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Self-Motivation in Policing

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Abstract
Research shows that the work shift of a patrol officer includes a large amount of “down time.” Occupational scholarship has validated that workers can reduce boredom by engaging in activities that are ancillary to normal duties. The autonomous work environment of police officers provides them a unique opportunity to minimize boredom by working in a way that makes their expected behavior interesting. To date the police motivation scholarship tends to examine “job satisfaction,” but the notion of boredom is missing from the research. This study used an observational research design to provide a qualitative examination of the techniques used by police officers to “self-motivate” during their down time. It documents how police officers, guided by self-actualization, autonomy, and intrinsic motivation, find constructive policing tasks to fill their time when they are not engaged in official activity, such as handing a call or dealing with a specifically assigned task.

Key Words: Police, Motivation, Autonomy, Boredom

INTRODUCTION
Contrary to popular media presentations of law enforcement careers, policing scholars contend that the duties of a street-level police officer are on average mundane and involve activities that may be considered boring to some, such as driving and completing paperwork (Bayley, 1994; Bouza, 1990; Reiner, 2000). Boredom exists when a person feels there is an absence of purpose or significance in their actions (Barbalet, 1999; Conrad, 1997). Job activity is meaningless or immaterial, or efforts do not match work features that are assumed to motivate (Loukidou, Loan-Clarke, & Daniels, 2009). The goal of street-level officers is to maintain order and keep the peace (Wilson, 1968), but policing values crime fighting (Herbert, 1998, 2001; Muir, 1979). Yet the opportunity for a police officer to participate in exciting or aggres-
sive activity is quite rare (Cumming, Cumming, & Edell, 1985; Famega, 2005; Frank, Brandl, & Watkins, 1997).

Boredom can have serious implications in policing. First, when officers' reported reduced job satisfaction and motivation, their maintenance of legal standards was negatively affected (Welsh, 1981). Second, boredom may increase turnover in police organizations. Orrick (2008) suggested that police officers who are categorized as Generation X (born roughly between 1965 and 1980) and Generation Y employees (born roughly between 1980 and 1994) are uncomfortable with delayed gratification, and they possess a shortage of employee loyalty (Corzine, Jaeckle, & Roberts, 2010). Finally, police officers are trained to be vigilant and alert for danger (Barker, 1998), and boredom may adversely impact an officer's safety. Despite the awareness of down time in policing and the possible implications, the only study of how police perform during their down time examined their discretionary decision making (Phillips, 2015).

This research fills a gap in the scholarship by examining the “self-motivation” of police officers during their down time. Self-motivation is comprised of three related concepts: self-actualization, autonomy, and intrinsic motivation. It is argued that street-level police officers have the ability to self-motivate and occupy their time in constructive activity that minimizes occupational boredom. If modes of self-motivation can be identified, then police supervisors and administrators might access those techniques during slow work periods, contributing to improved policing or problem-solving.

LITERATURE REVIEW

Motivation and Boredom

Questions of employee motivation often come from organizational supervisors or managers who wish to get their workers to do what they are expected to do. Herzberg (1968) explained that employees can be "kicked" to get them to move, but if a supervisor wants to get the worker moving again, they must be kicked again. Maslow's (1943) theory of motivation addressed a hierarchy of basic needs. At the most fundamental level of basic needs is the physiological needs of life, such as water and air. Once these needs are satisfied, a person can satisfy their safety needs (an absence of threat or danger), followed by the need for love and belonging. The fourth need in the hierarchy is self-esteem and the esteem of others. The pinnacle of Maslow's hierarchy is self-actualization, which he described as a person having the ability to work in a way that they realize their own potential (Maslow, 1943).

An important component of self-actualization and employee motivation is autonomy in the workplace (Lawler & Hall, 1970; Maslow, 1962). Autonomy is the ability of a worker to perform his or her job with some level of choice or volition (Gagné & Deci, 2005). This adds a feeling of responsibility and personal accountability to the job (Zhao, Thurman, & He, 1999). Autonomy
can add a sense of ownership to job duties, and workers are motivated to perform those duties well. Responsibility is not, however, simply doing more of the same by enlarging the number of similar tasks assigned to a worker. Responsibility involves trust in the worker to do what is expected without strict oversight or monitoring (Herzberg, 1968; Maslow, 1962). Still, workers require some level of meaningful feedback to understand their role in an organization and remain motivated (Deci, 1971). Thus, a worker's self-actualization and motivation needs are satisfied when they have autonomy and a level of responsibility for their own work. Feedback serves as a guide for autonomy (Zhao et al., 1999).

Cognitive Evaluation Theory proposes that “intrinsic motivation” is the next logical step for keeping a worker motivated. When some level of control is in the hands of the employee through self-actualization and autonomy, there is intrinsic motivation. This allows a worker to perform their tasks because “they find it interesting and derive spontaneous satisfaction from the activity itself” (Gagné & Deci, 2005, p. 331). Challenging the employee’s skills and abilities offers subjective rewards that motivate a worker to perform well (Lawler & Hall, 1970).

Boredom enters the equation as “a fundamentally negative subjective state where the individual experiences little interest in what is currently happening” (Conrad, 1997 p. 467). Occupational boredom is the “polar opposite” (Loukidou et al., 2009) of motivation; where motivation increases job satisfaction, boredom reduces it (Kass, Vodanovich, & Callender, 2001; MacDonald & MacIntyre, 1997). The negative side-effects of dissatisfaction included absenteeism, turnover (Kass et al., 2001), changes in cognitive processes (Suedfeld, 1975), and unsafe work behavior (Game, 2007).

Boredom is more than dullness or monotony. When a worker’s actions lack significance they are disengaged (Barbalet, 1999; Conrad, 1997), and this is associated with “meaning” (Barbalet 1999; Baumeister 1991). If a worker anticipates “the possibility of something else” (Conrad, 1997, p. 468) that never occurs, their job has no meaning and they are bored. A possible positive consequence of boredom is called “boredom drive.” A worker who retains a sense of “curiosity and exploratory behavior” (Barbalet, 1999, p. 636) would engage in behavior that reduces boredom. Behavior that results from boredom drive can answer the need for Conrad’s (1997) “possibility of something else.”

An inherent component of boredom is the work environment (Barbalet, 1999; Conrad, 1997; Loukidou et al., 2009). Organizational and business settings include formal rules and regulations that structure or limit a workers behavior. This can restrict innovative thinking and activity. Thus, new or inventive methods for dealing with a work task may be avoided if the behavior would violate formal organizational regulations. This can contribute to boredom. In addition, a worker may have an important role in the orga-
zation, but organizational environment may minimize the “quality” of their role. Thus, their position in the organization may not satisfy their objective occupational standards (Darden & Marks, 1999).

Policing and Motivation

Criminal justice research utilizing needs theory has examined how tasks are organized and how “job redesign strategies” can motivate workers (Elliot & Williams, 1995, p. 76). With respect to motivation in policing, the research is fairly limited. Policing scholarship tends to examine “job satisfaction” rather than motivation (Greene, 1989; Johnson, 2006; Lurigio & Skogan, 1994) or combined these concepts (Zhao et al., 1999).

It should come as no surprise that policing scholars have utilized the research of Hackman and Oldham (1975, 1980) to develop quantitative measures of job satisfaction. Survey items based on Hackman and Oldham’s work correspond well when examining the police. An officer’s job is complex, requiring autonomy, the use of a variety of skills, and engaging in different tasks that often involve serious issues. There are, however, other qualitative studies of the police (discussed below) that echo the scholarship examining self-actualization (Maslow, 1943), autonomy (Lawler & Hall, 1970; Maslow, 1962), and intrinsic motivation (Gagné & Deci, 2005; Porter & Lawler, 1968).

Maslow (1962, p. 62) described self-actualization as “an expression of the inner core or self.” With regard to police detectives, their work is characterized as a job requiring specialized talents and investigatory skills (Bayley, 1994; Gottschalk, 2006). In reality their work is mundane and unglamorous (Bayley, 1994; Heinsler, Kleinman, & Stenross, 1990). Despite the reality of detective work, they have been successful at shifting the core of their actual work into “valued roles and activities” (Heinsler et al., 1990, p. 236) that provided the detectives with pride in their jobs. Police detectives had the ability to reframe report writing and paperwork tasks “as an opportunity to assemble clues and develop insights” (p. 241). Similarly, Holdaway (1983) reported that police officers would not miss the opportunity to drive fast when they received a call, because the notion of a “fast” response time is important to policing. Further, locations known for their “trouble” have value in the police occupation because they have allowed officers to make arrests for minor offenses (Holdaway, 1983).

With respect to the concept of autonomy, since the early work of Goldstein (1960) and Wilson (1968), there is no shortage of scholarship examining officer’s discretion and autonomous decision-making. Police officers commonly work alone (Skolnick, 1975), have limited access to the resources needed to perform their work (Goldstein, 1977), and are supposed to enforce criminal laws that are often vague (LaFave, 1965). Yet, autonomy contributes to “intrinsic motivation.” Heinsler et al. (1990) reported that detectives did not consider patrol to be “dead time,” as street officers described the duty.
Rather, detectives felt the opportunity to patrol allowed them the chance to develop informants or simply look for criminal activity.

**CURRENT STUDY**

Police officers are considered “in service” when they are engaged in random patrol in order to deter crime. Being “in service” is considered “down time,” a patrol status when officers have no formal tasks (Bayley, 1994). If the down time is boring, it is incumbent on the officer to self-motivate in order to alleviate this affective state. What is completely absent from the policing scholarship is any understanding of how street-level patrol officers self-motivate during their work shift. Self-motivation is the driving force that results in a police officer engaging in legitimate, if somewhat banal, activities when they are not dealing with a formal law enforcement task. This research seeks to expand our understanding of the behavior of street-level police officers by exploring self-motivation in a fairly boring work environment. Self-actualization, autonomy, and intrinsic motivation guide this research.

**DATA / METHODS**

Data for this study were gathered using a Systematic Social Observation (SSO) design. SSO methods allow a researcher to observe subjects in their natural setting as opposed to relying on a respondent to answer questions about past or hypothetical behavior. Thus, there is an uninterrupted link between a subject’s activity and its documentation. Observers make brief notes during their observations; as soon as an observation period is completed those notes are used to construct extensive written narratives with in-depth descriptions of what occurred during the observation period (Mastrofski et al., 1998). This research design requires the cooperation of both the agency and the police officers who are involved in the study (Mastrofski et al, 1998). SSO designs have been used by policing scholars for several decades (Brown, 1981; Muir, 1979; Reiss, 1967; Skolnick 1975; Wilson, 1968). For this study, the SSO designed was used to collect qualitative data in a small police agency in upstate New York.

The observational research design required that I conduct ride-alongs with street-level police officers. I have a professional relationship with the police chief of a local agency (he is an adjunct instructor at my college) and he accepted my suggestion to conduct this study in his agency. His command staff was involved during a planning meeting to discuss a ride-along schedule. When the ride-alongs first began, a command officer introduced me to the street supervisors and officers at roll-call, and he explained the goals of the study.¹ In addition, I have prior law enforcement experience (in another state), and this experience provided a link to the officers’ world. Initially, a few officers were somewhat suspect of my company in their vehicles, but most officers were welcoming and seemed to accept my presence. During the
ride-alongs, the officers and I had informal discussions, which is an acceptable element of SSO.

I did not take any pencil and paper notes of my observations. Rather, a few “key words” were documented on a cell phone. When a work shift was completed I left the police station and immediately reconstructed the events on a computer word-processing program using the key words that were recorded during the work shift. Direct quotes were difficult to document; however, some officer statements were memorable with respect to a specific event. These statements are paraphrased in the findings section, but they will be placed within quotation marks to provide additional context or understanding to what occurred during an incident.

Ride-alongs occurred in July, 2014. Police officers worked 12-hour shifts, and the agency requested that I engage in four-hour ride-alongs with officers. I participated in two ride-alongs over an eight-hour period, starting at either 7 a.m. or 7 p.m., changing officers at the four-hour mark. I did not participate in ride-alongs between 3 and 7 during each shift. It is believed that a fair assessment of officers’ activity would be gathered during the eight-hour time frames for each shift; I was able to observe officer’s time in roll-call, answering calls for service involving multiple officers, and relaxing in the dispatch room. This allowed sufficient opportunity to watch and engage with the officers. While the 3 a.m. – 7 a.m. time period is often the slowest period for most police officers (Walker & Katz, 2008), and it can be argued that this time frame would be the perfect opportunity to examine officer down time, I decided that I had been provided sufficient opportunity during the other shifts to study the police when their activity level was low. Further, I suspected that I might “wear out my welcome” by spending time with officers between 3 a.m. and 7 a.m. I rode with 17 different officers, eight during the day shift and nine during the night shift, and the total observation time was 68 hours.

The study took place in the city of Great Lakes in upstate New York, which is a small urban area that is located in a relatively rural region; the nearest large city can be reached in an hour’s drive. Great Lakes has a population that is more than 80 percent White. The median value of owner-occupied homes is less than $100,000 and the median household income is less than $50,000. The Great Lakes Police Department employs between 40 and 50 sworn police officers, including the chief, upper and mid-level supervisors, and detectives. Approximately 60 percent of the officers work in the patrol section of the agency. There are five female and no minority officers. Each 12-hour shift is staffed by eight officers, which includes a few higher-ranking street supervisors who participate in patrol activity. Most work shifts had 4 to 5 officers on patrol. Recent crime data from the state showed there were less than 100 violent crimes for the year, including approximately 20 robberies and 40 aggravated assaults. There were almost 650 property crimes, but approximately 80 percent were larceny. Thus, it can be argued that the level
of crime and disorder in Great Lakes is fairly low, and the opportunity to do "real police work" (Herbert, 2001, p. 59) is limited.

FINDINGS

General Descriptive Work of Great Lakes Officers

Policing in Great Lakes mirrors prior scholarship: it is fairly dull and the officers usually handle minor events. During my observations, only two incidents occurred that might be classified as "serious." First, a "burglary in progress" of a house was reported to the police, and officers discovered a broken window. The home, however, had been abandoned, unoccupied, and completely empty, so the officers could not determine if anything had actually been taken. Nevertheless, three officers, a lieutenant, and a detective responded to the call. The second incident involved a distraught worker at a restaurant. The worker was upset about a recent relationship breakup and used a knife to threaten the responding officer (I was with another officer who provided back up). The primary police officer used a Taser to immobilize the restaurant worker. Outside my ride-along exposure, there had been a random street shooting but no one was injured. Nevertheless, when I was at the agency the next day, this incident involved substantial follow-up discussion during roll call and additional investigation by street-level officers. Most of the calls for service during my ride-alongs, however, were for theft, noise, and minor disturbance calls.

Overall, the duties and calls for service in Great Lakes are fairly minor and a bulk of the officer's shift can be considered down time. Nevertheless, all the officers used "boredom drivers" (Barbalet, 1999, p. 636) to reduce monotony by providing the officers with a sense of engagement and meaning to their work. These drivers involved aspects of self-actualization, autonomy, and intrinsic motivation.

Self-actualization

Self-actualization occurs when a worker has the ability to act in a way that expresses his/her core values so they can realize their own potential (Maslow, 1943, 1962). One of the core values of policing is random patrol in order to deter crime, make people feel safe, and be available for calls (Walker & Katz, 2008). All the officers exhibited an interest in their patrol duties, demonstrating thoughtfulness that belies the notion of "random" patrol. The first officer I rode with (mid-career) mentioned that the city was divided into four sectors or "beats." Officers, however, were not restricted to their particular beat. After riding with several officers, I noted variation in patrol tactics and the justifications or rationales for their activities. Several officers stated that when they leave the station they would first patrol their sector, often for a while. They did this because they wanted to check the area first in case things got busy later. One officer mentioned that this allowed him to
argue that if other things “got in the way” that he had patrolled the beat at least once.

Several officers, particularly the night shift officers, focus their patrols on the “high crime areas.” While these areas experienced little crime while I was with the officers, these areas were lower socio-economic neighborhoods and had a reputation for disorder and drug activity. When officers patrolled other parts of town it was commonly on the secondary streets; only occasionally did they patrol neighborhood streets. They used tertiary streets to link to other secondary roadways. I estimate that roughly 25% of the city, mostly middle and upper class areas, was never patrolled while I was with the officers.

A mid-career street supervisor patrolled these lower socio-economic neighborhoods and did not stray far from them. He stated that while recently promoted, he still liked to patrol and back up the street officers. After about an hour patrolling the same area with no stops or calls for service, the supervisor drove to an area that included some older industrial businesses that were occasionally used by drug users. He stayed in the area only briefly and then patrolled some tertiary streets. During a different ride-along, another mid-career street supervisor stated that he likes to patrol like a regular officer. He can keep track of things in a way that cannot be done from the station.

An experienced officer working during the day shift received no calls while I was with him; however, he patrolled a lot and never sat still. Most of the patrolling occurred on primary or secondary roads, but it is notable that he did not restrict his patrols to the lower SES or crime areas. In fact, he covered the entire city, north to south and east to west. While most of the first three hours of patrol occurred on primary and secondary roads, the fourth hour saw the officer patrol many of the neighborhood streets. Also, he drove through some areas I had never been before, including the upper middle class areas with nice homes.

While most officers I rode with patrol all around the city because it is not a particularly large in area, one officer stated that he stays in his beat unless he gets a call to another sector, and he never “poaches.” This novice officer explained that he likes to keep his area safe, and if he sees something then he should be the one to handle it. He mentioned that there are informal expectations for the officers (e.g., tickets, stops) and that if another officer is in his sector and issues a ticket, then that is something that he will not get credit for. He also stated that if he happens to be in another sector and sees a problem, he will call the officer assigned to that sector to inform him/her of the issue. The other officer can then deal with the problem and get the credit.

Another novice officer had a different tactic for patrol: the officer drove around his assigned sector for about 45 minutes and then parked in public locations in clear view of the primary roads. I assumed that the officer changed his behavior in response to my presence, but total inaction seemed an odd
type of reactivity. In addition, the officer seemed interested in the research I was conducting and asked several questions. Further, the officer was twice dispatched to minor incidents and allowed me to be present during his investigation or interaction with the caller. Therefore, the only officer I rode with who seemed to demonstrate behavior that might be considered “reactive” was nonetheless very open in conversation and official behavior.6

A second core value of policing that was seen in the officer’s patrol behavior was suspicion. Police officers are trained to look for suspicious behavior (Alpert, MacDonald, & Dunham, 2005). A novice officer was patrolling after midnight and noticed a vehicle in the parking lot of a local venue for public events (i.e., a building for shows or other civic gatherings, soccer fields), a location considered “closed” after dark. The officer entered the parking lot and pulled in behind the vehicle; he informed the dispatcher of the vehicle’s plate number and location. There was a man in the vehicle and upon investigating it was determined that the man had had an argument with his wife, left the house, and parked in the lot. The man had been drinking but he was cooperative. Another officer arrived shortly thereafter. Both officers discussed the situation and allowed the man to call his wife, who arrived about 10 minutes later. The officers spoke with her for several minutes and eventually they allowed the man to go home with his wife.

A little later in the shift, just after midnight, the novice officer and I were driving to a local all-night restaurant to get coffee when the officer noticed a vehicle parked directly in front of a store in a strip plaza. The car was near another business that had been burgled the night before. The officer pulled up behind the car and entered the license plate in the computer. At that time a man opened the door of a store (the man had parked directly in front of his store) and told the officer that he was doing paperwork as part of his job at a small health-care facility. The man showed the officer identification and explained that he had parked directly in front of the store so he could keep an eye on the vehicle. The officer was satisfied and we drove to the restaurant.

Traffic enforcement is a third issue that is core to the values of the police because “the enforcement of traffic laws offers unique opportunities and challenges . . . they provide an opportunity to look for evidence of other offenses and make inquiries about anything that seems awry” (Schafer & Mastrofski, 2005, p. 225). Most officers of the Great Lakes Police Department took note of traffic violations. While patrolling with a mid-career officer who worked the day shift, the officer noticed a vehicle with an expired inspection sticker. He needed to do a U-turn to catch up with the vehicle. Once stopped, the driver stated she had received two other tickets for the same offense. The officer told me that, while some people deserve a break, the fact that she had already received two tickets, and did not remedy the problem, was unacceptable; therefore, she deserved another ticket.
It should be noted that this was one of the few times an officer issued a traffic ticket for the original offense. Several officers stopped vehicles for a variety of reasons, but either did not write a ticket or provided the driver with a “fix-it-ticket” (a phrase provided by one of the officers). For example, a novice officer working the night shift passed a vehicle driving without using headlights (it was about 10:30 p.m.). He stopped the vehicle and spoke with the driver. When he returned to the patrol car, the officer stated that the driver had used the vehicle many times in the past, so “she should have known.” He added, however, that the driver lived about a block away, and she was just coming from a local theatre production of Peter Pan. “You don’t write a ticket to someone like that,” so he released the driver. At approximately 10 p.m., another novice officer noticed a vehicle make a rolling stop at a traffic light, so the officer pulled over the driver. The officer checked the driver’s license and told the driver why he was stopped, but the officer did not write a ticket. In another traffic stop, an experienced officer working on the day shift saw a person driving while using a cell phone (this is a violation in New York State). The officer stopped the person, had a brief conversation regarding the issue, and released the driver with “a warning.” While riding with an experienced officer at about 9:00 a.m., the officer noticed a pickup truck that appeared to be following another vehicle too closely. The officer did a U-turn and stopped the vehicle, which was being driven by a city worker, so the officer let him go.

When the officers issued the “fix-it-ticket,” they explained that this is a citation typically issued for an equipment violation that allows the driver or owner an opportunity to repair the problem. This occurred twice while I rode with officers. A mid-career patrol supervisor had parked in a location that allowed him to hide his unmarked police vehicle near an intersection. It was 1:30 a.m. and a vehicle made an illegal turn. The supervisor stopped the vehicle and determined that the vehicle had an expired inspection sticker. The lieutenant issued a ticket for the sticker but not the illegal turn. He explained that the moving violation would have added points to the driver’s license. At 12:30 a.m., I was riding with a novice officer who noticed a car make an illegal right turn at a red light. The officer stopped the vehicle and spoke with the driver; he returned to the patrol car and used the computer to search the driver’s name. He learned the driver was not wanted and had a “clean” license. The officer stated, “I hate writing tickets to people who have clean licenses. Plus she lives in the city.” He explained that he would write a ticket for a broken license plate light “and she won’t get points on her license.”

A few officers used radar guns during their work shift, and focused on primary roadways in the city. A mid-career officer who worked during the day shift used his radar gun for about 30 minutes at a location that had a fair amount of morning traffic, but none of the drivers reached his “cut-off” for speeding, which was ten miles over the posted speed limit. A mid-career officer used his radar gun for about an hour; his cut-off was 15 mph over the posted limit, but only two drivers violated this standard. While the officer
stopped both vehicles, he did not issue a ticket to either driver. One driver was a state trooper who was following a suspect as part of an undercover operation (the trooper lost the suspect as a result of the traffic stop), and the other driver was the brother of a county sheriff's deputy. Finally, a mid-career street supervisor drove to a busy primary road and parked in a used car lot; it was about 9:30 p.m. and his police vehicle blended in very well. I asked about his “cut-off” and he stated that it was about 13 mph. The supervisor stopped two vehicles but only gave one ticket. He explained that he did not give a ticket to the second driver he stopped because “I can't give a ticket to an out-of-state driver” who had just left a wedding.

An important core value in policing is the notion of “backup,” or supporting other officers (Crank, 1998). Also called “checking by,” this behavior was often practiced by the officers in Great Lakes. The most common opportunity for an officer to backup another was during a traffic stop; a second car would simply drive by so the officer who made the stop would know another vehicle was in the area. This occurred very often. Other times a third officer would check by. For example, around 2:45 a.m., a novice officer checked by with a patrol supervisor who had stopped a vehicle on a neighborhood street. While the supervisor talked with the driver outside the car, the novice officer, and then a third officer who checked by, stayed close to the stopped car and monitored the three passengers in the vehicle.

On other occasions an officer will hear a call on the radio and check by in case the first officer needs assistance. On one occasion a theft call resulted in three additional officers checking by to back up the first officer. When the suspect was arrested he became unruly, so two officers assisted in the booking process at the police station. A novice officer I was riding with checked by the location of an accident, but the two officers handling the incident were finishing their reports and did not need assistance. When a call involved a domestic violence incident, a second officer always checked by with the primary officer, and the second officer always informed the dispatcher about his status. One domestic violence incident, at 10:50 p.m., involved a novice officer who responded and spoke with a female and male. The patrol supervisor stopped by about two minutes later and he was followed by another officer. Both back up officers stayed close to the situation but allowed the primary officer to handle the incident.

Criminal investigation in policing is another core value (Walker & Katz, 2008); however, sophisticated or in-depth investigations were infrequent. For example, prior to starting his patrol, a mid-career supervisor printed a copy of a warrant (picture and incident details) of a man that he knew, “just in case I see him.” An experienced officer who worked the day shift drove to a section of town to look for a burglary suspect (a teenaged boy) who was arrested a few days earlier but had not shown up to court. The officer spent the better part of an hour checking parked vehicles the offender may have slept in during the night, and talking to neighbors on the street who
likely knew the offender and may have seen him. Finally, while riding with a novice officer who worked the night shift, the officer mentioned the need to look for a person who was suspected of firing a weapon at a home the day before. The officer mentioned that he had grown up in the city so he still knew a lot of people, even the people who engaged in illegal activity. The officer stated he had many phone numbers and a confidential informant who could provide some general “street information” when necessary. While a few phone calls were made regarding this event, nothing of substance resulted from these efforts.

Overall, many of the activities of the officers in the Great Lakes Police Department fit Maslow’s (1943) definition of self-actualization. Their behaviors often represent the core values of policing (e.g., patrolling, stopping traffic, being suspicious, backing up other officers, and investigations) and are actively pursued by the officers. While almost none of these actions resulted in arrests or other “real police work,” this did not prevent the officers from engaging in activity that allowed them to behave in a manner that would be expected of any police officer. These arguably minor activities allowed the officers to realize their potential as police officers.

**Autonomy**

While it is strongly suggested that worker autonomy is related to self-actualization (Lawler & Hall, 1970; Maslow, 1962), police officers often make self-directed decisions that are not necessarily related to their core values. Autonomy means working in a manner that allows a level of choice (Gagné & Deci, 2005) and is connected to job responsibilities and challenges (Porter & Lawler, 1968). Autonomy does not mean that police officers can “do anything they want,” but independence allows them to behave in ways that can reduce boredom, even if that behavior is fairly banal from a law enforcement perspective. A common example is that police officers would simply patrol. While officers tended to patrol for reasons associated with the core values (as discussed above), it was noticeable that they sometimes patrolled to pass the time. At least two novice officers mentioned that they “just can’t sit still.” While I was riding with these officers, they parked in locations that offered the opportunity to witness traffic violations. After roughly 5 minutes, and no egregious offenders, one officer suddenly said “that’s it” and quickly placed the vehicle in gear to drive away from the intersection. It was as if sitting and waiting was worse than driving and waiting; at least “driving” was something.

It is also noteworthy that autonomy seemed to allow some officers to backup other officers just to pass the time. One experienced officer checked by during a minor traffic accident and stayed for roughly twenty minutes. The back-up officer did not contribute to the investigation in any way, but simply chatted with me and the primary officer. A mid-career supervisor checked by with another officer who had been dispatched to an ambulance
call (a female had fallen and broken her leg). The same supervisor checked on another officer who was at the hospital with a suspect who had been arrested for drunk driving. When a novice officer was dispatched to a call regarding criminal mischief, two other officers checked by and waited for about ten minutes for the primary officer to complete the preliminary investigation. I was able to stand and talk with the two other officers who waited by the street. The conversation can best be described as idle chit-chat.

The autonomy to pass the time talking was also seen when the officers would stop at the station. While riding with a day shift officer who was using a computer at the station to complete some paperwork, another officer happened by and they, literally, talked about the weather for a few minutes. Other station-house conversations occurred on the night shift when officers ate their meals or stopped in to use the rest room.

One issue that was mentioned by several officers regarding their autonomy was that they were not to patrol outside the city limits. They could, if necessary, “cut through” non-city boundaries if it expedited their response to a call. There were, also, a few restaurants outside the city limits that were accessible to frequent if the officers needed a take-out meal or cup of coffee. This patrol restriction was not monitored by the supervisors, but the officers were diligent about adhering to the limit. Thus, regardless of the notion of autonomy in police decision making, some simple restrictions were put in place and the officers conformed to those limitations.

Autonomous behavior is not a necessary component of self-actualization, but the concepts are clearly related. Without belaboring the earlier information, officers could patrol or remain stationary, focus on one neighborhood or transit the city, determine if a ticket should be issued, check-by on another call or just drive past. The street officers in Great Lakes were not strictly monitored by the patrol supervisors but still have a sense of appropriate behavior that was structured by their own volition. More important, their ability to make autonomous decisions in their job responsibilities helped to alleviate the boredom of their down time.

**Intrinsic Motivation**

As argued above, self-actualization and autonomy contribute to intrinsic motivation, or the ability of a worker to behave in a way that is of interest to the employee and contributes to spontaneous satisfaction from the behavior itself (Gagné & Deci, 2005). Intrinsic motivation was seen fairly often during officers’ down-time. Street officers used their patrol time as an opportunity to engage in activities that might afford unplanned satisfaction. For example, several officers, novice and mid-career alike, hid in dark areas that afforded a clear view of intersections. This allowed them an opportunity to monitor the location for drivers who might run a traffic light or stop sign. I characterize this behavior – hiding in order to stop drivers for traffic offenses – as intrinsic motivation because of the tone of voice and comments made by the
officers when they explained their behavior. That is, hiding was of interest to the officers and they suggested the potential for spontaneous satisfaction. One mid-career supervisor who parked in a used car lot said “no one can see me when they pass.” A novice officer had parked so he could observe an intersection, and upon seeing the headlights of an approaching vehicle whispered to himself “come on, come on,” as if to will the vehicle’s driver to roll through the stop sign. When the driver came to a complete stop the officers stated “damn!”

As mentioned above, of all the tickets written by the officers, only one was for the original traffic violation; all other officers either released the driver with an unwritten warning or they issued a ticket for a minor equipment violation. Thus, the possible traffic stop or citation was not the primary source of satisfaction. The goal of the potential traffic stop seemed to be the possibility of cultivating an interaction with a more serious offender. The traffic stop offered the possibility that “something else” would result to reduce the boredom (Conrad, 1997).

Another example of intrinsic motivation occurred when a novice officer had stopped at a convenience store for a snack. When he started to pull out of the parking lot he casually used the in-car computer to check the license plate number of a vehicle that was in the lot. A moment later the computer returned a name that was familiar to the officer and he stated to himself “I thought so.” The officer circled back to the parking lot, pulled in behind the car and got out to speak with the driver. I learned later that the computer did not indicate that the vehicle’s owner was wanted; rather the officer simply wanted to check the vehicle based on the officer’s prior knowledge of the owner. The driver was not the owner of the vehicle (it was a sister), so the officer released the driver without further inquiry. Still, the simple effort needed to enter a license plate into the computer was based on interest and the possibility of spontaneous satisfaction.

Another novice officer stated that he had been “sitting on a house” during his down time. The officer explained that he had been trying to catch a particular suspect while driving home “because he’ll likely run.” He also stated that he had been watching the house for several weeks, “but I never can seem to catch him.” The officer continued that he often spent time watching the house but would eventually have to leave. The officer was explaining this to me as we drove to the suspect’s home; when the officer drove past the target house he said, “Hey, he’s not home yet” in a tone of anticipation, and he proceeded to park in a location that gave him a view of the house. While we sat I asked what the suspect was wanted for. The officer stated that the suspect had been driving across his neighbor’s lawn and the neighbor had gotten tired of it. Also, the suspect may be driving with a suspended license and he also had a history of drug use. While all these offenses would be considered minor, the officer demonstrated a great interest in the possibility of catching the offender or being involved in a chase. Nevertheless, as with the
other officers who could not sit for a long period of time, this officer informed me that he had limited patience for just sitting around waiting for something to happen. After about 10 minutes the officer stated, “That’s about it” and he pulled away.

The idea that a suspect might resist an officer’s authority seemed to stimulate an anticipation of satisfaction in another officer. I was riding with a novice officer who was interviewing the victim of a criminal mischief incident; I was standing by the patrol car talking with a different officer who had checked by the call. A mid-career supervisor had also checked by and was standing with the novice officer and the victim. The supervisor then came back to where I was standing with the second officer and told us that the victim believed the offender was likely to fight if the officers found him. This fact seemed to interest the other officer, and the three spent over an hour searching the area for the suspect. After a fruitless search, however, there was rising ambivalence on the part of the officers to continue the search. Thus, while the initial opportunity to arrest a potentially violent offender was satisfying to the officers, this enthusiastic feeling eventually dissipated.

Overall, intrinsic motivation, or the ability of a person to work in an interesting way that contributes to spontaneous satisfaction from the behavior itself, was an important aspect of policing. The possibility of “something else” occurring was a noteworthy part of stopping traffic or even looking for a low-level offender. While none of these activities resulted in unusual or exciting activity, the officers seemed to thrive on the possibility.

DISCUSSION AND CONCLUSION

This research examined the self-motivation of police officers, an occupation that is fairly boring. Scholars have examined concepts that are associated with police work and job satisfaction or motivation. None of the studies of police motivation, however, have examined how police officers respond in a boring work environment or to mundane “official” duties. Before the findings of this study are closely examined, a discussion of the study limitations is needed.

