a terrorist event in the state of Texas. The data suggests that more Republicans believe that a terrorist event will occur in Texas than do Democrats. It is important to note that both parties felt strongly about supporting funding for reaction measures, training, and equipment for law enforcement agencies to respond to a terrorist incident.

Table 3



Texas legislators were asked to indicate the degree to which they felt finding funding for county law enforcement anti-terrorism measures was important. This is the primary dependent variable in the analysis. The mean response was between 2.22 and 2.44 depending on the specific attributes of the variable. This indicates a slight overall opinion of importance regarding securing funding for county anti-terrorism measures.

Collapsing the responses into discrete categories illustrates the divisions of opinion even better. Regarding the importance of finding funding for county law enforcement terrorism prevention/reaction measures and securing funding for terrorism response training, the majority (75%) thought that finding funding for prevention/reaction measures was very important or important (responses = 1 or 2), a minority (15.6%) felt that finding such funding was unimportant or very unimportant (responses = 4 or 5). The remainder (9.4%) were ambivalent or undecided (response = 3). In response to the question regarding terrorism response equipment, the majority (59.4%) felt that finding funding for county law enforcement terrorism response equipment was important or very important (response = 1 or 2), the minority (15.6%) felt finding such funding was unimportant or very unimportant (response = 4 or 5), and the rest (25%) were neutral or undecided (25%). It is evident that even eight years after the tragedy of September 11, 2001, terrorism prevention and readiness is still an important issue in the minds of the Texas legislators.

Conclusion

This research was based on a survey of Texas legislators regarding their views on several terrorism related issues. Many states are facing similar issues that were addressed in this study and it is projected that this topic will continue to dominate policy decisions, law enforcement preparedness, and funding. All the data collected was confined to Texas, therefore, the findings are considered general in nature as they relate to other states and jurisdictions. However, the authors believe that this research does raise considerable discussions that appear important in contemporary decisions in the criminal justice community.

Considering the limitations of this data, this study has important implications regarding funding from the Texas government for terrorism related spending. Contrary to the media reports of government officials voting along party lines, the data from this research suggests that party affiliation is not significant to Texas legislators when considering the importance of funding for prevention measures, training, and equipment. This is supported by researchers who suggest that allocating grant funding is not directed by party lines but is directed by areas most likely the targets of terrorist events (O'Hanlon, 2003 & White, 2004). The analysis of this study could be considered a partial support

for that finding because party affiliation could not be identified as a factor for funding.

Another finding worth mentioning is the consensus among Texas Representatives that terrorism prevention, training, and equipment are important issues. In many areas, under the current financial climate, the political focus has been diverted from national security to economic issues. Although it appears that Texas Representatives are currently focused on the economy, they have not lost sight of terrorism related issues.

Finally, most expert reports indicated that the probability for another major terrorist attack is high and the event will again capture national attention and the channeling of funding. The research methodology provided in this study may assist elected officials in making decisions and provide a foundation for future research in this area.

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Which Came First, The Bond Or Self-Control? A Test Of Hirschi's Revision of Low Self-Control

Michael A. Cretacci
State University of New York, College at Buffalo

Travis Hirschi, the author of social control theory and one of the authors of self-control, has re-defined self-control and now argues that the bond and self control are the same. He also states that adding items to the revised measure increases its explanatory power. This study adds to the findings of the only other published test of the revision in three ways: First, it clarifies whether or not the revision lives up to Hirschi's hypothesis that low self-control is the most important variable in a given equation. Second, it also addresses whether Hirschi is correct in proposing that adding items to the revision will enhance its performance. Third, it seeks to determine if often overlooked concepts, such as criminal opportunity and interaction effects, are important to the perspective. Logistic regression results show that not only is low self-control not the most important predictor of crime but it may not be important when examining property offending. In addition, adding items to the revised measure does not appear to enhance its explanatory power. Finally, neither criminal opportunity nor its interaction with self-control, appears to be significant predictors of deviance in this sample.

Introduction

In 1969, Travis Hirschi developed social control theory in *Causes of Delinquency* and in 1990, he and Michael Gottfredson formulated self-control theory in *A General Theory of Crime*. It is important to discuss these perspectives because the self-control revision is similar to the bond from social control (Hirschi, 2004). The purposes of this study are threefold: to test the bond-type revision that Hirschi has called for, to heed calls by other scholars (and Gottfredson & Hirschi, [1990]), to test the impact of criminal opportunity and an interaction between it and self-control, and finally, to test Hirschi's hypothesis that adding items to the revision would increase its explanatory power. To test these propositions, two measures of self-control are constructed. One is comprised of 10 items and is close to the scale that Hirschi developed (Hirschi, 2004, p. 545). The other is an expanded measure, comprised of 17 items that incorporates additional bonds that Hirschi felt were important (Hirschi, 2004, p. 548).

Michael A. Cretacci is Assistant Professor in the Criminal Justice Department at the State University of New York College at Buffalo. He received the Ph.D from the State University of New York at Albany, School of Criminal Justice, in 2002. His research interests include social and self-control theories, criminal procedure, and attitudes of police recruits towards their work environment. His recent publications include *Supreme Court Case Briefs in Criminal Procedure* by Rowman & Littlefield and articles in *Criminal Justice Review*, the *International Journal of Police Science and Management*, and the *International Journal of Offender Therapy and Comparative Criminology*.

If Hirschi is correct about the importance of his revision, then a number of tentative conclusions could result from this analysis. First, both measures of low self-control should be significant for all estimated equations. Second, not only should both measures of self-control be significant but they should be the most important variable of any of the estimates. This is true because Gottfredson and Hirschi (1990) stated in the original formulation of the theory that the impact of self-control would overwhelm all other indicators used to explain crime. If Hirschi is now equating the earlier conceptualization of self-control with his revision, then it should have the same sort of hypothesized impact as the old one did. While Hirschi did not specifically mention this in the paper explaining the revision, he said nothing about whether the expectations of the revision should be different than the original.

These possibilities are important because they could impact future research. For example, if Hirschi is not correct about the significance of the re-definition, then scholars will need to determine if the measure is poorly conceptualized or if the measure simply does not explain certain types of crime. Along the same line, if it turns out that the revision does not impact the types of crime that other scholars have explained using the traditional measure, it may then be that the two measures are not the same. Third, if the expanded concept proves to be no more important in explaining crime than the truncated version then it may be that bond items other than the ones utilized here, are more conducive to increasing the performance of the expanded measure. However, it could also be that the expanded measure is simply not more important than the truncated one. Since Hirschi is now equating the traditional and revised measures and because the original version of self-control is grounded in social control, a brief description of both perspectives is needed to lay the groundwork for Hirschi's subsequent revision (2004).

Literature Review

When Hirschi developed social control theory, he argued that individuals formed "bonds" with society. He also asserted that the bond had several components; attachment, commitment, involvement, and belief. Attachment is the measure that addresses the feelings that an individual has towards family, friends, and school. Commitment represents the desire that one had for conventional goals while involvement was the time that a person spent pursuing them. Belief pertained to the conventional attitudes that one had toward society. The theory further states that as the bond (or any of its components) strengthens, delinquency decreases. On the other hand, if the opposite occurs, then deviance is likely to increase. It is this theory that serves as the foundation for self-control.

The major point of the theory is that crime occurs because offenders have low self-control (Wiebe, 2006), due to poor parenting. In 1990, Gottfredson & Hirschi asserted that the parental tie, undergirded by proper supervision and discipline, was the most important part of the bond and if it deteriorated, it became more likely that low self-control would develop. Recent research has found some support for this contention (Pratt, Turner, & Piquero, 2004). According to Gottfredson & Hirschi (1990), the development of low self-control takes place prior to age 10 and is permanent (Muraven, Pogarsky, & Shmueli, 2006). However, recent research indicates that self-control may vary over time (Mitchell & Layton-MacKenzie, 2006). The theory also distinguishes itself from others by making the claim that all crime is explainable by low self-control. Investigators have also pointed out that since Gottfredson & Hirschi (1990) stated that self-control is rooted in the Classical and Routine Activities perspectives, concepts such as criminal opportunity should be included in complete tests of the theory (Cretacci, 2008; Grasmick, Tittle, Bursick, & Arneklev, 1993). In fact, Gottfredson & Hirschi themselves felt that variation in crime rates were attributable to changes in chances to commit crime, not changes in self-control. Therefore, including a measure for opportunity is important. In a nutshell, self-control theory is comprised of the bond, low self-control, and criminal opportunity.

While the theory has been scrutinized (Watkins & Melde, 2007), recent scholarship tests the theory in interesting ways. Specifically, it may have some utility in explaining white collar (Benson & Moore, 1992) and occupational deviance (Gibson & Wright, 2001). Investigators are also examining whether self-control is useful in explaining criminal processing (Delisi & Berg, 2006), parole outcomes (Langton, 2006), and recidivism (Krauss, Sales, Becker, & Figueredo, 2000). As an adjunct to these studies, scholars are also determining whether offenders can perceive future sanctions (Piquero, Gomez-Smith, & Langton, 2004) and if there is a distinction between the capacity for self-control and the ability to exercise it (Tittle, Ward, & Grasmick, 2004). However, while scholars were testing self-control theory, Hirschi altered the definition of self-control (Hirschi, 2004).

He now contends that statements made by himself and Gottfredson, created confusion and as a result, the research testing self-control has not clearly addressed how the perspective operates. Hirschi concedes that there are four problems, rooted in the list of characteristics that were provided in *A General Theory of Crime*, that he and Gottfredson created (Hirschi, 2004, p. 542) and it is these issues that drove his desire to revise the definition of self-control. First, Hirschi asserts that he and Gottfredsons's description of people who have low self-control was grounded in the view that those with the trait are "impulsive,

insensitive, physical, risk-seeking, short-sighted, and nonverbal" (Hirschi, 2004, p. 541). Hirschi (2004) argues that this list of characteristics confused researchers into thinking that it was a guide for constructing self-control measures. Second, Hirschi argues that both "the list" and the traditional measures derived from it; contradict the assertion made by Gottfredson & Hirschi (1990) that personality traits contribute little to explaining crime. Third, Hirschi now believes that the list distracted researchers from the larger point that offenders calculate the benefits and costs of crime and act accordingly (Hirschi, 2004, p. 542). Finally, Hirschi admits that the errors led to the construction of poor measures and he now feels that the only way that these matters can be reconciled, is to assume that the bond and self-control are the same (Hirschi, 2004, p. 543).