The first obvious limitation is the location of the study. While the Great Lakes Police Department is representative of most police departments, in that 86% of all U.S. police agencies employ less than 50 sworn police officers (Reaves, 2011), it was the only agency involved in this study. Greater understanding of self-motivation will be gained when officers in other agencies, of various sizes, are studied. Second, the number of ride-along hours amounted to 68. This is similar to the work of Skolnick (1975), one of the seminal scholars in policing research. A single scholar, however, without resources to hire multiple observers simply cannot afford the time for extensive ride-alongs (e.g., Mastrofski et al., 1998). Finally, there is a risk of bias based on my prior law enforcement experience. I was cognizant of this and deliber-
ately documented as much information as possible to avoid presenting a favorable or “slanted” image of the activity that was observed. Nevertheless, a single observer taking part in all facets of policing activity, including rollcall, patrol, and time in the dispatch room, reduces inter-rater reliability problems and documentation errors. Further, I was able to document the subtle aspects of policing behavior, including their sense of humor, tone of voice, or facial expressions.

The observations of police activity in the Great Lakes Police Department strongly suggest that police officers find ways to self-motivate. The officers used several aspects associated with their core values to drive some behavior. Further, the autonomy associated with policing in general allows the officers freedom to patrol (or not), use technology, set a “cut off” for speeding, or get a cup of coffee. Some officers are moved by the satisfaction they can potentially experience from the work.

It may be argued by some that the concepts identified and defined here are not mutually exclusive. That is, the officer’s behavior could be qualified into two different concepts. For example, “patrol” was classified as self-actualization, but other times it was considered autonomy. I commonly relied on the context of an officer’s behavior in order to classify their actions. For example, if an officer patrolled with the apparent goal of deterrence, that activity was considered self-actualization because that goal falls into their core values. Other times I would attempt to determine an officer’s mindset as it related to their behavior. For example, I classified the officer who “sat on a house” as intrinsic motivation. He was engaging in that activity because he seemed more “interested” in the opportunity to catch the suspect. Future scholars may find improved or an alternative methods for measuring these concepts.

Overall, this research suggests that police officers find ways to self-motivate in a boring work environment. It is noteworthy that some research argued that workers reduced their boredom by engaging in “non-work” activities (Roy, 1959). Police officers, however, can take the opportunity to engage in behaviors and activities that reduce the boredom associated with their down-time by working in a way that makes their official actions interesting. That is, when there is nothing official to do, officers manufacture official activity. This point should be emphasized. The officers are not “goofing off” or engaging in “occupational deviance,” which can include potentially illegal or unethical behavior, such as drinking (Barker, 1983; Friedrichs, 2002). They were acting as they assumed they should act.

This can be interpreted as good news for police agencies, but it does not relieve police supervisors the responsibility of finding ways to assist patrol officers in work motivation. There may be policy implications for police leadership to insure that an employee’s motivation “generator” (Herzberg, 1968) runs smoothly. It should be policy of police agencies that supervisors cul
tivate self-actualization, autonomy, and intrinsic motivation. As part of the cultivation process, supervisors should actively tap into of street-officer’s knowledge for problem solving activity. This relates to the notion of “responsibility” and trust discussed by Herzberg (1968) and Maslow (1962), and is a component of transformational leadership (Bass, 1991) that seems uncommon in policing (Marks & Sun, 2007).

Also, the findings here indicate that officers take seriously several core values. Supervisors can amplify the importance of these values at different times, demonstrating their significance to the role of police officers and reinvigorating the officers to engage in these actions. For example, evidence from the observed behavior of Great Lakes officers indicates they often use down time to patrol areas known for crime and disorder. Weisburd, Davis, and Gill (2015) might argue that police supervisors could guide or direct patrol officers to utilize their knowledge of these areas to identify and engage informal social control assets, such as schools or churches, to reduce crime and disorder. If the task is framed as a “hot spot” assignment, patrol officers may eagerly take on the duty because it fits their expectations. Policing supervisors who engage an officer’s curiosity and anticipation of “something else” by pointing out tasks that fit within existing occupational roles can help reduce boredom and possibly improve policing overall.

NOTES

1. Prior to each ride-along, the street officer was provided an informed consent document approved by my college Institutional Review Board. The document explained the voluntary nature of their participation, and that their identities would be kept confidential (no names or gender descriptions). Each patrol officer was given the opportunity to read and then sign the document. None of them declined to participate in the study.

2. Great Lakes is a pseudonym. Further, details regarding the city population were not included in order to minimize the possibility of identifying the police agency.

3. I was able to ride with only two of the five female officers. In order to avoid exposing the gender of the officers, all references to specific officers will use “he” or “him.”

4. In order to minimize any chance of identifying the officers, I am describing their work experience as “novice,” (0-7 years), mid-career (8-15 years), and experienced (more than 16 years).

5. For this study “primary” streets are those six or seven roadways that bisect the city, including two State roads. These roads have a high traffic volume. “Secondary” roads also cross the city and are often fairly busy, include intersections with traffic lights, as well as residential apartments and houses. “Tertiary” roads are those residential areas that would be used largely by city residents for easy transit to secondary or primary
roads; there would be some active traffic throughout the day. “Neighborhood” streets are those that would have little traffic and are used primarily by those who live in the area.

6. With respect to officer reactivity to my presence, it is noteworthy that none of the officers expected me to stay in the vehicle while they handled a call. Several stated that my presence outside the police vehicle, whether during a traffic stop or inside a home during a disturbance, was not a problem. The only exception involved an incident that entailed an officer using a Taser, because of potential for danger.

REFERENCES


**AUTHOR BIOGRAPHY**

Scott W. Phillips is an associate professor in the Criminal Justice Department at SUNY Buffalo State. He earned a PhD from SUNY Albany and his research focuses on empirical examinations of police decision making, police attitudes, and police culture. His works have appeared in *Journal of Criminal Justice, Police Research and Practice, Criminal Justice Policy Review, Policing: An International Journal of Police Strategies and Management*, and the
International Journal of Police Science and Management, Policing & Society. Dr. Phillips has worked as the Futurist Scholar in Residence with the Behavioral Science Unit at the Federal Bureau of Investigation’s National Academy in Quantico, VA.
“They Teach You How to Weather the Storm, but They Don’t Teach You How to Dance in the Rain:” Veterans’ Perspectives on the Pathways to Criminal Justice Involvement

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Abstract
Some veterans face elevated risk of mental illness, alcohol, and drug use, and difficulty adjusting post-deployment, which can increase the risk of homelessness and contact with the criminal justice system (Elbogen et al., 2012). This study adds to the limited and mixed findings regarding factors associated with criminal offending among veterans. It explores, from veterans’ perspectives, what contributes to their criminal justice involvement. In-depth interviews with 28 U.S. Veterans on probation or parole explored their military service, mental health, and the events surrounding arrests. Findings indicate that substance use was a significant contributor to arrests. Alcohol and drugs were used to cope with trauma, interpersonal stress, and their transition from military service to civilian life. Some veterans indicated that substance use was evident and problematic prior to military service, while others found the military culture and conditions post-service contributed to problematic use. Veterans also entered the criminal justice system due to difficulties adjusting to civilian life and economic disadvantage.

Keywords: arrest, military veterans, criminal justice system, substance abuse, mental illness

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Despite the development and implementation of pre-arrest and diversion programming, the number of people in the U.S. involved in the criminal justice system remains high.

In 2013, one in 35 people was under a form of correctional supervision (e.g., probation or parole, jail, prison; Glaze & Kaeble, 2014). Although rates of people on community supervision declined in 2013, there was a slight increase in the national prison population. Many of the people who encounter the criminal justice system are considered part of vulnerable populations or populations with an increased risk of negative outcomes from exposure to the criminal justice system such as people with mental health problems, chronic substance use problems, or veterans. Veterans, in particular, are thought to be at a heightened risk of suicide (Frisman & Griffin-Fennell, 2009; Wortzel, Binswanger, Anderson, & Adler, 2009) and may experience an exacerbation of mental and physical health symptoms while in custody (Sigafoos, 1994).

Myriad programs along the criminal justice continuum (i.e., pre-arrest, court, jail- and prison-based, and reentry) have targeted veterans in order to reduce the negative impacts of the criminal justice system on their mental and physical health and recidivism risk. Although post-arrest programming like veterans treatment courts are helpful (Knudsen & Wingenfeld, 2016), greater emphasis is needed for the development and implementation of preventative programming that reduces the risk of veterans entering the criminal justice system. However, the body of research on the causes of criminal offending among veterans, which is needed for intervention development, is mixed and inconclusive (Taylor, Parkes, Haw, & Jepson, 2012).

This paper outlines the results of the first phase of a research project that aimed to explore and identify causes and contributors to veterans’ criminal justice involvement from the perspective of a heterogeneous group of veterans with varying discharge statuses. Knowledge gained from this analysis uniquely adds veterans’ perspectives to the literature and creates the foundation for developmental research on arrest prevention programs targeting military veterans with and without veterans’ benefits.

BACKGROUND & SIGNIFICANCE

Veterans account for approximately 8% of the national prison and jail population (Bronson, Carson, Noonan, & Berzofsky, 2015). Little data exists to discern the rate of arrest among veterans. One group of researchers estimated that approximately 6% of arrestees self-reported veteran status in one county in Arizona in 2009 (White, Mulvey, Fox, & Choate, 2012). The rate of arrest is thought to vary by cohorts of veterans serving in the military at different points in time (Culp, Youstin, Englander, & Lynch, 2011; Greenberg, Rosenheck, & Desai, 2007; Tsai, Rosenheck, Kasprow, & McGuire, 2013); however, it is likely that these differences are, in part, explained by changes in military recruitment, eligibility, and enlistment (e.g., all volun-
teer force vs. draft; Greenberg & Rosenheck, 2012). It is expected that the rate of incarcerated veterans will increase, and the number of veterans who are arrested will continue to climb over time as service members from the most recent conflicts transition home (Brown, Stanulis, Theis, Farnsworth, & Daniels, 2013).

Preventing criminal justice involvement among veterans is important in order to reduce the disparate risks they face once involved in the criminal justice system. Veterans are at a high risk of negative outcomes once arrested. Incarcerated veterans are thought to be at a heightened risk of suicide (Frisman & Griffin-Fennell, 2009; Wortzel et al., 2009) and may experience an exacerbation of symptoms while in custody (Sigafoos, 1994) because of the vulnerabilities inherent in the prison environment (Cavanaugh, 2010). Additionally, felony convictions can interfere with finding and securing employment and may have an impact on benefits for the veteran and his or her family (Addlestone & Chaset, 2008) that can increase their susceptibility to homelessness upon release from incarceration (Greenberg & Rosenheck, 2008) and poverty. Incarcerated veterans face myriad treatment needs. At least half of incarcerated veterans have at least one mental health concern including exposure to trauma at some point in their lifetime (military or non-military related). Nearly 40% of veterans in jail have posttraumatic stress disorder (PTSD; Blodgett, Fuh, Maisel, & Midboe, 2013). Jails and prisons are not set up to clinically monitor mental illness and intensive treatment; thus many conditions are not addressed while in custody or people receive minimal treatment. Veterans also face a high risk for recidivism, particularly when they have substance use problems (Blodgett et al., 2013).

Despite a growing body of literature on veterans in the criminal justice system, the precise reasons why veterans are being arrested are not clear. It is known that adjusting to civilian life following military service can be difficult for many veterans. Over a quarter of veterans surveyed reported having difficulty transitioning to civilian life; among veterans who served since 2001, 44% experienced difficult transitions (Morin, 2011). Scholars argue that military training and the behaviors required for being successful in the military clash with civilian culture, thus making adjustment post-service complex and challenging (Brown et al., 2013; Huskey, 2015; Smith & True, 2014). For example, Smith and True (2014) find that veterans face an identity struggle when returning home. In the military, group cohesion and collectivism are expected and valued while autonomy and self-focus are the norm for American civilian culture. Navigating between these two cultural ideals can create mental distress for some veterans.

Difficulty adjusting to civilian life can impair occupational and social functioning and may lead to anger for some people (Worthen & Ahern, 2014), all of which could put people at risk for encountering the criminal justice system. Having PTSD is one predictor of work and financial problems following discharge from the military (Larson & Norman, 2014). Many veterans from
the most recent conflicts have returned home diagnosed with PTSD and traumatic brain injury (TBI; Tanielian & Jaycox, 2008), which some research shows increases the risk of aggression, violence, and incarceration (Calhoun, Malesky, Bosworth, & Beckham, 2005; Grafman, Schwab, Warden, & Pridgen, 1996; Greenberg & Rosenheck, 2009; Pandiani, Rosenheck, & Banks, 2003; Saxon et al., 2001; Shaw, Churchill, Noyes, & Loeffelholz, 1987). Other studies, however, do not find PTSD (Larson & Norman, 2014) or TBI (Elbogen et al., 2012) to be a predictor of arrest.

Across studies, veterans with mental illnesses, family violence, and childhood conduct problems (Blodgett et al., 2013; Elbogen et al., 2012; Erickson, Rosenheck, Trestman, Ford, & Desai, 2008; Tsai & Rosenheck, 2013), combat exposure (Black et al., 2005), and antisocial traits (Black et al., 2005) are at an increased risk of contact with the criminal justice system. Many of these traits are also associated with criminal justice involvement among civilian populations (Bonta, Law, & Hanson, 1998; Schubert, Mulvey, & Glasheen, 2011; Skeem, Manchak, & Peterson, 2011). One of the most well documented correlates for criminal justice involvement among veterans are alcohol and drug use problems (Erickson et al., 2008; Elbogen et al., 2012; Weaver, Trafton, Kimerling, Timko, & Moos, 2013). Approximately one quarter of veterans in prison were using drugs or alcohol at the time of arrest (Noonan & Mumola, 2007). Those veterans with co-occurring mental illnesses and substance use disorders face the highest risk for incarceration (Pandiani et al., 2003).

For some populations, veteran status is a protective factor to criminal justice involvement. Although African American veterans are 5.6 times more likely to be incarcerated than Caucasian veterans, this risk is lower than the risk of incarceration in the general population (6.7 times higher; Tsai et al., 2013). Bouffard (2005) argues the military is a turning point for many service men and women. It is protective due to the broad range of experiences and opportunities not available to civilians, but may also have negative consequences like teaching aggressive problem solving strategies, exposure to interpersonal stress due to separation from family, and trauma from combat situations.

Although it is helpful to know the correlates associated with criminal justice involvement, these data do not distinguish the various and potentially unique pathways that lead people with experience in the military into the criminal justice system. The analysis presented in this paper extends the literature by utilizing the perspectives and voices of military veterans who have been arrested to develop foundational knowledge regarding the causes, contributors, and life experiences that veterans believe led to their criminal justice involvement.
METHOD

Research Design

The aim of this project is to explore and identify why military veterans encounter the criminal justice system. In order to achieve this aim, we used an exploratory sequential research design (Creswell & Plano Clark, 2011). This type of design allows for exploration of a topic before quantitative measurement. The qualitative analysis (Phase I) is presented in this manuscript. We used a constructivist perspective to inductively uncover salient constructs to test in Phase II. The exploratory sequential research design is conducted in four steps: (1) Exploration of a phenomenon through data collection and analysis (completed in Phase I); (2) Use of the emergent framework and variables identified through qualitative analysis to develop constructs to be tested in Phase II (completed in Phase I); (3) Examination of quantitative constructs with a new sample of participants (Phase II); and (4) Interpretation of results, including the extent to which factors identified in the qualitative analysis remained salient in the quantitative analysis (Phase II; Creswell & Plano Clark, 2011).

Sampling. We recruited self-identified veterans who were on probation or parole in one county in mid-Missouri through two different strategies: (1) the distribution of flyers to probation and parole officers; and (2) recruitment phone calls to self-identified veterans. For purposes of this study, a “veteran” is defined as any adult who previously served any amount of time in the U.S. Armed Forces. Probation and parole officers informed veterans on their caseload that a researcher may be calling to inform them of the research study. We randomly drew names from a list of 115 veterans and called them to inform them of this study. We set up interviews with the first 32 participants who responded to our calls or flyers. Twenty-eight participants consented to study participation; four people did not show up to scheduled interviews. The four people who did not show up met eligibility criteria for the study. We did not retain any other information about them, and thus are not aware if they are significantly different from the veterans who consented.

Eligible participants were required to have served in the U.S. Armed Forces for any period of time, currently be on probation or parole for a felony charge or charges, and be English speaking. Participants took part in one semi-structured interview with researchers at a location convenient for the veteran. Interviews were face-to-face and lasted between 30 and 90 minutes. All interviews were audio-recorded and transcribed by a third-party service. An interview guide was used during interviews, but it was not rigidly followed in order to probe participants for further information when necessary. Questions in the semi-structured interviews were intended to capture veterans’ perspectives of the contributors to his/her arrest, factors that, if addressed, may have prevented criminal justice involvement, and general
experiences with the criminal justice system (e.g., arrest, probation, parole). Questions included: Can you tell me about the events that led to your most recent arrest? Can you talk about other arrests and the events surrounding those? Why do you think you were arrested? Can you think of anything that may have prevented you from being arrested? Are there resources you need that will prevent future arrests? What was it like for you to be arrested? Can you talk about your experience with probation/parole/arrest/incarceration?

During initial consent procedures, study participants were asked if they could be contacted again for a follow-up focus group where researchers presented the findings and participants were given the opportunity to challenge, support, and comment on the analysis. Twenty-four participants wanted to be contacted for the focus group which took place eight months following the final semi-structured interview. When contacted, four participants agreed to take part in the focus group, nine no longer had working phone numbers, four had scheduling conflicts, and seven were left voicemail messages with no return call. Two of the four study participants attended the focus group. The focus group was also audio-recorded and transcribed by a third-party service.

ANALYSIS

We utilized Schatzman's (1991) grounded dimensional approach to the analysis of the semi-structured interviews and focus group. Grounded dimensional analysis is a variation of grounded theory (Strauss, 1987) and allows the researcher to utilize an overarching, interactionist framework to guide the analysis and uncover meaning. We utilized the model outlined by Kools and colleagues (1996) which identifies the context (i.e., boundaries of the research), conditions (i.e., factors that impact the phenomenon of study), processes (i.e., actions/interactions that promote conditions), and consequences (i.e., outcomes of an action/interaction) of the phenomenon under examination. We used thematic analysis in combination with the grounded dimensional analysis to identify, analyze, organize, interpret, and present patterns or themes within data (Braun & Clarke, 2006). Themes are intended to capture important components of the data in relation to research questions. The interviews conducted in Phase One were deconstructed into components through coding using both open coding and the overarching framework and were eventually grouped together based on thematic similarities. Once chunks of data were grouped, they were compared, contrasted, and synthesized to create an explanatory framework including overarching themes. These results will be used to develop hypotheses for Phase Two and will direct what additional data needs to be collected.

Specific to this study, we wanted to understand why military veterans encounter the criminal justice system, including the pathways and condi-
tions that contribute to criminal justice involvement. Prior to data collection, we set the context of the study to include a heterogeneous group of veterans who were already involved in the criminal justice system for felony charges. We sampled through probation and parole rather than the U.S. Department of Veterans Affairs because we wanted our study to include people who may not be benefit eligible, benefit eligible but not using services, and have varying discharge statuses, including those statuses that restrict or limit involvement in the U.S. Department of Veterans Affairs. Approximately 23% of incarcerated people with service histories were discharged without honorable conditions (Bronson et al., 2015), and thus it was important to include that population in our analysis. Further details on the context are described below in the Results section.

Two members of the research team conducted all interviews, proofread each transcript by listening to the audio-recording and reading through the transcripts prior to analysis, recorded their interview experiences, and conducted the first round of coding. Although specific questions were asked about reasons for criminal justice involvement, researchers analyzed entire interviews rather than only responses to individual questions. The aim of the first round of coding was to identify portions of the interviews where participants discussed their criminal justice involvement (i.e., the consequence of interest in this study), including the reasons for arrests, the life circumstances occurring at the time of arrest, perceived causes of arrest, and factors that directly or indirectly contributed to arrest. Using only the data coded in round one, a second round of coding occurred to identify the emergent themes that facilitated or led to arrest. After the second round of coding, the research team met to discuss emergent themes, redundancies in themes, and recommendations for consolidating themes. The remaining themes were clearly defined using participants’ language when possible. The themes are the conditions of arrest in our sample. The first author conducted a third round of coding to identify emergent themes that impacted the conditions of arrest (i.e., the processes). In order to examine the validity of the results, the research team met to discuss the preliminary findings and how results are situated within the larger body of data on criminal justice involved veterans. Preliminary findings were also presented to study participants who joined the focus group facilitated by the first author and research assistant. The fourth and final round of analysis integrated preliminary findings, the larger body of literature, and focus group data in an iterative fashion (i.e., going back and forth between reading through data sources, identified themes, and the literature) until the conclusions presented below were clearly conceptualized, defined, and challenged with alternative explanations. The analysis was organized using NVivo software, version 10. All procedures and methods used were approved by the University Institutional Review Board.
RESULTS

Context
The context of the study was defined by the parameters of our sample of veterans who were involved in the criminal justice system at the time of study recruitment. Table 1 outlines the demographic and key variables of interest ($n = 28$). The sample represents a heterogeneous group of veterans from different branches with varying discharge statuses, benefit eligibility, deployments, and combat exposure. The average age of study participants was 45.5 years old at the time of the initial interview. The majority of study participants served in the Army and 36% reported exposure to combat. All veterans were on probation or parole in a Midwestern county at the time of our interview for the conviction of a felony charge or charges. On average, participants self-reported 4.4 lifetime arrests and the majority of the sample had spent time in jail or prison in the past. Only one participant was arrested prior to serving in the military.

Pathways to Arrest
The overarching goal of this project was to develop an understanding of why military veterans become involved in the criminal justice system. Study participants identified a number of factors that they perceived to have caused or contributed to their criminal justice involvement. Factors identified by participants are surrounded by and embedded within salient conditions that facilitate contact with the criminal justice system. We coded data as a contributor to criminal justice involvement when our study participants explicitly stated a factor caused their arrest or discussed factors that co-occurred with all or almost all of their arrests. Some participants identified multiple factors while others identified one primary cause. Three prominent factors consistently emerged throughout data analysis: alcohol and drug use, difficulty adjusting after military service, and economic disadvantage. Each factor and its pathway leading to the criminal justice system is discussed in detail below, including the conditions surrounding criminal justice involvement and direct quotes from study participants that help illustrate the emergent themes and conditions that these factors are embedded within.

Alcohol and drug use. Many people, regardless of their service in the military, are in the criminal justice system due to drug and alcohol use. Of the general population, 45% of a national sample of people who had been arrested met criteria at the time of arrest for a substance use disorder (Kubiak, Arfken, Swartz, & Koch, 2006). What may be different for military veterans, however, are the conditions in which alcohol and drug use acted as a pathway for criminal justice entry. In other words, the circumstances leading to drug and alcohol use for military veterans may be, in part, related to their time in the military.
Table 1

Sample Demographics and Key Variables

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*Categories are not mutually exclusive; the counts represent the number of participants who have a previous charge in the associated category (NOTE: Some participants could not recall all of their charges, particularly when there was extensive history. Given this, the numbers listed may be an underestimate.)

+ Includes: unlawful use of a firearm, pornography, violation to order of protection, property damage, and probation violation/absconding

Twenty-four out of 28 veterans in this study discussed alcohol and drug use as a major contributor to their criminal justice involvement. Within this theme, four salient conditions emerged regarding veteran alcohol and drug use that help to give context and meaning to their substance use. These four themes include pre-existing problematic substance use, trauma during military service, interpersonal stress, and poor coping with adjustment to civilian life. One theme, pre-existing problematic substance use, denotes the
small group of veterans who reported having problems with alcohol or drug use prior to entering the military. Following their service, they continued having problems with substance use which, as they perceived, led them into the criminal justice system. The three remaining themes include stressful events and circumstances that occurred during or following their military experience. Figure 1 outlines the proposed relationship between the four emergent themes, substance use, and criminal justice involvement.

**Figure 1**

*Substance Use as a Pathway to Criminal Justice Involvement*

**Pre-existing problematic alcohol and drug use.** The first condition to emerge within drug and alcohol use leading to criminal justice involvement involved a small group of veterans \( (n = 4) \) who reported they had problematic substance use prior to entering the military. Problematic substance use was defined by participants identifying their drug or alcohol use as being problematic for them before they enlisted. For example, participants reported being addicted to drugs or “partying” too much or being an “alcoholic” when they went into the military (“I was an alcoholic before I went in. I was drunk when I signed up.” Vet 026). Problematic alcohol and drug use was already present for this group of veterans prior to their military service. It is unknown whether or not serving in the military impacts people with pre-existing problematic substance use. As one participant said, “I don’t think that the uniform makes a difference, one way or another;” (Vet 028). Although this may be true for some, the military may mediate the impact of pre-existing substance use problems. Serving in the military did not prevent these veterans from being arrested; however, Veteran 017 reports:

If I hadn’t gone in the Marines I think probably I – there’s a good chance that I would be worse, more trouble, honestly, because I went into the Marines because I just got into partying too much in high school and was starting to sample drugs, you know? I wasn’t addicted to anything but I was definitely open-minded to sample things and my senior year I just barely graduated due to partying and if I hadn’t been taught that
discipline...I think things probably would've went downhill for me. Vet 017

Other people discussed how they did have problems with alcohol use after the military but the military didn't cause the problem (e.g., “Now, I can't say that the service made me an alcoholic. Well, I did learn to drink real good there but they didn't make me be an alcoholic.” Vet 003).

Serving in the military could impact the trajectory of problematic substance use by facilitating a culture of acceptance of excessive drinking (e.g., “I was drunk most of the time. Not on duty, but after duty. I drank in the barracks...As long as you could go out and do your patrol, whatever you were doing, they accepted it. It was just a coping – I think it was a coping mechanism, basically, for combat...but they accept – alcoholism is acceptable, but you can't do drugs, and you can't be drunk on duty.” Vet 026). Serving in the military could be protective in that it removes people from risky environments or it could be damaging as it places people with vulnerabilities in high stress environments. More research is needed in order to explore how serving in the military impacts people with pre-existing problems with substance use. This section presented data on the condition of entering the military with self-identified alcohol or drug use problems. The remaining three conditions include stressful events or circumstances that arose during or after service in the military which led participants to problematic substance use.

*Alcohol and drug use due to trauma during military.* Trauma while in the military is one salient condition that study participants perceived to have caused their problematic substance use. Seven participants referenced situations, events, circumstances, or series of events that occurred during military service that they perceived as traumatic. Veterans viewed these traumatic conditions as being the reason they began using substances, which subsequently propelled them into the criminal justice system. One participant talked about how military sexual trauma impacted her feelings of self-worth and subsequent drug use:

But I believe in my circumstance, being in the military and having so many awful things happen to me that – I was a good girl. I was a good girl. I wouldn't have used. I would have had the power to say no. I wouldn't have hooked up with somebody who beat me because I felt like I was worthless. I went into the Navy with pride, and I came out feeling worthless. Vet 009

Other participants who experienced combat and had post-traumatic symptoms discussed their drug and alcohol use post-service as a way to cope with and manage their symptoms. Vet 011 stated, “It (substance use) lets me sleep at night.” Similarly, another veteran reported,

Like I said, it (drug use) was after my deployments that I came back and I just relied on alcohol to get some shit out of
my head that I saw or had to deal with ’cause my second trip, we lost 53 people. So it wasn’t pretty at all...it was something to clear my head, get the memories out so I could feel kinda’ normal I guess. Vet 010

Some participants reported they had received treatment for their experienced trauma while others had not.

**Alcohol and drug use due to interpersonal stress.** Five study participants discussed instances of interpersonal stress that perpetuated or initiated substance use. Although participants identified their substance use as what led to criminal justice involvement (e.g., driving while intoxicated, possession of a controlled substance), participants reported the substance use resulted from distress between friends and family. For example, participants talked about substance use as a way to cope with “family problems,” fighting with significant others, and changes in household (e.g., children moving back home, significant others moving out). For example:

That’s pretty much the only thing you can do when you’re stateside after work is go drink. So when me and my ex-wife separated, the stress and me not being around the kids and the job and getting ready to deploy and everything else, it was easier for me to go drink than it was to sit down and talk to somebody about it. So me and my buddies would go out four or five times a week, go get drunk and show up to formation still drunk the next day but we’d P.T. [Physical Training] and work it out and go do it all over again. Vet 020

Other participants discussed mounting stress with partners during deployments. One participant asked his wife to move with him when he was overseas. She was not able to relocate and he ended up having multiple affairs while deployed. He reported, “I was having family problems as well. And I just got to a point I didn’t give a damn. I could go – I’d go down to the Red Light District to get a woman, but I did love my wife at the time. And I think that kind of threw me in the bottle.” Alcohol use, in this case, was used as a means to cope with stress and conflicting emotions surrounding interpersonal strains.

Other veterans in this study coped with the stress and strain of family problems during their deployment, but struggled to cope when they transitioned back home and faced the interpersonal stressors directly. One participant reported after his unwanted discharge from the Navy:

I felt rejected...And because of, you know, putting up with my dad and putting up with my mom, then the Navy rejected me and...I took it hard. I took it really hard because I was gonna be a career sailor in the Navy. I had my career plan all set up on what I wanted to do. So yeah, it was hard. I didn't seek treatment or anything and when I got back home, I was work-
ing menial jobs, jobs that I was just very disappointed with...
That I didn't like doing, didn't have the camaraderie that the
Navy did. Vet 024

Veteran 024 went on to describe how he battled with depression and prob-
lematic alcohol use following his discharge from the Navy. Participants also
discussed the stress and strain of transitioning back to family life with their
significant others when they returned home. Veteran 019 described his mili-
tary experience: “It changed me because when I came home I couldn’t stay in
the house. I couldn't be married no more. I was too independent and then my
freedom and my space and I didn’t know that I would chase a beautiful wife
away from me like that and I did. She divorced me after we had two kids. I
punish myself years later about it.” Veteran 019 was on probation for his sec-
ond charge of driving while intoxicated.

Alcohol and drug use and coping with transition from military ser-
vice member to civilian status. Although it is not uncommon for veterans
to report some difficulty transitioning from serving in the military to life
as a civilian, participants in this study discussed service discharge and the
subsequent transition as a highly stressful time. Two key themes emerged
that are associated with this transition period were especially problematic:
the conditions of discharge and military training and culture. In both cases,
participants attributed problematic substance use to coping with the stress-
ful transition. For some participants, the transition never occurred as they
quickly ended up in jail. For others, there was an attempt to work through
the transition but it ended unsuccessfully with arrest. Twenty-three study
participants attributed their alcohol and drug use as a means to cope with
their transition from the military to civilian life.

Condition of discharge. Participants with dishonorable discharges report-
ed significant distress due to the conditions of their discharge. Problematic
substance use resulted from or increased following their discharge. Veter-
an 005 provided an account of what he experienced which combines anger
directed at his own actions (i.e., smoking marijuana) and feelings of being
abandoned by the military. Having a difficult time managing those feelings,
he had no resources for treatment and began self-medicating with alcohol.

I mean I failed. I was a failure. I failed a lot of people. I failed
myself. And a lot of people turn to alcohol, drinking or what-
ever, but I don’t know. There wasn’t anyone to talk to about
it. There was no – I didn’t have any recourse. When I got out,
it’s like the Army’s through with me, see you later. There was
nothing given to me that said, hey, this is a pretty big deal. You
were a good guy, a good soldier, but you knew the rules, but if
you need some help getting out or some place you need to call,
some center, some place to help you get a job – none of that
happened. And that’s why I do a lot of things...And then it was
all taken away quickly, and it’s my fault. I don’t blame anyone but myself. But when I got out, I thought… I would have thought there would have been something. Just, you’re out of the Army, son, go home. Well then now what? Vet 005

Involuntary discharge from the military was disappointing to study participants but it also made participants reflect back on their ability to “be a good soldier” which participants prided themselves on. The resulting feelings further complicated an already stressful transition. Some participants directed their feelings at the military (e.g., “How can you say I’m an outstanding soldier but still you’re going to let me go...kind of made me resentful toward the military.” Vet 013) while others internalized their hard feelings (e.g., “– it was a like a real big thing for me because I just really loved being in and I did very well, you know? I gained a lot of rank and I just really beat myself up over it for a lot of years.” Vet 017).

Military training and culture. Substance use also resulted from difficulty adjusting to civilian life due to military training and culture. Participants discussed the survival skills, high pay, and military duties during their service and how, for some people, these aspects of the military created barriers to successful transitions. One veteran described how military training will keep you alive but may not encourage people to seek help:

...any military really does a good job of teaching you how to survive. They teach you how to weather the storm, but they don't teach you how to dance in the rain. And by that, I mean they teach you to be a survivor, and so we vets – we survive. We can be drunks for a long, long time. We can still be semi-productive. We still have – we can still pull it together. We’re just not functioning right. And our way of dealing with things is ignore it, put it out of your mind, do what you’ve gotta do to get through that day. Survive at all costs. Vet 025

The training provided during the military helps prepare people for their work in the military. Many participants talked about their oath to protect their country. The training and skills learned during time in the service equipped people to be able to protect; however, as one participant described below, it is difficult to turn off the military mindset for some people. Veteran 022 shared his struggles coming home between deployments where he would drink alcohol in excess. He described one night when he was intoxicated and got into a fight:

...by the next morning, that man died, and I woke up and got arrested for it, and that was the end of my whole life...looking at so many years, 35 years, and I was like – whatever happened to self-defense, whatever happened to defending somebody that they can’t defend themselves? And I thought that was what the military taught me, and they gave me tools to
defend people, and I know that the oath says that we’re supposed to defend the country from all enemies, foreign and domestic, and I thought this was a domestic enemy, and I guess I didn’t look at the equation all the way through. Vet 022

Moving between military and civilian life can present challenges. Although study participants discussed their use of substances as a way to cope with these challenges, it is likely that the substance use further complicated an already challenging circumstance.

In summary, alcohol and drug use leads many people into the criminal justice system. Veterans are no exception. When examining the conditions surrounding drug and alcohol use among veterans, however, study participants identified drug and alcohol use being triggered by stressful life events including trauma encountered during the military, interpersonal stressors during and after deployments, and difficulty transitioning to civilian life. Additionally, some study participants identified having problematic drug and alcohol use prior to their military experience and continuing to have substance use problems following their time in the service.

**Difficulty Adjusting After Service**

A second cause of criminal justice involvement identified by military veterans is difficulty adjusting to life after serving in the military. Of the study participants, 27 of 28 reported difficulty adjusting after service, and five study participants identified difficulty adjusting after service as the direct cause of their criminal justice involvement. Whereas participants discussed difficulty adjusting to civilian life leading to drug and alcohol use, as noted above, here participants identified difficulty adjusting as the reason they were arrested. Adjusting to civilian life was hardest for people who could not find meaningful work or yearned for the structure and accountability inherent in the military. Veteran 006 provided one example of his struggle after returning from two tours of duty. He stated:

...in Afghanistan you are, like, the top dogs...you’re walking around, you’re the one with the guns and everything and then you come back and you have...like there's no respect for the law here...cops here are more standoffish to you...coming from the military and everything, like, if somebody's standoffish to you, you’re straight-up like fight or flight...I have, like, bad emotions, like anger, fear, like, I don’t really have happiness. It’s like numb, anger or fear, and if something happens, it's fight or flight instantly. Vet 006

This participant went on to describe his dissatisfaction with work after being discharged from the service. “I ran a dining facility in Afghanistan. That’s a really big job...coming back here... it’s like, ‘Wow, I’m flipping pancakes at IHOP’...there’s no satisfaction to it after doing this.” The transition following service including the day-to-day duties of life and civilian jobs,
particularly when there were stark differences, created barriers for smooth transitions. This finding was further supported by focus group participants who suggested trouble arises when transitioning “from a high-adrenaline situation to low—to the mendacity of getting a job, paying the bills, dealing with the wife and kids, and what they come into is a real tumultuous situation because they’re having to make a priority switch.” Anger, low frustration tolerance, and boredom may result and lead to high-risk-taking behaviors, assault, or battery.

Study participants identified a way of thinking or mindset that they developed during their service experience that was hard to change after discharge. When discussing study results with the focus groups, focus group participants called this concept a “portable culture.” Veterans learn a way of thinking and interacting with the world. When a person leaves the service, that mindset travels with you:

... you can take it back and forth with you, and that’s hard... the transition from being with the guys, knowing what the lines are, what the protocol is, you know, ranks or whatever. And then transitioning to civilian life, you know, you don’t carry much of that—a lot of us don’t want to carry some of the good things from that culture to this culture. Vet focus group

Study participants were aware of the differences between military and civilian culture. Some merged the two cultures; they lived as a civilian with a military mindset. For example, one participant said:

... my way of thinking's always been a military way...I don't like nonsense. If I seen that you BS'ing somebody, I’m gonna interrupt and then I just—and sometimes I don’t know when to stop...that’s why I get in a whole lot of trouble. Vet 001

Other participants recognized differences or changes in mindset based on their appraisal of the same behaviors during their time in the military and after service. Veteran 012 demonstrated this shift in the quote below:

I never drank and drove while I was in the service. I mean we always get cabs and stuff like that. And some—we had a designated driver when we would go. I mean I guess the only thing I can really say is just I feared failure then, you know, a lot more than I guess I would now. I mean, I’m just a regular old civilian now. Vet 012

Less clear from these data is the sense of agency that veterans have after they are discharged from the military. Do they have a choice whether or not they carry pieces of military culture with them as they adjust to being a civilian? Is the culture so inherent for some that there is no choice? Although study participants did have an awareness of the differences between military and civilian cultures, it is not clear if cultural differences are noticeable
to all veterans and to what extent there is awareness of some of the more subtle differences in culture. It is also unclear when and how these cultural differences lead to difficulty adjusting to civilian life. Military experience is a strength for some people. The tools and mindset acquired through military service facilitates successful and productive careers for many (Bouffard, 2005). For participants in this study, military culture and training complicated an already stressful period of transition, which contributed to criminal justice involvement.

**Economic Disadvantage**

A final salient contributor to criminal justice involvement is economic disadvantage. For purposes of this study, economic disadvantage includes situations where veterans attribute their criminal justice involvement to being homeless, without work or resources, or generally unable to pay bills and manage financial affairs. When discussing the events leading up to arrest, nine participants identified the stress of finances being a major contributor to breaking the law. For example, Veteran 002 stated “I was poor. Well, I’m still poor. And I didn’t have any work at the time and it was a circumstance that I hadn’t planned.” Similarly, Veteran 008 and 015 reports, respectively, “I was down on my luck with family bills...We were fixing to be evicted, my wife and I, so I busted some bad checks, you know, to pay bills” and “I was out of work for a few years, and it was rough.” Participants felt they had limited options for meeting their needs. Some of these study participants received honorable discharges and were eligible for benefits. In some cases, benefits were denied and the participant did not follow-up with reasons for denial while others never tried to obtain benefits or resources. Thus, participants reported writing fraudulent checks, stealing money and credit cards, selling goods illegally (e.g., copper, counterfeit purses), and not paying child support due to financial hardship.

Participants generally talked about economic hardship as a period of time they encountered due to unemployment or under-employment. However, some participants identified their change in lifestyle leading to economic hardship. For example, “...they [military] get you used to a certain life and then when you can’t afford that life anymore...the Army pays very, very well,” Vet 018. Pay, even when employed, was less than what was received during military service for some people. Rather than adjusting to the differences in pay and lifestyle, some of our study participants took illegal measures to compensate for the pay gap (e.g., retail theft or burglary).

**DISCUSSION AND CONCLUSION**

Military veterans in this study identified alcohol and drug use, difficulty adjusting after the service, and economic disadvantage as the main contributors to their criminal justice involvement. Although alcohol and drug use is quite common among populations involved in the criminal justice system...
veterans reported distinct pathways leading to their problematic substance use that may be unique. The Institute of Medicine (2012) recently characterized military substance misuse as a “public health crisis.” More than 25% of 18 to 25 year olds in the military engage in problematic alcohol use compared to 16% of civilians in the same age group (Bray et al., 2006). Heavy drinking among military personnel rose more than 25% from 1998 to 2008 (Bray et al., 2006), while an estimated 12% of service members report illicit substance use including misuse of prescription drugs (Institute of Medicine, 2012).

With the high prevalence of substance use among military personnel and the clear link between substance misuse and criminal justice involvement, it is important to understand what contributes to problematic substance use in order to develop preventative and early-stage intervention models to reduce the risk of incarceration among veterans. Participants in this study found substance misuse to be caused or exacerbated by trauma they encountered in the military, difficulty adjusting to civilian life, and relational stress. In order to treat and reduce problematic substance use, it is important to address the conditions surrounding problematic use through evidence-based approaches. Given that an estimated 20% of veterans from the most recent conflicts report symptoms of PTSD, major depression, or TBI (RAND Corporation, 2008), when returning home, it may be important to encourage integrated treatment aimed at addressing substance use and mental illness simultaneously.

In addition to substance use, veterans in this study found economic hardship to be a major contributor to their arrests. Economic hardship, and poverty in particular, are risk factors for criminal justice involvement among the civilian population (Brown & Males, 2011; Ludwig, Duncan, & Hirschfield, 2001; Wacquant, 2001). It is well established that veterans are at a high risk of homelessness (Fargo et al., 2012. Veterans with PTSD are also at risk of economic hardship (Larson & Norman, 2014). Evidence suggests, however, that the risk for poverty for veterans with PTSD is reduced with the use of U.S. Department of Veterans Affairs (VA) benefits (Murdoch, van Ryn, Hodges, & Cowper, 2005), but in seeking care, particularly for mental health needs, veterans face stigma, which prevents some from receiving disability for mental disorders, including PTSD (Ben-Zeev, Corrigan, Britt, & Langford, 2012; Pietrzak, Johnson, Goldstein, Malley, & Southwick, 2009). Reducing stigma for treatment and increasing veteran use of treatment may indirectly prevent criminal justice involvement for some veterans.

It is not uncommon for veterans to experience challenges when adjusting to civilian life following their discharge from the military (Morin, 2011). Participants in this study, in fact, found that difficulties in adjusting post service contributed to their criminal justice involvement. These difficulties were particularly salient for people who were involuntarily discharged from the military; having less than an honorable discharge seemed to engender
particular stresses on veterans. Moreover, it may not be readily apparent for new veterans what resources and services they need at the time of discharge, or how to obtain them. Policymakers might consider providing periodic post-discharge outreach for up to five or more years following discharge to assist veterans in knowing what resources are available, how best to access those resources, and to overcome perceptions of stigma. It may also be important to provide preventive services for a period after involuntary discharge, especially when these veterans lack access to other services, as their discharge status may foreclose VA benefits, for example.

Criminal justice policymakers should also work to recognize the characteristics of offenders with military experience and accommodate the needs to best serve the goals of public safety and rehabilitation. In collaboration with the VA and using the sequential intercept model (Munetz & Griffin, 2006) as a guide, criminal justice policymakers can work to intervene with veterans along the criminal justice continuum to reduce arrest, prevent incarceration, and enhance community re-entry. Veterans treatment courts have drawn on models of other specialized courts and show promise in coordinating services for these offenders, maintaining accountability and making use of some aspects of military culture to serve criminal justice system aims. Little research is available, however, on what distinguishes these courts from other specialized legal forums or the precise mechanisms these courts employ that may affect the outcomes of veterans’ criminal cases. However, veterans treatment courts can connect service-eligible veterans with resources, social services, and treatments.

Limitations
When interpreting the results of this study, it is important to keep in mind key limitations. First, this study offers an exploratory look at why veterans believe they have come into contact with the criminal justice system. There may be bias in their reporting, including omission of information they did not want to share with the researchers. Second, these interviews were conducted at one point in time and perspectives can and do change over time. We attempted to engage participants a second time through a follow-up focus group; however, most participants did not attend the focus group. Finally, these results are not meant to generalize to all veterans who have been arrested. This study was intended to gather an in-depth analysis of veterans’ perspectives. Additional research of greater sample size is needed to examine how applicable these findings are to other veterans who have been arrested.

The results discussed in this paper reflect the perspectives of veterans in this study and may not be representative of the larger group of veterans. In order to test the generalizability of these findings, additional exploratory research is needed. The results presented in this manuscript were used to develop a structured interview of standardized measures. A larger group of veterans will complete the structured interview and be compared to civil-
ians in order to improve our understanding of the causes and contributors of criminal justice involvement unique to veterans. These findings will inform interventions needed to keep veterans from entering the criminal justice system and recidivating.

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Playing Nice in the Sandbox: An Examination into the Working Relationships between Retail Store Detectives and Public Law Enforcement Officers

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Abstract
This study explores the working relationship between store detectives and public law enforcement officers. Thirty semi-structured interviews were conducted with store detectives from two national retail chains. The results of this study indicate that store detectives have a positive working relationship with police and engage in active cooperation with them. In addition, the presence of community development units and organized retail crime task forces enhance active cooperation between the two parties. Findings from this study can be used by both academics and practitioners to promote strong relationships between law enforcement and the retail security industry.

INTRODUCTION
Over the last 40 years, private security industry’s growth has become immense. Globally, the private security industry has expanded such that private security personnel and their resources outnumber public law enforcement (Sarre & Prenzler, 2000). Expenditure estimates suggest the total cost of private security operations has surpassed that of public law enforcement in the 1970s; furthermore, the number of private security personnel has continued to rise to a point where they now outnumber public law enforcement officers by a ratio of two to one. Future labor force estimates project the private security industry to grow while law enforcement hires are stagnated or are in decline (Cunningham & Taylor, 1984). By 2024, the private security industry is slated to grow by five percent, thus adding approximately 55,000 new jobs to the workforce (Bureau of Labor Statistics, US Bureau of Labor, 2015). As a result, the costs of managing the security workforces are also

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expected to increase. The most recent estimates suggest that the security industry is responsible for 30 billion dollars in costs (Cunningham, Strauchs, & Van Meter, 1991). This estimate does not include the additional costs of security equipment and surveillance technology.

The Origin of Security Research and the Explanation of its Dormancy

Since its inception in the early 1970s, research on private security issues has remained sporadic and disaggregated. It was not until the early 1980s that a seminal piece titled *The Hallcrest Report* (Cunningham, Strauchs, & Van Meter, 1990) broke new ground by introducing academics and industry practitioners to an unprecedented examination into the interactions and cooperative exchanges between law enforcement and private security officers. Although Hallcrest acted as an impetus for follow-up investigations into the security labor force, examinations into these areas continue to remain quelled.

With the foundation laid for research in security studies, why has the security discipline remained dormant while research in other criminal justice disciplines continues to proliferate? The answer rests in one of two explanations. First, security research has been overshadowed by research in other disciplines like law enforcement (Shearing & Stenning, 1983). Simply put, law enforcement research takes priority over security research. This is unfortunate since both play essential roles in maintaining order in society (Van Staden & Sarre, 2007; Walby & Lippert, 2014), both share similar functions (i.e. detecting suspicious behavior and managing the same criminal element) (see Manzo, 2010), and both have similar objectives to control crime (Shearing & Stenning, 1981; National Advisory Committee on Criminal Justice Standards and Goals, 1976). However, the subordinate status of security research does not entirely explain why there is such a lack of security-related studies in general; nor does the subordinate status explain why those who have chosen to publish on security related issues (i.e. Chuvala and Fischer, 1994; Fischer, Halibozek, and Walters, 2013), remain distant from the very organization about which they write.

The answer rests in how difficult it is to secure access to data in private corporations. Private organizations are fragile entities that operate in an environment of constant flux. Shareholders value a company based upon its current state and anticipated future performance. Negative scrutiny damages a company’s image and creates uncertainty in the mind of the investor. In an environment characterized by relentless instability, just one incident has the potential to bring an incredible amount of civil damages and negative media publicity. For example, Dillard’s clothing chain was ordered to pay over 22 million dollars in damages after a Dillard’s employee racially profiled and made malicious false statements against a minority college athlete (Fuquay, 1999).
Retail Store Detectives: Roles and Functions

In 2012, United States retailers were confronted with $44.2 billion in inventory shrinkage (Hollinger & Adams, 2012). Inventory shrinkage is described as the discrepancy between logged inventory and physical on-hand inventory. Many of these discrepancies arise from shoplifting, employee theft, and vendor fraud; however, it is difficult for retailers to identify where losses originate (Beck, 2014). To investigate inventory shrinkage, retailers hire specialized private security personnel known as retail loss prevention officers (also known as store detectives). Store detectives are not sworn law enforcement officers, but are considered to be more skilled than for-profit contract security guards (Walby & Lippert, 2015). The use of store detectives is pervasive throughout the retail industry. According to Hayes (2000), almost two-thirds of retailers employ some form of loss prevention staff to protect their company against shrinkage.

Currently, retailers use one of two models to staff their loss prevention departments. The first model is a contract model. With contract models, an independent security agency is contracted to provide security for retailers. On the other hand, proprietary security personnel are hired, trained, and paid by the retailers (Cunningham & Taylor, 1984). Store detectives typically fall under the proprietary security model.

Store detectives are multi-faceted corporate security personnel who protect the assets of the retailer by conducting internal audits, accident investigations, and theft investigations. Store detectives work in plain clothes and are tasked with investigating and apprehending citizens suspected of criminal offenses (i.e., shoplifting, credit card fraud, organized retail crime) (Singh, 2005). The extensive role they play in the criminal justice system necessitates each store detective be well versed in legal issues such as laws of arrest, detainment techniques, interview and interrogation, and the use of force (Curtis, 1983; Manley, 2004).

Mass Private Property and the Convergence of Law Enforcement and Retail Store Detectives

Until the advent of mass private property, private security and public law enforcement operated independently (Shearing & Stenning, 1981). The deteriorating conditions in United States inner cities pushed citizens away from the inner city to the suburbs in search of safer living conditions. An after-effect of the migration was the development of large, private shopping complexes known as “mass private property” (Shearing & Stenning, 1983) to provide customers with a safe to place shop (National Advisory Committee on Criminal Justice Standards and Goals, 1976). These complexes attract a variety of criminals and create surges in crime. As a result, corporations are plagued with crimes traditionally handled by law enforcement (Albanese, 1986; Sarre & Prenzler, 2000).
To manage these crimes, retailers employ a security staff to fill traditional law enforcement roles. Thus, an opportunity is created for security personnel to interact with public law enforcement (Nalla, Madan, & Mesko, 2009). Part of the interaction between security personnel and law enforcement involves their working relationship. Effective cooperation between security and law enforcement depends on the working relationship they have with one another (Nalla, Hoffman, & Christian, 1996). To date, no study has investigated the relationship between store detectives and public law enforcement. This is unfortunate since law enforcement officers and store detectives frequently interact with one another. For example, in 2015, 15 Wal-Mart stores in Jacksonville, Florida produced 5,298 calls for service (Inside Edition, 2016). The frequency and importance of these interactions necessitates an examination into how the two parties interact with one another. This study was the first attempt to analyze the working relationships between store detectives and law enforcement. The goal of this study is to identify variables that contribute to healthy working relationships so better partnerships can be forged between the retail security industry and public law enforcement.

A REVIEW OF THE LITERATURE

Nature and Extent of the Private-Public Partnership

Kakalik and Wildhorn (1971) assert that private security personnel and public law enforcement should cooperate in the following ways:

- Public police respond to calls for service from private security officers
- Public police provide private security officers with vital information such as criminal arrest records
- Private security officers transfer their criminal investigations to public law enforcement
- Private security officers conduct surveillance on wanted criminals and disseminate the information to public law enforcement
- Private security officers keep public law enforcement abreast of crimes that occur on private property

Inter-Agency Attitudes

Inter-agency interaction allows for the formation of certain attitudes and biases by one party toward another. Law enforcement and private security are not exempt from these biases. Previous literature that examined inter-agency attitudes suggests that public law enforcement officers hold disproportionately unfavorable attitudes toward the private security indus-
try. Nalla, Madan, and Mesko (2009) document that law enforcement officers hold significantly less favorable views of the private security industry compared to the views the private security industry holds toward public law enforcement. Similarly, Nalla, Hoffman, and Christian (1996) report that 75 percent of security guards hold favorable attitudes toward law enforcement, but 70 percent of security guards also felt that law enforcement officers did not share these mutual feelings. Private security guards are also significantly more likely to believe that law enforcement could do more to promote a working relationship with the private security industry (Nalla & Hwang, 2006).

Inter-Agency Cooperation

The National Advisory Committee on Criminal Justice Standards and Goals (1976) asserts that information sharing leads to increased efforts to combat crime. In the criminal justice system, processing offenders and protecting property is contingent on how well information is shared between law enforcement and private security (Shearing & Stenning, 1981). Research suggests private security and law enforcement have minimal cooperation with one another (Cunningham & Taylor, 1984). Public law enforcement is averse to information sharing and establishing lines of communication with the private security industry (Noaks, 2008). Sixty-eight percent of surveyed security guards feel that law enforcement is unwilling to share information (Nalla, Hoffman, & Christian, 1996). Consequently, what appears to be collaboration between the two parties is nothing more than two separate agencies working independently toward the same goal (Noaks, 2008).

Explaining the Strained Relationship

The reasons why law enforcement refuses to cooperate are reduced to three explanations:

- Private security and public law enforcement are largely unaware of each other’s operations
- Private security and public law enforcement have competing interests
- Law enforcement does not trust the private security industry with traditional policing tasks

First, the National Committee on Criminal Justice Standards and Goals (1976) postulates that the private security industry and public law enforcement do not form active partnerships with one another because the two agencies are running concurrent but independent investigations.

Second, law enforcement serves the interests of the public, whereas private security personnel serve the interests of the employer. Investigations are not without consequences. Many private organizations elect to not make investigations public because they could damage the company’s image. Many
private organizations elect to handle things "in-house," distributing their own form of private "justice" (i.e., collecting restitution rather than electing for prosecution) (Shearing & Stenning, 1981, p. 223). This creates strife between law enforcement and the private security industry because law enforcement feels they need to be involved in what they consider traditional crimes. However, private agencies remain largely closed off to outsiders. Police may be the prosecuting law enforcement agency, but it is the private security officer who controls whether public law enforcement is granted access to the property (Shearing & Stenning, 1983).

One of the most convincing explanations for why law enforcement refuses to cooperate with the private security industry pertains to how law enforcement views private security personnel. Historically, private security guards have received poor training or no training at all. In addition, there is no standard for measuring their qualifications. Less than half of all states do not license or certify their private security officers (Cunningham & Taylor, 1984).

Police do not view private security as equal partners; rather, they view private security personnel as poorly paid, poorly educated, and poorly-trained mimics who should not be granted access to law enforcement investigations (Nalla & Hummer, 1999; Kakalik & Wildhorn, 1971; Shearing & Stenning, 1981). The disrespect held by law enforcement towards private security translates into attenuated confidence in the investigatory abilities of private security personnel. Evidence suggests law enforcement rates private security personnel as somewhat or completely incompetent at apprehending criminals or reducing crime (Cunningham & Taylor, 1984).

**METHODOLOGY**

*Obtaining Access to the Sample*

This study was part of a larger examination into the behavior of retail store detectives. Thirty semi-structured interviews were conducted with store detectives from two national retail chains. A purposive sampling method was used to obtain the sample. These retailers were included in the study because:

1. They hired many full-time, proprietary retail store detectives
2. They shared common characteristics with the average big-box retailer (size, types of merchandise sold, and a national presence)
3. They were willing to participate in the study

The sample was split between two companies: Company A and Company B. Company A employed full-time store detectives to work in each of their stores. Company B employed full-time store detectives who worked out of a "home" store, but also traveled to other stores to handle shrink-related
issues. To obtain the sample, the principle investigator engaged in a series of phone meetings with Company A's head of security. During these phone meetings, the principal investigator outlined the purpose of the study, as well as the proposed risks and benefits of being involved in the research project. As part of the agreement between Company A and the principal investigator, the principal investigator was asked to furnish a copy of the interview question list for Company A to review and to send to the retailer's legal department. Company A agreed to participate in the study as long as another retailer was brought in to dilute the results of the study in case the responses were accidently leaked to the public. As part of this agreement, Company A placed the principal investigator in contact with Company B's head of security. The principal investigator used the same process to obtain permission from Company B as was used with Company A.

After obtaining permission to conduct the study, Company A and Company B placed the principal investigator in contact with their respective field operation units. Company A arranged for the principal investigator to conduct the interviews with the store detectives in one jurisdiction of stores. The principal investigator requested the geographic area be expanded to include multiple jurisdictions, but this request was denied by Company A's legal department. Company B arranged for the principal investigator to interview each store detective inside the retailer's corporate office. The store detectives for Company B were provided with meeting times to speak with the principal investigator. To protect these store detectives' identities, their names, genders, employer names, and ages were not recorded. Instead, each officer was assigned a code (i.e. Interview 1) to protect his or her identity. A small number of female store detectives were interviewed for this study. To protect the female detectives' identities, only the male pronoun will be used to describe their responses.

Description of the Sample

The sample consisted of 30 non-salaried retail store detectives who were assigned to work in store locations that ranged from South Carolina to South Florida. Their primary responsibilities were to engage in internal and external theft investigations, conduct audits and inventory checks, and maintain the safety of the customers and store employees. However, the store detectives' primary responsibilities consisted of detecting, investigating, and apprehending shoplifters who stole merchandise from the store. This role created the most opportunities for store detectives to interact with police departments.

Measures

The working relationship between store detectives and law enforcement officers was examined by asking a set of pre-written questions followed by an opportunity for the store detectives to provide an open-ended response.
On some occasions, store detectives interacted with multiple police agencies. The series of pre-written questions are as follows:

- “Can you please describe the law enforcement agency that responds to your store?”
- “Is this law enforcement agency federal, state, county, city, or local jurisdiction?”
- “Can you please describe the working relationship you have with your responding law enforcement agency?”
- “In general, would you describe the relationship as harmonious or contentious? Why do you feel this way?”

Depending on their response, a series of informal follow-up questions were asked to gain a better understanding of their working relationships with their designated police department.

**Interviews**

The principal investigator interviewed Company A’s store detectives at their stores. Company A was highly sensitive to sexual harassment allegations. Therefore, Company A advised the principal investigator to conduct the interviews inside the loss prevention office in view of a camera. However, since the office was also used by other store detectives while on duty, the interviews were moved to a makeshift interview room inside an unused area in the retail store. Company B arranged to have the principal investigator conduct interviews in a conference room inside their corporate office.

The legal departments of both Company A and Company B’s were highly concerned about protecting the identity of their loss prevention staff. As part of the agreement, the principal investigator was not allowed to electronically record any of the participants’ responses. All data gathered during the interview had to be recorded by hand using a pen and notepad. If the principal investigator had to record longer quotes or phrases, the interview was temporarily paused by the principal investigator to allow the quote or phrase to be recorded. Despite the restrictions, valuable information was obtained.

**Analytical Approach**

After the interviews were conducted, the data was transcribed into a word processing program for descriptive analysis. The relevant working relationship questions were extracted from the rest of the interview questions and placed into a single word-processing document. Microanalysis was conducted on each of the questions. A codebook was created to log themes that emerged from the literature. The sections were separated to identify patterns between the responses. In all, 19 codes were created and main themes were developed. The main themes appear below.
RESULTS

The store detectives interacted with a total of 25 different police agencies. The agencies’ sizes ranged from small local departments to large urban agencies that contained multiple districts. In addition, each district was treated as a separate encounter since they were located in different areas of the city and were headed by different supervisory staff.

A Positive Working Relationship

The attitudes that store detectives harbor toward public law enforcement are consistent with the findings in the previous literature. Store detectives hold overall positive views toward their local law enforcement agencies. Store detectives who held positive views toward law enforcement characterized their working relationships as good to excellent. Generally, these store detectives felt that they “got along” with the police. The negative interactions were the minority; negative perceptions toward the police appeared to be directed toward one particular police officer, rather than entire police department.

Cooperative Partnerships

Cooperative partnerships were a central component to the working relationship. Store detectives formed partnerships with local law enforcement agencies to investigate crimes from petty larceny, grand theft (i.e., embezzlement), and organized retail crime. Store detectives assisted law enforcement in several ways; however, the most common assistance provided by the store detectives involved providing the police with video evidence for court. Store detectives provided law enforcement with video evidence for retail theft investigations as well as other law enforcement investigations such as hit-and-run accidents, credit card fraud, and embezzlement cases.

Store detectives also assisted their police departments with obtaining information from suspects. This included contacting local law enforcement to interview suspects to provide the police with information obtained from suspects during the security interviews. Store detectives hold a unique position, as they can interview suspects without being bound by constitutional restrictions; more specifically, they are not required to advise suspects of their Miranda rights. Therefore, store detectives can freely interview subjects and gather information. The suspect’s testimony can be turned over to law enforcement when they arrive to the store. Store Detective 30 claimed that when he apprehends a perpetrator of organized retail crime, he contacts law enforcement to see if they are interested in interviewing the suspect. Store Detectives 11 and 25 perform their own interviews on suspects before law enforcement arrives at the store. When suspects refuse to speak with law enforcement, the store detectives provide the police with the suspect’s testimony from the prior interview. As Store Detective 11 commented:
As a store detective, I don't have to read shoplifters their rights, so when the cop comes and asks the shoplifters questions, and the shoplifters refuse to say anything, I will tell the cop everything the shoplifter told me when he was apprehended.

Law enforcement enjoyed working with the store detectives because the store detectives’ investigations often led to larger law enforcement investigations. Store detective 3 stated that he worked a felony cash theft that involved a cashier who happened to be a police recruit for the local police agency. He contacted the agency to advise them of the investigation. The agency sent two internal affairs investigators to review the video with the store detective. Store Detective 25 apprehended a member of a credit card fraud ring. After he notified police of his apprehension, he turned the individual over to the police who then followed up on the investigation. The investigation led to the apprehension of eight members of organized crime who were involved with $300,000 in credit fraud. This case gave the police department a lot of publicity.

The assistance provided to law enforcement by store detectives was reciprocated by police in several ways. These included:

- Law enforcement provides store detectives with backup when they approached a shoplifter.
- Law enforcement used their police powers to assist store detectives for suspects that escaped custody.

Law enforcement provided store detectives with backup when they approached a shoplifter. For example, Store Detective 10 stated, “If we know (officer name redacted) was working, we ask him to go to the store to hang out (in case a shoplifter attempted to flee). (Officer name redacted) says ‘yeah, I’m just hangin’ in the medians, I’ll be right over.’” Store detectives would also send text messages to individual police officers like “I have one for you,” to provide an officer with enough time to position himself or herself outside the store in case a shoplifter attempted to flee. This type of backup was especially useful since many of the store detectives operated in areas where suspects attempted to flee.

In turn, police also provided assistance to the store detectives. By nature, store detectives operate with ambiguous regulation; apprehending shoplifters is not a clear-cut process. Sometimes, store detectives suspected customers of shoplifting, but did not have probable cause to detain them. In some of these cases, store detectives called upon law enforcement to apprehend customers who were suspected of shoplifting, but could not be approached. Store Detective 12 detailed a case where he knew customers had taken merchandise, but he did not have enough evidence to stop them. He called a patrol officer to perform a traffic stop on the vehicle. When the officer stopped
and secured permission to search the vehicle, the officer found all the stolen merchandise from the retailer. The police called the store detective and allowed him to retrieve the stolen merchandise. When Store Detective 23 is unable to stop shoplifters for the same reason, he contacts his police agency and provides them with their driver’s license. In return, the police agency provides him with the necessary information to fill out a criminal complaint.

Store detectives and police departments display favorable attitudes toward one another. Store Detective 2 commented that his police department compliments the entire loss prevention department for the assistance they provide to their agency. Officer 28 received praise from his local police agency enforcement after he assisted them with a burglary investigation involving customer car break-ins. Officer 25 received a formal accommodation from his local law enforcement agency when he helped them investigate and apprehend an organized retail crime ring.

Trust

One reason why store detectives and law enforcement worked well together pertained to the trust that police held toward store detectives. Law enforcement trusted store detectives to provide them with accurate information that would hold up in a court of law. Although the overall trust police held toward citizens varied, trust indicates the health of the working relationship. Store Detective 25 commented that low levels of trust sometimes created contention between him and his police department: “(Agency name redacted) gives shoplifters NTAs (notice to appear citations) even when they fight with me...they take 35 minutes to respond, and when they do, they ask you questions instead of the shoplifters, there is no consistency.” This sentiment appeared to be in the minority. Many store detectives stated that police placed great trust in their abilities to provide them with a solid case. Not surprisingly, the more positive interactions a police officer had with the store detective, the higher trust they placed in their abilities. As Store Detective 12 commented:

Everything is good based on the amount of times they respond, they know my busts are legit, they ask me about what happened, but they know it’s legit, they read the shoplifter their rights and people fess up, they tell me good job and they will see me next time.

Another store detective commented, “(agency name redacted) love how thorough I am. They know when they show the case is a done deal” (Store Detective 20). Store Detective 23 stated that his local police agency places so much trust in him that they no longer review his narrative that he provides them for court. Store Detective 19 stated that the prosecuting attorneys in his jurisdiction trust him so much they no longer subpoena him to court.
Camaraderie

Police and store detectives experience camaraderies with one another. Store detectives commented that police agencies lauded them on their efforts to apprehend criminals as well as maintain high levels of professionalism. Police often praised store detectives on various aspects of their work, including their proficiency at apprehending shoplifters, as well as their investigatory and decision-making abilities. For example, one police officer praised a store detective for his ability to catch shoplifters by saying, “man we need to sit out in front of the store because you guys catch so much.” Another store detective stated that police would often tell shoplifters, “that guy (the store detective) is good” (Store Detective 12). Camaraderie between the store detectives and the police did not develop immediately. In fact, it took several positive interactions for the store detectives to gain the respect of the police. As one store detective explained, “At first I thought they (the police) were ‘prickish,’ but soon after they were really impressed with the way I carried myself, and they said I should take up a career in law enforcement” (Store Detective 3). Interestingly, some store detectives that were interviewed were prior law enforcement who became store detectives because it paid better than law enforcement. Not surprisingly, their previous experience as police officers enhanced the rapport between them and the police. One store detective commented that he displayed his police paraphernalia in the loss prevention office and that the police were pleased to see he had previous experience in law enforcement. This store detective was well aware of how being a former police officer aided building rapport with the local department. Store Detective 13 commented, “That thin blue line still exists.” Several of the store detectives were on a first name basis with the police officers. Some store detectives even had the personal cell phone numbers in case they needed to contact them about a particular case, or if they just wanted a faster response time. Store Detective 23 commented on his relationship with his local law enforcement agency:

So far really good, the department has a shoplifting tactical unit. I met two guys from there and they were really cool. I contacted them, and they gave me their personal cell phone numbers. If we just had something happen, they will be on it.