As a result, Hirschi (2004) now defines self-control as "the set of inhibitions that one carries with one wherever one happens to go. Their character may be initially described as going to the elements of the bond identified by social control theory: attachments, commitments, involvements, and beliefs" (Hirschi, 2004, pp. 543, 544). Hirschi further states that the focus of the definition is the opinions expressed by others that have influence over the adolescent (Hirschi, 2004, p. 545). He then creates a scale by counting the self-control responses to the following nine items:

> (1) "Do you like or dislike school?" (Like it); (2) "How important is getting good grades to you personally?" (Very important); (3) "Do you finish your homework?"(Always); (4) "Do you care what teachers think of you?" (I care a lot); (5) "It is none of the school's business if a student smokes outside of the classroom?" (Strongly disagree); (6) "Does your mother know where you are when you are away from home?" (Usually); (7) "Does your mother know who you are with when you are away from home? (Usually); (8) "Do you share your thoughts and feelings with your mother?" (Often); (9) "Would you like to be the kind of person your mother is?" (In every way. In most ways)" (Hirschi, 2004, p. 545).

In the only test of the revision to date, Piquero & Bouffard (2007) used vignettes to ask respondents about their behavior and concluded that the new measure significantly predicted drunk driving and sexual coercion. However, a number of published works have included the bonds in tests of self-control both before and after the revision was developed. Of those published prior to the revision, several incorporated bonds as variables in the equation but only included them to determine their effectiveness as controls (Nakhaie, Silverman, & LaGrange, 2000). In addition, some also suggest that self-control should be

combined into an integrated explanation (Longshore, Chang, Hsieh, & Messina, 2004; Nakhaie et al., 2000). Of the more recent tests, researchers continue to utilize bond measures as controls or as part of a different perspective in combination with self control (Beaver, Wright, & DeLisi, 2008; Beaver, Wright, DeLisi, & Vaughn, 2008; Wright, Beaver, DeLisi, & Vaughn, 2008). Of these, some found that parental influences were not significant predictors of self-control (Wright et al., 2008; DeLisi, Beaver, Wright & Vaughn, 2008) while others concluded that genetic factors were related to victimization (Beaver et al., 2008). On the other hand, Beaver et al., (2008) discovered that marriage, but not maternal attach-ment, was important for desistance from crime. Despite the number of studies that looked at social bonds in some context with self-control, the most common bonds under study were parental and peer variables (Hope & Chapple, 2005).

As a result of the new definition, Hirschi and others (Piquero & Bouffard, 2007) believe that the theory has been improved. Specifically, Piquero & Bouffard (2007) point out:

> "First, it provides a way to think about criminal activity from situation to situation…Second, it…gets around the personality-orientated approach to measuring self-control…Third, the new measure avoids the tautology issue raised by Akers and others…Fourth, by proposing the new definition, Hirschi better explicates the linkage between social and self-control through the explicit inclusion of the consequences of acts…Fifth, the definition of self-control is now broader than that contained in the original delineation of the theory…Sixth, self-control is now more contemporaneous, occurring at the instant of decision-making. Finally, the new definition of self-control now includes the salience of potential inhibiting factors." (p. 7)

Utilizing a measure of self-control that is comprised of bond items is also closer to what Hirschi actually did. In fact, Hirschi (2004) also states that bond items included in the revision are more theoretically relevant than other types of items (p. 548). Interestingly, some support in the literature does exist for bond items being combined into one measure in the way that Hirschi suggests (Wiatrowski, Griswold, & Roberts, 1981).

Method

The National Longitudinal Study of Adolescent Health (Add Health) is used here because it contains several items that Hirschi said were critical to the

revision and therefore allows for a test of two models of the redefined concept. Two measures of self-control ("original" and "expanded") are operationalized to determine if Hirschi's assertion that adding items to the revised measure will lead to increased explanatory power. In addition, opportunity, an interaction term between self-control and opportunity, demographic (sex, race, age, and urbanity) and crime (property, violent, and general) controls will be operationalized at Wave 1. The same crime constructs used as controls at Wave 1 are measured again at Wave 2 and utilized as dependent variables. Several recent studies have also utilized this dataset to construct measures that include bond items (Beaver, Wright, Delisi, Daigle, Swatt & Gibson, 2007; Delisi et al., 2008; Beaver et al., 2008). Due to skewness in the data, dichotomous dependent variables were constructed and logistic regression was employed. This technique allows an investigator to determine the probability that offending will occur (Cretacci, 2008; Piquero et al., 2005). All items used here employ Likert scales. The data were extracted from Waves 1 & 2 of Add Health, which is a nationwide, high-school based study of adolescent behavior in Grades 7-12 (Kelley & Peterson, 1998). Data was collected for Wave 1 from September 1994 through December 1995 (response rate 78.9%), and Wave 2 about 1 year later (response rate of 88.2%) (Kelley & Peterson, 1998, p. 5). In-home interviews were conducted with 90,000 respondents who completed the in-school questionnaire with a sample of 27,000 drawn from that group (Kelley & Peterson, 1998, pp. 4, 5). Topics of the interview at both waves included delinquency, conventional relationships and activities (Kelley & Peterson, 1998, p. 4). A public-use file that includes 6,504 cases was employed for this study.

Measures - Self-Control

An attempt was made to construct a revision that is based on the number of items that Hirschi used. However, because the reliability of that measure was poor (α =.54), it was not used in the analysis. Therefore, two additional measures were created. The first is referred to as the "original" measure and is designed to represent Hirschi (2004)'s revision. The second variable is referred to as the "expanded" concept. It is included to test whether or not Hirschi was correct in believing that adding items to it would increase its relevance (2004, p. 548). These two measures will be included in two separate models; the only thing differentiating them will be the two measures of self-control. To make the test as close as possible to what Hirschi actually argued for in the revision, his procedures will be followed here. Therefore, both measures of self-control are simple additive indexes.

The "original" measure (α = .75, M = 42.04, SD = 5.96) is composed of 10 bond type items that Hirschi (2004) felt were important. The first six deal

with issues pertaining to school: "I feel like I am part of this school?" and "You are happy at school?" have the following responses: *strongly disagree* (coded 1) to *strongly agree* (coded 5). The next four items ask what grades the respondent most recently received in Math, Science, History, and English. The responses are: *did not take this subject* (coded 1) to *A* (coded 5). The remaining four items ask about the respondents' relationships with their mothers and are: "Most of the time, your Mother is warm and loving to you," "You are satisfied with the way your Mother and you communicate with each other," "Overall, you are satisfied with your relationship with your Mother." All have the following responses: *strongly disagree* (coded 1) to *strongly agree* (coded 5) while "How close do you feel to your Mother?" ranges from *not at all* (coded 1) to *very much* (coded 5).

The "expanded" measure (α = .81, M = 71.08, SD = 9.18) includes 17 items, 10 of which are the same as those for the original measure, in addition to: "I feel close to people at school," and "The teachers at your school treat students fairly?" which have the following responses: *strongly disagree* (coded 1) to *strongly agree* (coded 5). An additional school item, "How much do you feel teachers care about you?" ranges from *not at all* (coded 1) to *very much* (coded 5). The final four items deal with Hirschi's conceptualization of peer attachment. In his original formulation of social control theory, Hirschi argued that peer attachment constrained delinquency (Hirschi, 1969). In fact, he stated that it was irrelevant as to whether or not the attachment was to a delinquent or conventional peer: "We honor those we admire, not by imitation but by adherence to conventional standards" (p. 152) not by engaging in delinquency. Even though most do not test Hirschi's assertion, it is legitimate to include both conventional and delinquent peer type items based on his original formulation since Hirschi is now arguing that social control and self-control are the same thing. Including delinquent peer items is permissible because Hirschi believes that those with few delinquent friends are really reporting their conventional behavior (2004, p. 547). "How much do you feel that your friends care about you?" has five responses: *not at all* (coded 1) to *very much* (coded 5). Three final items ask the respondent how many of their best friends smoke at least one cigarette each day, drink alcohol at least once a month, and smoke pot more than once a month. The responses are reverse coded to coincide with Hirschi's' assumption: (3 = 3, 2 = 2, 1 = 1, 0 = 0).

Criminal Opportunity

Even though Gottfredson & Hirschi (1990) argue that criminal opportunity is the catalyst for low self-control and without it, those that posses the trait are harmless (Bolin, 2004), most studies do not include such a measure. Researchers are now beginning to recognize this deficiency (Baron, Forde, &

Kay, 2007). In an attempt to test Gottfredson & Hirschi (1990)'s assertion that opportunity is related to crime, standard scores were calculated for 14 items and combined into an index of *criminal opportunity* (α = .63, *M* = 12.45, *SD* = 5.69). Six dichotomies began with "In the past week…" and asked the respondent whether or not they had "Gone to a male or female friend's house?,", "Met a male or female friend after school?" or "Spent time with a male or female friend?" Responses were *no* (coded 1) and *yes* (coded 2) to facilitate the calculation of standard scores. Six other items asked if the respondent's "Mom or Dad was home…" "When they went to school," "Came home from school" or "When they went to bed" with responses ranging from: *always* (coded 1) to *never* (coded 5). One additional dichotomy asked, "In the past year, did you ever spend the night somewhere without permission?" with *no* (coded 1) and *yes* (coded 2) as the responses. A final item, "In the past week, how often did you hang out with friends?" had a response set ranging from *not at all* (coded 1) to *five or more times* (coded 4). The greatest negative score was added to the entire measure to facilitate the creation of the interaction term with self-control (*M* = 26.23, *SD* = 20.47) so that the earlier research question could be addressed and the results compared with prior studies. Higher scores indicate higher levels of criminal opportunity and assume a positive relationship to crime.

Dependent Variables

Self-control theory claims to explain all forms of crime and to determine if that is the case, three different categories of crime (property and violent) are constructed in addition to a more "general" one that incorporates different types of offending into a single variable. Utilizing such an approach has support in prior research (Nakhaie et al., 2000; Rebellon & Van Gundy, 2005). Approximately 33% of the sample engaged in some form of property or violent crime and 31% in general crime. All items utilized for the dependent variables have the following responses: *no* (coded 0) or *yes* (coded 1), begin with "In the past 12 months…" and act as controls at Wave 1.

Seven items were used to create a *property crime* index (Wave 1, α = .78, *M* = .38, *SD* = .49; Wave 2, α = .80, *M* = .33, *SD* = .47): "How often did you paint graffiti or signs on someone else's property or in a public place?", "How often did you damage property that did not belong to you?", "How often did you take something without paying for it?", "How often did you steal something worth less than $50?", "How often did you steal something worth more than $50?", "How often did you steal a car?", "How often did you burglarize a building?"

Six items were combined to form the v*iolent crime* index (Wave 1, α = .71, *M* = .42, *SD* = .49; Wave 2, α = .74, *M* = .30, *SD* = .46): "How often did

you injure someone badly enough to need bandages or care from a doctor or nurse?", "How often did you get into a serious physical fight?", "How often were you in a group fight?", "How often did you pull a knife or gun on someone?", "How often did you shoot or stab someone?", "How often did you use a weapon in a fight?"

The thirteen items used to construct the *general crime* index (Wave 1, α = .71, M = .65, SD = .48; Wave 2, α = .66, M = .57, SD = .50) were taken from the property and violence measures except for "How often did you pull a knife or gun on someone?" and "How often did you shoot or stab someone?" but the measure also includes two additional dichotomies: "In the past year, how often did you sell marijuana or other drugs?" and "In the past year, how often did you run away from home?"

Several demographic controls are included. One item, "What is your sex?"(M = .48, SD = .50) has the following responses: *female* (coded 0) and *male* (coded 1). Another item, "What is your age?" (M = 15.48, SD = 1.93) has various ages as the responses. Race (M = .25, SD = .43), is a dichotomy with *non-black* (coded 0) and *black* (coded 1) as the response set. The item for urbanity is: "What is the dominant land use?" (M = 2.13, SD = .92), and included the following responses: *rural* (coded 1) to *retail, non commercial* (coded 5).

Results

Table 1 displays the logistic regression impact of both measures of self-control, criminal opportunity, the interaction term and the demographic controls on the three dependent variables. The exp (b) is reported both in the text and in the table and it represents an odds ratio obtained when conducting logistic regression. Since the results from both models are similar, the exp(b)s are reported in parentheses for both the original and expanded models, in that order. This ratio indicates that when a predictor varies by 1, its influence on the dependent variable varies by the factor of the exp (b). Results at or close to 1 indicate little or no effect.

Table 1
Logistic Regression Results for Property, Violent and General Crime

	Property Crime (N=3,194)		Violent Crime (N=4,268)		General Crime (N=3,155)	
Variable	Exp(b)	p	Exp(b)	p	Exp(b)	p
Original Self-control						
Low self-control	.99	.43	.96	.02*	.96	.03*
Opportunity	.98	.63	1.01	.84	1.01	.91
Control-Opp.	1.00	.45	1.00	.68	1.00	.79
Sex	.93	.33	1.63	.00**	1.26	.00**
Race	.97	.75	1.09	.31	1.00	.96
Age	.96	.02*	.91	.00**	.91	.00**
Urbanity	.95	.19	1.06	.18	1.04	.38
Property/Violent/General	5.89	.00**	5.21	.00**	3.60	.00**
Constant	.71	.68	3.67	.13	7.71	.02*
Nagelkerke R^2	.21		.25		.15	

	Property Crime (N=3,102)		Violent Crime (N=4,147)		General Crime (N=3,066)	
Variable	Exp(b)	p	Exp(b)	p	Exp(b)	p
Expanded Self-Control						
Low self-control	1.00	.70	.96	.01**	.98	.05*
Opportunity	1.01	.88	.99	.78	1.01	.88
Control-Opp.	1.00	.92	1.00	.93	1.00	.85
Sex	.93	.34	1.65	.00**	1.24	.01**
Race	.99	.93	1.09	.32	1.03	.78
Age	.95	.02*	.90	.00**	.91	.00**
Urbanity	.93	.07	1.05	.27	1.02	.69
Property/Violent/General	5.85	.00**	5.09	.00**	3.64	.00**
Constant	.60	.57	11.62	.01**	8.69	.03*
Nagelkerke R^2	.21		.25		.15	

* significant at the .05 level.
** significant at the .01 level.

Property Crime

Results obtained indicate that none of the indicators of the revised theory attained significance, while age (.96/.95) negatively predicted an increased probability of involvement in property crime. The controls for prior involvement in property crime (5.89/5.85) also attained significance for both equations with each model responsible for explaining 21% of the variance in the likelihood that property crime would occur.

Violent Crime

The findings for the revised measures of self-control for violent crime were better than those for property as both conceptualizations of self-control (.96) predicted a lesser probability of involvement in violent crime. Of the controls, sex (1.63/1.65) and violent crime (5.21/5.09) predicted a greater likelihood of involvement in future violence, while age in both equations (.91/.90) negatively predicted it. Unexpectedly, neither the opportunity nor the interaction term attained significance. Finally, both models explained a moderate amount (25%) of the likelihood of involvement in future violence.

General Crime

Results indicate that both revised measures of self-control (.96/.98) predicted a lesser likelihood of involvement in general crime. As with the results obtained for violence, sex (1.26/1.24) and the general crime control (3.60/3.64), predicted a greater likelihood of future involvement in criminality while age (.91) for both models negatively predicted such involvement. Once again, both opportunity and the interaction failed to attain significance. Each model predicted 15% of the likelihood of future involvement in criminality.

Discussion

Several findings pertaining to the research questions need clarification. First, recall that in the original formulation of the theory, Gottfredson & Hirschi (1990) claimed that low self-control would be the most powerful predictor in any equation and that its influence would overwhelm all other independent variables. Given that Hirschi (2004) makes the claim that the social bond and traditional self-control are the same, it is safe to assume that Hirschi still believes that the revision will be the most significant indicator in any equation. One can also safely make this assumption since Hirschi continues to assert that the trait is invariant (2004, p. 543). In other words, while Hirschi redefined how self-control should be conceptualized, he still feels that its importance in explaining crime has not diminished. However, this study tentatively claims that the revised version of self-control is no better at explaining crime than the traditional. More

specifically, while results indicated that the revised self-control measure attained significance in the equations for violent and general crime; sex and age actually were more influential than the revision. In fact, age attained significance for all six equations. Further, the new measure failed to attain significance at all for property offending. While this result was unexpected, it highlights the contention that other concepts are important to the explanation of crime and that self-control has some competition in terms of its ability to explain offending. These findings directly contradict the claim that self-control would be the most prominent predictor. To underscore the point, the theory only explains a small amount of the variance in the likelihood of future crime.

Secondly, Hirschi (2004)'s claim that adding additional bond items, from different arenas of the bond, would increase the measure's explanatory power was also tested in this study. A brief examination of Table 1 also should give pause with reference to the veracity of Hirschi's claim. For all practical purposes, the results from both the "original" and "expanded" models are identical. Recall that the "original" measure utilized here was composed of 10 items, similar to those used by Hirschi (2004) in his initial test of his revision. The "expanded" measure included 17 items, from arenas of the bond that Hirschi also felt would be important and no improvement was realized. To further underscore this conclusion, while the results obtained from using the measure with poor reliability were not reported, it should be noted that it had only 6 items. Interestingly, including that measure in the same set of equations as those that were reported, resulted in no difference in the outcome. So, in reality, three models of the revision were employed here but none appeared to be an improvement over the other. However, there could be an important reason for this: it may be that only certain items are relevant to the measurement of the revision. If that is the case, then future research will need to address which items are best. An intriguing prospect is the operationalization of the social bond that Wiatrowski et al. (1981) proposed. They found, as Hirschi (2004) does now, that the bond is really one construct composed of several items that measure one concept. Since Hirschi now believes that the bond and self-control are one and the same and Wiatrowski et al, (1981) has found that the bond is a singular concept, future research should begin to focus on which items load on an individual measure and if they do, if that concept the best explanation of delinquency.

Third, this study set out to test whether or not concepts from routine activities theory, such as opportunity and a hypothesized interaction between it and self-control, were important to the perspective. This particular question was addressed here because both Gottfredson & Hirschi (1990) and others have asserted that opportunity was both an important part of the theory and because

several studies have failed to test for its effects, the theory had not been completely tested very often (Grasmick, Tittle, Bursick, & Arneklev, 1993). Tentatively speaking, it appears that these concepts are not important to the revised understanding of self-control as neither the opportunity measure nor the interaction term produced significant results. Future research will need to more completely address this matter since this is the only study to test the re-definition and these important concepts within the context of the revised perspective.

Additionally, for violent and general offending, low self-control seems to play an important role. Perhaps these types of crime are explained by people who already have difficulty controlling their impulses. At this point though, it is difficult to interpret these results because no one has tested whether or not the two different measures of self control ("traditional" and the revision), explain crime the same way. If they do, then researchers can safely assume that the two concepts are the same and this interpretation of the results for violent and general offending would make sense. However, if the two concepts are different, then researchers will need to determine what exactly self-control is.

While this study is an important first step in determining the impact of Hirschi's revision of self-control, it is also necessary to discuss its flaws. First, this study does not take into consideration the possibility that the two historical measures of self-control could be different. As a result, this paper can only tentatively state that the two measures are "the same" as Hirschi claims, others will have to test whether or not the two measures explain crime in a similar way. Secondly, the items utilized for the opportunity measure could be better. While the reliability of that measure is acceptable, others could likely construct a better one and perhaps shed a clearer light on whether or not opportunity and/or the interaction belong in the perspective. Therefore, the assertions made here about the influence of these two concepts within self-control theory should be viewed with caution. Finally, this study also does not include important controls such as class and disadvantage. These variables have been shown over time to have an impact on criminality but due to the number of missing cases, these concepts were not included.

To conclude, future research should focus on whether an expansion of the revision can better explain crime than a more truncated one, determine whether or not the revision is "the same as" traditional measures used to define self-control, and finally, scholars should try to ascertain which, if any, concepts from routine activities theory have any bearing on self-control as most scholarship testing the perspective does not include these potentially important concepts.

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Police Corruption or Police Productivity? Officers Perceptions of Moonlighting in U.S. Agencies

David A. Jenks, Ph. D.
University of West Georgia

Moonlighting in law enforcement involves sworn peace officers working second jobs while off-duty. While some agencies allow this, others cite fatigue, liability issues, and conflicts of interest and consider the behavior corrupt. Likewise, no clear line has been drawn regarding how acceptable moonlighting is among officers in general. While previous studies have examined officers' attitudes toward varying degrees of corruption, none have explored moonlighting specifically nor used an analytical strategy that explores variation between categories within variables. Following the work of Micucci and Gomme (2005), this paper reviewed officers' perceptions of moonlighting behavior using multinomial logistic regression in an attempt to flesh out nonlinear relationships. It was found that agency size, rank, type of assignment, and supervisory position all had a significant effect on varying aspects of officers' perceptions of moonlighting with evidence that rank and type of assignment were nonlinear.

Introduction

While many studies have explored moonlighting behavior (Krishnan, 1990; Paxson and Sicherman, 1996; Conway and Kimmel, 1998; Kimmel and Conway, 2001) and many others have examined officers' attitudes toward corruption (Klockars, et. al., 2000; Ivkovic, 2005; Micucci and Gomme, 2005) none have explored officer attitudes toward moonlighting nor analyzed relationships in a manner that incorporated the possibility of nonlinear associations. The current study provides information on both of these issues by directly assessing officers' perceptions of moonlighting using an analytic strategy that provides an odds ratio for each rank of categorical variables.