Enhancing the Relationship: The Presence of Community Development Units and ORC Task Forces

The presence of police task forces significantly influenced the working relationship between store detectives and public law enforcement. Organized retail crime is a general term for the large scale theft of retail items by professional shoplifters, or organized groups of shoplifters, with the intent to sell the goods to a “fence,” or someone who purchases stolen merchandise for a fraction of its original value (Finklea, 2012). Local police agencies employed two types of task forces that interacted with the store detectives. The
first was a community development task force and the second was an organized retail crime (ORC) task force. The store detectives described the community development task force as a traditional community-oriented police strategy. The objective of the community development task force was to engage local residents in identifying and solving criminogenic problems within their respective communities. ORC task forces had different objectives. In select communities, shoplifting and ORC had increased to a point where local police dedicated specific officers to handle retail theft investigations. Although ORC units did respond to low-level shoplifting complaints, their primary objective was to investigate and apprehend members of organized retail crime rings, as well as their fences. Although community development units and ORC task forces had different objectives, they both contained one or more of the following characteristics that helped enhance their working relationships with store detectives:

- Dedicated police liaisons who interacted with store detectives
- Increased levels of engagement by police toward loss prevention efforts
- An enhanced perception that police supported loss prevention efforts
- Active partnerships between police and different investigators within the retail organization

Store detectives enjoyed working with task forces because it gave them an opportunity to interact with the local police departments, and allowed them to engage in joint investigations with the task forces. Store Detective 1 commented that his town's community development unit frequently stops by the store to chat with him about issues that occur in a low-income housing development project located adjacent to the store. Since the residents shop at the retailer, the police felt the need to include them in their community policing efforts. In many cases, the benefits of these community development and ORC units increased the positive interactions police had with the store detectives. Police actually liked coming to the store to process shoplifters. Officer 21 commented: "(Police agency) likes being involved. They have a community development unit; the partnership aspect allows us to work together. It is so much easier because they love coming to the store; and it's a free case for them." Another store detective commented, "It's just the way they (the police) respond, they are always there, just great, they actually care" (Store Detective 25). One store detective mentioned that he enjoys working with a specific individual of the ORC task force in his local sheriff's department by stating, "I work with (officer's name redacted) of the (police agency name redacted). When the task force asks me for information, I will provide it to them. I will let them see the video and I will get the information ready for them" (Store Detective 11). Store Detective 30's police agency is notorious
in the local area for concentrating their efforts on ORC activity. Store Detective 30 mentioned that his police agency gained so much notoriety from apprehending members of ORC that his local agency frequently travels outside their jurisdiction just to apprehend members of ORC. This store detective takes it upon himself to act as a liaison between the local police and senior ORC private investigators in his company. This store detective admitted that his goal was to eventually become an ORC investigator.

Task Forces Increase Optimism about a Positive Working Relationship

The idea of developing an ORC task force made the store detectives optimistic about their working relationships with law enforcement. One store detective commented that his current working relationship with police needed improvement and this improvement would come with the development of an ORC task force. He commented: “It’s a one way street, they call me to get video, times, dates, and store credits. I call the police (to request information) and the detective never follows through; but they are starting a task force which should bump up the level of involvement” (Store Detective 29). Whether currently in place or planning to be implemented in the future, community development units and ORC task forces have positive effects on the working relationship between retail store security and local police agencies.

Discussion and Future Implications

The majority of store detectives hold positive views toward their working relationship with law enforcement. According to the store detectives, law enforcement officers harbor positive attitudes toward them. This data partially supports previous research conducted by Nalla, Madan, and Mesko (2009) and Nalla, Hoffman and Christian (1996) that suggests private security personnel harbor favorable views toward law enforcement, but law enforcement did not reciprocate feelings toward private security. One explanation for this discrepancy is that public law enforcement officers view store detectives and contract security guards differently. Store detectives are corporate security officers, and corporate security officers are considered more skilled compared to security guards who work for contracted for-profit agencies (Walby & Lippert 2015).

Store detectives form strong partnerships with their local law enforcement agencies. This data directly contrasts previous research suggesting law enforcement and private security do not cooperate (see Cunningham & Taylor, 1984; Noaks, 2008). First, unlike private security guards who may intermittently call law enforcement for assistance, store detectives and law enforcement have very frequent interactions with one another. Police also heavily rely on the equipment and technology possessed by the retailers to conduct law enforcement investigations. Mass private property is used by a number of criminals before, during, and after crimes. Surveillance technology possessed by these retailers rival some government agencies. However,
video recording (DVR) equipment is difficult to operate and is impossible to gain access to without a warrant. Therefore, store detectives facilitate police access to DVR equipment. Store detectives are the only ones qualified to operate the equipment and control whether law enforcement has to take additional steps to secure a warrant for the footage. This parallels research that suggests law enforcement and private security act as, “one big police force,” but the relationship is largely controlled by private security since they have jurisdiction over private property (Shearing & Stenning, 1983, p.503).

One of the most reliable predictors of a healthy working relationship between law enforcement and store detectives are police task forces such as community development or ORC task forces. Police Departments who had organized retail crime task forces dedicated to handling organized retail crime issues positively influenced how well the department worked with retail store detectives. Community development units and ORC units employ the use of law enforcement liaison officers who act as a link between the retailers and the local law enforcement agencies. Store detectives who operated in a jurisdiction with ORC units conducted joint investigations that routinely led to the apprehension of members of organized crime. Interviews suggest that store detectives were very satisfied with their working relationships with these units. In addition, the promise to create an ORC task force generated optimism among store detectives. One reason why these units are so effective at facilitating cooperation between law enforcement and the retail security industry is that retailers perceive the task forces as police attempts to prioritize retail theft. When store detectives felt that law enforcement cared about their jobs, the store detectives worked assiduously to ensure a good partnership was maintained.

Establishing and Enhancing Future Active Partnerships
Practitioners who seek to create active partnerships between retail store detectives and local law enforcement agencies should consider taking the following measures:

- Develop a shoplifting task force
- Designate one police officer to act as a liaison between retailers and law enforcement
- Extend current community policing initiatives to include retail store security

Although an ORC task force is one of the most effective ways to enhance the relationship between store detectives and public law enforcement, the costs of maintaining an ORC unit may exceed the benefits. Interviews with the store detectives suggest that ORC units were developed in response to a surge in retail crimes in the local area. Some jurisdictions may not be impacted by retail related crimes to a degree that warrants an ORC task force.
One alternative to a dedicated ORC task force is to designate an officer from each department (or division in larger departments) to act as a liaison between retailers and their law enforcement agencies. The National Advisory Committee on Criminal Justice Standards and Goals (1976) asserts that dedicating a regular liaison can help facilitate the resolution issues between law enforcement and private security officers. The liaison should not be indiscriminately chosen by the department; rather, careful consideration should be given to the selection of the officer because the success of crime prevention efforts is largely contingent on the skills and abilities of this officer. The officer chosen for the liaison position should have rank within their agency to garner the respect of the heads of security within the retailers. Furthermore, the officer should have a working knowledge of the private security industry. The liaison must be versed in the laws and regulations surrounding the private security industry, and must be aware of the nuances between contract and proprietary security operations.

The most viable alternative for most departments is to extend community policing efforts to include retailers. Police task forces significantly enhanced the working relationship with store detectives because they gave the perception that the entire department cared about loss prevention efforts. Although designating one officer to act as a community liaison has its benefits, to be completely effective, store detectives need the support of the entire department -- including the chief of police. Police departments are highly structured. If a chief of police supports an initiative, his or her officers will follow their directives, and the entire police force will rally behind this effort. Unlike ORC task forces or dedicated liaisons, departments do not have to spend money to build units or remove officers from their regularly scheduled tasks.

**Limitations**

This study may not be representative of the entire retail security industry. Obtaining access to corporate security departments proved to be an onerous task. The principal investigator solicited multiple companies to participate in the study; however, many did not return phone calls or declined to participate. Although the principal investigator could have sought out store detectives without obtaining the retailer’s permission, the principal investigator wanted to keep the study above board in the hopes of obtaining a buy-in for future studies. Additionally, each retailer has a different organizational structure for its loss prevention department. Different organizational structures produce different working environments. These inconsistencies would make it difficult to compare responses. Sampling from two large companies allowed for consistency compared to a hodgepodge of different organizational structures. Future researchers who seek to study store detectives should be made aware of how difficult it is to gain access to private corpora-
tions. In addition, future researchers may want to seek out different vertical markets to increase the representativeness of their sample.

The retailers who did participate were very concerned about the information being leaked to the public. This concern trickled from the head of security to the store detectives. First, the retailers did not agree to participate in the study unless the principal investigator abided by their terms and conditions. Corporate legal departments placed heavy restrictions on the principal investigator’s data collection method. The retailers would not allow the responses to be electronically recorded; therefore, the principal investigator had to record the interviews by hand. On occasion, taking notes by hand proved to be difficult, especially when the principal investigator temporarily paused the interview to record a quote or phrase. Second, some of the store detectives in Company A were highly skeptical of the principal investigator’s motives. A few store detectives confused the principal investigator with an internal affairs investigator or the news media. To overcome this skepticism, the principal investigator had to engage in an extensive rapport process to convince the store detectives that the study was purely academic and that the principal investigator would ensure the confidentiality of each of their identities. On some occasions, the store detectives agreed to participate in the interview only because the principal investigator was a previous store detective. Researchers who seek to conduct similar research should be aware that gaining access to store detectives is extraordinarily difficult. Moreover, once access is granted, the researcher should be aware that store detectives are highly skeptical of the outside public and may be unwilling to speak with anyone not in the profession. Future researchers may also want to request more efficient data collection procedures. If such permission is not granted, or electronic methods are not available, researchers should devise ways to allow for the most efficient data recording.

CONCLUSION

This study provided a rare glimpse into the opinions of a security workforce contained within a private organization. The data in this study will surely provide strategies to enhance the relationships between retail security and public law enforcement. The question remains, what does the future look like for those who want to perform similar research? Unfortunately, the outlook of engaging in similar research is bleak. Increasing pressure from e-commerce, persistent government regulation, and the current state of our litigious society makes retailers reluctant to participate in academic research. As time passes, retailers will continue to become more closed off to the general public to protect their images and the interests of their shareholders. This study may be one of the last opportunities to gain insight into the security operations of a retail organization.
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**AUTHOR BIOGRAPHY**

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Some Things Are Just Better Left as Secrets: Non-Transparency and Prosecutorial Decision Making in the Era of Neoliberal Punitivism

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Abstract
This paper focuses on prosecutorial decision-making during the late-20th and early 21st century era of punitive American criminal justice. Qualitative semi-structured in-depth interviews were conducted with 10 former prosecutors who worked in two large and diverse states to determine how they made their decisions regarding charging and plea bargaining. This study investigates how prosecutors consider legal and extra-legal factors when making decisions. The results suggest that prosecutors considered legal factors such as evidence/provability and elements of the crime, the defendant’s criminal history, and witness credibility and/or victim credibility, but also extra-legal factors such as, victim’s request, law enforcement priorities, relations with defense counsel, high profile cases, and community influence. All of these decisions were made during and reflect the punitive era of criminal justice in the USA.

INTRODUCTION
Outside a local bar, three friends get into a fight with another patron from the bar. The fight sends the patron to the hospital. Four days later, the patron dies as a result of a fatal punch to the head. The evidence against all three friends is equally strong as it is unclear from the facts of the case which of the three friends delivered the fatal blow. In addition, all three friends have a “clean” record and have never been in trouble with law enforcement prior to this incident. Two are charged with second-degree murder and, of the two, one pleads to misdemeanor battery and is given probation in exchange for testimony against the other. The other friend that is charged with second-degree murder is not offered a plea bargain and faces 15 years to life in prison, if convicted. Meanwhile, the third friend is not charged with a

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crime at all. It seems unfair that two friends were charged and the other was not. Additionally, of the two whom were charged, it also seems unfair that one received a harsher sentence than the other. After reading this vignette, one may ask: Why were these three similarly situated people treated differently? Who made these decisions? How and why were these decisions made? What factors influenced these decisions?

The prosecutor made these decisions. It has been said that prosecutors are the most powerful officials in the criminal justice system (Bubany & Skillern, 1976), and this is especially so since the 1970s when states and the federal government began to ramp up punitiveness in America with mandatory minimum sentencing. Prosecutors have the exclusive power to decide whether or not to charge a person with a crime, what the specific charges will be, whether or not to dismiss charges, whether or not to plea bargain, whether or not to try a juvenile as an adult, and whether or not to seek the death penalty. The American prosecutor exercises almost totally unfettered discretion when it comes to making these decisions (Albonetti, 1987; Jacoby, 1980; LaFave, 1970; McDonald, 1979). Not only do prosecutors have enormous discretion when making these decisions, but their discretion is also virtually unreviewable. Judges have ruled in federal and state court cases that the judicial branch is not responsible for reviewing prosecutors’ decisions. For instance, when John P. Hassan filed a suit against the Magistrates Court of New York (Hassan v. Magistrates Court of New York, 1959) in an attempt to get the court to compel the district attorney to institute criminal proceedings against a New York City police officer for first-degree perjury, the court stated:

As a basic incident of our form of Government, with its divided powers and responsibilities lodged in the executive, legislative and judicial branches, and as a self-imposed rule of judicial restraint, the courts should not interfere with the discretion lodged in prosecuting officials such as a District Attorney or the Attorney- General to institute criminal proceedings. (p. 241)

The U.S. Court of Appeals for the Fifth Circuit stated similar reasoning in United States v. Cox (1965) for not interfering with the prosecutor’s decision not to prepare an indictment even though the grand jury requested that he do so:

Although as a member of the bar, the attorney for the United States is an officer of the court, he is nevertheless an executive official of the Government, and it is as an officer of the executive department that he exercises discretion as to whether or not there shall be a prosecution in a particular case. It follows, as an incident of the constitutional separation of powers, that the courts are not to interfere
with the free exercise of the discretionary powers of the attorneys of the United States in their control over criminal prosecutions. (p. 171)

Moreover, in *Wayte v. United States* (1985), the U.S. Supreme Court stated:

This broad discretion rests largely on the recognition that the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of the case, the prosecution’s general deterrence value, the Government’s enforcement priorities, and the case’s relationship to the Government’s overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake. (p. 607)

This gives prosecutors a tremendous amount of power over the fate of citizens. “When the prosecutor makes the decision to charge an individual, she pulls that person into the criminal justice system, firmly entrenches him there, and maintains control over crucial decisions that will determine his fate” (Davis, 2007, p. 22). Because prosecutors have so much power, it is important to know how they make these decisions, what factors influence their decision-making, and in what context they operate.

This study focuses on prosecutorial decision-making in the punitive era of American criminal justice. Qualitative semi-structured in-depth interviews were conducted with nine former prosecutors who worked in several district attorneys’ offices in California and one prosecutor who was the elected District Attorney (DA) in a large county in Illinois to determine how they made their decisions regarding charging, plea bargaining, trying juveniles as adults, and seeking the death penalty. In this paper, we focus on charging and plea bargaining because these were the main practices of nine of the ten respondents and are the primary duties of prosecutors in all jurisdictions in the USA.

The original impetus for this study was due to an unpaid internship that one of the authors (Shanda Angioli) undertook with the local district attorney’s office, in a large diverse California county. The hope was that this internship would create the opportunity to undertake research on prosecutors. After a circuitous path through the office, Shanda was able to meet with the elected district attorney. During the meeting, Shanda provided an explanation of the proposed research and provided copies of questions from the semi-structured interview. She assured that the study would be anonymous and that information derived from interviews would be confidential, and provided reasons as to the importance of the study, explaining the benefits that she and her deputy district attorneys could gain from the results of the study. The district attorney responded that she had reviewed the questionnaire and believed that the research would reveal internal policies to the public. She stated that she made the policies of the office and she was
concerned that some of her deputy district attorneys may answer questions incorrectly (i.e., their answers would not reflect her policies). She then said, “Some things are just better left as secrets.”

It was this refusal that caused us to change the focus of the study from current district attorneys to former district attorneys. Switching the sample from current prosecutors to former prosecutors allowed us to obtain more information because current prosecutors may be reluctant to answer questions truthfully because of the fear of retaliation from above, whereas former prosecutors essentially have nothing to lose. For example, Respondent # 3 stated, “Former prosecutors are not as scared as current prosecutors. When you’re actually doing prosecutions, you are likely more tentative about revealing things that could questionably be unethical or not proper.” Respondent # 5 said, “Current prosecutors are scared because it’s a political position and so people are very political about what they say; they don’t want to say the wrong thing, which to me, is part of the problem.” It is important to note that all of these attorneys decided to leave prosecution, in some cases explicitly due to dissatisfaction with the position. Seven of the respondents currently practice criminal defense. In an important sense, these lawyers—although very knowledgeable about prosecution—are possibly biased against or extra inclined to critique it. Nevertheless, we believe that they remain a more valid choice than practicing prosecutors precisely because of their critical insights about the institution. In some cases, it was problematic behaviors and actions in the prosecution institution that influenced them to leave the position. These persons are analogous to “whistle-blowers,” and therefore appropriate for studying a closed and opaque institution. At the same time, we acknowledge that former prosecutors currently working as defense attorneys are probably more eager to critique prosecution than former prosecutors currently working in civil law or some other non-criminal area.

The next section of this paper will provide a selected review of prior research regarding prosecutorial decision-making and American punitiveness. We subsequently discuss our methods for analysis, and then describe and analyze our findings. We conclude the paper with suggested avenues for future research.

LITERATURE REVIEW

Decision-making

Over the past few decades, there has been a significant amount of research regarding what legal and extra-legal factors influence prosecutors when making their decisions. Legal factors “typically refer to decision criteria set out in statutory law” while “extralegal factors usually include social and demographic” characteristics (Adams & Cutshall, 1987, p. 596). Legal factors can include, but are not limited to, strength of evidence, the seriousness of the offense, and the defendant’s prior criminal history. However,
Littrell (1979) once noted that “unlike psychotherapists, criminal justice officials do not assess character by delving into the privacy of a defendant’s mind. They rely instead upon a defendant’s social characteristics” (p. 79). Extra-legal factors include, but are not limited to, employment status, age, socioeconomic status, gender, and race of the defendant and victim. Prior research has shown that both legal and extra-legal factors matter.

Decision to charge

Albonetti (1987) studied 6,014 felony cases processed in the Superior Court of Washington, D.C. in 1974 and found that prosecutors were less likely to charge if there was a presence of exculpatory evidence (i.e., evidence that benefits the defendant) than if there were no such evidence. Also, prosecutors were more likely to accept cases for prosecution if either physical evidence or corroborative evidence were present than if there were no such evidence (Albonetti, 1987). Jacoby et al. (1982) found that similar legal factors, such as the presence of two or more police witnesses, increased the likelihood of charging. These two studies also found that extra-legal factors matter, demonstrating that prosecutors were more likely to file criminal charges if the victim and suspect were strangers than if they were acquaintances (Albonetti, 1987; Jacoby, Mellon, Ratledge, & Turner, 1982).

Not surprisingly, victim credibility has been shown to be significant for prosecutors. Frohmann (1991) observed prosecutors for 17 months regarding sexual assault cases and found that they were less likely to file criminal charges in a sexual assault case if the victims’ accounts of the crime contained discrepancies or if the victim had an ulterior motive.

Other legal factors, such as the use of a weapon, the suspect’s prior record, statutory severity (i.e., possible penalty), and whether the suspect was arrested at the crime scene have all been found to be statistically significant with regard to prosecutors’ decisions to prosecute (Albonetti, 1987).

Other studies have found that race and gender can influence prosecutors’ decisions regarding whether or not to charge a suspect with a crime. Spohn, Gruhl, and Welch (1987) studied 33,000 felony cases in Los Angeles from 1977 to 1980 and found that prosecutors were more likely to file criminal charges against both Hispanic men and women, and Black men and women than against White men and women. It was also found that Hispanics were prosecuted more often than Blacks, who were prosecuted more often than Whites (Spohn et al., 1987). With regard to gender, Spohn et al. (1987) found that prosecutors were more likely to file criminal charges against males in each ethnic and/or racial group (White, Black, and Hispanics) than against females.

Decision to plea bargain

Legal and extra-legal factors also influence plea-bargaining. Jacoby et al. (1982) found that the seriousness of the offense, the criminality of the defen-
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dant, and the legal-evidentiary strength of a case affect prosecutors’ decisions regarding whether or not to offer a plea bargain. This supports research by McDonald, Rossman, and Cramer (1979). McDonald et al. (1979) interviewed and observed prosecutors, defense counsel, judges, and other criminal justice actors as well as applied a decision simulation technique in 33 jurisdictions. Overall, McDonald et al. (1979) found that case strength, seriousness of the defendant’s history (i.e., whether or not the defendant had a criminal record), and seriousness of the offense all influenced prosecutors’ decisions regarding whether or not to offer a plea bargain. Jacoby et al. (1982) found that as the seriousness of the offense decreases, the more likely it is that a prosecutor will offer a plea bargain. Also, as the legal-evidentiary strength of the case increases, Jacoby et al. (1982) found that prosecutors were less likely to offer a plea bargain. McDonald and colleagues’s (1979) study had similar results. With regard to case strength, McDonald et al. (1979) used the data from their interviews to determine that prosecutors were more likely to give their most generous deals in their weakest cases. When dealing with the criminality of the defendant, Jacoby et al. (1982) found that the less serious the defendant’s criminal history, the more likely prosecutors would offer a plea deal. Unlike Jacoby study (1982), McDonald and colleagues (1979) found that prosecutors did offer plea deals to defendants with more serious criminal histories. Based on the interview data, the McDonald study (1979) found that in cases where prosecutors offered plea deals to defendants with serious criminal backgrounds, the more serious the criminal, the stiffer the terms of the plea bargains.

The media has also been found to influence prosecutors’ decisions regarding whether or not to plea bargain. Pritchard (1986) performed a content analysis of 744 news stories in Milwaukee’s daily newspapers regarding every non-vehicular homicide case presented to the district attorney’s office for possible prosecution from January 1, 1981 to June 30, 1982. Pritchard (1986) found that the average length of stories about cases was the strongest predictor of whether prosecutors engaged in plea negotiations. For example, the shorter the average story, the more likely the prosecutor would offer a plea bargain (Pritchard, 1986). Pritchard (1986) concluded that “the amount of space newspapers were willing to devote to the typical story about a case was a stronger predictor than any other variable in [the] study [regarding] whether the prosecutor would negotiate” (pp. 154-155).

**Decision to dismiss charges**

After charges have been filed against a suspect, the prosecutor can decide at any time to dismiss those charges. Research has shown that both legal and extra-legal factors have influenced prosecutors’ decisions to dismiss charges. For example, Adams and Cutshall (1987) reviewed 745 shoplifting cases in the District of Columbia from 1974 to 1975. Of the 745 cases, sixty percent (60%) received a nol-pros disposition, which is the technical term for dropping charges. Adams and Cutshall (1987) found that the number of
offenses charged, number of witnesses, value of merchandise stolen, race of suspect, gender of suspect, and the suspect’s prior criminal history to have a statistically significant relationship with the nol-pros decision. More specifically, Adams and Cutshall (1987) found that “shoplifting cases involving one offense charge, no more than two witnesses, stolen merchandise valued at less than ten dollars, white offenders, female offenders, and offenders with no prior record are more likely to be ‘nol-prossed’ ” (p. 600).

Researchers have also found gender to influence prosecutors’ decisions regarding whether or not to dismiss charges against a suspect. As previously mentioned, Spohn et al. (1987) studied 33,000 felony cases in Los Angeles from 1977 to 1980 and found that prosecutors were more likely to dismiss charges prior to trial against females in each ethnic racial group (White, Black, and Hispanic) than for males. This finding supports Albonetti’s (1986) research where she found that prosecutors were more likely to dismiss charges if the defendant was a female than if the defendant was a male.

**Decision to charge juveniles as adults**

The decision to charge juveniles as adults—known as “prosecutorial waiver”—is “controversial because it vests considerable discretion in the prosecutor, whose primary duty is to secure convictions and who is traditionally more concerned with retribution than with rehabilitation” (Fritsch & Hemmens, 1995, p. 18). As in other areas, research has shown that both legal and extra-legal factors have been found to influence prosecutors’ decisions to charge a juvenile as an adult. For example, Bishop, Frazier, and Henretta (1989) interviewed prosecutors in Florida and found that the age of the defendant was an important factor in deciding whether or not to transfer a juvenile to adult court, even when controlling for seriousness of the offense and the juvenile’s prior record. The older the offender, the more likely he would be transferred to adult court (Bishop et al., 1989). The interviews indicated that the offense itself was also a factor that influenced prosecutors’ waiver decisions. All of the prosecutors interviewed stated that they placed a heavy emphasis on the seriousness of offense when considering whether or not to transfer a juvenile to adult court (Bishop et al., 1989). In addition, some prosecutors interviewed claimed that the presence of an adult co-defendant also made transfer more likely because it made the juvenile offender seem more criminally sophisticated (Bishop et al., 1989).

In addition to interviewing prosecutors, Bishop and colleagues (1989) also studied 583 cases derived from prosecutors’ files and court clerk records in two Florida counties from 1981 to 1984 to determine what factors influenced prosecutors’ decisions to transfer a juvenile to adult court. They found that gender, race, and age were all factors that affected prosecutors’ waiver decisions. The results of their study showed that the majority of juvenile offenders that were transferred were male, white, and were either sixteen or seventeen when they committed the offense (Bishop et al., 1989). Al-
though prior record is often stated as a reason for waiving juveniles to adult court, Bishop et al. (1989) found that twenty-three percent (23%) of first time juvenile offenders (i.e., no prior record) were transferred to adult court.

Bishop et al. (1989) also found that the type of offense influenced prosecutors’ waiver decisions. Of those transferred to adult court, they found that most of the juveniles (55%) had committed a property offense whereas only 29% of them had committed a violent felony, and fewer than twenty percent had been charged with felonies against persons. These findings probably reflect the fact that property crimes are more common than violent crimes, but they raise the question of why that large percentage of juveniles committing property crimes were charged as adults. Prosecutors in the Bishop study (1989) said that seriousness of offense was a factor that influenced their waver decisions, but it is not clear how seriousness factored in to all those property crime waiver decisions. It is possible that extra-legal factors mattered for these prosecutors, even if unconsciously.

Podkopacz and Feld (1996) studied cases where prosecutors filed motions to transfer juveniles to adult court in Hennepin County, Minnesota from 1986 to 1992. They found that the type of crime, the suspect’s race, the use of a weapon during the commission of the crime, and the age of the suspect influenced prosecutors’ decisions regarding whether or not to transfer the juvenile to adult court.

Singer (1993) studied 103 juvenile offender arrests in Buffalo, New York between 1981 and 1985 and found that juveniles who came from single-parent homes were more likely to be referred to the grand jury for transfer to adult court in non-homicide cases than juveniles from two-parent homes.

**Decision to seek the death penalty**

Prosecutors’ decisions around the death penalty have been studied extensively. “There would be no death penalty without prosecutors, because only prosecutors may decide whether or not to seek the death penalty in a particular case” (Davis, 2007, p. 78). Although one might think that prosecutors seek the death penalty for most every offender that qualifies for it, that is not the case (Davis, 2007). In order for a case to qualify for the death penalty, the facts of the homicide must include a special circumstance beyond simple first degree murder (e.g., multiple victims, the victim was a law enforcement officer, another felony co-occurred with the homicide, etc.). Yet there are no laws that require that cases that qualify for the death penalty be charged as a capital case. As a result, prosecutors exercise the ultimate form of sovereignty when they exercise their discretion to decide which murder cases are suitable for capital punishment and which are not (Songer & Unah, 2006).

Legal factors certainly influence prosecutors’ decisions regarding whether or not to seek the death penalty. Yarvis (2000) examined 115 homicide cases in California between 1980 and 1991. Of the 115 cases, 52 were eligible for the death penalty. Yarvis (2000) sought to answer the question:
once the death penalty criteria have been met (i.e., when there was at least one special circumstance present), what compels prosecutors to determine whether or not to seek the death penalty, and what are the bases for such decision-making? Of the 52 death eligible cases, Yarvis (2000) compared the 39 defendants who met the special circumstance criteria and were charged with the death penalty to the 13 defendants who met the criteria but were not charged as such. Yarvis (2000) found that prosecutors were more likely to seek death when more than one special circumstance was present. Yarvis (2000) also found that robbery and sexual assault usually provoked prosecutors to file a special circumstance charge. When determining if aggravating and/or mitigating factors played a role in prosecutor decision-making in capital cases, Yarvis (2000) found that prosecutors focused selectively on aggravating factors and placed much less emphasis on mitigating ones, and that the presence of mitigating factors did not deter prosecutors from charging a special circumstance.

Extra-legal factors have also been found to influence prosecutors’ decisions regarding whether or not to seek the death penalty. For example, the role of race has long been shown to matter in prosecutorial decision-making on the death penalty. Paternoster’s (1984) research suggests that the race of the victim is influential. Paternoster (1984) analyzed data from 300 homicides involving an aggravating felony that occurred in South Carolina between 1977 and 1981. Prosecutors sought the death penalty in 107 of the 300 capital murders, and Paternoster (1984) found that when several legally relevant factors were taken into account, the race of the victim was significantly related to the decision to seek the death penalty. In a highly publicized study, Baldus, Woodworth, and Pulaski (1990) examined over 2,000 murder cases that occurred in Georgia between 1973 and 1979 and found the race of the victim to have an influence on prosecutors’ decisions regarding whether or not to seek death. They found that prosecutors were more likely to seek death if the victim was White than if the victim was Black, regardless of the race of the defendant (Baldus et al., 1990). They also found that prosecutors sought the death penalty for 70% of Black defendants with White victims while they only sought the death penalty for 15% of Black defendants with Black victims (Baldus et al., 1990). In addition, Baldus and colleagues (1990) also found that prosecutors sought death for 32% of White defendants with White victims while they only sought death for 19% of White defendants with Black victims. The findings of the Baldus study (1990) suggest that prosecutors value the lives of White victims more than they value the lives of Black victims. These findings have been replicated repeatedly (e.g., U.S. General Accounting Office, 1990; Free, 2002; Songer & Unah, 2006).

**Neoliberal Punitivism**

The above-mentioned research describes the legal and extra-legal factors that influence prosecutors’ decision-making. Regardless of whether their decisions were influenced by legal or extra-legal factors, other research sug-
suggests that these decisions were driven by America’s desire to punish offenders. Many scholars have described and theorized the late 20th century punitive turn in American criminal justice, most notably Jonathan Simon’s (2007) influential Governing through Crime.¹ What Simon calls ‘governing through crime,’ we will refer to as ‘neoliberal punitivism,’ a reactionary ideology that emerged out of a backlash against the legacy of civil rights era Supreme Court criminal justice doctrines and fear generated by the rise of crime rates beginning in the 1960s and accelerating into the 1980s.² Neoliberal punitivism valorizes executive authority, derides judicial decision making as “activism,” and devalues due process and the rights of criminal defendants. This ideology sees criminals in simplistic and individualistic terms, constructing them as monsters or “super predators.” It views victims as innocents, whose purity and goodness must be avenged, resulting in harsh and humiliating punishments, including the re-emergence of practices such as the chain gang (Allen & Abril, 1997). The rise of neoliberal punitivism has been facilitated by what Simon (2007) refers to as “the prosecutorial complex,” a model in which: 1) prosecutors are constructed as champions for victims, 2) victims seek recognition through retribution, and 3) prosecutors have a monopoly on service to victims and power to isolate and punish defendants (p. 37).

Aviram (2015) describes the punitive turn as “received wisdom in the field for all but a few” (p. 26). However, partly due to concerns over public expenditure on prisons during the 2007 financial crisis, the era of neoliberal punitiveness may be waning. Many examples could be cited, but a prominent example with large effects was the passage of Proposition 47 in California in 2014, which overnight transformed many non-violent drug and property crimes from felonies to misdemeanors. Whether the era of mass incarceration has passed is certainly under debate, but the hegemonic necessity for

¹ There is an extensive literature on neoliberal punitivism, with various orientations, including, just for example, Garland’s (2001) influential social theoretical analysis of neoliberal politics in the United Kingdom and USA at the end of the 20th century, Alexander’s (2010) treatise on race and mass incarceration in 21st Century America, and Gottschalk’s recent (2015) skeptical look at attempts to reform mass incarceration.

² It is not easy to precisely identify the exact historical parameters of neoliberal punitivism. Antecedents of it began in the early 1970s with the rise of political orientation toward privatization and market-based policy solutions (Harvey, 2007). Most scholars of criminology and criminal justice probably conceive of neoliberal punitivism as beginning in the 1980s with the rapid expansion of criminal punishment and the war on drugs. We note that one of our subjects worked as a prosecutor in the early 1970s, a period arguably preceding neoliberal punitivism. We include this subjects’ responses because this subject was the elected DA in a large, diverse county and provides insight into decision making, even if not during neoliberal punitivism.
politicians to be tough on crime, the war on drugs, and the massive warehouse prison are at least under critique at the moment, including from conservative commentators (see rightoncrime.com). Whenever the exact starting (or ending) point of this era may be, nine of the ten former prosecutors in this study worked for some period between the years 1983 and 2009, the peak years of neoliberal punitivism.  

METHODS

Prosecutorial decision-making in the neoliberal punitive era was investigated using qualitative semi-structured in-depth interviews with ten former prosecutors with experience in DA offices in various counties throughout California and Illinois.

Qualitative Data Collection

While quantitative research tends to employ descriptive and/or inferential statistical methods to identify relationships between independent and dependent variables, qualitative methods tend to focus on answering the *why* questions. In other words, they seek to investigate the *why* and *how* of decision making (as in this current study), rather than the *what*, *where*, and *when*. McCoy (1995) defined qualitative research as:

Qualitative research is concerned with nonstatistical methods of inquiry and analysis of social phenomena. It draws on an inductive process in which themes and categories emerge through analysis of data collected by such techniques as interviews, observations, videotapes, and case studies. Samples are usually small and often purposively selected. Qualitative research uses detailed descriptions from the perspective of the research participants themselves as a means of examining specific issues and problems under study. (p. 2009)

Semi-Structured Interviews

Interviews allow the researcher to learn first-hand from the participants’ own words and past experiences, and so, therefore, the researcher is able to gain a better understanding of *why* and *how* things happened. As Rubin and Rubin (2005) state it, “qualitative interviews have operated for us like night-vision goggles, permitting us to see that which is not ordinarily on view and examine that which is often looked at but seldom seen” (p. vii). “Qualitative interviews are conversations in which a researcher gently guides a conversational partner in an extended discussion” (Rubin & Rubin, 2005, p. 4). Qualitative interviews are similar to ordinary conversations in that they typically

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3 Optimism about the end of neoliberal punitivism has diminished considerably in light of the 2016 elections, which handed control of the government to a populist nationalist president and a conservative legislative branch.
follow the same format as ordinary conversations. In ordinary conversations, each person takes a turn speaking and "questions and answers follow each other in a logical fashion as people take turns talking" (Rubin & Rubin, 2005, p. 12). In qualitative interviews, although the researcher is ultimately in charge of the interview and determines what topics to discuss, there are typically very few pre-set questions and the "researchers listen to each answer and determine the next question based on what was said" (Rubin & Rubin, 2005, p. 12).