Moonlighting is a serious and unique concern for law enforcement agencies for two reasons. First, unlike other 'corrupt' behaviors, some agencies strictly prohibit moonlighting while others actively encourage it (Ayling & Shearing, 2008). Lateral transfers across agencies make this troubling by creating confusion, dissension in the ranks, and eventual legal consequences for agencies who try to enforce strict policies. Second, police officers retain full law enforcement powers even while off duty. Officers in most states retain the power

David A. Jenks received his Ph.D. from Florida State University and is currently an Associate Professor at The University of West Georgia. His research interests include police structure and organization, comparative/international policing, and integrating research and practice. Correspondence should be forwarded to David A. Jenks, Department of Sociology and Criminology, University of West Georgia, 1601 W. Maple Street, Carrollton, GA 30118. djenks@westga.edu

to arrest, a duty to act, and remain an agent of the state regardless of whether they are in uniform. This inherently links the officer with an agency should any issues arise.

Many police agencies have limited the type and amount of off-duty moonlighting for officers. This raises questions about the right of an employer to limit the earning potential of an employee. Kimmel and Conway (2001) found that most moonlighters engaged in second jobs because they were constrained, most frequently financially, in their primary job. If this finding held true for officers, then those who wanted to moonlight are those who needed extra money. This situation creates a serious dilemma for the agency. Allowing officers to moonlight opens the agency to possible legal issues that arise, while disallowing moonlighting restricts financial security in a job rich with opportunity to gain money through more serious corrupt behavior.

This study takes a first step in exploring moonlighting behavior within law enforcement agencies by analyzing officers' attitudes toward the practice. Early research on moonlighting found that in many police departments in the United States the number of officers moonlighting exceeded the number of officers on duty (Reiss, 1988). More recent work has focused on officers' perceptions of corrupt behavior because of the dual role officers play in this type of activity (Ivkovic, 2005; Micucci and Gomme, 2005). Police are both the perpetrators of the prohibited behavior and the guardians charged with enforcing regulations should a violation occur. Bayley (2002) also noted the police regularly adhere to the belief that cutting legal corners is acceptable and often necessary to protect the public. Gaining an understanding of how officers view corrupt behavior, therefore, provides an initial look into how likely they may be to levy sanctions on fellow officers.

Literature

Moonlighting among law enforcement officers is rooted in the foundation of modern policing in the United States. Prior to the formation of organized law enforcement in England, men who worked in more conventional primary jobs would 'moonlight' as officers (Ayling & Shearing, 2008). The roots of moonlighting as corrupt behavior were also born around the same time period. For example, London saw the formation of private policing and prosecution businesses in which off duty officers used "violence, extortion and blackmail, as well as the manipulation of specialized knowledge of the law" to perform police services (Ayling & Shearing, 2008, p. 29).

Juris and Fouille (1973) found that police officers often view moonlighting as necessary due to the fact that many salaries are not sufficient to support the type of lifestyle that they would prefer to live. This viewpoint was

defined more thoroughly by Kimmel and Conway (2001) as one of two primary types of moonlighters. They found that moonlighters fell into one of two categories: constrained or job packaging. Constrained moonlighters picked up extra work as needed to maintain a lifestyle, while job packagers take second jobs to advance their careers. Most officers fell into the constrained category, doing security work for an hourly wage that seldom advanced their careers (Juris & Fouille, 1973). In some instances the opposite was true. Moonlighting officers were seen as unfair competition for security jobs, which may have hurt their careers (Kakalik & Wildhorn, 1977). Officers who completed academy training were often much better suited for security work and can often use their own equipment. This equated to an enormous savings for many private businesses and provided a higher level of security. In this case, moonlighting by officers would have been an inherent good if the aim was to have more effective private security (Kakalik & Wildhorn, 1977).

In the general population, approximately 6% of all employed males in the Unites States reported having a second job in a 1993 survey (Mishel and Bernstein 1995, p. 126). Second jobs can become troublesome for employers if they believed that the extra jobs fatigue employees to the point that performance or judgment suffers (Hirschman, 2000, p. 1). Fatigue has been a serious concern for law enforcement and many agencies have adopted a 3/12 or a 4/10 work week so that officers will have 3-4 days off-duty to rest and recuperate. This provided opportunities for many officers to pick up extra work (Hirschman, 2000).

Agencies vary dramatically on their involvement regarding the regulation of off-duty officers. Some human resource experts believe that employers should not place restrictions on the types of jobs their employees may work when off duty (Hirschman, 2000, p. 4). This is contradictory, however, to the views held by many police administrators (Sharp, 1999, p. 82; Juris & Fouille, 1973, p. 139). Police agencies typically do not want their officers working in a capacity in which they would be witness to illegal activities and therefore have a duty to act. A typical example would be working as security or a bouncer for a bar or nightclub.

Departments often utilize private duty job coordinators and actively look for off duty employment for their officers who seek to moonlight (Sharp, 1999, p.84). Sharp (1999) found that 96% of departments polled reported that they restrict the types of off duty employment their officers perform and the other 4% sometimes restrict officers. In addition, 20% had full time private duty job coordinators and 11% personally solicited off duty jobs for their officers (Sharp, 1999, p.84). This constant variation in the types of jobs police departments will

accept or reject as legitimate secondary employment can create confusion for officers who may have been just trying to make ends meet.

Sharp (1999, p. 82) suggested that the closest thing to a "don't ask, don't tell" policy in law enforcement is the subject of off-duty employment of officers. The issue is important considering law enforcement is a unique profession in that on or off duty, employees are sworn law enforcement officers. Whereas a security guard who is called to help may or may not respond, an officer is bound by duty and may therefore be exposed to more dangerous situations. The risks associated with allowing officers to moonlight have resulted in great variation in the policies of agencies nationwide and contribute to why administrators are often not in favor of moonlighting (Sharp, 1999).

Sharp (1999) suggested the Bangor, Maine Police Department's policy on moonlighting characterized a typical policy. It read: "Supplementary employment is not encouraged, but may be permitted with the approval of the Chief of Police" (Sharp, 1999, p. 82). In a survey of the same department, he found that 43% of the officers were indifferent about moonlighting stating, "we don't care as long as the assignments don't interfere with members' job performance." The same survey concluded that 14% of officers did not approve of off duty employment and only 33% reported that they did not encourage off duty employment (Sharp, 1999).

Another concern of police administrators was personal liability. Officers that were injured while in performance of off-duty services can cost their departments financially and leave them shorthanded (Sharp, 1999). The differentiation from one department to the next was evident on this issue as well. Under half of respondents said that their department had health insurance policies that covered injuries and illnesses suffered by officers while engaging in off duty assignments (Sharp, 1999). Some agencies, such as St. Paul, went so far as to make a policy stating that the city was not responsible for insuring police officers while performing off-duty assignment (Sharp, 1999).

Another issue to consider is the perception of officers working off duty jobs. Due to the high visibility of some jobs such as directing traffic or security at public events, it is often hard to tell from a public perspective who these officers are working for (Reiss, 1988). In many of these circumstances the police are actually privately employed but are still wearing their uniform, are armed, and have their police radio with them (Reiss, 1988, p. 249). Moreover, the officer is performing police duties of "surveillance, control, and patrol" (Reiss, 1988, p. 249). In any of these capacities, a citizen would clearly see the officer as a representative of the agency and the state.

However, were these individuals not in an official uniform, they may be viewed as "low level, inept persons" as opposed to public police officers in the

same settings (Reiss, 1988, p. 249). An individual is much more likely to be compliant with commands from a uniformed officer than, for example, a security guard. The power of arrest maintained by a duly sworn law enforcement officer is, in itself, a deterrent. Although we cannot be absolutely sure as to public perception, there is no doubt that public police are regarded in higher prestige, even when performing routine protection of security services (Reiss, 1988, p. 249).

Moonlighting by police officers entails several issues. Since the inception of the idea was adopted from our English roots, there has been some form of controversy. The question remains as to how well moonlighting is received among officers. The variation in policy across agencies may well be patterned after distinct characteristics of both agencies and officers. This research will explore officers' perceptions of moonlighting behavior across agency size, officer rank, type of assignment, and whether the officer is in a supervisory role.

Data

The data for this analysis were collected as part of a cross-national study of police integrity by Klockars (1997) under a grant from the National Institute of Justice. The survey included 3,230 respondents from 30 different agencies in the United States. This data is the largest and most comprehensive of its kind and is still being utilized by researchers as officers' attitudes do not tend to change much over similar periods of time. While a more recent data set would be ideal, funding sources for criminal justice research were significantly reduced over the last decade. In addition, there has been little change in police organizations over the last ten years regarding moonlighting behavior. The same concerns that were being expressed in the 1980s and 1990s are the same concerns being heard today. In fact, practitioner approaches to this issue have not changed much over the last 30 years as many agencies are very reluctant to create or follow strict guidelines in self-enforcement. They tend instead to opt for as much discretion as possible citing the need for examination on a case by case basis. Critics are quick to point out that this approach lends support to the very type of behavior they are trying to prevent – favoritism toward fellow officers.

Officers were asked to rate their perceptions and tolerance for eleven different types of corrupt behavior. They were presented with a hypothetical scenario and then asked to rank the seriousness of the behavior, the type of disciplinary action required, and reporting behaviors. While eleven different scenarios were presented, only one dealt directly with moonlighting and thus it was the focus of this analysis.

The sample was a convenience sample that was collected for three reasons (Micucci and Gomme, 2005; Haberfeld, Klockars, Ivkovich, and

Pagnon, 2000). The first reason was that a random sample could not reasonably be drawn from a population that included over 18,000 agencies with different size, mandate, function, organizational structure, governance, and political accountability (Walker and Katz, 2005, p. 62; Micucci and Gomme, 2005, p. 492). Second, police cooperation was suspect and difficult to obtain when studying any type of police behavior that could be considered corrupt (Haberfeld, et. al., 2000; Micucci and Gomme, 2005). Third, expanding the knowledge of police behavior that was under-reported and under-recorded was not "readily amenable to achievement through random sampling techniques." (Micucci and Gomme, 2005, p. 492; Haberfeld, et. al., 2005). For a more detailed description of these reasons, please see Haberfeld et. al. 2000; and Micucci and Gomme, 2005. Another limitation was the exclusion of demographics such as age, race, and sex. These variables were excluded in an effort to bolster response rates as it was thought that officers would be less likely to answer questions about corruption if any identifying characteristics were included (Klockars, Ivkovich, Harver, and Haberfeld, 2000, p 6).

The moonlighting scenario in the questionnaire was worded as follows:

> A police officer runs his own private business in which he sells and installs security devices, such as alarms, special locks, etc. He does this work during his off-duty hours.