In semi-structured interviews, the researcher begins the interviews with an outline of questions, but the sequence of questions flow naturally depending on the answers that the interviewee provides (Goodman, 2001; Merton, Fiske, & Kendall, 1990). In other words, semi-structured interviews allow the researcher flexibility with regard to the order that the questions are asked as well as flexibility to develop questions during the interview in response to what the research participant says. These questions are typically asked of each interviewee in a systematic and consistent order, but the interviewers are allowed freedom to digress; that is, the interviewers are permitted (in fact expected) to probe far beyond the answers to their prepared and standardized questions. (Berg, 1995). This approach makes sense for interviewing former prosecutors from widely varying backgrounds.

These interviews included questions about respondents' demographics (e.g., age, ethnicity, political affiliations, gender, and religious preferences), descriptive information regarding their position as a prosecutor (e.g., how many years the respondents worked as a prosecutor, which county they worked in, the division of the district attorney's office that they worked in, and what crimes they dealt with), their views on crime (e.g., questions regarding their stance on crime and stance regarding the death penalty), and their decision-making power (e.g., if the respondents ever filed charges against a suspect and if respondents ever offered plea bargains to defendants). If respondents had made decisions about charging juveniles as adults or the death penalty, we then probed them for more information about that.

A prime example of qualitative research on legal decision-making can be found in the extensive work by the Capital Jury Project (CJP), which examines jurors' decision-making through extensive interviewing. The CJP focuses primarily on arbitrariness in capital cases (Steiner, Bowers, & Sarat, 1999), and CPJ data have shown that a host of factors influence how juries make capital decisions, including: knowledge of sentencing options (Bowers & Steiner, 1999; Eisenberg, Garvey, & Wells, 2001); (mis)understandings of jury instructions (Eisenberg & Wells, 1993); defendant's (lack of) remorse (Eisenberg, Garvey, & Wells, 1998); premature decision making (Bowers, Sandys, & Steiner, 1998); perceptions of personal sentencing responsibility (Hoffman, 1995), and folk knowledge about punishment (Steiner et al., 1999). This comprehensive program of study obviously reaches much farther into the process of legal decision-making than our modest analysis of ten pros-
Executors, but we reference it here because we see it as a model for qualitative work on prosecutors. Despite the problem of access, we believe that a Capital Prosecutors Project is well warranted.

Subjects for this study were located by searching the internet for “former prosecutors” or “former district attorneys.” Most results were websites for law firms where the firms were advertising that a former prosecutor works for their firm. We contacted potential respondents, explained the study, asked if they would be willing to participate, and set up interviews. There was no specific race, gender, or age group targeted for this study. Rather, the sample included both men and women from a wide range of ethnicities and ages. We recognize that ten subjects is a very small sample. Unfortunately, the process of identifying former prosecutors, obtaining their consent to an extensive interview, and then undertaking the interview is highly labor intensive for two researchers. Some former prosecutors were too busy to participate. As we discussed above, some of the subjects who agreed to participate probably have strong critical views about prosecution. In short, the sample has flaws. Nevertheless, we believe that the depth of the interviews and richness of the data helps ameliorate these flaws.

IRB approval was granted by our home university, each interviewee agreed to informed consent, and each interview took place at the respondent’s place of business, except when respondents’ locations were of great distance; those interviews were conducted via a recorded telephone call. The interviews were in-depth and took place for several hours each, sometimes up to 3.5 hours.

**Characteristics of Respondents and Areas of Practice**

Ten former prosecutors were interviewed, ranging in age from 32 to 67; nine of the ten were male, seven were White, one was African-American, one was Asian, and one was Hispanic. Respondents’ areas of practice while working as prosecutors ranged from working as a line attorney in a misdemeanor trial unit to being the elected District Attorney for one of the largest counties in the country, including most positions in between. Years working as a prosecutor ranged from 3 to 15 years. Nine of the ten worked during the years 1983-2009, although one of those nine retired from prosecution in 1983. One of the prosecutors worked from 1971-1974. Seven of the ten currently work in criminal defense, and the other three in various civil law areas.

**Data Analysis**

Analysis of in-depth interviews is a process in which “you prepare transcripts; find, refine, and elaborate concepts, themes, and events; and then code the interviews to be able to retrieve what the interviewees have said about the identified concepts, themes, and events” (Rubin & Rubin, 2005, p. 201). Upon completion of each interview, one of us transcribed them, summarized them, created a typology of categories of decision-making based on
the literature, and selected quotes to reflect that typology. The other author then analyzed the findings from a theoretical standpoint, connecting the data to ideas about prosecutorial decision-making and neoliberal punitivism, as we discuss in detail below.

**Strengths and Limitations of the Research Design**

Qualitative in-depth interviews are subject to the critique that they are unscientific and not generalizable, but there is a long tradition in the social sciences of valuing the strong internal validity and depth of small scale qualitative studies. Our goal here is not to prove causation nor make any broad claims about prosecution in the USA, but rather to make a record of the hows and whys of some prosecutorial decision-making during the period of America's peak use of criminal justice as a form of governance.

**Importance of the Study**

It is important to know how prosecutors make their decisions because under the current regime of total opacity, executive use of state power is unchecked. The public needs to understand who can invoke this state power and under what conditions this power is exercised. “Only when the public knows the reasoning behind prosecutorial decisions . . . can it understand the prosecutorial function and evaluate the desirability of existing policies and practices” (Bubany & Skillern, 1976, p. 498). This study hopes to provide insight into these policies and practices, especially as they did during the time when prosecutor practices were so involved with mass incarceration.

**LEGAL AND EXTRA-LEGAL FACTORS**

In our exploration of how prosecutors decide to charge and plea-bargain, we, not surprisingly, found that legal factors certainly mattered. All respondents reported that the available evidence and provability of the case, the defendant's criminal history, and the credibility of witnesses and victims affected their decision making. In a sense, even counting the defendant's criminal background as a legal factor is debatable because even if a person has a record of committing many crimes, it should up be to the judge's discretion to decide whether to punish the person more severely (after conviction) as a deterrent to prevent the person from committing the same crime (or other crimes) in the future, not the prosecutor's job to decide whether or not to file charges because of the person's past offenses. Victim or witness credibility is also arguably extra-legal because it has nothing do with the defendant's culpability, but because it is so similar to the concept of evidence/provability, we will consider it a legal factor. So, to be clear, all of our respondents said that legal factors were prominent in their decision making. However, rather than focus on what is obvious—that evidence matters to prosecutors—we focus instead on extra-legal factors because this illuminates deep problems with prosecution in the USA.
Decision to Charge

The decision to charge is “the most important prosecutorial power and the strongest example of the influence and reach of prosecutorial discretion” (Davis, 2007, p. 22). When discussing what factors influence prosecutors’ decision to charge, respondent # 5 said, “Everything you think might come into play probably does; the question is, how much?” In addition to the evidence, defendants’ criminal history, the credibility of witnesses and victims, and a number of factors that should not matter came into play.

Victims’ Requests

Comments about victims’ wants and needs were inconsistent. Some respondents said that victims’ wants and needs were considered but it did not influence their decisions so long as they could prove the case. Respondent # 6 stated that the victims’ wants and needs are important but if the victims are not willing to cooperate, he would still file charges if there was evidence to prove the case:

Obviously the attitudes and views of the victims are important in two senses. Number one, they are victims and they should be heard. Prosecutors have to make their decisions based on what they think is the right thing to do for the community, for the people, who we represent. So it’s not, the victim wants to do X so we do X. And, that includes domestic violence. In many cases, if the victim is unwilling to testify, we will not go forward but there are evidence-based prosecutions, especially if there has been violence and the victim does not want to proceed, but we have other evidence and we feel it’s sufficient, we will go forward.

When discussing how domestic violence victims often do not want to prosecute, respondent # 1 said he tried to convince the victims to go forward with the prosecution:

We’re going to try to force them to cooperate. Now sometimes they won’t. We look at these horrible, god-awful pictures of what they looked like on day one and they say, absolutely yes I want to prosecute, I’m tired of this, I am fed up with this. And by the time a month or so goes by, they say, well he loves me and he promised me he wouldn’t do it again. We try to force them to do the right thing.

Other respondents did not force recanting victims or uncooperative victims to go forward with the prosecution, but rather wanted the victims to recant or not cooperate because it made the case easier to prove to the jury. Respondent # 3 said:

You often had situations, especially in domestic violence, where the victims did not want to prosecute. . . . The cases
were better when the victim was not cooperating because the jurors didn’t believe the woman if she was on board... It’s really a sad comment on our society that my cases are better when she’s not cooperative. It was better because we’ve got this police report and it’s reciting everything that she said at that time and we’ve got these pictures, and now she’s on the stand saying, “Oh, I ran into a door.” The jury believes she was abused because they think there’s no way the injuries from the pictures are because of what she just said on the stand. They think that she is just being a victim and is just trying to protect him because she loves him. So yes, we proceeded in cases where the victim wasn’t cooperative if the evidence was good and she had given a good statement at the outset or we’ve got some injuries that are pretty convincing and are obviously not from walking into a door.

It is important to note the contradiction between respondent # 1 and respondent # 3. Respondent # 1 stated that he tries to force victims to cooperate and to do the right thing, but respondent # 3 actually prefers when victims do not cooperate because she is more likely to win those cases. The fact that both respondents # 1 and # 3 took such different approaches to filing charges illustrates the tremendous amount of discretion that prosecutors have, and variation in legal outcomes.

**Relations with Police**

Seven respondents discussed the pressure that law enforcement officers put on prosecutors to file charges. One respondent claimed that the police influenced his decisions to charge, two respondents stated that the police did not influence their decision-making but influenced other prosecutors’ decisions, and four respondents said that the police did not have an influence on their decisions to charge.

Respondent # 2 admitted to being influenced by law enforcement when making his charging decisions. He said, “Of course law enforcement influences my charging decision. They do that.” He then went on to say:

Well, there used to be an old urban legend that on the end of reports or on the end of a ticket, law enforcement would put a dot with a circle around it and that meant that that person was an asshole and so they were requesting the prosecution to treat them accordingly. As a result, the offers would be a little tighter. But, the defense attorneys got a hold of that and so that was the end of that. But it gives you an example of the kind of culture. I’ve had detectives come up to me and say, “You know, I charged this but you need to know this, this, and this. I don't think we should really push hard on this. I
think you should cut him a break.” I’ve also had cases where detectives have said, “We know he’s bad news, we know he’s involved in gangs, and we can’t catch him. The only thing I’ve got is a lousy possession of a modified bat. . . . We just need him on probation so we can do probation searches.”. . . I said, “Alright, I will do it for you guys.” And I did it and subsequently later, he was involved in a serious assault with a deadly weapon with a bat . . . It was helpful that the police had that probation on him because it ended up sending him to prison for a longer term than we could have otherwise. So, yes you do work closely with law enforcement. You absolutely have to because they are your chief witnesses.

When asked if law enforcement officials ever went to specific prosecutors that they knew were likely to charge what they want, respondent #5 said:

It’s a possibility, yes. I wouldn’t say that they all do that. A lot of the times they are assigned. . . . But sometimes in a homicide case or a bigger case where the detective is bringing over this one case today, he may say, “Okay I’m bringing this over and we busted our ass to put this together to figure out who did it and I need this case to be charged because this guy killed somebody.” You may get it and you may say, “Well, there are problems with this case, there are problems proving this case. Even though you think he did it, even though you may think you know he did it, we can’t charge it if we can’t prove it.” And so in that context, detectives . . . may definitely forum shop. . . . I mean, in fact, the charging deputy who is in charge of the X office right now, between you and I, is under some heat because he’s been rejecting cases and so the local police agencies are pissed off.

Although police and prosecutors often work closely with one another, they are not supposed to influence the other in their decision-making. This can lead to injustice because the police work in the community and often know the suspects and have an opinion regarding the suspects’ character. If a police officer is biased against one person, he may urge prosecutors to file charges against that person but then urge prosecutors to be more lenient for a person that he may like. It is important to note that not only can injustices occur when the police influence prosecutors’ decision-making, but also other negative results can occur such as wasting resources and taxpayers’ money.

Other respondents did not allow the police to influence their decisions. Respondent # 7 made it very clear that he did not allow law enforcement officers to influence his charging decisions:
If the law enforcement came in with a police report and told me they wanted it filed, I didn't care what they said. It was my decision. Sometimes the police would say, “I recommend this charge,” and I would charge them with something different. I could charge something less or something more severe. I hate police. I find that police are lazy. They arrest people and don’t want to come to court for prelims, and I would always say, “Look, this is really simple. If you don’t want to come to court for it, don’t arrest people for it.” I would never let the police influence my decisions. I actually liked the police before I became a prosecutor. Being a prosecutor soured the police in my eyes. They were lazy. They would lie. They basically would do whatever they could to get the conviction.

While we cannot verify the veracity of this former prosecutor’s claim, if true, it suggests that the concern in some sectors of American society about police misconduct are based in reality. Respondent # 9 made a similar claim:

I don’t want to say that the police fabricate their reports but here’s what I’ll say. The police are like kids taking the test for the millionth time so they know what elements have to be in the police report. If they arrest you, they don’t want to arrest you and have the case get rejected as a bad arrest. So once you’re arrested, they’re back there writing their report and they need to say that you knew X, Y, and Z and so they’re going to put that down; they’ve already made up their mind that you did it. So I would say that it’s creative writing at times.

These two quotes reveal the prosecutorial perception that police officers engage in dishonest practices; however, these dishonest practices sometimes do not deter prosecutors from charging suspects with crimes anyway.

**Relationship with Defense Counsel**

Respondent # 9 stated that the relationship between the prosecutor and defense counsel influenced his charging decisions. He reported that he was a prosecutor for nine years and so he knows many of the current prosecutors in his county and he is a friend to many of them. He currently works as a criminal defense attorney and because he has good relationships with many prosecutors, he is able to negotiate with prosecutors prior to them filing charges:

Prosecutors are absolutely willing to cut deals with defense attorneys that they know. That’s why my office is right across the street from the district attorney’s office. I go over there right away. I have no problem with telling the filing deputy, “I have a client, you’re going to be getting the paperwork
soon, and I would like to talk to you before you make your decision.” Otherwise, like I said, they’re basing their decision just on what the police are saying and not necessarily what other evidence says.

This is an example of the influence of personal relationships on legal outcomes, suggesting that some people receive special treatment and others do not. And while this finding may not surprise casual observers of the criminal justice system, it is clearly an example of arbitrariness—non-legally relevant factors causing legal outcomes.

High Profile Cases

Four out of ten respondents mentioned the media and/or high profile cases when discussing the factors that influenced their charging decisions. Respondent #5 said:

Absolutely the media has an effect. Absolutely. I mean, the district attorney is an elected position so whenever the media gets involved, everybody changes, I mean, everybody changes. It makes it so that, for example, the prosecution can’t do what the defense wants because they can’t explain it to the media. Even though it may be the right thing to do, they’re stuck because, like, take for example, [celebrity]. [Celebrity] got thrown back into custody because of the media. If she was going to be handled like anybody else, she would have been released because the sheriff had made that determination. But, because of who she is, they said, “You’re going in.” So, it has an effect because the district attorney is an elected job and so if you don’t do what the public wants, the public will find another district attorney. And, that happens routinely in counties.

Although respondent #7 did not let the media influence his decisions, he was not so convinced that other prosecutors followed in his footsteps. He said, “I never let the media influence my decisions, but I don’t think everybody is like me and that’s probably why I left.”

Other respondents reported being more cautious when making their decisions when the media was involved. Respondent #6 stated:

Certainly not consciously did I make decisions because of the media. If we had a high profile case, I think we were more careful about every step that we took just to make sure that we were not influenced by that. But, I think I can fairly say that in the 12 years that I was there, I never made a decision because the media had a particular view of the case. That’s just not right. It doesn’t mean that the media’s view may not be the right view, but you make your decision
as a prosecutor on the basis of what the evidence shows. And certainly in the situation like that where it's a high profile or heater case; that would be something that would come to me. Somebody in the trial court, if it were a huge media high profile case, would certainly want to check with me before major decisions were made.

Community Influence

Some respondents discussed the political challenges that prosecutors face when the community gets involved in the criminal process. Respondent # 1 discussed how ignoring community sentiment could hurt a prosecutor's chance for re-election:

Remember when I mentioned the [celebrity] incident earlier? Again, I didn't see the police report and so I don't know all the facts of the case, but another reason that prosecutors may not have filed charges against [an NFL player] is because he is a very popular defendant. In other words, the community really likes him. District attorneys don't want to try popular defendants because it could hurt them in the re-election. Many district attorneys lose their jobs because they try popular defendants.

Respondent # 4 discussed the tough political situation when half of the community wants the prosecutor to do one thing and the other half of the community wants the prosecutor to do another thing:

In downtown urban areas, it's actually very difficult to convict criminals because half the population thinks the police are all liars so they just don't want to believe any policeman. . . . You’ll have one large group of people in these downtown urban areas who are fed up with crime and want the police to do something about it. Then, there will be a whole other group of people in those urban areas who hate anything the police do. So those two communities of people in a city who have diametrically opposed views and have a way of cancelling each other out so that the crime is allowed to continue. . . . So, for the district attorney faced with that situation . . . he's going to have twelve jurors who have to unanimously convict this person, so he's got a difficult situation because the police and a large part of the community want him to charge him and he also knows these jurors are not going to convict him.

Respondent # 5 discussed how what county or city a prosecutor is located in will dictate whether charges will be filed and what those charges will be:
The standards change depending upon where you are. The community standards of what they will hold somebody accountable for and the level of proof they require change, and it's exceptionally dramatic here in X County; you probably don't see anything like it except in Y County where depending upon where you are, the demographics of that community are so dramatically different that conduct could get charged that wouldn't get charged in another area. And, the price of a case is up in certain parts of the county and down in others. For example, if a guy gets caught out here (in City U) and he has an ounce of cocaine, out here they may charge him with possession for sale, out here they may try and jack up bail, they may want him to admit a felony and go to prison, they may want him to admit a felony and go to jail for up to a year, whereas in City Z, they may just say this might be personal use and we'll put him in diversion. It just depends on the mores of that particular community.

Respondent # 5 then discussed how these communities whose standards are focused on being punitive contribute to the overcrowding of prisons.

X County . . . is probably one of the most liberal counties that there is. If you go up to W County or if you go up to V County, I mean, there are a lot of very rural counties who are sending a lot of people to prison for de minimis conduct. That's really where the burden is being forced on the Department of Corrections. Those smaller counties are really abusing their authority in my opinion because they think that in their community, this is terrible, and dammit, if they were in X County, they would clean the place up. They have no idea what an overburdened system really looks like, and so they really take advantage and they send people away, and then the State has to pick up the burden of their incarceration decisions. In my opinion, that's where it's really a problem . . . and the system is breaking because of them.

Harshness of Policies

Respondents also discussed how their office's harsh policies influenced their decision-making. For example, respondent # 4 explained his office's harsh policy regarding charging suspects involved in drug crimes:

During the time that I worked as a prosecutor, our office was very strict on drugs. We had a policy to charge all drug offenses no matter what the amount of possession. Never would a district attorney in my office not charge somebody, even for a roach. If they had the slightest bit of marijuana, it
would be in municipal court and would be a misdemeanor, and they would be charged for sure.

Respondent # 4’s office follows Jacoby’s (1979) Legal Sufficiency Model. In the Legal Sufficiency Model, the prosecutor believes that if any case is legally sufficient, charges should be filed (Jacoby, 1979). Offices that operate under the Legal Sufficiency Model are those in which the prosecutors give little attention to screening cases prior to deciding whether or not to file criminal charges (Jacoby, 1979). Prosecutors in respondent # 4’s office did not spend much time screening drug cases, but rather, chose to file charges if the prosecutors believed they could establish a *prima facie* case.

Some respondents admitted to allowing office policies to influence their decision to charge even when they did not agree with the charges being filed, while other prosecutors stated that they did not file charges if they did not believe in them, regardless of the policies of the office. Respondent # 2 explained why he charged cases when his superiors wanted him to even though he did not think that charges were warranted:

> There have been other cases where I wanted to go with a misdemeanor but my boss told me, “The policy of the office is that we try those crimes as felonies. Try it as a felony.” In that situation, you realize that you are a deputy district attorney. He is in an elected position and he has to worry about the community. And the reason why he is elected is because he represents the conscience of the community about what is a crime and what isn’t; that’s the function of the district attorney. And so when he says, “jump,” I say, “how high?” And you put your personal feelings aside, and a lot of times, you have to be able to put your feelings aside to be a good prosecutor.

Respondent # 2’s statement is also an example of Jacoby’s (1979) Legal Sufficiency Model. Prosecutors in respondent # 2’s office automatically charged certain crimes as felonies if the elements of a felony were met regardless of other circumstances.

Respondent # 7 discussed how he did not let the policy of the office influence his decision to charge:

> My ethics and the office’s ethics did not align. There was a case that they wanted me to prosecute that I didn’t want to, so I didn’t. It was a potential three strikes case. . . . What had happened was his previous two strikes arose out of one . . . event. . . . It had gone through several series of appeals, and finally, the last appeal upheld his two strikes. When he found out, he was angry and so in his cell, he picked up a stool and threw it. It happened to hit the door’s window and cracked it, which costs $1500. Any damage over $400 is a felony. So
they wanted to use that as his third strike. He had beaten a charge; they were actually trying to get three strikes on him in the original but since he had beaten that charge, in the meeting they actually said to me, “We didn’t get him on the rape, so we’re going to get him on this.” And, I didn’t believe in that so I didn’t try the case. You’ve got to understand, X County is a very aggressive District Attorney’s Office, very aggressive. They charge a lot. In my interview, I basically told them, if I don’t feel comfortable with a case, I’m not going to prosecute it.

Even though respondent #7 did not adhere to his office’s policies, his statement above suggests that his office also followed Jacoby’s (1979) Legal Sufficiency Model in that prosecutors were willing to charge vandalism cases as felonies if they were over $400 even though other factors may have contributed to the crime that could warrant a lesser charge.

Race

It is a truism of the criminal justice system in America that minorities are punished more harshly than Whites. However (not surprisingly), none of these respondents reported their own racism. For example, respondent #2 said that he never considered a suspect’s race when making his charging decision, “Most of the time, I didn’t know the race of the suspect before I filed charges. I didn’t even know what the suspect looked like until I saw the suspect at the arraignment, which obviously occurs after charges have been filed.”

This does not mean that latent racism did not influence these prosecutors. For example, race may have influenced these respondents’ decisions to charge, but not overtly. In other words, race may have influenced their decisions subconsciously. Racism is very common in the criminal justice system and these respondents’ worked in a predominately White profession, watched mainstream media (which perpetuates negative stereotypes of minorities), experienced dealing with many minority defendants that have committed crimes, and possibly saw how police officers handle cases differently based on the races of the suspects. All of these experiences can contribute to latent racism. As a federal judge stated in United States v. Clary (1994), “... the root of unconscious racism can be found in the latent psyches of white Americans that were inundated for centuries with myths and fallacies of their superiority over the black race. So deeply embedded are these ideas, that their acceptance and socialization from generation to generation have become a mere routine” (p. 779). Therefore, although racism may have influenced the respondents’ decisions, it is simply not possible to know through this study as the respondents themselves may not be aware of the impact that race had on their charging decisions.
DECISION TO PLEA BARGAIN

Plea bargaining is a widely used practice in the criminal justice system. For example, studies have shown that defendants plead guilty in approximately 95% of all criminal cases in the United States (Cohen & Reaves, 2006). Although plea bargaining may appear inherently unjust because it results in decreased punishment for guilty offenders, it is essential for the criminal justice system to function. If plea bargaining did not exist, prosecutors would be forced to take every case to trial. “Many believe that the entire [criminal justice] system would come to a crashing halt if the practice [of plea bargaining] were abolished” (Davis, 2007, p. 43).

Although prosecutors often use plea bargaining, they do not offer plea deals in every case. In fact, there is not a law that requires a prosecutor to offer a plea in every case. Therefore, prosecutors have the power to decide whether or not to offer plea deals and also the power to decide what those offers should be (Davis, 2007). Not many district attorneys’ offices provide guidelines to help prosecutors when making these decisions (Davis, 2007).

Discretion and the Plea Bargaining Decision

The respondents’ offices varied regarding how much discretion they allowed their deputies to have when making plea bargaining decisions. Some respondents’ offices gave their deputies full discretion to make plea bargaining decisions while other offices gave their deputies little to no discretion when making a plea bargain offer. Respondent # 4’s office gave their deputies complete discretion when making their plea bargaining decisions:

When I was a prosecutor, as a trial attorney, we had complete latitude. The only thing we had to do was be prepared to justify it to our supervisor who was the toughest, hard as nails prosecutor in the state. So you had to be prepared to justify it to him. But, we were given latitude to make those decisions. For decisions about plea bargaining, there were really no standards at all. We could just decide. Now, there was always one limiting factor and that was, would the judge agree to it? There were very few judges who would not. But, we did have one judge, he was a great judge really, and he was a former defense attorney, and he would make his own independent judgment about whether he agreed with the plea bargain before him. And, if he didn’t go for it, the case would just be tried anyway. But, mostly we had unfettered decisions; we would just look at it and we’d negotiate it pretty much in terms of incarceration, probation, everything.

Respondent # 2 expressed his frustration about how district attorneys in other counties did not have as much discretion as those in his office did when making their plea bargaining decisions:
I do not like the fact that in some cases, the person actually trying the case has no say as to what the offer is. For example, in X County, these junior district attorneys get handed these cases that are crap sometimes or are totally unfair, which will punish someone, I believe, unfairly, and the trying attorney knows it. There's nothing that he/she can do because the senior supervisors are in their Ivory Towers and are trying to be consistent, and I believe the interests of justice are ignored that way.

Deputies in respondent # 7's office did not have any discretion when making their plea bargaining decisions:

In X County, deputy district attorneys don't have full discretion. If they want a certain deal, they have to get their supervisor's approval. A lot of times what will happen, at least in X County, when I decided to file charges, I would file the charges and send it to clerical and they would type up the complaint. Then, it would go to the supervisor and the supervisor would make an offer, if they made an offer. Then from there, I could make other offers but I always had to go back to the supervisor if I wanted to change the offer. So, I had very limited discretion. If I wanted to change the offer, I had to sell him on it. Now, if I wanted to change the offer so that the defendant would receive a harsher sentence, well, technically I had to get approval. But, it's a completely different game when you're asking for harsher penalties than when you're asking for lesser penalties. If you want a harsher penalty, they were like, go for it.

When Plea Bargains are Offered

Some respondents discussed at what point in time a plea bargain was made during the case. All of the respondents who discussed this said that plea bargains were offered at any time throughout the case. However, respondent # 2 claimed that the best offers were offered early, well before the trial:

If you're working in theory of judicial economy, what you do is, you give your defendant his very best offer in the pre-preliminary stage. So let's say you have someone who did a crime and his maximum exposure . . . is 16 months-3 years. Well if it goes to jury trial, he's going to get his 3 years. So if I offer this guy three years, he going to look at me and say, "Well I'm just going to go to trial."

. . . So I'll say, . . . "If he wants to plead today before the preliminary hearing and plead for 16 months, we'll call it a day." But I tell him, "If things get worse, if the evidence at the preliminary hearing is strong, then the offer will go
up a bit.” . . . Now, district attorneys have to be very careful with this. They cannot say, “After the preliminary hearing, it’s going to go up to two years.” You can’t say that because you’re punishing the defendant for actually exercising his constitutional rights. That’s malicious prosecution and you could get disbarred. . . . But if I do the preliminary hearing and my witnesses come and my witnesses are great and my evidence is good, well that 16 months was last time. . . . After the preliminary hearing, I will offer him two years. It is still better than the three years that he’ll get if he goes to trial.

Respondent 2’s comments reveal the fine line prosecutors walk when wielding their enormous power over the fate of American citizens. While cognizant of defendants’ rights, they are driven by the prerogatives of the adversarial system in a highly punitive context.

**Frequency of Plea Bargaining**

Frequency of plea bargaining varied due to efficiency and a sense of justice for victims and defendants. Respondent # 10 said he plea bargained “99 percent of the time.” Respondent # 2 explained that the reason that he plea bargained regularly was because if he did not, the judicial system would not be able to operate:

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In X County, the average district attorney had to deal with 1,000 cases or more a year. If I took every single one of those to trial, let’s say I took two a week, which is not possible, but let’s say it is, I could only cover 100 cases. For judicial economy purposes, the judicial system as we know it would crumble and stop if I did not plea bargain cases.
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Unlike respondent # 2, respondent # 6 explained that his office plea bargained often, but they did not plea bargain to get rid of cases for judicial economy purposes:

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It’s important to note that unlike maybe some other jurisdictions, during my twelve years, I was not aware of any case where just because of the volume of cases that we had, we concluded that we had to get rid of X number of cases. Obviously with the number of cases that we had, if all the defense attorneys wanted to try every case, the system could not handle it but what I’m saying is, just the approach of the defense attorneys, public defenders especially, who are looking to get rid of cases that shouldn’t take a lot of time where a result that is mutually acceptable to both sides can be worked out, will initiate that.
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Respondent # 7 stated that he hardly ever plea bargained:
There wasn’t a lot of plea bargaining in X County. We tried almost every case. . . . They shut down the civil courts in X County so they could do their criminal calendar because there are too many. . . . A lot of times, prosecutors would go to trial because if they plea bargained, the judges could change the sentence. You’ve got to understand that judges have a limited amount of discretion. They can’t change the actual charge, but when you’re talking felonies and your average run of the mill felony carries a sentence of sixteen months for the low term, two years for the mid term, and three years for the high term. So your plea bargain is, I want the mid term, so plead to this and you’re going to plead to two years. Well the judge can, without changing the charge, say, “No, I’m going to give him sixteen months.” . . . X County, the last year I was there, tried more cases to jury trial than Y County did, and X County has 40 less judges than Y County. . . . You were going to trial a lot because they didn’t make plea bargains.

When probed about why his office did not plea bargain, respondent # 7 said:

I think it boils down to politics and money. You know, they are all trying to get their budget increased. The more convictions you have, the more cases you take to trial, at least in X County, and in X County to be fair, they were short 20 judges that they should have had due to the population increase. Their philosophy was, we’re going to take all these things to trial and show them that we need the judges so that we get them. But, I think when you do that, you’re messing with people’s liberty, and that’s a line I chose not to walk.

This is an example of how prosecutors abuse their discretion to get what they want. X County wanted more judges so they decided to try every case. This is obviously unfair to defendants in X County, who are pawns in a political game played by the District Attorney.

Relationship with Defense Counsel

Respondent # 5 discussed how the relationship between the defense counsel and prosecutor can influence a prosecutor’s plea bargaining decision. Respondent # 5 is currently a criminal defense attorney, and has maintained the friendships with the prosecutors he used to work with. He explained how those friendships have influenced prosecutors to give his clients a better offer than they would have given defendants with an unknown defense attorney:

Oh, it’s huge. Huge. I mean, I can’t deemphasize that. Let me put it this way, some of these guys, because I was there 10 years, are really good family friends; my kids are friends
with their kids, we vacation together, we’re friends. As a defense attorney, I don’t know if I get better deals because I know the prosecutors, but human nature would suggest that the deals are not worse. Anytime you can have personal credibility in a negotiation setting, it makes things easier. But, there is a certain line that cannot be crossed. I can’t ask them to do anything, and I wouldn’t ask them to do anything that is inappropriate, that could get them in trouble, to dismiss somebody who is guilty, unless I can project to them a compelling reason why.

Media

Two respondents discussed how the media influenced prosecutors’ decision to plea bargain. Respondent #9 said:

Clearly the media influences prosecutors’ plea bargaining decision. Look at all the cases in Los Angeles with all the celebrities. In those cases, the district attorney usually screws up because they are trying to appease the media or the public without the facts of the case so it definitely affects decisions. On a case where there is media interest, the district attorney tries to do it right and tries to look at it carefully, but they also tend to, in my opinion, don’t give it away because then everybody will say, “You’re doing that because they are celebrities” and so sometimes those people don’t get a plea bargain at all. You know, all district attorneys are, a lot of them are political animals, a lot of them want to be judges or the district attorney, an elected official and get their name in the paper a lot.

Respondent #2 discussed when a prosecutor would be more inclined not to offer a plea bargain. He mentioned three types of cases that a prosecutor would not offer a plea bargain—murder cases, three-strike cases, and cases involving the media:

Almost all cases you’re going to plea bargain. The cases that you wouldn’t would be murder. You might not offer a plea bargain to a three striker if they are all violent felonies and the third is a violent felony as well. Or if the crime was horrendous and well publicized, a DA would think twice before giving a plea bargain. Publicity absolutely has an effect on district attorneys. Your boss generally lets you go about and do your business. If it is a well publicized case, you know, a big enough case that your boss hears about it, he’s going to have a seat in your office and ask you what you’re doing, what your feelings are about the case, what your offer is going to be, etc. He will make you state your case as to
why that is your offer. He might lean on you to do one thing or lean on you to do something else.

The respondents’ quotes suggest that prosecutors are worried that if they offer plea bargains in highly publicized cases, that they will appear “soft” on crime and thus will upset the public as a result. Therefore, they are often likely not to offer plea bargains in such cases. This is another example of how neoliberal punitivism influences prosecutors. Elections provide structural incentives for prosecutors to bring more cases to trial and seek harsher punishments, which in turn feeds the crisis of mass incarceration.