The officers were then asked seven questions regarding the behavior assuming that "the officer in question has been a police officer for five years, has not been previously disciplined, and that the officer has a satisfactory work record" (Klockars, 1997, p. 39). Officers' responses to these questions were treated as dependent variables in the analysis. The first question asked how serious the officer perceived the behavior [BUSINOS]. The second question asked how serious the officer felt others perceived the behavior [BUSINMS]. The third question asked whether the behavior was a violation of policy [BUSINVI]. The fourth question asked whether discipline *should* follow [BUSINOD]. The fifth question asked whether discipline *would* follow [BUSINMD]. The sixth question asked the officer's likelihood of personal reporting [BUSINOR], and the seventh question asked the officer's perception of the likelihood of others reporting [BUSINMR]. Officers' case assessment options are presented in Table 1 with necessary recodes to remove a large number of cells with zero frequencies.

Table 1 – Case Scenario Assessment Categories

Question	Response Categories
How serious do YOU consider this behavior to be? [BUSINOS]	1 Not Serious 2 Neutral 3 Serious
How serious would MOST POLICE OFFICERS IN YOUR AGENCY consider this behavior to be? [BUSINMS]	1 Not Serious 2 Neutral 3 Serious
Would this behavior be regarded as a violation of official policy in your agency? [BUSINVI]	1 No 2 Neutral 3 Yes
If an officer in your agency engaged in this behavior and was discovered doing so, what if any discipline do YOU think SHOULD follow? [BUSINOD]	1 None 2 Verbal Reprimand 3 Written Reprimand 4 Suspension / Demotion / Dismissal
If an officer in your agency engaged in this behavior and was discovered doing so, what if any discipline do YOU think WOULD follow? [BUSINMD]	1 None 2 Verbal Reprimand 3 Written Reprimand 4 Suspension / Demotion / Dismissal
Do you think YOU would report a fellow police officer, who engaged in this behavior? [BUSINOR]	1 No 2 Neutral 3 Yes
Do you think MOST POLICE OFFICERS IN YOUR AGENCY would report a fellow police officer who engaged in this behavior? [BUSINMR]	1 No 2 Neutral 3 Yes

Additional variables in the data included rank in the department [RANK], type of assignment [ASSIGN], supervisory position [SUPERVIS], and agency size [AGENCY] (See Table 2). These were treated as independent variables. Although supervisory role would logically be highly correlated with rank, it was found not to be the case. In many agencies lower ranking line officers were in a supervisory role as patrol officers. Given the hierarchical structure of police agencies and the limited avenues for promotion this seems logical. Length of service in general and length of service at this station were also available variables in the data set, but both were highly correlated with rank and were therefore excluded.

Table 2 – Police Agency Characteristics

Agency Size (Number Sworn)	*Sample Size n*	*Percentage of Sample*	*Percentage Supervisory*	*Percentage Patrol/Traffic*
Very Small < 25	93	2.9	35.5	64.8
Small 26-75	275	8.5	30.5	67.2
Medium 76-200	292	9.0	29.8	59.0
Large 201-500	638	19.7	22.9	60.4
Very Larger > 501	1934	59.8	14.6	64.5

Results

Multinomial logistic models (MNLM) were used to evaluate officer's perceptions of moonlighting behavior. MNLM were chosen because the response variables were ordinal and this type of analysis takes ordering into account. Accounting for natural ordering in examining categorical variables resulted in more parsimonious models and also increased the likelihood of detecting relationships with other variables. The MNLM approach is advantageous over loglinear models because the effect of one variable (Rank) is reported directly on another (perceived seriousness). With MNLM, the relationship of rank on perceived seriousness was the main effect and therefore eased interpretation.

The current analysis will also examine the relationship between categorical variables in a manner that will explore conflicting findings in the current body of literature. Ivokovic (2005) and Micucci and Gomme (2005) analyzed similar data using correlations and Chi-square respectively. The use of MNLM expands these prior analyses by examining the possibility of finding nonlinear relationships between categories within individual variables. Although Ivkovic (2005) and Micucci and Gomme (2005) found significant differences between rank and attitudes toward various forms of corruption, their analyses provided conflicting results. Ivkovic (2005) reported differences only between line officers and supervisors thus suggesting a linear relationship – as rank increases officers become more punitive. Micucci and Gomme (2005), however, reported that new recruits fresh out of the academy were more likely to be in agreement with command staff while mid-level officers did not, thus suggesting a nonlinear relationship – officers are initially punitive in the lower ranks, become less punitive in the mid ranks, and become more punitive at the higher ranks.

The models supported the various hypotheses demonstrating that officers' perceptions varied for different viewpoints regarding moonlighting behavior within their agencies. The first model examined how serious officers viewed the behavior (Table 3). Frequencies were run to determine the reference category and for this model (87 percent 'not serious', 7 percent 'neutral', and 5 percent 'serious'). The reference category was therefore 'not serious'. Officers who were assigned to patrol/traffic (p=.014) or detective/investigative (p=.015) areas were more likely to view the behavior as serious. This result was similar for officers who held the rank of sergeant/detective (p=.003). There were no significant differences for officers whose response was neutral and those who indicated it was not serious.

Table 3 – How Serious the Officer Viewed the Behavior. Multinomial Logistic Regression Results

		Estimate	SE	Wald	df	P (Sig.)	Odds Ratio
Neutral	*Intercept*	-1.650	.339	23.766	1	.000	
Serious	*Intercept*	-1.124	.291	14.933	1	.000	
Assign	Patrol/Traffic	-.552	.225	5.991	1	.014	.576
	Det./Invest.	-.843	.346	5.943	1	.015	.430
Rank	Srgt./Detective	-1.021	.340	9.037	1	.003	.360

N=3136 (Not serious = 2730, Neutral = 225, Serious = 181)
Model Chi Square = 65.559; p < .000, -2 log likelihood = 474.660, Pseudo R2 (Nagelkerke) = .034, df = 26
The reference category is not serious

The second model was constructed to evaluate differences for how serious officers thought others viewed moonlighting (Table 4). Officers were less likely to think others found it serious (4 percent vs. 6 percent) then they did themselves. The model was significant (p<.000), but the majority of the significant differences were not between those that found it serious and those who found it not serious. Instead, those assigned as detectives/investigators (p=.021), those in very small agencies (p=.036), and those who hold the rank of recruit (p=.029) were significantly more likely to respond that others found the behavior neutral. Only those who held the rank of sergeant/detective (p=.000) were more likely to believe others viewed moonlighting as serious.

Table 4 – How Serious the Officer Felt Others Viewed the Behavior.
Multinomial Logistic Regression Results

		Estimate	SE	Wald	df	P (Sig.)	Odds Ratio
Neutral	*Intercept*	-1.989	.368	29.198	1	.000	
Assignment	Det./Invest.	-.699	.302	5.338	1	.021	.497
Agency	Agency < 25	-1.511	.722	4.374	1	.036	.221
Rank	Recruits	1.210	.553	4.794	1	.029	3.353
Serious	*Intercept*	-2.329	.377	38.072	1	.000	
Rank	Srgt./Detective	-1.587	.417	14.507	1	.000	.204

N=3121 (Not serious = 2735, Neutral = 256, Serious = 130)
Model Chi Square = 62.104; p < .000, -2 log likelihood = 431.039, Pseudo R2 (Nagelkerke) = .033, df = 26
The reference category is not serious

The third model examined whether moonlighting was a violation of departmental policy (Table 5). Frequencies were run and the reference category was no (79.5 percent 'no', 9 percent 'neutral', and 11 percent 'yes'). The results for this model were varied. It appeared as though a large portion of some groups did not know whether moonlighting was a violation of policy. Officers assigned as on call/control (p=.049), those in very small agencies (p=.027) or large agencies (p=.011), those not in a supervisory role (p=.001), and the ranks of officers/deputies (p=.004) and sergeants/detectives (p=.024) responded neutrally and differed significantly from those who responded that is was not a violation of policy. Agency size was significant for three different categories when comparing those who thought it was a violation to those who thought it was not. Those from very small agencies (p=.009), small agencies (p=.002), and large agencies (p=.000) were all significantly more likely to respond that it was a violation of policy.

Table 5 – Was it a Violation of Policy?
Multinomial Logistic Regression Results

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Neutral	*Intercept*	-1.878	.337	31.025	1	.000	
Assignment	On Call/Control	-.626	.318	3.870	1	.049	.535
Agency	Agency < 25	-1.320	.596	4.912	1	.027	.267
	Agency 201-500	-.458	.181	6.390	1	.011	.633

Table 5 (continued)

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Supervisor	No	1.006	.292	11.890	1	.001	2.734
Rank	Officers/Deputy	-1.156	.401	8.323	1	.004	.315
	Srgt./Detective	-.812	.360	5.098	1	.024	.444
Yes	*Intercept*	-1.082	.283	14.559	1	.000	
Agency	Agency < 25	-1.348	.518	6.760	1	.009	.260
	Agency 26-75	-.794	.257	9.578	1	.002	.452
	Agency 201-500	-.742	.172	18.497	1	.000	.476

N=3116 (No = 2479, Neutral = 286, Yes = 351)
Model Chi Square = 97.636; p < .000, -2 log likelihood = 500.250, Pseudo R2 (Nagelkerke) = .042, df = 26
The reference category is No

The next model analyzed what type of punishment *should* be levied for someone who engages in moonlighting (Table 6). Available responses included none, a verbal reprimand, a written reprimand, and suspension/demotion/dismissal. The reference category was none (81 percent 'none', 8 percent 'verbal reprimand', 7 percent 'written reprimand', and 4 percent 'suspension/demotion/dismissal'). Officers from large agencies were more likely to respond that a verbal reprimand was warranted (p=.029). Those assigned as detectives/investigators (p=.008) and officers from large agencies (p=.000) were more likely to indicate that a written reprimand should be given. Lastly, officers from large agencies (p=.013) and those holding the rank of sergeant/detective (p=.015) were significantly more likely to note that a suspension, demotion, or dismissal was necessary.

Table 6 – Should it be punished?
Multinomial Logistic Regression Results

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Verb. Rep.	*Intercept*	-1.691	.322	27.594	1	.000	
Agency	Agency 201-500	-.426	.196	4.742	1	.029	.653
Writ. Rep.	*Intercept*	-1.826	.373	23.941	1	.000	

Table 6 (continued)

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Assign	Det./Invest	-.899	.340	7.007	1	.008	.407
Agency	Agency 201-500	-.797	.224	12.625	1	.000	.450
Susp-Diss.	*Intercept*	-1.570	.375	17.521	1	.000	
Agency	Agency 76-201	-1.298	.521	6.210	1	.013	.273
Rank	Srgt./Det.	-1.039	.426	5.954	1	.015	.354

N=3148 (None = 2552, Verbal Reprimand = 247, Written Reprimand = 228, Suspension / Demotion / Dismissal = 121)
Model Chi Square = 82.378; p < .000, -2 log likelihood = 655.869, Pseudo R2 (Nagelkerke) = .035, df = 39
The reference category is None

Officers were then asked what type of punishment *would* be typical for someone who engaged in moonlighting (Table 7). Officers were twice as likely to believe that the harshest punishment *would* be handed down than they were to believe it *should* be handed down (8 percent vs. 4 percent). Verbal reprimands were significantly more likely to be expected for officers from medium agencies (p=.003) and those who held the ranks of officer/deputy (p=.010) and sergeant/ detectives (p=.006). Written reprimands were more likely to be expected among officers from very small (p=.041), small (p=.049), and large (p=.000) agencies. Suspensions, demotions and dismissals were more expected among officers from small (p=.022), medium (p=.000), and large (p=.013) agencies.

Table 7 – Would it be punished?
Multinomial Logistic Regression Results

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Verb. Rep.	*Intercept*	-1.661	.307	29.210	1	.000	
Agency	Agency 76-200	.571	.193	8.720	1	.003	1.770
Rank	Officer/Deputy	-1.000	.388	6.625	1	.010	.368
	Srgt./Detective	-.930	.338	7.589	1	.006	.395
Writ. Rep.	*Intercept*	-1.921	.354	29.493	1	.000	

Table 7 (continued)

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Agency	Agency <25	-1.064	.521	4.176	1	.041	.345
	Agency 26-75	-.488	.248	3.880	1	.049	.614
	Agency 201-500	-.784	.197	15.887	1	.000	.457
Susp-Diss.	*Intercept*	-1.930	.396	23.752	1	.000	
Agency	Agency 26-75	-.643	.280	5.263	1	.022	.526
	Agency 76-200	-1.525	.423	12.999	1	.000	.218
	Agency 201-500	-.444	.179	6.134	1	.013	.642

N=3148 (None = 2328, Verbal Reprimand = 266, Written Reprimand = 298, Suspension / Demotion / Dismissal = 256)
Model Chi Square = 124.640; p < .000, -2 log likelihood = 717.337, Pseudo R2 (Nagelkerke) = .047, df = 39
The reference category is None

The sixth model examined whether officers would report moonlighting (Table 8). The reference category was no, the officers would not report the behavior (89 percent 'no', 5 percent 'neutral', and 6 percent 'yes'). While the vast majority of all officers indicated that they would not report (2805 of 3148), some interesting differences were found. There were no significant differences between those who responded neutrally and those who reported that they would not report. Officers assigned as detectives/investigators (p=.006), those not in a supervisory position (p=.004), and those who held the rank of officers/deputies (p=.013) and sergeants/detectives (p=.001) were more likely to respond that they would report moonlighters.

Table 8 – Would the Officer Report it?
Multinomial Logistic Regression Results

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Neutral	*Intercept*	-2.194	.407	29.108	1	.000	
Yes	*Intercept*	-.654	.267	5.986	1	.014	
Assign	Det./Invest.	-.993	.363	7.494	1	.006	.370
Supervisor	No	-.865	.299	8.361	1	.004	.421
Rank	Officer/Deputy	-.986	.397	6.157	1	.013	.373
	Srgt./Detective	-1.035	.300	11.937	1	.001	.355

N=3148 (No = 2805, Neutral = 155, Yes = 188)
Model Chi Square = 95.023; p < .000, -2 log likelihood = 464.127, Pseudo R2 (Nagelkerke) = .052, df = 26
The reference category is No

The final model investigated whether officers believed their counterparts would report the behavior (Table 9). There were slightly less officers who thought others would report moonlighting when compared to their own reporting (5 percent and 6 percent). Officers who held the rank of detective/investigator (.008) and lieutenant (p=.019) were more likely to respond neutrally. Only those who were not in a supervisory position (p=.017) were more likely to believe that others would report moonlighting.

Table 9 – Do you think others would report it?
Multinomial Logistic Regression Results

		Estimate	SE	Wald	Df	P (Sig.)	Odds Ratio
Neutral	*Intercept*	-1.960	.324	36.514	1	.000	
Rank	Srgt./Detective	-.932	.351	7.035	1	.008	.394
	Lieutenant	-1.381	.588	5.526	1	.019	.251
Yes	*Intercept*	-2.229	.384	33.621	1	.000	
Supervisor	No	-.814	.342	5.647	1	.017	.443

N=3148 (No = 2725, Neutral = 256, Yes = 167)
Model Chi Square = 40.671; p = .033, -2 log likelihood = 462.313, Pseudo R2 (Nagelkerke) = .021, df = 26
The reference category is No

Discussion and Conclusion

Moonlighting among officers presents a variety of concerns for police officers and their agencies. Agency size appeared sporadically throughout the analysis. Agency size was a significant predictor in four of the seven models. There was, however, no clear pattern as to how agency size affected responses. This could be due to poorly defined policies regarding moonlighting behavior in various agencies. The likelihood that most officers are well versed in depart-mental polices regarding moonlighting may not be a 'given.' This is evidenced by officers from very small, small, and large agencies all being more likely to respond that it was a violation of policy when compared to those who thought it was not a violation. Further, those from very small and large agencies were also more likely to answer neutrally to the same question. Either the officers were not aware of a policy, or it may not have been enforced.

In order to get a better idea of how agency size affects officer's perceptions of moonlighting behavior, researchers would first need to collect data on agency policy. A more detailed dataset could include the agency's policy regarding moonlighting and whether it is officially enforced. For example,

are offenders sought by the agency or is it a 'don't ask, don't tell' policy? If they are pursued, is punishment severe enough to deter the officers from engaging in the behavior? An officer who receives a one-day suspension for working six nights a week may not view the trade-off as being derogatory. We would also want to know the number of officers who are moonlighting and their ranks. It would certainly not be surprising to find support for moonlighting in an agency where a majority of officers had off-duty jobs. While the results found here are informative, they raise more questions than they answer.

Very often police agencies are viewed as a single organization with a single focus (Marks and Sun, 2007). Others suggested that there was often disagreement among officers of varying ranks regarding departmental mission, policy, and procedures (Paoline and Terrill , 2005; Chan, 1997; Reuss-Isanni, 1983). Likewise, Micucci and Gomme (2005) found that the disagreement was not always linear; rather officers from the lowest ranks in their study were in agreement with the higher levels of command. The current results provide support for Micucci and Gomme's (2005) findings that officer's attitudes toward corruption do not vary in a linear fashion with rank.

Rank was found to be a significant predictor of officer responses for all seven equations. Sergeants/detectives were the most frequently significant category. They were more likely to believe that moonlighting was serious and others viewed it likewise, that it should be punished with suspension/demotion/ dismissal, that it would be punished with at least a verbal reprimand, and that they would report it. This finding was interesting because one would assume that lieutenants and higher would be better versed in the reality of sanctions being imposed on officers for moonlighting. Here it seemed that perhaps higher-ranking officers were more likely to know that while frowned upon, moonlighting was not a direct violation of policy nor would it be formally punished. Thus commanders were passing along the idea that moonlighting was a violation of policy, yet they were less likely than their subordinates, at least mid-level sergeants and detectives, to indicate this formally.

Type of assignment was significant for how serious officers viewed the behavior for detectives/investigators and patrol/traffic officers. Detectives/investigators were also significantly more likely to report moonlighting and to believe that it should be punished with at least a written reprimand. The results for detectives/investigators were not surprising as the rank category that included detectives was significant in all seven models. Nonetheless, it is interesting that patrol/traffic officers indicated a significantly higher likelihood of viewing the behavior as serious. This could be attributed to academy training, but recruits were not more likely to view moonlighting as serious. More likely, those on

patrol/traffic must attend role call on a daily basis and may therefore be more up to date regarding departmental policies regarding off duty behavior.

Those not holding a supervisory position were significantly more likely to indicate that they would report moonlighting and that they believed that others would report it as well. This finding could be interpreted as supportive of cultural adaptation within police agencies. Those who stayed at a particular agency and reached a supervisory position were less likely to report. Micucci and Gomme (2005) found that supervisors were more likely to view excessive force as serious. Their findings, however, cannot be extrapolated to moonlighting as supervisors were no more likely than non supervisors to view the behavior as serious and supervisors were less likely to report it.

Clearly there is no consensus among officers regarding moonlighting behavior. This suggests several policy implications for agencies who want to regulate or control it. First, agencies need to recognize that officers often hold perceptions based on factors other than a departmental or personal ideology. This study shows that status (rank, assignment, agency size, and supervisor) may shape one's perception of moonlighting. This means that individuals' perceptions may change with a promotion or different duties, based in part perhaps on their self-interests. Considering this finding, agencies should target their moonlighting policies and regulations in a way that benefits officers. For example, promoting a policy to protect the officer from reprimand and liability would be more effective than promoting a policy to protect the agency.

Second, agencies need to present their policies regarding moonlighting in a clear manner targeting those officers who favor the behavior. Those officers who held attitudes favorable to moonlighting would logically be the same officers likely to take a second job. By directing their efforts toward these officers, agencies are more likely to see positive benefits from their efforts, i.e. more officers in line with departmental policy. This would be more productive than the typical blanket approach as resources would be spent only on officers who are at risk of encountering problems associated with moonlighting.

Third, agencies that restrict or prohibit moonlighting behavior must understand that they are competing with other agencies that do not. Given a limited pool of officers, an agency that limits off-duty income should be prepared to offer higher salaries to compensate for the income generated from off-duty work. For most agencies operating within budget constraints is the status quo and for them limiting rather than prohibiting moonlighting would be a better option. Allowing officers to run a lawn care business on the weekends would inherently be less risky than working security at a local nightclub. These options need to be explored to help eliminate the confusion present among officers in regards to moonlighting.

The current study examined officer's perceptions of moonlighting using seven different multinomial logistic regression models. It was discovered that responses varied significantly across agency size, rank, type of assignment and whether the officer held a supervisory position. While the results found here raise many questions that require additional research, a preliminary picture of how officers view moonlighting overall was drawn. Future research should use this information to explore departmental policy regarding moonlighting behavior. Interesting relationships could be explored including the number and types of sanctions levied for known violators and the motivations for officers who moonlight versus their salary structure. The possible link to job performance, fatigue, and liability issues suggested by Hirschmen (2000) and Sharp (1999) also need to be explored. Moonlighting as a corrupt behavior for law enforcement officers has only recently been considered in the literature and there is clearly a need for additional research in this area.

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Criminal History That Repeats…..and Punishes……Severely: How Career Drug Offenders Relive Their Past Under the Federal Sentencing Guidelines

Richard H. Hubbard, Esq.

Introduction

In 1984, after evaluating the federal sentencing system, Congress concluded "that the entire system was outmoded and in need of reform."[1] As a result, Congress enacted "The Sentencing Reform Act of 1984" (SR) which revolutionized federal sentencing, replacing traditional judicial discretion with far more limited authority, controlled by a complex set of mandatory guidelines. The goal and structure of the SRA was to achieve uniformity in federal sentencing.[2] The Act created determinate sentences. By eliminating parole and greatly restricting good time, it ensured that defendants would serve nearly the entire sentence imposed by the court. This sentencing system required district courts to engage in a new, mechanistic application of complex rules.