OTHER PROSECUTORIAL DECISIONS

We asked all respondents about how they decided to try juveniles as adults and how they decided to seek the death penalty. Not surprisingly, responses to these questions were far more limited than questions about basic prosecutorial functions of charging and plea bargaining. Indeed, only the respondent who was the elected district attorney had much to say on these topics. Most of his response focused on evidence and provability, but one comment about charging juveniles is worth mentioning because it reveals an awareness of bias:

You run into some iffy things there. Don’t get me wrong, sometimes if it is a concerned family and a responsible family, that could have an impact on their life, it certainly would be a consideration when I make my charging decision. African-American leaders are very sensitive to this, and I think rightly so. A lot of times in our suburbs with the juveniles, we don’t even see them because the police department will look at Johnny and think, oh Johnny comes from a good family and yeah he got into a little trouble but we’re not really going to push this thing. The poor kid down in the inner city does exactly the same thing and the police look at him and say, “Come on in buddy.”

Although this quote is about police conduct and not that of prosecutors, it is still important to note because of the influence that the police have on prosecutors’ decisions. For example, respondent # 2 reported that he relies on law enforcement officers to be his chief witnesses. This quote is a clear example of labeling of minority children and treating them differently than White children. The fact that respondent # 2 is aware of the racial bias between police officers and minority children suggests race may indirectly influence his decisions to charge juveniles as adults.
NON-TRANSPARENCY, HARSHNESS, AND LIMITS TO PROSECUTORIAL POWER

Several things stand out from our research. First, this study demonstrates empirically that prosecutors work in contexts of non-transparency. Aside from Shanda's experience with the DA in her county which gave this paper its title, several respondents referred obliquely to invisible power and respondent # 7 explicitly discussed a culture of secret power:

I know in one county, there is a judge who ruled to allow discovery that all the good defense attorneys usually want. That didn’t sit well with the district attorney’s office so now that district attorney’s office will not let that judge hear any of their cases. They pretty much banished that judge. District attorneys have a tremendous influence over judges. I don't think you'll ever be able to get anyone that will actually say that other than me.

That the most powerful figure in American criminal justice—the prosecutor—operates behind an opaque wall of secrecy is anti-democratic and reflects the still-resonant hegemony of America's neoliberal project of unchecked state punitiveness that has been ongoing for several decades, even if it is, in some senses, perhaps abating.

One major objective, then, is for this study to be understood as a record of prosecution during the peak of this program of harsh punishment and mass incarceration. For example, recall a quip made by Respondent #3 when discussing statutory rules influencing plea bargaining: “If you have possession of methamphetamines, it’s a mandatory ninety days.” A sentence of ninety days in jail for simple possession of a controlled substance—even if actual time served is considerably less—is exactly the kind of overkill sanction associated with the war on drugs and the concomitant era of mass incarceration. In 2016 in California, this crime would be a misdemeanor.

Another example of harsh punishment is the norm in district attorneys’ offices described by respondent #7 where “bargaining down” requires approval, but not “bargaining up”:

Now, if I wanted to change the offer so that the defendant would receive a harsher sentence, well, technically I had to get approval. But, it’s a completely different game when you’re asking for harsher penalties than when you’re asking for lesser penalties. If you want a harsher penalty, they were like, go for it.

Beyond the evidence of opaqueness and punitiveness in these data are the many non-legal factors respondents reported influencing their decisions. In the above section, we discussed how requests from victims, pressure from law enforcement, relationships with defense counsel, the high profile of
cases, and the influence of the community all influenced how these tremendously powerful government agents made consequential decisions about the fates of many American citizens. We argue that these practices are largely invisible and implicitly condoned by American society because of the elevated position the prosecutor has enjoyed during neoliberal punitivism.

Moreover, the cultural scene of prosecution entails a zero-sum approach to litigation, where “winning is all that matters” and invisible quotas exist. When talking about his views regarding winning and losing cases, respondent # 2 said:

As for prosecutors’ records regarding the number of cases, I don’t know if it was super important. CHP officers are not supposed to get rated on how many tickets they give, but if you’re giving fewer tickets than everybody else, you’re in trouble. Same thing with district attorneys. If you’re doing jury trials and you’re not winning your fair share, then it reflects badly on you and on the office because the bottom line is, your job is a litigator and you have to preserve the community and protect the community, and if you can’t win a jury trial, and guilty people are walking, you won’t stay long in any office. They’re going to let you go. You know, being a deputy district attorney is a step to becoming a judge and it is a step for political appointment. So if those are your goals, then you better be winning your cases.

America’s adversarial system emphasizes success in a zero-sum game rather than any sense of justice.

Another theme here is that there are limits to prosecutorial discretion. Although deputies have a tremendous amount of discretion, the elected district attorneys have the power to regulate deputies’ discretion and a norm of automatic opposition to the defense pervades. As respondent # 5 puts it:

Prosecutors have their guidelines, which are often very inflexible. In fact, I was in court about a month ago on a case where I was trying to get, I represented the woman in a domestic violence case and the district attorney’s office had not filed charges. . . . Even though they didn’t charge her, she still had an arrest record. . . . There is a remedy where you can file a motion with the court to basically destroy your arrest record, but it’s very difficult to get. . . . I filed the motion and the judge called us to the side bar and he asked the district attorney, who was a colleague of mine when I worked there, “Jonathan, why are you opposing this?” My response was, . . . “Because they always do.” The judge replied, “I’m not asking you.” Jonathan was like, “Uh, but,” and the judge was like, “No” and just shooed him away and
he granted my motion. They just oppose everything because that’s what they do. And, there’s no flexibility at all.

When prosecutors have limited flexibility (i.e., discretion), as in the example provided by respondent # 5, it can sometimes lead to unjust results. Another example comes from respondent # 8:

Okay, so I had been in the office for six months and I’m still waiting for my first evaluation by my first line supervisor who was the overall supervisor for all the people doing trials. I get kicked out to the courtroom and it’s a bench trial. I’m in front of a judge. . . . It’s a DUI, it was an accident and the cops came on the scene. There were four people in the car and . . . they determined it was a particular person, one of the four, that was driving. The person had a prior so we put the case into the system. . . . We charged the guy with a DUI with one prior. As I was hearing the testimony, I was sensing that we got the wrong person. . . . We went back to the office and as we were doing research, we found that there was another person in the car that had two prior DUI’s and that we sensed based on what we were hearing and what we discovered, that the person that was really driving was the guy that had the two priors. . . . From our perspective, I came to believe with some certainty that we got the wrong guy. . . . So I went to my supervisor and I said, “Listen, I’ve researched this and I really believe we’ve got the wrong guy. I would suggest, if you give me the authority, to go to Judge Edwards on behalf of the People and dismiss the case as to the defendant that we charged, and re-file it against this other person.” My supervisor said, “No. The policy of our office is, once it’s kicked out to trial, bench trial or jury trial, it’s in the hands of the judge or it’s in the hands of the jury. So, let them decide.”

Although respondent # 8’s supervisor eventually allowed him to have more discretion and he decided to dismiss the charges and file against the other person, respondent # 8 was reprimanded for it. We note that although these examples demonstrate bad consequences due to limits on discretion, it is also the case that prosecutors in major free democracies elsewhere in the world—notably Japan—have considerably more discretion and power than American prosecutors (Johnson, 2002). Even during punitive neoliberalism, the unchecked power of American prosecutors pales in comparison to prosecution in Japan. We mention this in the spirit of fair treatment to prosecutors in the USA; their power is strong and concentrated, but not totally unchecked.
CONCLUSION

It has been said that prosecutors are the most powerful officials in the criminal justice system (Bubany & Skillern, 1976). They have the exclusive power to decide whether or not to charge a person with a crime, what the specific charges will be, whether or not to dismiss charges, whether or not to plea bargain, whether or not to try a juvenile as an adult, and whether or not to seek the death penalty. The American prosecutor exercises largely unfettered discretion when it comes to making these decisions (Albonetti, 1987; Jacoby, 1980; LaFave, 1970; McDonald, 1979) and their discretion is also virtually unreviewable.

The findings of this study suggest that there is not consistency in how prosecutors make decisions and that, while prosecutors certainly consider legal factors, they also rely on extra-legal factors to make decisions. There are few rules governing what factors prosecutors must consider (or not consider) or how much weight should be given to each factor when making their decisions. Because there are few regulations, prosecutors are allowed to use their discretion, and sometimes rely on factors that have nothing to do with facts or law, such as their relationship with defense counsel or the judge. The fact that such arbitrariness is tolerated in the USA arguably reflects the hegemony of the neoliberal program of punitive governance that has presided since the 1980s. Of course, because we did not compare these prosecutors to prosecutors from a previous era in the USA, or to a different country, we cannot make a causal argument. We can say, though, that our subjects were working during a period of extremely high stakes, in terms of punishment, and that their discretion had profound material consequences for probably thousands of individuals. And, as we show above, many of them explicitly and implicitly reference aspects of neoliberal punitivism in their interviews.

Moreover, regional differences in criminal justice practices in the USA are extreme and highly localized. Even under a general national trend toward harshness, there are pockets of exceptionally aggressive prosecution in some places and pockets of lenient, more restorative prosecution in other places—sometimes in the same state. Studying the charging practices of prosecutors in a systematic manner is extremely difficult; we unsuccessfully attempted to do so in a previous study (Kaplan, Ganschow, Angioli, & Tabin, 2009). But we would speculate that differences in decision-making and charging are vast among the DA offices in; for example, Orange and San Francisco Counties in California.

One very clear indication of radical regional variation is the empirical evidence on death penalty activity in the USA. Liebman and Clarke (2011) have shown that between 1976 and 1995, “16% of the nation’s counties (510 out of 3,143) accounted for 90% of its death verdicts” (p. 265), and that these disparities generally hold up when only considering capital states, and also when including the years since 1995 (see p. 264-266). The death penalty in
America exists only in a very few locations. Without undertaking a literature review on the topic, we suspect that many other examples of variation in criminal justice practices could be found. Indeed, across the ten subjects of this study, there was significant difference in prosecutor office policies and individual prosecutors’ decision making practices. As we have suggested above, this creates different legal outcomes for similarly situated defendants—the definition of arbitrariness. We recognize, though, that regional differences also reflect the local values of the communities in which prosecutors operate, which is to be expected. While we find the arbitrariness of difference troubling, we can see at the same time that it is, in a sense, democratic. Whether this is a communitarian ethic at work or simply a consequence of crass electoral politics is hard to know.

**IMPLICATIONS FOR FUTURE RESEARCH**

Although this study provides some insight as to how prosecutors make their decisions and also identifies factors that influence those decisions, further research is needed. This study is obviously limited by its small number of interviewees and limited coverage of a few counties in two states. A sustained program of study on prosecutors in terms of transparency and accountability is seriously wanting in the USA. We see this research as generative—our hope is that it can function as a small indicator about the practices of prosecutors working during the era of punitiveness, and spur others to investigate the practices of the most powerful figures in America’s criminal justice system.

**REFERENCES**


**AUTHOR BIOGRAPHIES**

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Conjectures, Refutations, and (Elusive) Resolution: An Exercise in the Sociology of Knowledge within Criminology

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Abstract
An analysis of in-depth discussions (oral histories) with 17 leading criminologists on the seminal debates in which they each participated showcases the benefits of intellectual debate. Over the last half-century, the field’s understanding of crime and its control has experienced genuine gains through a vigorous exchange of conjectures and refutations. It stands to benefit from more of these. However, there is a tension between professional and scientific concerns that limits the expansion of this process. The insistence on open ended inquiry in advancing professional ends dulls the interest and opportunity for debating first principles. As a result, the field is populated by numerous unresolved theoretical disputes. In attempting to settle the dilemma posed by competing interests, a compromise that works to satisfy the concerns of both science and the profession is offered. Crafting an appreciation for where the limits of collective knowledge are found would serve to outline an agenda for discovery while stimulating debate.

KEYWORDS: sociology of criminology, oral history, history of criminology, theoretical dissensus

THE INQUIRY
The academic enterprise of criminology and criminal justice has reached a point in its maturation where it is contemplating its own identity in much the same way the sociology of sociology movement once did (Freidrichs, 1970; Gouldner, 1970; Ritzer, 1975). There have been repeated calls of late to make the history of the field relevant to contemporary scholarship (Bursik, 2009; Laub, 2004). There has also been a reconsideration of the benefits to be gained from a proliferation of the field’s theory, largely through a renewed push toward integrating perspectives (Agnew, 2011). The sociology of criminology (Savelsberg, Cleveland, & King, 2004) and of knowledge can assist in promoting a resolution to these budding concerns. If the field is interested in
working toward more enduring resolutions to its debates, an exploration of its scientific practice will be necessary.

What follows is an analysis composed from recollections (i.e., oral histories—Laub, 1983) offered by seventeen leading criminologists. The reader is invited to focus not so much on the content of the arguments highlighted in these histories but rather on the structure of the exchanges. While others have worked to tidy up the field’s abundance of theory through promoting integration (Agnew, 2005; Elliott, Ageton, & Canter, 1979), a winner-take-all strategy (Hirschi, 1979), or pruning illogical theoretical propositions (Bruinsma, 2016), the approach offered below is agnostic on the matter. Here an alternative path is mapped through an elaboration of how disputes came into being, the thrust and parry of the exchanges which transpired, and the resolutions settled upon.

The primary point of emphasis here is to elaborate upon the beneficial role that intellectual exchange plays in the etiology and advancement of thinking on the origins of crime and its control. In sum, the theme that emerges from the analysis attests to the pivotal importance that debate has played in sharpening the field’s perspective through the years. Rather than muting the discussion of controversial or contested subject matter, criminology and criminal justice ought to seek ways to encourage and structure these intellectual exchanges. There are several professional and scholarly advantages that the field stands to gain from if it can successfully capitalize upon the reactions of its scholars toward divisive topics.

BACKGROUND LITERATURE

The evolution of science through the ages has been most famously depicted as one in which fleeting moments of revolutionary advance happen amid the grind of mundane “normal science” (Kuhn, 1970). This depiction has challenged the prevailing understanding that rational science works in an orderly, linear progression of constant, incremental advance. In contrast to the earlier textbook description, in Kuhn’s version science is characterized as a series of sporadic eruptions defined by breakthroughs which are followed by elongated periods of calm.

The sociology of knowledge, of which Kuhn’s work (1970) stands as a canonical contribution, has acquired a reputation as suffering from physics envy (or redux; Ball, 2004). Despite this tendency there are clear applications of its perspective to the social sciences and humanities (Collins, 1998). Karl Popper, whose classic work on the philosophy of science, The Logic of Scientific Discovery (1959), relied heavily on examples drawn from physics, writes elsewhere that the progress of science is greased upon the wheels of conjectures and refutations (Popper, 1963). Randall Collins (1998) affirms this conclusion with his sweeping historical overview of the development of numerous schools of thought through the ages. The adversarial process of
finely honed debate has proven advantageous for promoting ideas. The agendas that populate a given research environment play a vital role in collecting like-minded scholars around thematic sub-specialties that are studied (see, Hull, 1988). The respective groups work diligently to recruit adherents and refine their instruments to defeat their opponents’ contentions.

Emergent perspectives are often forged through blows delivered by contested claims in a process referred to as boundary work (Gieryn, 1999). The communities that play host to these debates make collective decisions on what the parameters of debate are, in terms of the appropriate topics around which debate ought to center, the criteria of proof, and the methods of reciprocating exchange. The passion with which responses are proffered and rejoined grant indication as to which ideas are fundamental to a community’s identity and which are at the periphery (Nisbet, 1976). The former ideas constitute the core, while the latter represent the frontier (Cole, 1992). These are all sociologically defined characteristics of a scientific community that have a direct bearing on the science which is produced.

Criminology’s identity as a multi-disciplinary field permit a threading of the varied lines drawn from the sociology of knowledge. There are a few scholars working at documenting the evolution of the field (Laub, 2004) and its schools (Koehler, 2015; Rafter, 2008). A few efforts have been undertaken to document the field and its operation through the collection of oral contributions (Laub, 1983; Oral History Criminology Project, http://oralhistoryofcriminology.org/home; Savelsberg & Flood, 2011). Other writings have outlined the trends in published research (Savelsberg & Sampson, 2002; Dooley & Rydberg, 2014). What follows is an inquiry into the development of the field through a recounting of a few of its defining debates (see Laub and Sampson, 1991), resolution, and recurring issues (Bernard, 1990) as told by its primary disputants.

Attention will be drawn towards the architectural elements of the disputes—the structure, points of contention, process, and denouement. The latter term is intended to indicate the varied states at which debate is often left: compromise, détente, accommodation, and inchoate resolution. These observations are offered while referencing internal (professional norms and expectations) and external influences (political and historical developments) that shaped the study of crime and its control. In this regard, it is an effort at “taking stock” (Cullen, Wright, & Blevins, 2006) for the field at large through chronicling various intellectual contributions, then evaluating how they have weathered the criticism encountered.

**METHODOLOGY**

The present research employed a purposive (i.e., non-random) sample. This was done in order to meet the two primary criteria imposed by the research aim. First, the research question required locating contributors who
have participated directly in the animating debates that marked the advance of the study of criminal justice and criminology. The intention is to gather a fine-grained account for the back and forth of a few—but far from most or all—of the seminal arguments the field has confronted over the past half century. The research focus is not intended to capture the zeitgeist of the field in its entirety over that period; the question before us here is narrow in comparison. Therefore, drawing a random sample was deemed unnecessary. The present effort is an attempt to chronicle several of the animating exchanges with a measure of depth, in a quasi-case-study approach. The methodology trades the promise of characterizing a consensus of a generation of scholars for a deeper elaboration of the defining debates of the historical period.

Second, the intention with the solicitation of the sampled members of the group was to capture contributors who represent a cross-section of the primary theoretical currents within mainstream criminology, inclusive of critical criminology. Twenty-five scholars were approached with an invitation to participate, of which seventeen contributed (Table 1). As Table 1 indicates the sample includes experts from a diversity of intellectual traditions under that broader heading. Obligations imposed by the Institutional Review Board (IRB) prevent the disclosure of the identity of the scholars and the respective agendas of those who declined. Despite the non-participation of a few of those invited, social disorganization, anomie/strain, differential association/social learning, deterrence, control, critical/radical, developmental, methodology, policing, routine activities, and victimology perspectives are all represented.

A wide reading within the history of criminological theory served to assist in the generation of a rough and ready list of scholars to sample. A subjective sense of a scholar’s stature from a single author is not entirely satisfactory in terms of validating their inclusion however. A measure of scholarly impact, more specifically in the citation counts, is what matters in a more objective sense. Ten of the seventeen interviewees rank among the top 33 scholars in the field according to a ranking published in a year proximate to the date of interview (Cohn & Farrington, 2007). Those results affirm a sample whose work has been widely and repeatedly cited, demonstrating their esteem within the criminological community and beyond.

Each was solicited through an email describing the project and outlining IRB related matters, such as the broad content to be explored in the interview. The sample averaged 1973 for a date of doctorate. The dates ranged from 1951 (Short) to 1989 (Lauritsen), producing an average of approximately thirty-five years of experience prior to the interview. Thirteen of the seventeen earned a doctorate in sociology, two in criminal justice, one each in psychology and economics/public policy/sociology. Defined by current (or most recent) department affiliation, the group is more balanced – nine in criminology or criminal justice and eight in sociology.
Table 1

Respondent Ph.D. Year and Research Concentrations

<table>
<thead>
<tr>
<th>Scholar</th>
<th>Ph.D. Year</th>
<th>Notable Contributions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freda Adler</td>
<td>1961</td>
<td>Feminist criminology, international/comparative</td>
</tr>
<tr>
<td>Robert Agnew</td>
<td>1980</td>
<td>General strain theory</td>
</tr>
<tr>
<td>Ronald L. Akers</td>
<td>1966</td>
<td>Social learning theory</td>
</tr>
<tr>
<td>Robert J. Bursik Jr.</td>
<td>1980</td>
<td>Social disorganization</td>
</tr>
<tr>
<td>William Chambliss</td>
<td>1962</td>
<td>Critical criminology, legality</td>
</tr>
<tr>
<td>Francis T. Cullen</td>
<td>1979</td>
<td>Strain/anomie theory, corrections, white-collar crime</td>
</tr>
<tr>
<td>Jack P. Gibbs</td>
<td>1957</td>
<td>Deterrence</td>
</tr>
<tr>
<td>John Hagan</td>
<td>1974</td>
<td>International/comparative, critical criminology, race, gender and crime</td>
</tr>
<tr>
<td>John H. Laub</td>
<td>1980</td>
<td>Life-course criminology, oral history</td>
</tr>
<tr>
<td>Janet Lauritsen</td>
<td>1989</td>
<td>Victimology, social disorganization</td>
</tr>
<tr>
<td>Steven F. Messner</td>
<td>1978</td>
<td>Institutional anomie theory, homicide</td>
</tr>
<tr>
<td>Wayne Osgood</td>
<td>1977</td>
<td>Methodology, peer influence</td>
</tr>
<tr>
<td>Robert J. Sampson</td>
<td>1977</td>
<td>Social disorganization, life-course criminology</td>
</tr>
<tr>
<td>Joachim J. Savelberg</td>
<td>1982</td>
<td>Sociology of criminology, legality</td>
</tr>
<tr>
<td>Lawrence W. Sherman</td>
<td>1976</td>
<td>Policing, Experimental criminology</td>
</tr>
<tr>
<td>James F. Short, Jr.</td>
<td>1951</td>
<td>Social disorganization, gangs</td>
</tr>
<tr>
<td>Charles R. Tittle</td>
<td>1965</td>
<td>Theory testing, Control-balance theory</td>
</tr>
</tbody>
</table>

Prior to conducting the interview, a copies of curriculum vitae were collected from each of the participants. Reading substantive portions of their overall scholarship gleaned from the vitae allowed for an informed interview to be conducted. The preparation in discussing major debates required the reading of two types of literature beyond the respondent’s own work. The first is that which granted a sense of the overall contemporary history of the field; the second consisted of the critiques offered of the participant’s work authored by a few notable critics.

The interviews range from twenty-eight minutes to an hour and fifty-two minutes in duration, averaging approximately an hour and fifteen minutes in length. Seven of the interviews were conducted face to face, either in the respondents’ offices or at the annual meetings of the American Society of Criminology. The remainder was collected through recorded phone calls. Following the recordings the author transcribed the interviews.

The interviews relied on a semi-structured format to explore the tangle of debate against the backdrop of the field’s maturation. As such, there was no script for asking precisely worded questions to each and every member of the sample. However, there was consistency in terms of the thematic items explored in the loosely structured interview. Any one of the following themes could have resulted in a contribution which speaks to the matter
of debate in the field: internal and external threats to the field's continuing expansion, evolution and change of the field, origin of their own ideas, aftermath of particular contributions, subjective assessments of the success or lack thereof with specific contributions, reflection on the resilience of their initial argument in the intervening years, relationship of their own agenda to the dominant currents in the field, and thoughts on the consensus or lack thereof within the field on theory and methodology.

RESULTS

Conjectures

Debate is begun when one party manages to incite a reaction from those interested in defending a perspective. The profession of science works to establish some observable consistency in elaborating a general comprehension of a phenomenon in a step-by-step progression. Nevertheless, members of the community will dissent periodically. These conjectures occasionally problematize the working order through questioning underlying assumptions. The verdict on which conjectures merit a response versus those which can safely be sidestepped is left to the scientific community.

The evidence accumulated in the interviews suggests that criminologists seek to spark interest in a topic using one of several approaches. First are those who ask entirely new questions. These are attempts to draw attention to newer subject matter or to repackage traditional topics in a new way. Second, others depart from the community through addressing different questions entirely, raising the prospect of approaching the subject matter with an axiomatically different perspective. Third, there are those who offer challenges to the working order that raise little more than an indifferent response from their peers. Not all threats to the field's working assumptions are determined to be equally meritorious of a response after all.

The first type of conjecture outlined is that of expanding the field's research agenda. An example is drawn from Freda Adler, whose foundational book in feminist criminology elicited firm reactions from the field's members when published in 1975. In her estimation, the straightforward application of an emerging approach (opportunity theory) in accounting for observations she was collecting in her interviews with female offenders was unproblematic. The book pointed to a growth of female involvement in crime. Reaction was leveled against it because of its perceived negative implications for the women's liberation movement, then in its infancy. When asked about the source of resistance to her work Adler replied.

Well, the major issue when I came out with *Sisters in Crime* [Adler, 1975], because I had written drug books before and nobody said anything, nobody probably read them, I had people who wouldn't speak to me. In the American Society of Criminology, I had people who were angry that I was go-
ing to move the feminist movement backward if I said that as
women moved up Merton's ladder they were going to have an
opportunity to commit different types of crimes. That was
going to take women and push them right back down again.

The content of the book was assigned a significance that drew the work
and its author beyond the confines of criminology into the fray of the culture
wars. This historical instance demonstrates how forces greater than a given
author's input can determine the meaning of scholarship.

When I wrote *Sisters in Crime*, remember, I was the first fe-
male professor of criminal justice. When I wrote *Sisters in
Crime* it was apolitical. But it was picked up by feminists at
the time. I spent three years doing talk shows starting with
Barbara Walters and Johnny Carson. Three years I spent on
talk shows defending my thesis. So it was an academic book.
McGraw-Hill put it into trade and it became highly publicized.
I debated Karin DeCrow and another big feminist. It got very
political. That's what they wanted on TV.

By virtue of its unintentionally touching on cultural sensitivities, the work
managed to earn a hearing in the popular media. Ultimately the measure of
notoriety her critics gave the work would evolve from a liability to a genu-
ine asset, despite the discomfort that may have accrued to the author in the
short term.

The second approach highlighted in the oral histories was that of recast-
ing an existing dilemma. These are issues that have reached a stalemate or,
as in the case below, a compromise. The way forward in invigorating a mori-
bund agenda can be found in looking at the matter from a fresh perspective.
In response to an invitation offer a retelling and post hoc review of an im-
portant debate to which he was a party Francis Cullen provided an account
in *Reaffirming Rehabilitation* (1982). In the book, he and a coauthor forecast
a few negative implications from the emerging consensus that rehabilitation
programming in corrections had proven to be a failure (Martinson, 1974).

My book, *Reaffirming Rehabilitation*, which I wrote with Karen
Gilbert [Cullen and Gilbert, 1982], conveyed this and a number
of other warnings about the dangers of rejecting treatment. The book was contrary to what most criminologists thought.
It came out in 1982, and most criminologists thought that re-
habilitation didn’t work and that it was a benevolent ideology
that was corrupted by class and racial interests. My view was
that rehabilitation probably was corrupted, but not nearly as
badly as what we were going to get without it. And so that
statement, that book, really brought a lot of notice to me. And
also the fact that I called it *Reaffirming Rehabilitation* was a
fortuitous event. If I would have called it *Crisis in Corrections,*
no one would have paid any attention to it. But the title of *Re-
affirming Rehabilitation* meant that if some scholar needed a
reference to some idiot who still supported rehabilitation, he
or she would pick that volume off the shelf and cite it.

At that point in time conservatives and liberals came to agree that discretion
should be stripped from judicial authorities to eliminate sentencing dispari-
ties and permit lengthier prison stays. The choice of a title was deliberately
provocative, unambiguously setting the work against the prevailing think-
ing. The reforms suggested by the larger body of the community failed to
produce the positive outcomes projected, thereby vindicating Cullen and Gil-
bert’s claims.

A similar tack on reopening a seemingly settled matter is evident in Jack
Gibbs retelling of his work in reviving deterrence research in the mid to late
1970s (Gibbs, 1975). In remarking upon the supposition that criminology nev-
er retires any of its theories forevermore, he offers the “perfect illustration”.

Rather than look at the death penalty, which had dominated
research prior to that, I looked at the certainty and severity
of imprisonment. I thought the findings were rather impres-
sive. It appeared amongst states the greater the certainty of
prison, the lower the homicide rate. The greater the severity
of sentences for homicide, the lower the homicide rate. But the
immediate point, Brendan, is this: prior to my sort of renew-
ing—that sounds all too grandiose I know—prior to my re-
newing the question about crime, punishment, and deterrence,
deterrence research had been dead. The findings on capital
punishment all but buried the question. The line of reasoning
was very curious. It seemed to be something like this, “Well if
something as severe as capital punishment does not deter how
could anything else deter?” I think that question was wrong
because that ignored the certainty of capital punishment.

The revival of the deterrence doctrine (his preferred term) was part a larger
shift in the field as the labeling perspective fell out of favor (Gove, 1975) and
control theory came to dominate criminology of the 1980s.

Another way in which to raise conjecture is to draw attention to another
matter entirely. Critically oriented criminology works to debate first prin-
ciples. In this sense it is at variance with most empirical criminology on a para-
digmatic level; its theory and methodology differ. What defines legal versus
illicit behavior is typically already addressed when mainstream criminolo-
gists work to outline the problem of criminality. Before engaging data driven
claims, critical criminology asserts the priority of skeptically assessing what
justifies the law and how these codes are being enforced. The late William
Chambliss, one of the field’s pioneers of the sociology of law, speaks of the
approach as being fundamentally removed from the orbit of the dominant movements in the field.

I don't see any way that conflict theory is going to replace conventional criminology because of political and structural reasons in the discipline. However, I think conflict theory offers an alternative way of looking at it, which is basically looking at crime as a political phenomenon and trying to understand how the laws are made that make some acts crime while others are not and how the laws are enforced and what effects these have on different groups of people that are victims of law enforcement. So that's a very different way of focusing the field. Conflict theory does occasionally try and answer questions about why individuals commit crime, but for the most part those are very tangential to the general conflict perspective. So I think the conflict perspective has a great deal to offer, in part because it does not ask the questions that conventional criminology asks. It tries to explain the political and economic forces that lead to the way crime and criminals are treated rather than why people commit crime. That's a very different paradigm. It's not in any way competing with the conventional social psychological paradigm. The only paradigm that conflict theory really competes with on the structural level is the social disorganization paradigm of Sampson and those guys.

In an important regard, conflict theory represents a direct conjecture against the working order of the field. Yet it also an articulation of a viable alternative agenda.

The third classification of conjecture is unrequited criticism. This invites the question of why some concerns generate controversy but not others. Ja-net Lauritsen (1998) offers a few thoughts in the aftermath of one of her contributions that threatened the validity of the methodology used to advance longitudinal research. The findings she published, although relevant to a growing research enterprise, failed to elicit a response; the field marched on without pausing to react.

One was early on, in which I found that it was difficult to use longitudinal, individual-level data to study growth curves in delinquency and victimization because the data lacked reliability over time [Lauritsen, 1998]. I thought at the time that graduate students and other researchers would want to see if that was true in other data sets, especially some of the other individual-level, longitudinal studies. How good are our data for studying delinquency and victimization trajectories over time? Unfortunately, that question has not been studied much
- I have not seen many replications with other datasets. Maybe it has been done and the findings are buried in technical reports somewhere. I think it is an important enough issue to have been addressed and published elsewhere. However, I was told by someone working in another discipline (a biologist) that whenever you publish something that appears critical of a dataset or methodological approach you should not expect much response because few researchers want to criticize what they have spent years working on. Nobody wants to know whether their own data might be flawed because they have made large personal investments in it.

The conundrum the field faced here is over what it could provide by way of a reasonable fix to correct an identified flaw in survey design. Upending the work of dozens of scholars and millions of dollars of investment was impractical considering there was no solution in the offing. Thus, the matter was tabled until some future point when a realistic correction could be introduced.

Refutations

Refutations mark those instances in which scholars elect to assume a muckraking stance through challenging hallowed truths. Here is where scholars assume an iconoclastic stance with their peers in the community in questioning the validity of assumptions upon which a consensus has been constructed. Offering refutations is problematizing in its purest form. The interviewees pointed to two types of debates, empirical and theoretical. These examples help illustrate the contrasts in opinion because the battle lines between the antagonists are so sharp.

When asked to reflect on his proudest accomplishments over the course of his career, Charles Tittle first points to the following example of pressing heterodox views from time to time.

For instance, the social class/crime relationship [Tittle, Villemez, & Smith, 1978], which right away when I first encountered it I was suspicious of it. I didn’t think the research literature was particularly strong. Yet everybody just about said, “Well this is so well established it basically doesn’t need to be questioned anymore.” Of course, I didn’t agree with that. So I made efforts to do a systematic review of the literature to see if that was the case and concluded that it didn’t seem to be the case. The evidence wasn’t strong enough for us to rule out other possibilities besides the conventional approach. I’ve sort of done that with two or three things including conventional notions about policy, this, that, and the other.

The debate which followed had him on the receiving end of a tart remark offered by a sociologist of considerable influence (Peter Rossi), that his ques-
tioning the socio-economic status and crime link was tantamount to espousing a flat-earth theory.

His critique of the role of a scientist in pressing policy implications from research represents another set of ideas that put him at odds with a substantive portion of the profession. A pronounced objection of his (see Tittle, 2004) is to the application of these purported findings. The divergence in opinions regarding the role of science in promoting policy solutions is one that is embedded in ideology.

And that put me in opposition to a large body of criminologists who were convinced that we did know a lot, and not only did we know it but we ought to be implementing it, telling people what to do. This all struck me at the very least as arrogant but at the most dishonest. It’s flying ideology under the guise of science.

The field is deeply divided over the matter of public sociology/criminology. The position outlined above vehemently objects to the field pressing knowledge claims into policy. With this division of labor, the tasks of scientists and policy makers are to be compartmentalized into mutually exclusive identities. However, many others press back against this argument with equal might (Belknap, 2015; Petersilia, 1991).

One of the points of consistency across the sample was that of an unflinching belief that the data will dictate the outcome of debate. Each attested to following the data to their conclusion, regardless of what it might eventually indicate. When asked to provide an example of where one of his contributions raised criticism Wayne Osgood (1998) points to an objection raised with his evaluation of how peer networking was traditionally measured in the field’s research.

From 1980 to ’86 my main job was on a study of kids in training school and particularly on peer group influence. Out of what I was doing I got pretty convinced that it was really off the mark if you just asked kids how bad their friends are because it doesn’t match up worth a damn with what you’ll find if you ask their friends too. A piece I coauthored not too long ago [Haynie and Osgood, 2005] got very strong reactions from some reviewers about pushing that point. So I pushed harder.

The fact that his findings were rebuffed in some measure signaled that he ought to redouble his efforts at articulating a critique. What the paper’s reviewers were communicating indicated that the findings being critiqued may have been vulnerable.

There were several mentions of instances in which empirical matters and methodology have an unambiguous bearing on theoretical debates (e.g., peer networks and differential association). Another example can be drawn from
one of the animating debates that consumed the better part of the 1990s, the
back and forth between low self-control (Gottfredson & Hirschi, 1990) and
life-course criminology (Sampson & Laub, 1995). Robert Sampson character-
izes the exchange as follows.

I think we both put forth perspectives that were a little bit
more—how shall we say? If you take sort of a purist level and
you're pushing the logic of the theory, we pushed the logic of
life-course theory pretty far.

The contrast in the respective frameworks, he adds, produced further sepa-
ration within the control theory tradition, namely over method.

But I think it also lead to debates about method, particularly a
concern that we had that methods were driving a lot of the sub-
stantive agenda in criminology particularly in the life-course.
That was over methods for analyzing longitudinal data.

Because of the debate being as comprehensive as it was, the disagreement
has meaningful claim to being characterized as paradigmatic.

Decades prior to that exchange there was an episode that was consider-
ablely more acerbic in tone. The pugilism between Marxist inspired and main-
stream criminology reached its most dramatic expression in the February
1979 edition of Criminology which was dedicated to offering the former per-
spective a hearing. Enthusiasts and critics alike contributed to the install-
ment. It was there that Ronald Akers (1979) offered a few written remarks,
some of which may have been informed by a prior exchange. Earlier in his
career his reformulation of Sutherland’s differential association (Burgess &
Akers, 1966) theory was subjected critical critique.

We had these British sociologists, Jock Young, Ian Taylor, peo-
ple like that who thought that criminology was so ill informed
about theory that it should just give up trying to explain crim-
inal behavior. You could never do that. What you had to do was
explain the exploitative and corrupt capitalist system that ac-
counted for all this stuff. So they were very critical of what we
did. In fact, they called us “theoretically illiterate.”

For the omission of any structural variables and failure to point to the in-
equality that capitalism fosters, the project lacked in legitimacy, at least in
reference to the new criminology (Taylor, Walton & Young, 1973). Crimo-
logical theories insist on measuring their success at explanation against dif-
fering criteria. According to leading critical criminologists differential asso-
ciation-reinforcement theory was devastatingly lacking in essential areas.

There were other considerations raised in refuting the incorporation of
behaviorist mechanisms into Sutherland’s symbolic interactionist-based mod-
el. In its bare outline, the criticism states that the two approaches are antithet-
ical to one another. Akers explains the source of the critique in the following.
We got a lot of resistance from our colleagues at Washington, including people like Bill Chambliss, who, again, was a good friend of mine. We taught a course together. Bill kept pointing out, “Look. You can’t use Skinnerian psychology. It’s tautological. You can’t test it. It’s not a theory.” Skinner had this idea that you don’t even have to think about mental concepts or cognitive concepts. All you have to have is behavioral input and behavioral output. You can’t combine that with something like Sutherland, which has a symbolic interactionist base to it. It’s based on cognitive processes and so on. You can’t talk about definitions favorable and unfavorable without talking about cognitive processes.

Elsewhere in the interview and in other forums (e.g., Oral History Criminology Project, 1997), Akers states he eventually conceded the validity of these criticisms. In fact, pondering them led to further efforts at incorporating structural influences on behavior, and creating a remedy to the tautology buried in the working formulation of the theory.

Resolutions

The interviewees mapped several avenues on which these diversions from routine science traveled in reaching an eventual settlement. The first method requires additional evidence to be procured and then evaluated in rendering a verdict on the claims offered. Second, debates often ordain a new set of criteria that claims are to be measured against as the older metric is replaced. Third, there are instances cited where a détente is reached by a new approach successfully embedding itself in the field. Criminology demonstrates a robust capacity to be an accommodating field of inquiry.

The first manner of resolution can be roughly summarized as “making work.” Studies must be assembled and publications generated to verify or dismiss provocative claims. Charles Tittle (2004), when asked as to whether any of his more audacious claims against the field’s orthodoxy successfully surmounted the resistance they encountered, replied.

Well, I don’t know if I overcame it. The honest answer is it made work for people; responding to what I had said, my critiques, my analyses and so on. It provokes other people; it makes work for them. So everybody can succeed in our business if they can come up with an idea or a theory that is simple enough that a lot of people can use it, do research on it and get published. In other words, making work for them. I had a conversation one time with Travis Hirschi about this. This is pretty much the way he sees it too. That’s the way he’s made his career.

Similarly, Freda Adler (1975) remarked that the Law Enforcement Assistance Administration’s granting of hundreds of thousands of dollars to those
interested in investigating her prognosis of more female criminals and criminal justice professionals opened doors for many. The antagonism seen in the conjectures and refutations presents ample opportunity for professionals seeking to secure grants and publications to advance their careers.

Wayne Osgood illustrates how this kind of process works in elaborating upon how his criticisms of peer networks generated research and a resolution. The interviewer-author offered a supposition that the Adolescent Health data might now serve as a final arbiter in the debate, given the relative wealth of its data on that point.

WO: I think I will. That really brought this to the fore. Now there's a really good dataset that had that. Now there's a lot more peer network stuff going on. I think the evidence is pretty straightforward to me on that point. I think there's enough new stuff going on with network type stuff. If you know who people's friends are and you're asking them about their friends and you have data from their friends, it just opens up more kinds of interesting questions. I think that's going to overwhelm the folks who don't like it.

In a manner consistent with that of “stealing from our friends” (Osgood, 1998), he grants that his effort was echoed by research happening beyond the confines of criminology and criminal justice. The open borders of the field helped to marshal additional evidence substantiating his position.

I think I've kind of played a part in that for this topic, but there are about five, maybe up to seven, papers that people had written in subspecialties like substance abuse or sexual behavior or something for a more public health audience. They all said, “Look at all these data for how these measures compare. People really shouldn't do research using this other measure.”

The second strategy for resolving an issue in the science of crime and its control is to generate a new perspective on the matter; innovative methodology can often assist with the project. Experimental criminology takes its cue from the medical model of research. Experimentalists work toward randomization and separating treatment and control groups when evaluating various interventions, a rather demanding set of criteria vis-à-vis conventional methods. Lawrence Sherman, one of the experimental criminology’s most vocal proponents, drew attention to a major structural limitation when questioned as to what is limiting the influence of this movement’s methodology on the field overall.

I think the major impediment to experimental method in academic life is the way in which it departs from the lone scholar model. In social science, as in humanities, I think the predominant mode of working continues to be an autonomous crafts-person who is in control of their data collection
or analysis, the research design, specification of the research question, writing it up and getting it published without having to do such political and organizational things as building coalitions, obtaining resources, hiring staff, getting organizational partners who are actually handling cases in a human services context to vary the way they do their job to assess causation of different policies.

The investment required by the alternative model is cost prohibitive for most. This characteristic works to reduce its potential to conclusively resolve many ongoing debates because its presence is limited.

There are advantages to settling upon a method with which to resolve a debate, especially a deeply divisive one. Francis Cullen offered a few reflections on the transformation of the debate over the merits of rehabilitation. Martinson's broadside against correctional practice—Nothing Works! (Martinson, 1974)—came to dominate the corrections research. His meta-analysis managed to set the ground rules for the subsequent rejoinders. According to Cullen,

But there was an important ironic and long-term effect of Martinson's work. It changed the terms of the debate from a critique over state discretionary power to the empirical issue of whether one could show that rehabilitation reduced recidivism. That is, Martinson succeeded in framing the debate as an effectiveness issue. Those who attacked rehabilitation said, "See. It doesn't work." Once you put things in those terms, then the validity of rehabilitation rests on this question: Is it effective or not?

The advantage of accepting the altered criteria of debate is that empirical questions began to draw more attention, to the exclusion of the ideologically freighted questions. Normative questions concerning the relative moral merits of applying state power to enforce various correctional strategies are not amenable to solving in the same way that evaluating efficacy in reducing recidivism is. The latter is an empirical claim, not a philosophical one.

The third way forward involves acquiescence in the face of a new approach. The eventual acceptance of a wayward theory, even one as resistant to being co-opted as Critical Criminology, can be achieved if the perspective is deemed to introduce additional utility. Chambliss traces the progression of critical criminology along those lines.

Whereas thirty/fifty years ago when I started writing from that point of view, and people like Turk, Quinney, and others were writing from that point of view, it was pilloried as not legitimate, as being political, as being Marxian, as being pro-Soviet Union. It was pilloried as being completely out of the mainstream. So the arguments were very, very vicious. Today
its importance has been usurped in a way because now people say, "Oh yeah, that’s a legitimate perspective. It just asks different questions and has a different point of view." It, in a sense, has become more legitimate, not less legitimate. But I agree with what you said that it’s more marginalized in that people pay less attention to it. It's now just become one more perspective amongst all these different ones.

The quote betrays an almost wistful tone for the earlier intellectual fireworks. What the critical paradigm may lack for in terms of antagonizing mainstream criminology it compensates for with its adoption into the family.

The internecine battle within the control camp eventually played itself out in a compromise as well. The field moved past the matter when an awareness set in that the debaters were, in the main, in agreement terms of the major points. According to Sampson's reading of the dispute, criminology perceived the self-control and life-course theorists to be debating on matters that were largely specific to control theory. The sharpened arguments he mentioned earlier were being gradually blunted and a reconciliation of sorts was forged.

The fact of the matter is that Crime in the Making [Sampson & Laub, 1995] was still a theory of informal social control. It’s still a social control theory. Looking back, but even at the time, I think what we were trying to do was to say that, “Look, both self-control and social control are important.” We gave credence to changes in informal social control throughout the life course. In other words, age graded informal social control. . . At the time we thought that that wasn’t consistent with the general theory of crime. Now since then some people have argued, “Well self-control and social control are more compatible.” And that debate is still going on.

The indication of the debate lightly simmering, if no longer smoldering, gives an indication to a matter that typifies the field of criminology. There are few, if any (e.g., phrenology), theories that have been laid to rest eternally. We turn our attention now to a brief exploration as to why perspectives are seldom falsified with finality.

Recurring Memes

Like any other science, natural and social alike, criminology frequently faces its share of intractable questions. Theory, methods, and data exhaust themselves on occasion. When that occurs the community pivots to engage less demanding, more solvable matters. The question then becomes: What is to be done with the existing approaches? The typical response has been to shelve the application of the theory for an indeterminate period. When the theories eventually reemerge they each rely on a veritable muscle memory when setting to work once more. The essence of these theories is maintained
but they are reconfigured when confronting emergent realities. The core of what endures is—and here a term appropriated from biology is offered—a meme (Dawkins, 1976). Cultural memes are essentially a toolkit (Swidler, 1986) for how groups, including those comprised of scientists, address persistent social problems with an institutionalized response.

Two interpretations are granted in explaining the metamorphosis of criminological theory through the years. The optimists view the enduring evanescence (i.e., the continuing appearance-disappearance cycle) of theory as a virtue. This value results from the fact that the field’s ideas can be adapted and pressed into service as the historical context continues to change. Furthermore, the interdisciplinary ethos of the field actively resists relegating itself to a singular approach.

The pessimists mark that attitude as confusion on stilts, the direct result of an under-articulated set of theoretical propositions. Critics of how the field conducts its science allege that until rules are established which can assist the field’s membership in converging on an ordered exploration of the social world, the profession will persist in endlessly recycling its ideas. Optimists dismiss that attitude as being absurdly stringent. Besides, the continuing adaptability of various theories is a definitive virtue of the science of the field. It permits continuing exploration and elaboration of theories that address the peculiarities of an ever-changing social context. When the facts change, theory ought to adapt as well, or it risks irrelevance.

Arguing from an optimistic point of reference Freda Adler provided the most enthusiastic feedback on the state of the field. Her faith is grounded in an appreciation for the modern tradition tracing its origins back to Greek antiquity. In defending the continuing reinvigoration of inactive theory, she draws an analogy to one of humanity’s greatest memes, language.

Well they reappear because it’s like when you want to make up a new word you can’t get rid of the old alphabet: because they were tried and tested. There are parts of them that are okay and they’re changed a little. We kept the grit. We keep that and we get more sophisticated. Even techniques get more sophisticated. As we get more sophisticated, then we refine the methods. They’re getting finer. It isn’t that we revert back to social disorganization. My God, you can find those ideas back in Plato and Aristotle. We’re not going to get rid of that. They are going to come up but they’re going to come up in new contexts, and they’re going to be refined. That is the beauty of our theoretical revision.

Thinking on the context in which Sisters in Crime was published, Adler makes the case that it represented a simple extension of opportunity theory, popularized in the 1950s and ‘60s. The wholesale expansion of post war the economic expansion provided greater opportunity for both licit and illicit enterprises.
As the socio-political environment shifts, so do the theories that play a part in explaining the events of the day. While Adler poses her work as an effort capitalizing on intellectual movements within the field, there are other ways in which context directs science. John Hagan remarks that despite the reluctance of the field to engage particular theories, historical events have a way of forcing the field to reemploy them on occasion.

There was a period when what people like Chambliss and Austin Turk and Quinney were doing had a big audience. We went through a period in the '80s and even the '90s when that really got pushed into the background. We had a focus that was much more developmental, nation specific almost, and I guess you could say in the English-speaking democracies. There was a period of growing success for the field professionally and a period of growing sophistication methodologically, with important things happening in terms of theory, in terms of life course understandings and so on with crime. But it was also a period when we lost our focus on the state and the role of power. Our attention to inequality became very circumscribed in terms of where people were doing research. I think as a nation that we rediscovered some of these issues in the context of the genocide that was occurring in the former Yugoslavia in the 1990s. We tried to ignore it for a while and ultimately couldn’t. We got involved and our country played an important role both in military terms in intervening in that conflict and also in terms of playing a major role in the development of the international criminal tribunals. So we’ve had some changes back and forth.

A process of repetition is outlined where, despite the distractions of alternative subject matter or an outright neglect of the role of state power, critical criminology remains relevant. Theory in all its varied manifestations is habitually served as a time-tested framing device.

Theory is the medium of exchange for ideas within the field, making it an ideal space to contest the meaning of any given term. The drawback is that it provides space for seemingly interminable inquiry. Although the debates at a glance look to be little more than purely abstract philosophical exercises well removed from the day-to-day proceedings, these battles have a firm bearing on science. Ronald Akers (1979) offers an example of how the operationalization of control theory indicates whether it is a part of criminology or not, a question of significant weight.

To me the proof of that is name me a single test, including Hirschi’s own test [Hirschi, 1969], and anybody else in this multitude of studies of control theory, name me a single one that has not had conforming behavior defined as simply the
absence of criminal behavior. So if your dependent variable is crime or no crime that's the same dependent variable that all the other theories have. To me it's not criminology if you're not trying to explain crime. His argument is, "Well, no. You only explain crime by default. You try to explain why people conform and they conform because they're controlled away from committing criminal behavior." Well, okay. How's that any different from anybody else's explanation?

Although it is often overlooked as technical minutia the way in which terms are measured and tested is nearly always an open question.

Among others, Jack Gibbs has lobbied for the adoption of formal theory construction (Gibbs, 1985) to help the field lift itself out of the dilemma. This approach requires an exhaustive specification of variables and explanatory structure. When asked for his diagnosis on the source of the failure of the field to resolve matters definitively, he replied:

Lack of consensus on appropriate criteria for assessing theories. There's something that I think I should make clear: There's a curious phenomenon in sociology and criminology that theories are evaluated in terms of the perspective that supposedly gave rise to the theory. That's very curious; you'd think it'd be the other way around, that perspectives would be judged by the theories that it generates. Now, it's the other way around. You judge theory in terms of perspective that supposedly generated it. I think that's crucial in the question of why these trends, why the short life? Because once the interest in theories declined then interest in perspectives declined.

The flaw, as he sees it, is in using an endogenous approach to evaluating theory. Measuring the truth of a theory by its own internal logic is a subjective assessment. Gibbs rejects the discursive infrastructure of debate where contenders to the criminological throne joust against one another; the last left standing to assume authority. According to the logic of the pessimistic view, it is better for the competitors to agree to a set of rules to inform the contest before proceeding.

CONCLUSIONS AND DISCUSSION

The working order of criminology is one which provides the profession maximum opportunity to flourish. There are incentives to create ad infinitum; pruning is a secondary consideration. Empirical evidence is continually collected, permitting discovery of previously unknown facts, publication, and grant gathering. The discursive method has served to expand the scope of the field's inquiry and increase the collegiality of debate. These all represent advantages.
In addition, the results also indicate that avoiding and minimizing debate represents a missed opportunity. The matter of determining to what degree advances in the profession are tied to the progress of science presents itself here. The field demonstrates a reluctance to reward research that falsifies ideas (Dooley, 2016a). The acrimony involved with questioning “settled” debate can only impede the collection of additional knowledge. Some suggest that criminology’s lack of an “intellectual core” (Savelsberg & Sampson, 2002) may be at the root of its lack of coherence. A more definitive sense of identity would help in structuring the various debates.

There are two negative cases in the oral histories that confirm this observation. When asked whether any of his published work generated resistance, Joachim Savelsberg offered the following.

So, within a field like criminology in America, you have so many different—I’m not sure “factions” is the right word—orientations, types of interests. I’ve never found that whatever contribution I’ve tried to make was outright rejected by everyone. I always found there were people, some people, who really wanted to pick up on those ideas. That doesn’t mean that everybody did, or that there weren’t some people who rejected them or tried to block them or tried to disregard them. I’m sure there were.

When asked for an explanation of why that might be the case, it was offered that the field can be defined as one of convenience, at least in contrast to his home in sociology. Criminology and criminal justice is constituted of researchers drawn from any number of intellectual traditions. An overemphasis on theory would invite too much opportunity for unnecessarily complicating matters across these disciplinary divisions. In response there exists a working order that concentrates greater attention on the empirical and policy-related aspects of research.

The second case in point comes from Janet Lauritsen’s (1998) earlier example of having highlighted a methodological shortcoming in longitudinal studies. In her estimation, the crux of that contribution is mostly relegated to coverage in textbooks. When the field was forced to decide on the matter of halting millions of dollars of grants on which publications and careers were being furthered in the name of adhering to strict scientific protocol, it opted to look past the issue.

Plausible solutions to the dilemma of choosing between professional expectations that demand attention and science-qua-science ought to accept the former concern as non-negotiable and work within those constraints. Many of the interviewees expressed resentment, sometimes bordering on repugnance, toward the idea of scientific orthodoxy (see also, Dooley, 2010), as they felt it implied the proferring of allegiance to a unifying paradigm. Any solutions being generated that would interfere with obtaining grants, pub-
lishing, and the remaining markers of signaling professional advance were viewed with deep skepticism and considered impractical. Imposing a theoretical orthodoxy would be met with resistance.

To summarize, criminology has gained through the years through the intellectual volleys on a number of methodological and theoretical matters. There are a few inhibitions to a full embrace of an adversarial approach however. The barriers are found primarily in the organization of the profession. Solving the dilemma will require a compromise which will provide room for debate, yet appreciate the collective need for the signifiers of professional advance (i.e., publications, grants, etc).

Three possible strategies for achieving a successful reorganization within these parameters are presented. The intention is not to enumerate an exhaustive or exclusive list. Rather, the point is to demonstrate the types of research agendas that could prove suitable in generating fruitful conjectures, refutations, and resolutions.

The first suggestion is to encourage journal editors to continue arranging special topic debates on occasion. As a profession, criminology is committed to encouraging participation from a wide assortment of intellectual traditions and methodology (Dooley, 2016b). The two-fold advantage is that disciplinary influences will continue to generate points of debate and promote innovation. Part of that inclusion involves appreciating ideological diversity on a trajectory that ranges from radical to conservative (Wright & Delisi, 2015). The problem of crime is unlikely to be resolved by a solitary approach. If a single criminological paradigm is to emerge from its eclectic collection of perspectives, it will likely mirror the elongated progression of economics arising as a social science from its roots in moral philosophy.

The second recommendation is to open debate on the assumption of crime control as a public good. There are a host of advantages that could result. Reevaluating the public goods framework holds the potential to permit a rapprochement between mainstream and critical criminology. The latter perspective is derived from a Marxist understanding of public and private goods are, after all, allocated (i.e., economics). Assigning the reduction of crime to the state has produced great benefits (Elias, 1994). The state-centric approach is not without its limits, however, as state-sponsored crime research has pointed out (Rummel, 1997).

There are several approaches drawn from economics which could prove useful to the creation of such a line of inquiry. New Institutional Economics (NIE) is an example of one such effort that explores the decision-making processes institutionalized by various communities, including those governed by non-state actors. Just as with allocating rights to water use (Ostrom, 1990), the problem of controlling crime represents a tragedy of the commons (i.e. a free-rider problem with the exploitation of a “free” public good). Nuance and delicate negotiation often must be paired with a blend of state
and informal sanctions/monitoring if social order is going to be maintained. Sophisticated responses are required given that there are genuine limits to state power in areas ranging from the management of ungoverned pasture land (Ellickson, 1991), settling the early West (Anderson and Hill, 2004), and limiting violence in “total institutions” like prisons (Skarbek, 2014).

The positive analysis of economics provides additional benefits for the study of crime as well. The normative assessment of what constitutes a “crime” and the policies its control requires introduces a measure of difficulty. For example, opinion varies on whether one scholar’s version of crime in fact constitutes self-help (Black, 1983). The label applied to any action tends to be contingent upon its context (Cooney, 2009). What would be useful to consider is offering a more instrumental approach when discussing violence (Tedeschi & Felson, 1994). Although the thought of conscientiously assuming a normatively neutral position on these matters is likely to prove a contested proposition, it may help to consider the potential that a normatively free inquiry can grant in advancing science (Black, 2013). Downplaying debate over inherently philosophical matters until figuring out how the riddle is to be confronted fits within the field’s operating demeanor.

NIE, as opposed to its more familiar mainstream counterpart, emphasizes the value of investigating history (see especially, cliometrics) and the qualitative aspects of human interaction. An inclusion of this branch of scholarship heeds the call for criminology to evaluate its history (Koehler, 2015; Rafter, 2010). Lengthy historical accounts have linked institutions like capitalism (North, Wallis, & Weingast, 2009) and manners (Elias, 1994) to bring about more genteel forms of cooperation. The state and its interaction with informal modes of shaping behavior (Fukayama, 2011) is a prevailing theme consistent with NIE. Macro-historical investigations are almost required in comprehending the subtle shifts in collectively discovered responses to wayward behavior.

Third and lastly, the intellectual horizon criminology should consider drawing from in the promotion of debate draws on an implication from the sociology of knowledge. The existence of a sociology of non-knowledge (or ignorance) is inferred from the concept that knowledge is socially constructed (Smithson, 1985). The field of agnotology works to make the process explicit in its case studies of how the science wars (e.g., smoking/cancer research and global warming/climate change skepticism) pit scientific findings against research to the contrary. Science and “anti-science,” if you will, plays an influential role in convincing the public of the validity of a particular policy position (Mirowski, 2011). There are spoils to be gained by organized constituencies in exploiting the limits of voter attention and knowledge (Somin, 2013) by producing a fog of obfuscation. A policy-related concern as emotionally laden as crime is susceptible to the creation of various moral panics to exploit rationally ignorant voters (Caplan, 2011) in advancing their preferred political agendas. Here is where science, politics, and policy intersect. Identifying the
sources from which ignorance derives and reacting with a strategy to generate knowledge in response to that will assist practitioner and scholar alike. Separating out knowledge from ignorance opens opportunities for debate, intellectual growth, and professional advance. A definitive part of that process requires an evaluation of what determines facts that are known from observations which have yet to be satisfactorily established.

Openly contemplating why known-unknowns are not understood serves as the first step in generating a strategy to improve knowledge. Publishing the results of failed investigations and policies is integral to overcoming the file-drawer problem and establishing transparency. *The International Journal of Negative and Null Results, Journal of Negative Results in BioMedicine, and New Negatives in Plant Sciences* are at the forefront of a movement in the natural sciences in acknowledging the term “null-findings” as a non-sequitur. Evidence of limited knowledge is knowledge in and of itself (Schultz, 2011). The creation of additional journal space to highlight null-finding research fits within the working mentality of the profession. Journal outlets dedicating themselves to these pursuits serve notice to the field of the importance of solving these concerns, contributing to the making of reliable and relevant work.

The present research has its limitations, which merits at least a brief acknowledgement. The sample size is small and, admittedly, unrepresentative. Future research might seek to redress this shortcoming through gathering a random sample. Such a strategy would undoubtedly produce a sample with a more demographically diverse set of respondents. As the field has expanded, the research interests of its members has shifted considerably. As a result, the trajectory and focus of debate has undoubtedly been altered.

**ENDNOTES**

1 In the interest of brevity, “criminology” is used as an omnibus term capturing both criminology and criminal justice.

2 The alternative paths may or may not lead to the same end producing a better science. Bruinsma’s (2016) writes, “Obviously there is a single proper road that leads to Rome.” The sentiment indicates a laudable endorsement of letting a broad agenda wend toward the end of achieving theoretical clarity. The rationale for pursuing a different approach with the present inquiry is motivated by a contention that many theoretical debates have proven to be exceptionally stubborn with submitting to a resolution. This is so because of the a priori assumptions on which the varied perspectives are founded. For example, the debate over whether Sutherland’s theory endorses “cultural deviance” is almost Biblical in nature. Each party contends their interpretation of his work justifies a rejection (Matsueda, 1997) or endorsement of the critique (Costello, 1997).
3 The approach is consistent with that of oral histories generally (Bennett, 1988). For example, Studs Terkel’s work did not attempt to capture the Depression era (1970) or the experience of World War II (1997) through gathering a random sample, stratified on various demographics, and posing a prearranged set of questions. The oral history method permits lengthy interviews to approach an array of topics. The transcripts are then edited down for presentation to the reader to render a textured feel for a historical event.

4 The breakdown of the eight declined invitations was as follows. Four corresponded to either the mailed invitation (1) or the email overture (3). Three declined via email responses, generally citing personal reasons. One potential interviewee was approached on the author’s behalf by an interviewee and communicated a preference in declining via that contact.

5 Economics ponders the question of how societies deal with distributing finite resources, a problem-centered inquiry just like criminology and criminal justice. From a multitude of theories, a generalized account of humankind engaged in cost-benefit decision making processes eventually emerged. The illustration is offered not to suggest the adoption of this abiding assumption, but to demonstrate how scientific consensus tends to emerge.

6 The author volunteers no evaluation as to what the stature of these publications are vis-à-vis the main currents of these varied disciplines. The point is merely to illustrate that there are movements afoot to draw attention to and formalize the respective community’s understanding of the limits of science.

7 As with the challenge of operationalizing variables, the attributions made here with categorizing scholars and their scholarship are open to debate. Taking just one of the scholars, John Hagan, for example, the inherent difficulty of categorizing his research becomes undeniably apparent. A truncated list of his work includes—race, gender, conflict criminology, international applications of law, imprisonment, white collar crime, labeling perspective, offender decision making street ethnography, among others. It is offered here that a defensible claim to the sample being inclusive of the main thrust of criminological work is present.

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**AUTHOR BIOGRAPHY**

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Book Review:
Kitty Calavita and Valerie Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic*

ISBN: 9780520284180

Reviewed by: TaLisa J. Carter, University of Delaware, USA

In *Appealing to Justice*, by Kitty Calavita and Valerie Jenness explain the grievance system of the California Department of Corrections and Rehabilitation (CDCR) in detail. Grievance systems are the formal internal process by which inmates contest prison conditions. Federal law requires that prisoners fully exhaust the grievance system before their claims can be heard in court. Although there may be an assumption that justice exists in systems that are charged with upholding standards of safe and humane conditions within confinement facilities, the authors find the grievance process to be riddled with inefficiencies and inequalities.

CDCR provided the researchers with a list of over 16,000 inmate grievances filed in the fiscal year 2005-2006. This resulted in the qualitative analysis of 470 grievances, using a random sampling strategy of appellants. These qualitative results were enhanced by interviews of supervisory correctional staff members. The combination of data sources gave a complex perspective on the CDCR grievance system and the culture surrounding inmate protests. Two major findings of the work are (1) the CDCR is complicit in the systematic silencing of inmate protests via the grievance process, and (2) there is a fundamental conflict between the logic of inmate rights and the logic of punitive control.

The authors describe the various pressures staff persons face in processing the vast number of grievances submitted by inmates each week. To keep up, staff rely on “assembly-line routines” (pg. 37) that lead to quick decisions. Oftentimes, these strategies do not take into account contextual factors that have dramatic consequences on the everyday life of individual prisoners. Departmental policies enforce these work management strategies which creates a culture in which inmate voices are silenced. Therefore, employees who engage in silencing processes feel justified by the institution itself. That is, “shifting responsibilities for their decisions onto rigid rules and polices gives decision makers not only cognitive certainty but a moral ‘alibi’ (pg. 120), thereby perpetuating the systematic oppression of inmate rights and voices. In this way, the CDCR becomes complicit in an unjust grievance system.
The conflicting logic between inmate rights and punitive control creates an inherent tension that, as discussed above, the current CDCR grievance system fails to alleviate. Inmate rights logically require their complaints to be addressed, at least sometimes. However, the authors describe that an inmate being victorious in their initial grievance and/or on appeal was an extremely rare occurrence. The logic of punitive control focuses on an individual convicted of wrongdoing to be the recipient of punishment rather than compromise. This is reflected in that fact that prisons hold massive amounts of power within the grievance system, serving as both the respondent to the accusation and the adjudicator in determining just outcomes. The authors describe a concession of sorts between these two conflicting logics where the inmate is forced to perceive victory in a different way. Inmate participation in the grievance system is a way in and of itself to combat wrongdoings. That is, for many inmates “standing up for one’s rights was the goal, not merely a means” (pg. 78).

The content, approach and complexities of this book are, in my opinion, refreshing and welcome. Grievances are an under-studied part of the correctional system. To that end, studies that use multiple approaches to explore grievances are rare. For the authors to have this type of research relationship with the CDCR, especially on a topic that may be viewed as controversial and/or risky for the institution is a noteworthy feat. While it was revealed that one of the coauthors had a record of research with the CDCR as well as good connections with key decision-makers, the nuances of these relationships may have shaped some of the findings. Furthermore, the characteristics of the research team that was involved in the data collection were not discussed. Demographics such as gender, sex, age, and relevant experience have been found to influence how interviews are conducted, the way respondents feel, and how data are interpreted. The authors find the diversity of staff and inmates to be overshadowed by the homogeneity of their perceptions and actions, further reflecting the “power of these legal, structural, and institutional forces (pg. 128).” However, the absence of racial demographic breakdown of participants does not mean it is neither present nor critical in discussions about the grievance system.

Using voices from inmates, corrections supervisors, and grievance system staff makes the findings of this book a major contribution to the literature. Although insightful, this work is missing the critical voice of those who have the most interaction with inmates: front-line correctional officers. The authors consider the decision to exclude rank-and-file officers from the study as a strategic research decision to “minimize the degree to which they could intentionally or unintentionally contaminate the field or otherwise undermine the research (pg. 196).” However, the importance of hearing and understanding the place and voice of these staff persons is evident, particularly because front-line officers were discussed repeatedly throughout the text. For instance, correctional officers are referenced in some staff interviews as
“knuckleheads” in need of training. Here, rather than placing fault with the actual officers, some staff blamed inadequate training. On the other hand some grievance staff consider correctional officers who commit misconduct to be poor reflections on the entire CDCR staff. No matter how blame is assigned, front-line correctional officers are an important part of the everyday conditions inmates face. The grievance system cannot be fully analyzed without taking the voices of correctional officers into account.

In all, this book continues an important yet infrequent discussion about the nuances of the correctional grievance system. The excellent research relationship the authors had with the CDCR allowed findings drawn from multiple sources. It is my hope that this conversation will continue by integrating the importance of diversity and the voices of front-line correctional staff in future analyses.
Historical Book Review:
Michel Foucault, *Discipline & Punish: The Birth of the Prison*, trans. Alan Sheridan


**Reviewed by:** Brian Sellers, Eastern Michigan University, USA

For hundreds of years, criminologists and penologists alike have investigated the various functions and designs, as well as the policies and practices that regulate the effectiveness of prisons as correctional institutions. The ideological aims underpinning penal practice can be either myopically focused or quite diverse as they reflect the varying goals of retribution, deterrence, incapacitation, and rehabilitation. However, as corrections continue to undergo numerous reforms, scholars and policymakers might do well to revisit, critically reflect upon, and reexamine the socio-historical origins of the prison and its close relationship to power structures operating in the wider society. French philosopher, Michel Foucault’s book, *Discipline & Punish: The Birth of the Prison*, is a radical reevaluation of our more mainstream assumptions regarding the role of penal institutions and their foundational purposes in advanced, sophisticated societies, where freedom and liberty are cherished. As Foucault states, “This book is intended to be a correlative history of the modern soul and of a new power to judge; a genealogy of the present scientifico-legal complex from which the power to punish derives its bases, justifications and rules, from which it extends and by which it masks its exorbitant singularity” (p. 23).

The book is divided into four parts that convey how society’s response to crime evolved from torture to punishment to discipline and, ultimately, to the creation of the prison. Foucault’s work has been criticized for its obscurity and specialized language; however, his unique use of prose is also one of his purposive stylistic techniques to illustrate how discourses, like institutions, are complex structures in which individuals can become easily trapped and confined without the knowledge needed to find their escape. As Foucault takes the reader on a journey through the past in order to better understand the conditions of the present, his audience is challenged to resist the temptation to perpetuate the penal path we chose to take centuries ago in hopes that the human sciences will become the agent of change necessary to actualize what we could become in the future.
In the first part of his book, Foucault presents a stark retelling of the grotesque and horrific public execution of Damiens the regicide in 1757, which is followed by a contrasting account of the documented prison rules inmates are subjected to in 1837. The comparison between the two approaches to punishment reveal a fundamental shift from the 18th Century to the 19th Century, whereby the focus of punishment is no longer limited to the offender's body and is now extended to his or her "soul." The soul refers to our modern concept of the mind, such as the psyche, conscience, or personality, which allows for new possibilities of punishment as the investigation of the subject, while incarcerated in prison, can now look beyond the crime to unearth underlying motives that drive criminal behavior.