One of the harshest parts of federal sentencing has been the Career Offender provisions, whose reach and severity can surprise defense counsel, defendants and probation officers alike. This article examines the application of the Career Offender Guideline in present-day federal sentencing as it affects drug defendants. Several recent cases are analyzed and discussed to illustrate how stark results are possible under the guideline computations. The last part of the article gives an overview of a recent Supreme ruling which has impacted the application of the Guidelines by giving some avenues of relief for the career offender.

Guideline Sentencing

Under the Act as originally crafted, a district court judge's authority was greatly restricted by the Sentencing Commission. In general, the Act required the Court to consider a broad variety of purposes and factors before imposing a sentence, including "guidelines" and "policy statements" promulgated by the

[1] Orrin G. Hatch, The Role of Congress in Sentencing: The United States Sentencing Commission, Mandatory Minimum Sentences, and the Search for a Certain and Effective Sentencing System, 28 Wake Forest L. Rev. 185, 187 (1993).

[2] William J. Wilkins, Jr. et al., The Sentencing Reform Act of 1984: A Bold Approach to the Unwarranted Sentencing Disparity Problem, 2 CRIM.L.F. 355, 364-65 (1991); Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (1984) (codified as amended at 18 U.S.C. § 3551-3626 and 28 U.S.C.§ 991-998 (2000).

Richard H. Hubbard, Esq. is a private attorney in New Hampshire who practices federal criminal defense.

Commission.[3] While pointing the Court to these range of consideration, the Act cabined the judge's discretion within a grid of sentencing ranges established by the guidelines by making their application mandatory.

General Overview

The guidelines use a grid (the "Sentencing Table") which assigns two mathematical numbers to a defendant – one value based on the individual's offense level and another based on his or her "criminal history". The intersection of the Offense Level with the Criminal History Category generates a sentencing range, set forth in months. In a most simple and bare application, a guideline computation would go as follows.

The applicable guideline section is determined by the offense of conviction, which is the conduct "charged in the count of indictment or information of which the defendant was convicted."[4] Offense Levels form the vertical axis of the grid and are shown from 1 to 43. In drug and drug-conspiracy cases, the offense level is generally determined by the drug type and quantity, appearing in the drug quantity table. For example, an indictment charging a hypothetical defendant with the possession and intent to distribute 5 grams or more of crack cocaine would yield a base offense level of twenty-four under the guideline chart.[5]

Chapter Three, Part E provides an all-important *downward* adjustment of two, or in some cases three, offense levels for acceptance of responsibility by the defendant. To qualify for the reduction, a defendant must clearly demonstrate acceptance of responsibility for his offense, typically by pleading "guilty".[6] Thus, in our hypothetical, with a three-level adjustment downward for acceptance of responsibility, the defendant would have an "adjusted" base offense level on the vertical axis of the grid of twenty-one.

The Defendant's Criminal History forms the horizontal axis of the sentencing table. The table includes six criminal history categories and translates the defendant's prior record into one of the categories assigning points for prior sentences and even juvenile adjudications.[7] If we assume his criminal history

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[3] See 18 U.S.C. 3553(a) et. seq.

[4] U.S.S.G. § 1B1.2(a).

[5] U.S.S.G. § 2D.1.1.

[6] U.S.S.G. § 3E1.1.

[7] U.S.S.G. § 4A1.1.

was category III (the horizontal axis on the grid), his guideline sentencing range ("GSR") for consideration by the court would be 46-57 months.[8]

Career Offender Guideline

A federal defendant qualifies as a career offender if (1) he was eighteen years old at the time he committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a "crime of violence" or a "controlled substance offense," and (3) he has at least two prior felony convictions of either a "crime of violence" or a "controlled substance offense."[9] The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, distribution or possession of a controlled substance, or the possession of a controlled substance with intent to manufacture or distribute.[10]

The career offender guideline specifies a different set of offense levels depending on the statutory maximum sentence for the offense and conviction as shown here:

Offense	Statutory Maximum	Offense Level
(A)	Life	37
(B)	25 years or more	34
(C)	20 years or more, but less that 25 years	32
(D)	15 years or more, but less that 20 years	29
(E)	10 years or more, but less than 15 years	24
(F)	5 years or more, but less than 10 years	17
(G)	More than 1 year, but less than 5 years	12

If the offense level for a career offender from this table is greater than the offense level otherwise applicable to the defendant (under the general guideline), the offense level from the career offender table shall apply. In all cases, the career offender's criminal history elevates to category VI.[11] This "trumping" effect of a defendant's base offense level and criminal history category is the

[8] See U.S.S.G.§ Chapter Five-Part A (Sentencing Table) which is Appendix A of the article. There are mechanisms or steps that can be taken in order to depart from a computed guideline range, the most common being based on the defendant's cooperation with the Government. See U.S.S.G. §5K1.1.

[9] U.S.S.G.§ 4B1.1(a).

[10] U.S.S.G. §4B1.2(b).

[11] U.S.S.G.§ 4B1.1(b).

guideline mechanism for substantially enhancing a sentencing range for a qualifying defendant.

Selected Case Discussion

As a federal defendant in a 2006 criminal case in the United States District Court in the District of Maine, Carlos Torres, like so many other defendants each year, quickly found himself in the cross-hairs of the United States Sentencing Commission's Career Offender arsenal. His case is similar to those of many other crack defendants.[12]

A DEA agent learned that a confidential informant contacted Torres to arrange the purchase of $500 worth of crack cocaine. Based on that call, the DEA arranged for the informant to go to Torres's apartment building. He returned with 10 tan individually wrapped rocks containing 3.7 grams of "crack" cocaine. A second purchase was made a few weeks later involving 6.4 grams of crack cocaine. He was indicted and eventually plead guilty to Distribution of Five (5) grams or more of Cocaine Base in violation of Title 21, U.S.C. § 841(a)(1) and (b)(1)(B).[13] [14]

Under federal sentencing guidelines, Torres's base offense level was 26 because he possessed 10.1 grams of crack.[15] Torre's criminal history included: (1) Possession of Controlled Drug Substance with Intent to Distribute Within 1000 feet of School Property; (2) Possession of Assault Weapon; and (3) Burglary. His Base offense level of 26 was reduced 3 levels to 23 in recognition of his acceptance of responsibility. With a Criminal History Category of IV, this equated to a GSR of 70-87 months imprisonment.[16] However, his sentencing story does not end there. Unfortunately for Torres, he qualified as a career offender.

In January 1996, Torres possessed marijuana and crack cocaine within 1,000 feet of a school. He was sentenced by a New Jersey court in October 1998. A year later Torres illegally possessed a "fully-loaded M-11 machine gun" and a New Jersey court convicted him of possession of an assault firearm, but set his sentence to run *concurrently* with that for the drug offense. At the time he

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[12] See Kimbrough v. United States, 128 S.Ct. 558, 574 (2007) in which the Supreme Court described as "unremarkable" a crack case in which the defendant was caught sitting in a car with some crack cocaine and a firearm.

[13] The minimum term of imprisonment was 5 years to a maximum term of 40 years, pursuant to Title 21, U.S.C. § 841(b)(1)(B).

[14] U.S.S.G. § 2D.1.1(1)(8).

[15] U.S.S.G. § Chapter Five-Part A.

[16] U.S.S.G.§ 4B1.1(b).

committed both offenses, Torres was only seventeen years old. By the time he was sentenced for both, he was twenty.

Because Torres qualified as a career offender, and because his offense of conviction had a statutory maximum of 40 years imprisonment, the PSR calculated his base offense level as thirty-four (34). The base offense level then superseded Torres's non-career offender base offense level of twenty-six (26) under the career-offender section of the Guidelines. His Criminal History automatically became VI.[17] He was credited a three (3) point reduction for acceptance of responsibility thus making his adjusted offense level thirty-one (31). His revised guideline range became 188-235 months. The District Court sentenced Torres to One Hundred and Ninety Five (195) months.

Torres appealed his sentence to the 1st Circuit Court of Appeals arguing, *inter alia*, that his two 1998 convictions should not have counted as predicate offenses because they were committed when he was seventeen. The Court affirmed the sentence holding that, under the career offender guideline, the District Court *could* count these convictions since Torres committed his federal offenses within five years of being released from confinement on the two New Jersey convictions.[18]

Therefore, rather than being sentenced within the Guideline range of 70-87 months, Torres was sentenced to 195 months due to his career offender status. The offenses committed while he was still a juvenile surely came back to haunt this 27 year old federal defendant. The federal criminal system is replete with similar career offender outcomes, although few perhaps as unforgiving as the case of Jermain Marvin Alexander.

Based on a confidential informant having made a controlled purchase of crack cocaine from Mr. Alexander, federal agents on December 7, 2006 executed a search warrant at his residence in Kalamazoo, Michigan. The search yielded over 250 grams of crack cocaine, a small quantity of powder cocaine, and some marijuana. Authorities also found over $1,000 and a digital scale. He was indicted on December 14, 2006 and later plead guilty on January 31, 2007 to possessing with intent to distribute more than 50 grams of cocaine base in violation of Title 21, U.S.C. § 841(a)(1) and (b)(1)(A)(iii).

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[17] See U.S.S.G. § 4A1.d(2) which covers offenses committed prior to the age of eighteen. The Guideline states that said offenses are to be counted if the instant federal offense was committed within five years of being released from confinement for those crimes.

[18] Under Title 21, U.S.C. § 841(b)(1)(A)(iii) and (viii), Alexander faced the possibility of a minimum mandatory sentence of 20 years based on having a previous, felony drug conviction. Even that statutory provision was trumped by the career offender guideline application.

The history and personal characteristics of this 26 year old Defendant were that he had dropped out of school after the ninth grade. His reading and writing ability was marginal. More importantly perhaps, he underwent hemodialysis treatment three times a week for an incurable, life-threatening condition called End-Stage Renal Disease.

Under the Guidelines, Alexander's base level for the count of possession with intent to distribute 50 grams or more of cocaine was twenty-seven (27), after applying a three level reduction for acceptance of responsibility. His CHC was III, making his guideline range 87-108 months. Again, though, this was just the start of the federal sentencing determination.

Alexander had two prior convictions, and they reared their heads. Specifically, he had two previous state convictions. One was a conviction for the delivery and manufacture of cocaine, and the other was a felony assault conviction. Therefore, the Presentence Report classified him as a career offender.[19] His total offense level jumped to 37 and his criminal history to category VI. His sentencing range became 360 months to life. Despite his medical condition, Alexander was sentenced to 360 months.

The final case to be discussed here is out of the District of Kansas that again illustrates there are few things that slow or stop the career offender train when it barrels toward a federal defendant.

Terri Pruitt struggled with drug addiction most of her life, piling up three prior drug-related state convictions. In addition to having suffered severe physical and sexual abuse as a child, she had been the victim of domestic violence. She did graduate from high school and also maintained employment for most of her life. She was able to have some prolonged periods where she was drug-free.

A confidential drug informant had told a DEA agent that Pruitt was involved in distributing multiple-ounce quantities of methamphetamine. Based on this information, the Government decided to set-up a controlled buy from Pruitt. On November 29, 2004, the informant and Pruitt arranged to meet at Pruitt's residence where it was agreed Pruitt would sell the informant two ounces of methamphetamine. The informant arrived at her house as planned but Pruitt sold the informant only one ounce for $1,350. The amount sold by Pruitt contained 29.4 grams of 63% pure methamphetamine. She was arrested and charged with one count of intentionally distributing 5 grams or more of methamphetamine in violation of Title 21, U.S.C. § 841(a)(1) and (b)(1)(B)(viii).

Her criminal history was lengthy and characteristic of a drug addict, but not violent. In 1985, Pruitt completed a one-year diversion for a DUI charge. In

[19] United States v. Booker, 543 U.S. 220 (2005).

1987, when Pruitt was 22 years old, she was arrested and charged with possession of methamphetamine and conspiracy to possess or sell cocaine, both felonies under Kansas law. Before she pleaded guilty to these offenses, she was convicted of aggravated failure to appear in court. Pruitt ultimately pleaded guilty to these drug-related felonies and served four years on probation (until April 1991).

Eight months after her probation period ended, Pruitt was again arrested and charged with committing drug-related offenses, namely possession with intent to sell marijuana and possession of cocaine. She had brought her then-infant daughter to a drug transaction and was found in possession of 102.1 grams of marijuana, 10 plastic "baggies," 13 syringes, a metal tin containing cocaine, a plastic spoon, a razor blade, a set of scales, and $420. But, before the Court could adjudicate her, she was arrested and charged with a sale of methamphetamine. Pruitt was convicted of all these felonies and served four years in prison. She was paroled in 1996. Seven years later, at the age of forty-two, she committed the 2005 federal offense. Prior to this federal charge, she had not had a conviction of any kind for nearly fourteen years.

Pruitt plead guilty to the one count and was sentenced on April 11, 2006. Under the Guidelines, her offense level was 26, and her criminal history category III. With the three point reduction for acceptance of responsibility, her advisory Guideline sentencing range was 57-71 months. Since she had at least one predicate felony conviction, she was also subject to a mandatory minimum 10 year sentence.

However, Pruitt qualified under U.S.S.G. § 4B1.1(3) as a career offender due to her previous state felony drug convictions. Because the maximum sentence for her charged conduct was life imprisonment, her base offense level increased to 37, adjusted to 34 for acceptance of responsibility, and an automatic CHC of VI. Her guideline range thus became 262-327 months. Despite her arguments to the Court to vary from the Guidelines, the District Court sentenced her to 292 months.

Departure From the Career Offender Guideline

In January 2005, the United States Supreme Court changed the entire landscape of federal sentencing.[20] In United States v. Booker, the defendant was arrested after police officers found 92.5 grams of crack cocaine in his duffle bag. He later gave a written statement to the police admitting to selling an additional 566 grams of crack cocaine. The statement was not used at trial. A federal jury in the United States District Court for the Western District of Wisconsin found

[20] Id. at 224.

Booker guilty of possessing with intent to distribute at least 50 grams of cocaine base in violation of Title 21, U.S.C. § 841(b)(1)(A)(iii), subjecting him to a mandatory minimum of 10 years and a maximum sentence of life in prison. Under the Guideline calculation, the range was 210 to 262 months.

At sentencing, the judge found by a preponderance of the evidence that the defendant: (1) distributed 566 grams over and above the 92.5 grams that the jury convicted him of , and (2) had obstructed justice by giving false testimony at trial. The judge's finding increased the defendant's base offense level from 32 to 36 (2D1.1(c)(2), (4). The enhancement for the larger quantity and the obstruction of justice made Booker's sentencing range jump to 360 months to life. The Court sentenced him to 360 months.

On appeal, the Supreme Court struck down the provisions of the Federal Sentencing Act – which made the Federal Sentencing Guidelines mandatory – and declared the Guidelines advisory.[21] The Court stated that its finding:

> "…makes the Guidelines effectively advisory….and requires a sentencing court to consider Guideline ranges, but.. permits the court to tailor the sentence in light of other statutory concerns as well."[22]

Although the Court declared the Guidelines non-binding, it does not mean that they are now irrelevant to the imposition of a federal sentence.

The Court directed district courts to continue to calculate proper USSG sentence ranges, and stated that the Federal Sentencing Act "requires judges to take account of the Guidelines with other sentencing goals," including Title 18 U.S.C. § 3553(a). The goals set forth in Title 18 U.S.C. § 3553(a) specify that a sentence should: (1) reflect the seriousness of the offense; (2) promote respect for the law; (3) afford adequate deterrence to similar conduct; (4) protect the public from further crimes of the defendant; and (5) provide the defendant with needed training or medical care in the most effective manner.[23]

Thus, sentencing after Booker can be divided into a three-step procedure. First, the district court must correctly determine the applicable guideline range. Next, the Court must determine whether a sentence within that range serves the factors set forth in § 3553(a), and, if not, select a sentence that does serve those factors. Third and finally, the district court must articulate the reasons for the

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[21] Id. at 245.

[22] Id.

[23] 18 U.S.C. § 3553(a).

sentence imposed, particularly explaining any departure or variance from the guideline range.

The post-Booker case of United States v. Robert Martin is an example of how the new sentencing thought-process can work and can at least provide some relief to the career offender.[24] The Defendant pleaded guilty to a charge of conspiracy to distribute more than 35 but less than 50 grams of cocaine base in violation of 21 U.S.C. § 846. In the presentence investigation report (PSI), the probation officer determined the base offense level was 30, and adjusted it downward to 27 to take into account his acceptance of responsibility. Martin had eight prior convictions, yielding a criminal history score of 14 putting him in category VI. His guideline sentencing range (GSR) was 130-162 months. As is the case with career offenders, his guideline range was trumped by the designation as a career offender which meant his enhanced GSR became 262-327 months.

Relying on Booker's rationale, the defendant asked the court at time of sentencing for a sentence beneath the GSR premising his request on 18 U.S.C. § 3553(a) factors. He requested the court sentence him to the ten-year statutory minimum, arguing his criminal history score overrepresented the seriousness of his previous convictions. Some of the convictions were remote in time, and one was for a misdemeanor, and others involved mitigating circumstances. The defendant also argued the sentencing variance was justified because of his difficult childhood, the supportive role of his family, and his potential for rehabilitation – in other words, typical sentencing considerations that state courts most often have the chance to consider. The Government objected to the Defendant's request and urged the Court to sentence him to 262 months.

The Court, after considering all the § 3553 criteria, imposed a sentence of 144 months and explained its decision in part this way:

> "I can't justify going down to the minimum-mandatory sentence of ten years but I'm going to impose a sentence of 144 months which is a 12-year sentence. It's a tremendously tough sentence. It's a tremendously tough sentence for Mr. Martin to serve, and I think that the sentence is fully responsive to all the criteria set forth at 18, U.S.C. Section 3553. It brings home the seriousness of the offenses and properly addresses it. ……and I believe that the 144 month sentence does recognize the positive things about Mr. Martin, and I have in mind particularly the close relationship he has with his family who are here today and how important that

[24] United States v. Robert Martin, 520 F. 3d 87 (1st Cir. 2008).

> relationship is…. ……I also believe that Mr. Martin has demonstrated an unusually strong commitment to a law-abiding life and I do believe that when he is released from prison and after he has served his very difficult sentence, he will stay on the right path and be the sort of person that he now wants to be."[25]

These words and analysis by a federal sentencing court would never have occurred before the Supreme Court's decision in Booker. By the court's action, the sentence was roughly ten years lower than the GSR career offender calculation.

The Government appealed the sentence to the First Circuit Court of Appeals. In upholding the district court's sentencing determination it stated:

> "Under Booker ….there is a heavy emphasis on a sentencing court's informed discretion. In this instance, the sentencing court exercised that discretion and chose leniency. In the process, it offered a plausible rationale and reached a defensible result. Consequently, we uphold its sentencing determination despite the fact the defendant received the benefit of a substantial downward deviation from the guideline sentencing range."[26]

For career offenders who find themselves in the federal sentencing maze, it is now possible at least to put forth an argument for relief from the previously rigidity of the guidelines

Summary

Sentencing, even after the Supreme Court's decision in Booker, remains driven not by a defendant's actual roles in the crime, but rather by two factors: 1) the quantities of drugs for which the government seeks to hold each defendant responsible and whether those quantities trigger a mandatory minimum sentence; and 2) whether the defendant qualifies as a career offender. If a defendant qualifies as a career offender and is guilty of distributing a quantity of drugs sufficient to trigger a mandatory minimum sentence, the combination of the two increases his sentence astronomically. In fact, it is not at all uncommon to find that the *supplier* of drugs has a minimal criminal record, and thus avoids career

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[25] Id. at 91.

[26] Id., See also Memorandum RE: Sentencing, United States v. Martin, United States District Court For the District of Massachusetts, CR No. 03-30008, Document 930.

offender sentence, because of the distance he has maintained from street activities, while the street dealer winds up with a substantial one.

The United States Sentencing Commission has acknowledged that the career offender guideline can be problematic, particularly when it is based on prior drug trafficking offenses. In its recent 15-year report, the Commission said:

> "The question for policymakers is whether the career offender guideline, especially as it applies to repeat drug traffickers, clearly promotes an important purpose of sentencing. Unlike repeat violent offenders, whose incapacitation may protect the public from additional crimes by the offender, criminologists and law enforcement officials testifying before the Commission have noted that retail-level drug traffickers are readily replaced by new drug sellers so long as the demand for a drug remains high. Incapacitating a low-level drug seller prevents little, if any, drug selling; the crime is simply committed by someone else."[27]

The sentencing bottom-line, especially as it impacts drug defendants, is that the career offender guideline continues to be a harsh and imperfect sentencing measure. Arguably, the most significant aspect of Booker is its directive to district courts to incorporate sentencing goals contained in 18 U.S.C. § 3553(a). This has provided some relief to the career offender, albeit little as it can be sometimes. Under the ruling, it is now possible for district courts and probation officers to use a § 3553(a) purpose-based analysis to mitigate the heavy-handed career offender guideline in drug cases. Whether judges begin to universally consider these wider range of facts in sentencing decisions to enable the deserving defendant to escape the career offender net will be the test of Booker. If anything, federal drug defendants now have some reason to hope that the Court will depart from the career guideline in their case; a hope that was all but elusive under the prior, mandatory sentencing regime.

[27] U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing, 133-134 (Nov. 2004).