Prior to the creation of the modern prison, crimes were seen as direct challenges to the sovereign's power, which undermined the hierarchical order that placed the monarch as the all-powerful head of state above the lower orders of society. Foucault refers to this power structure as the political situation of the era in which power works from the top down. Under these power dynamics, there was a ceremonial system of punishment that entails both torture and execution. The trial was initially hidden and relied on torture to expose the truth of the crime. Thus, torture served as a secret investigation by judicial authority, and it was highly regulated as a tool to exact a measurable quantity of pain with the aim to extract evidence, and ultimately, a confession. A confession would remove the need for further investigation and transition the ceremony to the public execution, where the executioner would serve as the sovereign's champion to carry out this political and judicial ritual in an effort to repair the injury to sovereignty caused by the crime. In addition, "the spectacle" of public execution requires an audience, because in order for the ceremony of power to be complete, the people must bear witness to the restoration of order and give it meaning. However, there was uncertainty in how the vicariously viewing public would react to the execution. People may attack the executioner and attempt to free the prisoner. Additionally, the convict's last words could become the political focus of how crime and its punishment are portrayed in literature, and responses to this literature might lead to forms of popular illegality, such as demonstrations or riots from the angered masses.

The second part of Foucault's book examines the penal reforms that occurred as societies evolved out of the Age of Enlightenment and new forms of production and capital accumulation materialized during the Industrial Revolution. During the 18th Century, judicial violence was increasingly seen as exceeding the legitimate limits of power exercised by the sovereign. As such, humanitarian efforts by reformers, like Beccaria, sought to end the shameful practices of torture and public execution and replace them with a careful calculation that adjusted punishment to the nature of the crime, created new consequences, and punished just enough in order to prevent future offending. This new approach to punishment reflected the concept of the
social contract in which all citizens collectively agreed to form a state and punish those who broke the laws, so that the right to punish was no longer to appease the vengeance of the sovereign but instead to uphold the common defense of society.

To Foucault, these reforms reflected structures of power that still sought to suppress forms of popular illegality, which due to structural and economic changes underwent a shift in focus from rebellion to a focus on goods and property crime. Thus, Foucault offers a critique of these reform efforts and emphasizes how they strategically coincided with the modification of how power functions in society. His argument is that the real motivations for penal reforms were not manifested out of concern for the humane treatment of criminals in which the state would punish less, but instead, the aims were to make punishment more efficient by relying on the technology of representation via obstacle-signs to exert more control. The obstacle-sign represents the crime and its corresponding punishment in a clear association that is easily understood to dissuade the potential criminal. In other words, punishment was no longer used to reestablish order, and was instead used to prevent crime through the technique of punitive signs that serve to deter offending by stripping the crime of its attraction. According to Foucault, there were two ways society could punitively react to an offender, which either entailed restoring the offender to the social pact or shaping him or her into an obedient subject by using punishment as a technique of coercion that trained the individual’s habits. The appeal of corrective penalty, which would target the offender’s “soul” for restructuring and create a compliant subject prevailed as the dominant form for organizing the power to punish and subsequently led to the adoption of the modern coercive institution known as the prison.

The third part of the book examines how docility is accomplished through the forces of discipline and control of time and space, rather than torture of the body. Within institutions, timetables are utilized to regulate time as the individual experiences it, while forms of exercise are used to regulate the body through activity. Foucault argues that it is through the division of space and time that the individual is created out of the group. This assertion is not to suggest that people never existed in groups before this historical period; however, it does claim that the concept of arranging people for the purpose of controlling them was new. So it is from the collective mass of bodies that the notion of “the norm” is established, and the modern invention of “the individual” is compared to this standard to determine if a person is normal (e.g., a sane person, a law-abiding citizen, or an obedient child) or abnormal (e.g., an insane psychopath, a hardened criminal, or a defiant child). The more abnormal one is, the more likely one is to be excluded or become subjected to discipline and control. Furthermore, Foucault states that the primary function of disciplinary power is to train docile bodies, and therefore, the success of disciplinary power relies on hierarchical observation, normalizing judgment, and examination.
Hierarchical observation, as through the construction of “observatories,” provides the watcher with a vantage point that makes it possible to see everything constantly. Normalizing judgment creates a “penality of the norm” in which it is possible to measure differences between individuals and use punishment to correct departures from normal behavior. Thus, this judgment rewards people whose behavior acquiesces to the standard of the normal homogenous group to which we all are conditioned to belong; yet it also perpetually punishes and seeks to normalize those who deviate from the norm. Organizing people into ranks and classifications based on their “normality” accomplishes this process. Lastly, the examination fuses the processes of observation and normalization through a new ritualized practice that transforms the economy of visibility into an innovative exercise of power. Now the individual subject, instead of the sovereign, is the focus of observation and may be treated as a “case” to be analyzed and described. It is through these disciplinary mechanisms, instead of force, that the calculated gaze of discipline operates. As such, Foucault acknowledges Jeremy Bentham’s Panopticon prison as the disciplinary apparatus with the architectural structure that enabled all prisoners to be seen incessantly, within their individual cells, by a supervisor without the inmates knowing when they were being watched. These conditions created power over people's minds and the subordination of their bodies through architecture that fosters indefinite examination in order to render inmates compliant through normalizing (i.e., self-disciplining or self-corrective) behaviors that become internalized as they begin to conform to the “norm.”

In part four of the book, Foucault proclaims that since our society is built on liberty, the prison, as an institution of coercion focused on the deprivation of liberty, is the obvious and self-evident form of punishment for society to employ. Moreover, society has yet to find a viable alternative, and as a result, is preoccupied with what we should do with the prison rather than how we might function without it. The prison maintains total power over individuals through panoptic surveillance and aims to reform his or her character through exercise, work, and training of the body and soul. Here, Foucault also explains how the modern prison is actually a penitentiary that combines the dual functions of the workshop (i.e., where prisoners engage in a world of production through “exercise”) and the hospital (i.e., where prisoners are examined by professionals of the human sciences to gain knowledge of the individual whereby behavior is recorded, mental state is assessed, and abnormality is catalogued) to increase the efficiency of power in the prison, which allows for the prisoner to be redefined as “the delinquent.” Consequently, we see not only the expansion of prison but also the growth of the human sciences (e.g., psychiatry, criminology, psychology, sociology, and medicine), which create bodies of knowledge that controls and describes human behavior in relation to norms. The term “delinquent” is not referring to a youth who breaks a law, but instead it represents a new sub-class group in society whose very existence reflected illegality and crime, and the effects of the pe-
inality in which they are subjected to allows for this new criminal underclass to be identified for further control and observation by both the prison and the carceral system that serve as parts to a larger system of discipline that emerged from the class and economic conflicts of the 18th and 19th centuries.

Therefore, Foucault points out that rather than reduce crime, prisons produce “delinquents” and prison conditions encourage criminal networks to flourish, which later condemns released inmates to future recidivism and perpetual supervision and confinement that will eventually leave the prisoner’s family destitute and vulnerable in society, as well as susceptible to the temptations of deviance. Foucault is not necessarily arguing that prisons create crime; however, he does suggest that without prisons, crime and the criminal would be perceived in different ways. So after hundreds of years of witnessing prisons failing to reform “delinquency,” Foucault’s critique uncovers a perhaps more sinister motive behind the carceral system in which the aim is not to eliminate crime, but rather to reorganize our knowledge about crime in order to sustain a control society that manages conflicts over power through the mechanism of normalization that shape and govern everyone's life. Thus, the prison serves as a vital component to the machinery of the carceral continuum, and its diffusion throughout society permits its survival as a complex apparatus to discipline and punish new and evolving forms of popular illegality that might challenge existing power relations and conventional social order.

Foucault’s analysis is still very much relevant today, and if we look close enough, we can identify numerous parallels to the concepts and notions he captures in his book. The original title, in French, is *Suveiller et punir*, which emphasizes the act of surveillance. If we step back and look around us, it is hard to ignore the overwhelming amount of surveillance we are subjected to daily in society and how it affects our conformity to the norm. Thus, research in the areas of surveillance studies and criminal justice technology would greatly benefit from incorporating Foucault’s work. Panopticism refers to “the few seeing the many,” and a vast array of surveillance technologies are increasingly being used in industries, schools, prisons, hospitals, the military, law enforcement, the courts, and corrections. Indeed, Foucault warned that the panopticon “is a type of location of bodies in space, of distribution of centers and channels of power, of definition of the instruments and modes of intervention of power, which can be implemented in hospitals, workshops, schools, and prisons” (p. 205). In other words, panopticism functions as a disciplinary apparatus whose microphysics of power can be generalizable to domains beyond the machinery of penal systems to expand the ability to control and discipline throughout all facets of the control society, or carceral city.

For example, let us consider schools and the hyper-vigilant response to school-related violence in the post-Columbine era. As Foucault mentioned, schools are designed as institutions of conformity and their architecture can
easily be manipulated to enhance the visibility of students. The mounting of CCTV cameras in hallways, the installation of metal detectors and transparent lockers, the requirement to wear clear backpacks, and the use of ID cards with radio frequency identification (RFID) technology that allows the movements of students to be tracked and monitored are all increasingly used in schools across the United States and in other countries. The goal of these surveillance technologies is to place students under constant panoptic inspection with the intention of deterring deviant behaviors like bullying, truancy, fighting, vandalism, and substance use. Like the panoptical processes used in prisons and community corrections (e.g., electronic monitoring of those on probation or parole), the presence of CCTV cameras encourage self-surveillance because students do not know who is watching and when they are watching. In addition, official psychological profiles (i.e., an ordered system of knowledge/power used to compare a student’s behavior, relationships, and interests to a prescribed list of abnormal symptoms) may be used to identify several behavioral traits common to school shooters or disruptive students so school officials can determine who merits inclusion or exclusion. Similarly, recent reliance on zero tolerance policies in schools also acts as mechanisms to exclude those who pose a threat to the norm by exhibiting disruptive behaviors (e.g., insubordination, dress code violation, substance use, weapon possession, etc.), whereby they are diverted away from educational opportunities and funneled into the school-to-prison pipeline to face increased surveillance, discipline, and control.

Foucault’s overall critique of the existence of the carceral system and the pervasiveness of the power to punish in society is that although we have modified how we discipline, punishment is still largely used to quell popular illegalities (e.g., demonstrations, protests, riots, etc.) that seek to change the dominant political and economic power structure in society. Over time, popular illegality evolved from efforts to subvert a despotic sovereign to illegality centered on property, to illegality focused on political upheaval. If we reflect on the turbulence of the 1960s, which sought widespread social and political change to promote issues of racial equality and civil rights, it is not too difficult to understand how civil disobedience and social unrest lead to political leaders (e.g., President Richard Nixon) desiring to restore “law and order” via the “War on Drugs.” Many critical theorists and social scientists have documented how the “War on Drugs” became a new strategy to classify and categorize citizens into groups of normal and abnormal through the overt criminalization of drug use and distribution. In this case, the street pharmacist, the “crackhead,” and the dope boy are all targets of a harsh disciplinary response to what many claim is a public health issue. Examinations of how the War on Drugs is waged have revealed that African Americans, Hispanics, and the poor are disproportionately arrested, prosecuted, convicted, and sentenced for drug crimes. As one can see, the “delinquent” label Foucault wrote about as the product of prisons, which creates a new “criminal underclass,” is similar to today’s “criminal” label that stigmatizes ex-fel-
ions and allows for forms of legalized discrimination to exist to further marginalize them into a permanent undercaste of society (see Alexander, 2011).

Prisons are typically at the edge of cities or in rural areas hidden from the prying view of the public. Subsequently, their remote location means that these coercive institutions are often “out of sight, out of mind” and basically operate without the intrusion of public scrutiny. Foucault spends a great deal of time explaining how inmates are kept busy with forms of “exercise” and examined by professionals (e.g., psychologists) to assess changes in behavior, attitude, mental state, and overall well-being. However, Foucault’s theory also has room to evolve in order to investigate other ways in which inmates are manipulated and controlled to become docile bodies. One practice of considerable concern is the used of solitary confinement. A growing body of research is investigating how solitary confinement exacerbates pre-existing mental illness and cultivates new psychoses, as well as elevating levels of aggression, anxiety, and depression among inmates who receive this form of punishment while incarcerated. Perhaps torture has not completely disappeared, but rather has evolved to better produce “delinquency” that requires continued discipline and control.

By revisiting Foucault’s explanation of how society transitioned away from the spectacle of public execution, we can recall that society was presented with two new ways to punitively react to an offender. Rather than choosing to restore the offender to the social pact, we chose to shape him or her into an obedient subject by using punishment as a technique of coercion that trained the individual’s habits. According to Foucault, this approach led to the formation of the carceral system we have today. Foucault also asserts that the prison is now an essential building block of society, so removing it without changing other aspects of the system would be futile. Currently, there is a worldwide movement seeking to replace punitive correctional practices with restorative justice practices, which aim to engage victims, offenders, and the greater community in a process of reconciliatory dialogue in an effort to repair the harm caused by crime and rebuild damaged relationships at both the individual and community level. Restorative justice practices aim to hold the offender accountable, build up the competency of the offender, and respond to conditions in the community that cultivate crime and undermine public safety. Through this process formal labels are typically avoided as the offender’s participation leads to their diversion from formal imprisonment and informal community-based sanctions are imposed instead. Perhaps the restorative justice approach, coupled with community-based rehabilitation, could serve as a viable alternative to incarceration and effectively restore the offender to the social pact.

These examples are only a few among many relevant reasons why Foucault’s work is still important today. Beyond the examples above, Discipline & Punish may specifically offer insight to many areas of critical social theory, legal studies, critical political theory, and critical criminological theory,
especially post-modern criminology, cultural criminology, post-structural criminology, constitutive criminology, and semiotics among others. As Foucault reminds us, “Justice must always question itself, just as society can exist only by means of the work it does on itself and on its institutions.”

**REFERENCES:**

Book Review:
Waverly Duck, No Way Out: Precarious Living in the Shadow of Poverty and Drug Dealing

The University of Chicago Press, 2015; 192 pp.
ISBN: 9780226298061

Reviewed by: Jascha Wagner, University of Delaware, USA

No Way Out: Precarious Living in the Shadow of Poverty and Drug Dealing examines how the residents of “Lyford Street,” an impoverished Black neighborhood, organize for survival against the backdrop of “increasingly desperate circumstances.” Decades of deindustrialization and misguided social policies have left the neighborhood economically and socially isolated. Unemployment and poverty are rampant for young men of Lyford Street. Stripped of educational or economic opportunities, the drug trade has become their “principal employment.” However, against the “stereotypical image of the drug infested ghetto,” Waverly Duck compels us to see Lyford Street as a place with a unique social order that offers opportunities and even safety to its residents.

Lyford Street is part of a small, northeastern American city (pop. 33,000 in 2012) Waverly Duck calls “Bristol Hill.” In 2005, Duck was drawn into his field site through a chance encounter. He was asked to testify as an expert witness on behalf of a young man, “Jonathan Wilson,” from Lyford Street—accused of murder and accessory to murder. Duck set out to contextualize the young man’s life story and his pathway into drug dealing in the environmental constraints of an economically-poor neighborhood with a flourishing drug trade – a context the young man had grown up in. To prepare his testimony, Duck began to emerge himself into the community and the lives of its residents. Far beyond his initial scope, he continued his ethnographic research for seven years.

The main argument of the book is that the residents of Lyford Street, faced with environmental constraints on opportunities and resources, develop practices that allow them to survive their daily struggles and to make sense of their lived experiences of poverty, yet maintain a positive self-image against the stigma of poverty. Moreover, the author shows how these practices and discourses over time lead to stable nets of reciprocal expectations and implicit rules that guide their everyday actions and interactions in the neighborhood.

In the introductory chapter Waverly Duck positions this perspective against culture of poverty approaches and argues that culture is not a cause
of poverty and that it is, moreover, malleable and depends on the structural conditions under which it develops. Isolated from the concrete social conditions and settings for which practices and discourses developed, for instance when seen through the eyes of policy makers or researchers, they might seem as irrational decisions or even as signs of social disorganization or moral decay. Understanding crime and deviance through Duck’s framework requires a focus less on personal characteristics or moral failings of offenders and more on the social expectations of the settings they live in.

The first two chapters of *No Way Out* outline Jonathan Wilson’s pathway into drug dealing and discuss the characteristics of the drug trade and drug dealing careers of Lyford Street. Drug dealing in there is shaped by its location next to an expressway that allows buyers easy and fast access to the drugs without ever having to leave their cars: For the predominantly White, suburban customers, Lyford Street functions as a drive-through for powdered cocaine. Duck observed how the location, the customers, and the product shape the organization and characteristics of the drug trade in the neighborhood. For instance, he observes that drug activities ebb and flow with the time of the day and week—the drug trade is especially prevalent in the evening hours and during the weekends when the customers with regular jobs stream into the neighborhood. Therefore, the dealers higher in the local hierarchy take the more lucrative evening shifts while younger and less experienced dealers are relegated to morning and midday hours. Drug dealing in Lyford Street is not, however, organized by gangs, as Duck stresses, but rather by individual drug dealers who have often known each other since childhood or have family ties with each other. The drug dealers also work together during shifts as order takers, money collectors, and drug deliverers. Without any formal organization, the drug trade activities within shifts as well as the organization of spots for drug activities are guided by tacit understandings of hierarchies based on age and experience. However, drug dealing careers are dangerous and dealers must prepare for possible stick-ups as well as the seemingly inevitable arrests. Instability of social and economic conditions as well as violence are so closely connected to the interaction orders that evolve around the drug trade of Lyford Street.

In the chapters three, four, and five, Waverly Duck contrasts insider perspectives on Lyford Street with outsider perspectives, and shows how the differences in experiences and expectations can lead to misunderstandings and prejudice. For instance, when outsiders, such as public officials, the media, or the police, discuss crime and violence in this predominantly Black and economically-poor neighborhood, they rely on understandings and descriptions of gang activities and senseless violence. However, from an insider perspective, as Duck shows in a vivid discussion of a series of murders connected to Lyford Street, clear individual motives are visible. Similarly, chapters six and seven describe the lived experiences of economic hardship from the perspectives of Lyford Street residents. Duck shows here how diverse
policies, such as child support laws or zero-tolerance policies, were made without attention to the daily experiences of the low-income residents of neighborhoods as Lyford Street and how they exacerbate economic and social isolation. Duck here reiterates his argument that social policies meant to elevate the situations of the economically-poor need to start with their experiences and their practices of survival. Moreover, he argues that policymakers need to understand that the effects of individual policies and social institutions on the lives of low-income Americans cannot be understood in isolation, but that the focus, especially for profound social change, needs to be on the interplay of social institutions and policies and the structure of reduced opportunities they concertedly produce.

*No Way Out* is a slim book of roughly 140 pages. It is an ethnographic study that keeps theoretical and methodological discussions to a minimum and foregrounds the lived experiences of its characters. The theoretical arguments and concepts Duck uses to make sense of the participants’ stories are woven into and reiterated throughout the chapters, but the strength of *No Way Out* lies in the thick descriptions of the participants’ experiences and their shared space—Lyford Street. The profound contributions of the book arise from its unusual field side as an urban ethnographic study. As Duck stresses, Lyford Street, as part of a smaller urban area, might be different from impoverished neighborhoods in major US cities. And the observations Duck can make about its chronic poverty and the drug trade complement other urban ethnographic studies that address gang-related behaviors and social disorganization. Duck contrasts these studies with the picture of a neighborhood “highly organized” for survival. While survival refers foremost to surviving economic hardship, it also means maintaining meaningful relationships with friends and family, and maintaining positive identities against stigma and cultural violence.

However, the brevity of the book may also constitute a limitation. For instance, Duck claims that the drug trade in Lyford Street and its organization differ from what we know about drug trades in other impoverished US neighborhoods; however, discussions of aspects that differ and what factors might lead to its deviating organization are not fully developed. Similarly, claims about failures of policies based on the lack of taking the lived-experiences and the knowledge of residents into account and advocating to use a more holistic approach to counter poverty might have intuitive appeal, but discussions of concrete examples are absent and leave readers wondering how to move forward. Moreover, the argument that we need to address challenges for low-income residents in impoverished neighborhoods in its interplay and based on their historic development is not fully extended to a critical argument that identifies the processes behind the structural inequalities or the motivations of the actors that drive the convoluted system of multiple inequalities. Despite these minor limitations, *No Way Out* extends debates relevant to readers interested in crime, social disorganization, or
urban ethnography and provides remarkable conceptual tools to foster our understandings of social inequalities.
BOOK REVIEW:
Aldo Civico, *The Para-State: An Ethnography of Colombia’s Death Squads*


Reviewed by: Elena Sciandra, University of Trento, Italy

On August, 24, 2016, the Colombian conflict returned to the spotlight. On this day the peace agreement between the Colombian government and the last active guerrilla group, the FARC (Fuerzas Armadas Revolucionaria de Colombia), had been signed after decades of discontinuous peace talks. Such discontinuity, along with other peculiarities, have long piqued the interest of scholars in this conflict; not only is it one of the longest civil wars in recent history – its origin dating back to the end of the 1950s – it has also shaped the political, economic, and cultural life of the country. Started as sectarian riots motivated by political ideals, enduring violence and a drug-based economy soon emerged and consolidated, while the civilian population remained caught in a cycle of murders, targeted killings, disappearances, and forced displacement. According to official statistics, between 1958 and 2012 over 200,000 people died, 81.5 % of which were civilians, while more than 4.5 million people were internally displaced. Yet a comprehensive study of both the conflict and the actors involved is still lacking.

In *The Para-State*, Aldo Civico acknowledges the need to provide a thorough insight into the Colombian conflict, and focuses on an understudied, yet crucial armed actor: the paramilitary combatants. The author aims to go beyond a plain account of the violence perpetrated by the paramilitaries to untangle the complexity of this social phenomenon and to understand how these groups have enjoyed solid and broad support from different layers of the Colombian society.

The book geographically covers the north-western Colombian region of Antioquia, a region that has seen the rise of guerrilla and paramilitary groups, social disorder, and the establishment of powerful drug cartels. Based on Civico’s fieldwork in Colombia between 2003 and 2008, *The Para-State* is the outcome of the author’s interest in the activities of the paramilitaries as well as in the vast power they wielded. Although the primary focus of Civico’s research was on the ways displaced civilians reinvent their lives, he first documented the spectacular violence carried out by paramilitary groups through

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the stories of its victims. The book, therefore, aims at enhancing the knowledge about the paramilitaries' pivotal role in the Colombian conflict. By combining several ethnographic methods, Civico retraces the history of the war through the eyes and the experiences of paramilitary group members and challenges the traditional understanding of a weak State unable to foresee and stop a civil war. The book's key assumption, indeed, is the intertwine-ment, that is, the complex project of gaining political and economic power by the paramilitaries with the support of a large section of the Colombian state. In Civico's words, "the source of paramilitaries' power and legitimacy is external to them (p. 144)."

To substantiate his assumption, Civico proceeds in progressive steps to bring to the fore specific topics related to the Colombian conflict, such as the Limpieza, cocaine production and sale, and the disarmament, demobilisation, and reintegration programme, garnered from the reported first-hand experience of former members of paramilitaries' death squads and the historical reconstruction of the conflict.

The book opens with a powerful prologue, where a partial reproduction of Civico's field notes describes his first meeting and the following interviews with Doble Cero, one of the most notorious paramilitary combatants and leader of the Bloque Metro group. While the pages rapidly turn, the readers share the expectations and revelations of the author as well as Doble Cero's mindset. We follow Civico through military checkpoints and impervious roads, until he meets with the paramilitary commander and interviews him in the middle of the countryside. Although his reputation of cruelty precedes him and despite the ongoing war against rival paramilitary groups, Doble Cero appears as a charming and "caring father," keen to explain his choice to join the paramilitaries and his refusal to disarm on the basis of ideological contrasts. The prologue contains in nuce all the aspects of the conflict that the author develops in the main body of the text: the justificatory framework of self-defense against the leftist army used by paramilitaries and their supporters, the disarmament and demobilisation programme, and the ties between drug cartels and the combatants.

The first two chapters address the "narratives of paramilitary combatants" (p. 9) through the voice of former members, in order to understand the reasons behind a person's decision to join these groups and to accept the logic of violence. In spite of the differences in ages, personal histories, and ranking in the paramilitaries, they have in common a life of violence, endured and enacted. Starting his career with a small stash of cocaine and a money exchange business near the Ecuadorian border in the 1970s, El Doctor soon turned into a trusted leader of the North Valley Cartel and organised illegal shipments of cocaine, money laundering, kidnappings, ex-

Limpieza means "cleaning" and refers to the systematic recurrence of extreme forms of violence by some of the paramilitary groups in their effort to eradicate the guerrilla presence from the Colombian territory.
tortion, and targeted killings, while he was also working as a mediator between different cartels. Due to his skills and connections, El Doctor eventually became one of the main strategists of the paramilitary, and worked in the Middle Magdalena region where élites first united against the guerrilla forces. The concentration of land in the hands of landowners, cattle ranchers, and businessmen encouraged the spreading of leftist guerrilla groups, including the FARC, which, in turn, resulted in the establishment of the first self-defense groups in 1982 and the beginning of the paramilitary parabola. Land and ranch owners, local political élites, army officials, drug traffickers, and businessmen all contributed to the project with men, money, and protection in the effort to annihilate the guerrilla insurgency in the region in the name of peace and stability. By so doing, they created the basis for the intertwinement.

Contrary to El Doctor’s case, other members joined the paramilitary in search of revenge and of a sense of belonging to a greater cause. Jorge Andrés, for instance, volunteered as paramilitary after a short experience in the army, after the guerrillas killed his brothers. While he joined motivated by a personal vendetta, he soon appreciated the salary and the order enforced by the paramilitaries in the villages freed from the leftist presence. In his eyes, the killings and the torture of militia members and civilians was a necessary tool to respond the enemy’s violence. He spent years fighting the guerrillas in the mountains before he decided to return to Medellín, where he joined the Cacique Nutibara bloc, an urban paramilitary group. Eventually, he had to demobilise with his group, although with other former members he still continues to work as a vigilante.

Chapters three and four investigate two empirical manifestations of the intertwinement, namely the Limpieza and the flourishing drug-based economy. Using a combination of historical ethnography, interviews with paramilitaries, and personal experience, Civico provides an accurate account of the expansion of the paramilitaries in the entire Antioquia region and their alliance with drug cartels. The key figures who orchestrated the birth of the paramilitaries in the region are the Castaño brothers, Fidel and Carlos; starting respectively as a drug trafficker and a hitman, they both collaborated with the emerging drug boss Pablo Escobar and, thanks to their charismatic personalities and connections, the brothers managed to acquire both wealth and political influence. After the FARC killed their father, the Castaño brothers embarked in the creation of a small self-defense group in the Urabá municipality, so as to help the banana plantation owners in the fight against the guerrilla forces. Once the presence of the leftist’s combatants and collaborators was eliminated, they widened the project to the entire country and created the AUC – Autodefensas Unidas de Colombia, an umbrella organization unifying paramilitary groups countrywide, financed mostly by drug trafficking. The convergence of interests shared by the paramilitaries and the drug cartels is reflected in the creation of the North Valley Cartel to fund the
AUC on the one hand and the concentration of economic and political power and land in the hands of powerful drug dealers on the other.

The relationship between drug-related criminal organizations and the paramilitaries, however, is more complex than it appears at first sight. Indeed, they shared the geographical location: Medellín and the Antioquia region were not only home to the paramilitaries, they also emerged as a strategic hub for the distribution of Cuban cocaine into the US market in the 1970s, before taking over control of the cocaine business in the following decade. Moreover, many paramilitary commanders were at the same time drug kingpins, such as Cuco Vanoy, leader of the Bloque Metro, while the cultural impact left by Pablo Escobar and his cartel had inspired the new generation of paramilitaries. The ties between these actors strengthened in the 1990s, following the death of Escobar and the rise of small, competitive, yet powerful drug cartels that adopted the “anti-insurgency discourse” (p. 130) to use the paramilitaries as private armies.

Having described the building blocks of the convergence of interests between legal and illegal economic and political élites, chapters five and six go further in examining the theory of intertwinement. Civico draws a parallel between the Colombian paramilitaries and the Sicilian Mafia, highlighting their many commonalities. Similar to the paramilitaries, the Mafia developed in the rural areas of Sicily in the second half of the 19th century in the aftermath of the process of land privatization and social unrest, which led the new owners to rely on armed groups of bandits to control the territory and resolve disputes. With the Italian unification in 1860, these armed groups further consolidated their power, as state officials benefited from their collaboration. As pictured by Block, a scholar cited by Civico, the newly established Italian state, being unable to enforce the law, forged an alliance with the Mafia to pacify the region. The intertwinement began, and the Mafia operated within and with the consent of the state. Civico posits that the paramilitaries mirror the evolution of the Mafia; the local élites, landowners, and business owners turned to armed groups to counteract the emergence of the guerrillas. In time, the paramilitaries set aside political ideology and transformed into powerful criminal organizations funded by drug trafficking.

Although “the convergence of interest among armed, political, and economic actors” in Colombia (p. 173) represents the strongest similarity with the Mafia, other parallels can be seen as well. Civico refers specifically to the complicity of the population with the paramilitaries, which resembled the acceptance that the Mafia enjoyed from some of local communities. Even if people at first welcomed the leftist militias, they soon looked to the paramilitaries to eliminate the social instability endorsed by the guerrillas. Elites also backed the paramilitaries, as long as they remained a lesser evil. The implications of such interconnections are investigated in chapter six, where the author analyses the narratives of the demobilization. As part of the agreement between the AUC and the government, paramilitary groups disarmed,
while thousands of combatants entered reintegration programmes throughout the country. Without public protests, complete immunity was assured to the paramilitaries, except for a few leaders who were extradited to the US for drug-related offenses. Most interestingly, only the paramilitary activities fell under the agreement, leaving the criminal business unpunished. Likewise, not all paramilitary members abandoned their arms and continued both their criminal and the vigilante careers. Hence, “paramilitaries continue to dominate” (p. 185). In the concluding remarks, Civico emphasizes the double nature of the intertwinment process: while the spectacular violence perpetrated by the paramilitaries expresses the state’s coercive function, the intertwinment itself originates new spaces in which to delegate such function to armed groups. Violence thus became and remains endemic in Colombia’s political system.

Overall, the book has several strengths. First, the reading is engaging thanks to the combination of styles; field note annotations, interviews, policy documents, personal considerations, and historical reconstructions create an intriguing storyline. Second, the topic is unique, since the role of paramilitary groups in the Colombian conflict has so far escaped the attention of the broad scholarly community. Moreover, the comparison between the paramilitaries and the Mafia offers an unprecedented insight into the nature of violence itself. Rather than separate political from criminal violence, Civico successfully highlights the similarities between the two phenomena; in the long run, they may converge and overlap, as the historical trajectory of the paramilitaries and the Mafia proves. The notion that the state itself creates the conditions for paramilitary violence to spread in order to maintain the system’s configuration is also innovative, promoting future debates on the innate nature of violence in any given society. Third, without being a manual of ethnographic methods, the book offers a practical overview of several research methodologies. Apart from first-hand interviews, the reader learns about historical ethnographic methods as well as the importance of field notes. Civico does not hesitate to share his own doubts and feelings as a researcher, giving the book a profound sense of reality and engagement. The *Para-State* is an excellent contribution to the study of the Colombian conflict in general and the history of the paramilitary groups in particular, which has the potential to become a reference for students and scholars in anthropology, criminology, international relations, law, as well as history.
Call for Papers

Special Issue: Technocrime Research at the Margins

We live in strange times. Through mobile devices we can access more information than has been available at any other point in human history. We can communicate instantaneously across the world through complex webs of wires, antennae, and satellites. Troves of information are continually stored and processed in massive data centers. In the age of the microprocessor and global telecommunications networks, nary a single element of social life has remained untouched including crime and crime control. Criminologists struggle to make sense of crime and control in this context where our understandings of the world have been rattled loose under what Jock Young termed the “vertigo of late modernity.” While inroads have been made, more progress is needed.

The Journal of Qualitative Criminal Justice and Criminology invites submissions for a special issue entitled “Technocrime Research at the Margins.” JQCJC seeks manuscripts focusing on qualitative examinations of technocrime (or “cybercrime”) and crime control issues to help alleviate the dizziness induced by our computer-mediated times. Studies focusing on critical criminological or otherwise marginal perspectives in the area are encouraged. Potential topics of interest include critical examinations of:

- Online harassment and hate speech
- Hackers, pirates, and other tech-subcultures
- “Cyberterrorism” rhetoric and responses
- Technocrime moral panics
- Law enforcement practices and perspectives related to information security

More traditional explorations of technological misuse/abuse may also be considered as well. Persons interested in contributing to this special issue are encouraged to submit abstracts by August 15th, 2016 to the guest editor, Kevin F. Steinmetz, at kfsteinmetz@ksu.edu. Upon abstract approval, manuscripts should be submitted to the guest editor by no later than May 15th, 2017. Manuscripts will be rigorously peer-reviewed.

JQCJC will consider only original manuscripts not previously published or currently under consideration elsewhere. All manuscripts should be in English, attached as Word Documents, double-spaced, preferably less than 40 pages (including tables, references, and appendices), and should conform to the latest APA format, without the use, however, of any running headers or DOIs (Digital Object Identifiers). Endnotes, tables, and figures should be on a separate page at the end of the manuscript with call-outs for placement.

We look forward to your submissions,
Kevin F. Steinmetz, Ph.D.
Guest Editor
Kansas State University